

# **JOURNAL OF THE INSTITUTE OF BANGLADESH STUDIES**



## **Volume 39 (2016)**

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**Working Conditions of Bangladesh Readymade Garment Industry**

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in Sub-district Health Service Delivery in Bangladesh**

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**The State of Governance in the Conservation of Ponds in  
Rajshahi City Corporation**



**Institute of Bangladesh Studies  
University of Rajshahi**

# Journal of the Institute of Bangladesh Studies

Volume 39 (2016)

Editor  
Swarochish Sarker

Associate Editor  
Md. Kamruzzaman



Institute of Bangladesh Studies  
University of Rajshahi

Journal of the Institute of Bangladesh Studies  
Volume 39 (2016), Published in November 2017

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Published by  
Md. Ziaul Alam  
Secretary (in Charge)  
Institute of Bangladesh Studies  
University of Rajshahi

Cover Design  
Abu Taher Babu

Printed by  
Rajshahi University Press  
University of Rajshahi

Price  
Tk 200.00  
US \$ 10.00

**ISSN 0256-503-X**

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All communications should be addressed to:  
The Editor of JIBS  
Institute of Bangladesh Studies  
University of Rajshahi, Rajshahi 6205, Bangladesh

Telephone: +88-0721-750985

Fax: +88-0721-711185

E-mail: [jibs@ru.ac.bd](mailto:jibs@ru.ac.bd)

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## **Kaivarta Rebellion of Varendri: Exploring A New Dimension**

Ichhamuddin Sarkar

**Abstract:** The historical literature of the Kaivarta Rebellion that occurred during the Pala rule of Bengal is fairly rich. Scholars have interpreted the event from different dimensions giving space of debates as to the nature of the Rebellion organised by the people of Varendra under Divya/Rudoka/Bhima leaders from the Kaivarta community. The main focus of the present article is to locate the major points of the bias of a few historians and to look into the incident afresh in the light of some sources which were either not consulted properly or somehow had been by-passed for some unknown reasons. Thus here is an attempt to revisit the history of the event and to explore the underlying factors with a new perspective.

### **1. Introduction**

Roughly from the beginning of the eighth century down to eleven century A.D. the Palas of Gauda dominated the political scene of Ancient Bengal. Many eminent historians have paid much attention to this event and dealt the scene from various standpoints with special reference to the condition termed as *Matsyanyaya* (political chaos) which prevailed just on the eve of the establishment of Pala Empire by Gopala (c.750-770 A.D.). It is said that Gopala was made king by the people (*prakriti*) to put an end to the state of lawlessness of the region where people were the victims of the circumstances. The successive kings of the empire, however, tried their best to bring back the normal situation of the then Bengal and by at large the unity and the integrity of the Pala Empire was maintained till the reign period of Mahipala-II (c.1072-75A.D.).

It may be noted that Vigrahapala-III (c.1054-1072 A.D.) had three sons namely Mahipala-II, Surapala-II and Ramapala. Mahipala-II being the eldest son succeeded his father Vigrahapala-III after his death but his reign is said to have been full of troubles and political disturbances. Not only a palace conspiracy organized by his brothers but also he had to face a well organized rebellion of his vassal chief. Mahipala-II's armies were not strong enough to tackle the situation

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\* Professor, Department of History, University of North Bengal, India.



and when he advanced to fight the rebels, he was not only defeated but killed by his enemies. Varendri, as a result was passed into the hands of Divya, a high ranking official of the Kaivarta community.

## 2. Change in the Political Scenario of Ancient Bengal

The change in the political scene of Ancient Bengal and the subsequent recovery of Varendri by Ramapala has been described in great detail in the contemporary Sanskrit-*kavya Ramaharita* by Sandhyakara Nandi. This important historical document supplies us a fascinating account of the history of Ancient Bengal with special reference to the symptoms of decline of the Pala Empire covering a history and political events of the region no less than half a century (roughly from 1070 to 1120 A.D.). All the more no other records excepting a few stray references found in the Kamauli copper plate of Vaidyadeva and Manahali copper plate of Madana Pala have supplied such a valuable phase of Bengal history. By the way, Sandhyakara Nandi was a court poet of Ramapala and that his account would be impartial and unbiased cannot be taken for granted. However, beyond this there are certain other indications of the story which deserve to be looked into with serious concern. It may be noted that R.C. Majumdar does not find any justification as to the allegation of Mm. Haraprasad Sastri and Radha Gobinda Basak (R.G. Basak) that Mahipala-II was an oppressive king and that the Kaivartas were being oppressed and tortured during his rule.<sup>1</sup> There is also another allegation against Mahipala-II that 'he was addicted to warfare' and that he disregarded the advice of his 'wise' and experienced ministers and led an ill-equipped army against the rebels under Divya. R.C. Majumdar again declines to comply with such a conclusion rather found it difficult to accept the view in the light of such 'scattered references cited in Ramaharita.'<sup>2</sup> But fact remains that Mahipala-II was succumbed to death and Divya took the possession of Varendri as ruler, although for a short time.

## 3. A Short Sketch of the Kaivarta Rebellion and the Traditional Views

There is a common view that Mahipala-II lost his life in that battle of the combined forces of the *Samantas* and organized by Divya. Divya, his younger brother Rudoka, ruled Varendra successively and latter's son Bhima before

<sup>1</sup> R.C. Majumdar, *History of Ancient Bengal* (Kolkata: G Bharadwaj, 1974), p. 143 (henceforth *HAB*); *The History of Bengal*, Vol. I, Hindu Period (Dhaka: University of Dhaka, 1976), p.151 (henceforth *HB*); Mm. Haraprasad Sastri, *Ramcaritam of Sandhyakara Nandin* (Kolkata: The Asiatic Society, 1969), p. XXVii.

<sup>2</sup> For details see "Introduction of the *Ramacaritam* of Sandhyakara Nandin," *The Ramacharitam*, ed. by R.C Majumdar et al. (Rajshahi: The Varendra Research Museum, 1939), p. XVI and also *HB*, p.151.

Ramapala (c. 1082-1124 A.D.) reestablished Pala authority. Under these circumstances, it is really difficult to draw any precise conclusion when there are contradictory, misleading and inconclusive view and comments of the historians as to the interpretation of the *Ramacharita* as well as the analysis of the rebellion from deferent angles.

However, A few scholars intend to justify the rebellion of Divya against the oppressive rule of Mahipala-II. The *Ramcharita*, the only contemporary literary source by Sandhyakara Nandi describes this revolt as *Dharmmaviplavam anikamalakshmikam* (1:24b)<sup>3</sup>. If anybody looks at the term used by the author of the *Ramacharita* it may be clear that Ramapala had repelled or reduced the strength of the unholy or unfortunate rebellion of Divya. The most significant word is *alakshmikam Dharmmaviplavam* and the attitude of the author towards Divya, the Kaivartas and all who participated in the rebellion. It is again interesting that R.S. Sharma has tried to justify the revolt in the light of its peasant dimension and also commented logically that the uprising can not only be characterized as merely a popular uprising against tyranny or simply 'a civil disturbance against an established and legitimate authority upsetting law and order.'<sup>4</sup> So there may be some other significant factors which rather provoke further analysis of the incident and to find out the roots of such a situation leading to the collapse of the Pala Empire for a short time.

#### 4. An Overview of the Observations of R.S. Sharma

In the light of the observations of the eminent historian R.S. Sharma we may proceed to some other dimensions of the Kaivarta Revolt. Here too, there may be certain debates which provoke many interpretations of the issue and though it is problematic to draw a final conclusion yet it deserves some thorough analysis in order to understand the whole perspective and historiography of the Kaivarta Revolt. Initially there is a space to look upon is that how far the Pala Empire as a whole could maintain permanent stability and peace in the region! There is a point of doubt as to the success of the Pala rulers regarding the desired prosperity of the empire after eradicating the chaos and disorder (*Matsyanyaya*) mentioned in the Khalimpur copper plate inscription issued in the 32nd regnal year of the Pala king Dharmapala. Whatever they had established seem to be nothing but a kind of state called feudal monarchism once designed by the Gupta rulers. The aristocratic class as well as *Prakritis* (common men/subject) had perhaps no alternatives but to welcome and appreciate the state system introduced by the

<sup>3</sup> "Introduction of the Ramacaritam of Sandhyakara Nandin," *The Ramacharitam*, p.30.

<sup>4</sup> R. S. Sharma, "Problems of Peasant Protest in Early Medieval India," *Social Scientist*, vol. XVI, No.9, 1988, p. 9; R. S. Sharma, *Economic History of Early India* (New Delhi: Viva Books, 2011), p. 99. (henceforth 'Economic History...').

Palas. It is likely that following the footsteps of the Guptas the Palas somehow proved their ability to unify the smaller units of the traditional but rotten republics of the region. But a rebellion like that of the Kaivartas clearly prove that their strategies could not work well to check the crisis within the society and economy and it eventually resulted in an outburst of the people led by the Kaivartas and its leader Divya at a time when there was no alternative to check the overall crises of the empire. Again, a question arises how far were the Palas successful in materializing the process of the empire-building and why in the long run the system got disrupted inviting violences! In this respect one may refer to the *Dasaprakritichakra* (group of the ten magnets) mentioned in the second chapter of the *Shukraniti*. The *Shukraniti* says- "*purodhacha protinidhi pradhan sachibasthata/mantricha pradabibakashcha panditashcha sumantakah/ amatyo dutahatyeta ranja prakritayo dash*" Here one can find that there may be ten magnets namely *Purohit*, *Protinidhi*, *Proadhan*, *Sachib*, *Mantri*, *Pradabibaka*, *Pandit*, *Amatya* and *Duta* who are supposed to be the assistants of the state and obviously they would be the spokesmen of the state elites. It is again important to note that this type of elements was equally much powerful during the Palas and they could, for reasons, enjoy the all privileges as the important pillars of the state fabric. But the existence of the state structure largely depended on the support and co-operation of the common people who stood ever as the sole base of the state and the polity. But a crucial matter that hints us is what may be the causes that inspired and instigated the Kaivartas and their fellowmen to raise voices of protest in the form of a rebellion under consideration? This particular question may lead us to explore certain inevitable factors, which seem to have given opportunity to this group of people to end the Pala Empire. Is it a fact that there was certain economic situation that victimised the common people (people of Varendra) and the Kaivartas were not an exception to mobilize themselves along with other victims against the torture and exploitations of the ruler and the ruling community?

### 5. Economic Condition of the then Ancient Bengal

In the light of the above premises let us look at the economic condition in particular of the then Bengal which might supply us some clues to understand the background of the disruption which had brought an end of the Pala rule of Bengal. It is, however, doubtful as a recent scholar Jhunu Bagchi by name has tried to prove that there was a sound economic condition of the Pala Empire.<sup>5</sup> Curiously the same scholar draws our attention to another factor and in her words- "the fallow land of north Bengal also were sold for two or three *Dinaras*

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<sup>5</sup> Jhunu Bagchi, *The History and Culture of the Palas of Bengal and Bihar (cir. 750 AD-cir. 1200AD)* (New Delhi: Abhinav Publication, 1993), p. 85.

for a *kulyavapa*.”<sup>6</sup> It indicates to the level of price of the lands of North Bengal (i.e. Varendra) which was definitely beyond the capacity of the common people to buy land to cultivate and in the same way she has noted clearly about ‘a very few coins of this period’ (i.e. Pala period).<sup>7</sup> Thus there may be so many contradictory views and interpretations about the economic condition of the Pala period and obviously the absence of unanimity in the studies create more confusion. If we are to go by such type of modern research on the Palas, we do not know whether the historian of this type is guided in anyway by so called Bengali chauvinism and is addicted to self-invented history to mislead the readers.

## 6. Bias in the Historiography of Ancient Bengal vis-à-vis Economic Crises of the Region

All the more it seems that most of the economic historians vis-à-vis political too, have not given much attention to the study of economic system of ancient India nay ancient Bengal. The real impetus to the study of ancient Indian economy, according to R.S. Sharma, is those of the nationalist historians who ‘had been influenced’ by vague socialist thinking and ideas of the materialist interpretation of history.<sup>8</sup> According to R.S. Sharma the nationalist writings of the 1920s and 1930s regarded the ancient period of Indian history as one of the considerable prosperities and general contentment. The patriotic bias often resulted in an exaggeration of the self sufficiency of the early Indian village out of all proportion, and a greater emphasis on the ‘socially productive aspects of the corporate institutions (cast included) of pre-British India’ than warranted by available historical evidences.”<sup>9</sup> R.S. Sharma is perhaps right when he found some predisposition in the writings of the nationalist economic historians and identified their intention to cover up the social in equal characteristics of the early Indian society by vague philosophical platitudes.”<sup>10</sup> Scholars are not few to show the credit and achievements of the Pala rulers regarding donation of lands (land grants) and installation of the images of Hindu deities and renovation and reconstruction of old monasteries and temples for the cause of the so called show of ‘prosperity and welfare state’ might be significant so far as their kingship and sovereign power were concerned. But behind the background there must have been uninterrupted exploitation of the peasantry. Beside this the Pala rulers have the record to face foreign invasions and various warfares. This had definitely affected the peasant economy and side by side agrarian-based industries.

<sup>6</sup> Ibid, p. 87.

<sup>7</sup> Ibid.

<sup>8</sup> R.S. Sharma, *Economic History...*, p. 166.

<sup>9</sup> R.S. Sharma, *Economic History...*, p. 160.

<sup>10</sup> Ibid.

Incidentally if one is to depend on the study of R. C Majumdar and his statement in the light of Kautilya's *Arthashastra*, then one is to conclude that Pundravardhana (North Bengal) was one of the reputed centers for the manufacture of textile commodities namely *kshauma*, *dukula*, *patrorna* and *karpasika*.<sup>11</sup> Beside this we are also informed that Pundravardhana was a seat of foreign trade in addition to that of domestic market transactions. With reference to the account of Kia Tan (785-805 A.D.) who noted about land route "from Tonkin to Kamarupa which crossed Karatoya river, passed by Pundravardhana, then ran across the Ganges to Kajangal and finally reached Magadha."<sup>12</sup> Now the question is had there not been any positive effects of such type of trade in terms of economic activities and to be honest the development of the region! But very unfortunately the fruits of such economic well-being did not go to the pocket of the common people. The ultimate result seems to be the sufferings of the people. The so called aristocratic and the administrative classes were certainly the beneficiaries and if someone is to recall the study of D.D. Kosambi who talked about 'feudalism from above' in which there was a tendency in 'the early centuries of the Christian era when kings began to transfer their fiscal and administrative rights over land to their subordinate chiefs who thus came into direct relation with the peasantry ...'.<sup>13</sup> This trend and perception may be clear from the study of R. S. Sharma's *Indian Feudalism: 300-1200* where he clarifies the economic essence of Indian Feudalism and feudal polity under the Palas,<sup>14</sup> Pratiharas and Rastrakutas and through his study he lays emphasis on a particular dimension.<sup>15</sup> In his view what happened in those Kingdoms was a type of Feudalism like that of Europe which contributed to the rise of landed intermediaries leading to the bonded labouring of the peasantry through mounting tax burdens, increasing obligations to perform forced labour and the evils of sub-infeudation.<sup>16</sup> What R.S. Sharma postulates is not only the existence of serfdom but a new angle of investigation which calls for more investigations. Here one may think about the social condition of the Kaivartas who were absorbed in Brahmanical society as a mixed cast with low origin and a part of them were boatman (*Jaliya*) but in East Bengal they belong to peasant class (*Haluya*). It is a fact that some Kaivarta chiefs were given land instead of payment of service done to the Pala Empire. From concrete evidence it appears that these lands were resumed by Mahipala-I more or less around the end of the

<sup>11</sup> R.C. Majumdar, *HB*, vol. I, pp. 654f.

<sup>12</sup> R.C. Majumdar, *HB*, vol. I, p. 662.

<sup>13</sup> D.D. Kosambi, *An Introduction to the Study of Indian History* (Bombay: Popular Prakashan, 1957), pp. 275-76.

<sup>14</sup> Ram Sharan Sharma, *Indian Feudalism: C. 300-1200* (Kolkata: Calcutta University, 1965).

<sup>15</sup> R.S. Sharma, *Economic History ...*, pp. 170-71.

<sup>16</sup> R.S. Sharma, *Economic History...*, p. 171.

tenth century.<sup>17</sup> And the Kaivartas are said to have been oppressed with taxes by the Pala authority. The common people did not appreciate these exactions of huge taxes and they sought some leadership to demonstrate their feelings and protest. They found the quality of leadership in Divya and if we are to follow the views of the commentator of the *Ramacharita* then the rebellion was led by a number of vassal chiefs and it is difficult to accept that this vassals belonged solely or primarily to the Kaivarta community.<sup>18</sup> In that case Divya or anybody else can be identified as *Dasyu* or a robber to interfere in the affairs of the state. He was virtually a *nayaka*- a hero or leader of the rebellion.<sup>19</sup>

### 7. Sandhyakara Nandi and His Personal Views about the Leaders of the Kaivarta Rebellion

It is rather not unlikely that a court poet like Sandhyakara Nandi would call Divya as *Dasyu*, i.e., brigand or dare-devil, robber or in any other obnoxious term because as a court poet he enjoyed all the possible privileges of the state and his position otherwise may be realized from the fact that he was a son of Prajapati Nandi who adorned the court of the Pala state as 'the principal minister of peace and war' (*Mahasandhivigrahika*).<sup>20</sup> It is, however, noteworthy that the victory of the rebels against Pala ruler Mahipala-II was eventually followed by the seizure of Varendri by Divya and in this light it may not be out of place to conclude that the two events mentioned were connected as cause and effect. But it is interesting that nowhere it is said or suggested that Divya was the only leader of the revolt and took the opportunity to utilize his success by placing himself on the throne. Nowhere is also mentioned the reign or reign period of Divya. In the verse 1.39, we are again informed that Varendri being frightened (*Trasta*) became the object of protection of Bhima, the son of his (Divya's) younger brother (Rudaka) who proved their worth to work out any scheme at that vulnerable point. At the long last Ramapala, brother of Mahipala-II could hardly reconcile himself to the loss of Varendri, his beloved ancestor-land (*janaka-bhu*) and according to Sandhyakara Nandi "he did not care for the lordship of the earth, having been deprived of his cherished fatherland (Varendri) and consumed by the fire of his heavy sorrow" (1.41). In his utter desire Ramapala sought for help and co-operation from all possible corners and he became successful in getting back his *janaka-bhu* Varendri. In addition to the response of a huge number of rulers he

<sup>17</sup> *Epigraphia Indica*, XXIX.5 also R.S. Sharma, *Economic History...*, p. 99.

<sup>18</sup> For details see "Introduction of the Ramacaritam of Sandhyakara Nandin," *The Ramacharitam* (ed. By R.C Majumdar et al.), p. XVI.

<sup>19</sup> *Ibid.*, p. XVIII.

<sup>20</sup> R.D. Banerji, *The Palas of Bengal* (Varanasi: Bharatiya Publishing House, 1973), p. 53.

put up a valiant fight and thereby he brought about the final collapse of the *Kaivartaraj*. In this respect, his maternal uncle Mathana or Mohana, the Rastrakuta chief who joined Ramapala along with his two sons only to find the success of Ramapala, immensely helped him. It is said in the *Ramacharita* (III.1) that Ramapala took possession of his immense wealth and occupied Varendri after a long time. He is said to have restored peace and order in Varendri (III.27) and found a new city named Ramavati at the confluence of the Ganges and the river Karatoya, though the identification of the capital is still a matter of controversy.

### 8. 'Poetic Venture' of Sandhyakara Nandi to Interpret the Event

It is a matter of regret that there is no other authentic record to corroborate the event named Kaivarta rebellion and the only source to depend on is *Ramacharita* by Sandhyakara Nandi. However, the poetic venture of Sandhyakara Nandi seems to be onesided because originally the poet intended to sing only the achievements of Ramapala. However, evidently he could not avoid the good qualities of Bhima as a ruler. We come across in the second chapter verse number 23b that "Bhima—the abode of all treasures, in whose possession there were excellent cavalry, elephant troops etc., having no rivals (to fight them); and (with whom were) even Saraswati and Lakshmi."<sup>21</sup> There are so many references to Bhima and his personal qualities in the *Ramacharita* but we do not know whether these references of the author of the *Ramacharita* was originally dedicated to recognize Bhima or to glorify his master Ramapala who had to vanquish an enemy of that qualities possessed by Bhima. It is so because we do not know any biographer of Divya or Bhima or any other vassal chief who came forward to liberate the common people from the alleged torture of Mahipala-II. But that Divya and Rudoka's son Bhima were quite popular figure among the people of Varendri is above all questions. Otherwise, his claim to occupy Varendri might not have been accepted and recognized by the people.

### 9. Limitations of the *Ramacharita* as a Source Material

We have already mentioned that the sources for the study on the Kaivarta rebellion are limited and Sandhyakara Nandi's *Ramacharita* is the only source to know in detail the crisis of the empire during Mahipala-II and afterwards. But 'a great difficulty in understanding the text of the *Ramacharita*, commented by D.C Sircar in his introductory note on *The fall of the Pala Empire*, (a lecture by

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<sup>21</sup> "The *Ramacharitam* of Sandhyakara Nandin (ed by R.C Majumdar et al), p. 55.

Akshaya Kumar Maitreya delivered at the Senate Hall of the University of Calcutta in 1915) is the fact that the author has not been able to maintain any kind of order in the description of the events of the Pala history ...<sup>22</sup> It is also remarkable that in stating the history of the recovery of Varendri the author in one reading refers to the homeland of the Palas and in the other it is a synonym for *Sita*- symbolized with *Bhu*, the Earth goddess which according to Romila Thapar is a variation on the theme of acquiring *Sri* and thus in many places she finds the Pala narrative somewhat ambiguous.<sup>23</sup> There is an interesting debate on the statement of Mm. Haraparashad Shastri who sought the cause of the rebellion due to the oppression of the Kaivartas by Mahipala II.<sup>24</sup> These authoritative comment of Mm. Shastri has been objected by R.C. Majumdar who seems to have been much lenient towards the king in question and the objective of R.C. Majumdar is still beyond our purview. But what is surprising here how would a reader consider some historical points described by the author of the *Ramacharita* to represent 'Mahipala-II as hard-hearted (1.32) not adhering to either truth or good policy (1.36) and resorting to fraudulent tricks (1.32,37).<sup>25</sup> Even the fact like the imprisonment of his brothers Ramapala and Surapala (1.33) and surprise to all the author (Sandhyakara Nandi) has himself admitted that Mahipala-II was instigated to the heinous act by false report propagated by wicked people who made a rumour that Ramapala being an able and popular prince had a design to usurp the throne (1.37). R.C. Majumdar in both of his books (i.e The History of Bengal Vol-I- Hindu period and History of Ancient Bengal) has quoted this statement but for unknown reason declined to "place full confidence on his (Sandhyakara Nandi) opinions and statements."<sup>26</sup> We cannot, however, understand why the eminent historian R.C. Majumdar inclined to ignore the truth of history, i.e., not to explore the actual facts and background of the incident! How can a reader undermine the terms like 'hard hearted', 'not adhering to either truth or good policy' or 'fraudulent tricks' and also to appreciate his unwarranted deed like to put his own brother into confinement. How much can a historian talk about something in defense of such a king! It is possible that this type of oppressive ruler would never be sympathetic to the subjects and the people would definitely protest in any favorable circumstances.

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<sup>22</sup> Akshay Kumar Maitreya, *The Fall of the Pala Empire* (Siliguri: University of North Bengal, 1987), p. IV.

<sup>23</sup> Romila Thapar, *The Past Before Us: Historical Traditions of Early North India* (New Delhi: Orient Blackswan, 2013), pp. 497 -99.

<sup>24</sup> Mm. Haraprasad Sastri, *Ramcharitam of Sandhyakara Nandin* (Kolkata: The Asiatic Society, 1969), "Introduction.", P.xxvii. Haraprasad Sastri wrote, "The Kaivartas were smarting under operation of the king. Bhima, the son Rudraka taken advantage of the popular discontent, led his Kaivarta subjects to rebellion".( P.xxvii).

<sup>25</sup> R.C. Majumdar, *HB*, vol.I, p.151, also *HAB*, p.143.

<sup>26</sup> R.C. Majumdar, *HB*, vol. I, p.151, also *HAB*, p.143.



### 10. Was the Kaivarta Rebellion an Insurrection of the People of Varendra?

There are also some scholars who are much concerned about the condemning the whole plan of Divya but at the same time accepted that the revolt of the latter was nothing but an insurrection. In this light the conclusion of some scholars<sup>27</sup> that 'The whole episode' was neither an outburst of 'popular sentiment' nor the 'public opinion' in favour of 'civil wars', is equally baseless and motivated. If it is to be taken then what exactly was the incident about? Furthermore, what provoked the people of Varendra to rise in arms by striking on the state system as a whole with a result of a short vacuum of the Pala rule of Ancient Bengal. Definitely there were some factors which prompted the people of Varendra to come forward to strike out the oppression done to them over the decades. It may be instructive to note some factors which had been operative during the time and burst out in the form of a rebellion vis-à-vis an insurrection of the common masses. Let us see what Arnold Toynbee says about such a situation and here attention may be made to his perception he developed called 'internal proletariat' and its activities can be found at the time of the disintegration of the civilization. In his words this time is "a time of wars between the nations which are parts of the civilization. The establishment of a universal state (an empire) follows this time of troubles. ... Ultimately the universal state collapses and there follows an *interregnum* in which the internal proletariat creates a universal religion ... the development of new religion reflects an attempt by the people of the internal proletariat to escape the unbearable present by looking to the past, the future (utopias) and to other cultures for solution."<sup>28</sup> Although Toynbee has focused this point in terms of the study of civilization but the role of internal proletariat is obvious in the process of state formation or inviting the decline of a state.

### 11. The Case of the Palas—the Rebellion was Spontaneous and Upsurge was that of the People of Varendra

The history of the Palas has proved the above truth long back when we experience the accession of Gopala, the founder of the Pala dynasty who was called to the throne by the united voice of the people (*prakritibhih*) to save them (*apohitum*) in a great crisis (*matsya-nyaya*).<sup>29</sup> Thus one cannot ignore the

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<sup>27</sup> R.C. Majumdar, Radhagovinda Basak and Pandit Nanigopal Banerji Kavyatitha. For details see "The *Ramacharitam* of Sandhyakara Nandin," R.C. Majumdar et al. (ed.), Introduction, p.xxx.

<sup>28</sup> Home page of applet-magic.com, Home page of Thayer Watkins, also Arnold Toynbee, *A Study of History* (London, 1972), part V, p. 229f.

<sup>29</sup> For details see R.C. Majumdar, *HB*, vol. I, p.153, also A.K. Maitreya, p. 16.

significance of the popular sentiment of the countrymen (people of Varendra) and if they are to be treated as 'internal proletariat' (in Toynbee's term) then it may be easy to some extent to realize what caused the Varendri rebellion or Kaivarta revolt or the uprising that disrupted the Pala Empire. In fact merely Divya did not organize the revolt because it was not possible for a single individual and the fight was to be directed against an established empire. It is also likely that the oppression of Mahipala-II was not confined within the Kaivarta community rather to the people as a whole and his 'impolitic design' was not favourable for a peaceful reign. In the palace too there was no peace rather there was his strong opposition and it was hatched by some people connected with his own blood relation. The grievances of the people were genuine, the agrarian life of the peasantry had been disturbed by the state policy, and it cannot be taken as a wrong step on the part of the victims if they put forward an organized protest. A few historians have taken the side of the ruler and this clearly certifies the class character they belong to. For example, one may recall here the case of the Pabna peasant movement of Colonial Bengal occurred in 1873 and it is well-known to all that the main issue of that event was a kind of 'no-rent movement' of the peasant. And in this respect the voices of the Indian historians in favour of the peasantry are very strong as it was a protest movement against the Zaminders vis-a-vis the colonial Government.<sup>30</sup> But when the case of the Kaivarta rebellion comes to the historical scene, historians are taking various camps and sides to explain the issue of the rebellion.

## 12. Conclusion

Whatever may be the facts and the debates as to the nature and character of the Kaivarta Rebellion of Varendri, the tragic point is that the democratic rights of the people, although the concept of democracy was unknown to the people of the then Varendra, have variously been interpreted and attempts are there to defend the ruler and the ruling community of the Palas. It is simply a protest of the people who under the circumstances had to select one among the numerous local chiefs to lead the Rebellion and there is nothing new here so far as the truth of history is concerned. But again it was not a protest or movement organized absolutely by the Kaivartas. A patriotic zeal must have inspired the people to mobilize themselves and to assert their voices which had eventually led to the collapse of the Pala rule. That this rebellion was a spontaneous outburst of the

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<sup>30</sup> See for details B.B. Chawdhury, "The Story of Peasant Revolt in a Bengal District," *Bengal Past and Present*, vol. XCii. July-December 1973; K.K. Sengupta, *Pabna Disturbances and the Politics of Rent, 1873-1885* (New Delhi: Peoples' Publishing House, 1974) also Nurul H. Chowdhury, "Pabna Peasant Movement of 1873: a Reinterpretation," *Bangladesh Historical Studies*, vol. Xvii, 1996-98, pp. 34-57.

people may be guessed from a reference to a term *Narapati Divya praja-nirbhara* used in the line number 21 of the Manahali inscription of Madanapala.<sup>31</sup> It may be noted here that Sandhyakara Nandi's *Ramacharita* was composed during the reign of Madana Pala, son of Ramapala and it is very likely that the involvement of the *praja* (subjects/common people) might have drawn attention of Tathagata Sar, the composer of the inscription. Thus it is likely that the rebellion during Mahipala-II, popularly known as Kaivarta rebellion, may also be termed as Varendra rebellion organized by the people of Varendra under the leadership of Divya, one of the vassal chiefs of the Pala Empire.

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<sup>31</sup> Akshay Kumar Maitreya, "Monahali Inscription," *Gouda Lekhamala* (Kolkata: Sanskrita Pustak Bhandar, 2004), p. 152.

## **Working Conditions of Bangladesh Readymade Garment Industry: A Study of Female Garment Workers in Gazipur City**

Shah Ehsan Habib\*

**Abstract:** Although the readymade garment (RMG) industry in Bangladesh has been rapidly growing recent accidents in factories and workplace harassment against women have raised concerns about their rights and safety. The objective of this study is to provide an overview of working conditions among female garment workers in Gazipur city. Information on safety of work place and harassment was collected through interviews conducted among a random sample of 128 female garment workers, using a structured questionnaire. The results show that about half of the workers (53.1%) had received an appointment letter, and nearly a quarter (24.2%) reported receiving any job description letter. Overall, the data show that occurrences of accident or injury are moderately high (45.3%) in this sample. Verbal abuse, use of bad and slang language were most commonly reported (89.3%), followed by reports of sexual harassment (3.6%). Efforts are needed to reinforce the capacity of workers and employers to improve the safety of their workplace.

**Key Words:** Garment Worker, Occupational Health, Harassment.

### **Introduction**

Bangladesh garments industry is the largest export earning sector which has made tremendous success over the years in exporting garment products.<sup>1</sup> According to the Bangladesh Garment Manufacturers and Exporters Association (BGMEA, 2015), there are at present 4,296 garment factories, contributing about 79% of the country's export earnings.<sup>2</sup> The cheap labour cost attracted many

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\* Professor, Department of Sociology, University of Dhaka, Bangladesh.

<sup>1</sup> A. Berg, S. Hedrich, S. Kemp & T. Tochtermann, *Bangladesh's Ready-made Garments Landscape: The Challenge of Growth* (Germany: McKinsey & Company, 2011); E. Bearnot, "Bangladesh: A Labour Paradox," *World Policy Journal*, vol. 30, no. 3, 2013, pp. 88-97; M. Quddus & S. Rashid, "Entrepreneurs and Economic Development: The Remarkable Story of Garment Exports from Bangladesh," *Journal of Bangladesh Studies*, vol. 2, no. 1, 2000, pp. 65-66.

<sup>2</sup> Bangladesh Garment Manufacturers and Exporters Association, BGMEA about section, 2015. Accessed, December 05, 2016 from <http://www.bgmea.com.bd>.

international brands that chose the Bangladeshi factories to produce their products for the European and US markets, taking up to the 60% and 20% of the total export.

Although the average standard of living for garment workers increased steadily during the last decades, many workers struggled to make ends meet.<sup>3</sup> There have not been improvements with regard to working conditions - women workers had to face long hours, averaging at least ten hours a day and six days a week, even longer for others. Work is often monotonous because workers perform one task over and over. The working conditions do not allow a decent level of living for garment workers that are exploited and forced to meet exhausting production quota for very little level of wage. The rising daily production targets for garment workers caused increasing and often unpaid overtime work, verbal abuse and harassment by supervisors.<sup>4</sup> The situation is even more worsened by the very low power that labour unions have and their limited activities that cannot ensure a proper protection of workers' rights.<sup>5</sup>

Female garment workers face a multitude of issues within their work place and their communities, such as low and irregular wages and unsafe or unhealthy working conditions.<sup>6</sup> Previous studies show that the main challenge is to improve

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<sup>3</sup> N. Kabeer & S. Mahmud, "Globalization, Gender and Poverty: Bangladeshi Women Workers in Export and Local Markets," *Journal of International Development*, vol. 16, 2004, pp. 93-109; N. Begum, "Women Workers Status in Bangladesh: A Case of Garment Workers," in *State of Human Rights in Bangladesh* (Dhaka: Women for Women, 2002); N. Kabeer, "Cultural Dopes or Rational Fools? Women and Labour Supply in the Bangladesh Garment Industry," *The European Journal of Development Research*, vol. 3, no. 1, 1991, pp. 133-159.

<sup>4</sup> M. J. Alam, M. J. Mamun & N. Islam, "Workplace Security of Female Garment Workers in Bangladesh," *Social Science Review*, vol. 21, no. 2, 2004, pp. 191-200; D. M. Siddiqi, "The Sexual Harassment of Industrial Workers: Strategies for Intervention in the Workplace and Beyond," (Paper no. 26) (Dhaka, Centre for Policy Dialogue/UNFPA, 2003).

<sup>5</sup> M. K. Islam & D. Zahid, "Socioeconomic Deprivation and Garment Worker Movement in Bangladesh: A Sociological Analysis," *American Journal of Sociological Research*, vol. 2, no. 4, 2012, pp. 82-89; P. Dannecker, "Collective Action, Organisation Building, and Leadership: Women Workers in the Garment Sector in Bangladesh," *Gender and Development*, vol. 8, no. 3, 2000, pp. 31-38.

<sup>6</sup> M. R. Khan & C. Wichterich, "Safety and Labour Conditions: the Accord and the National Tripartite Plan of Action for the Garment Industry of Bangladesh" (working paper no. 38) (Geneva: International Labour Office (ILO) and Global Labour University, 2015); L. J. Leilanie, "Occupational Health and Safety of Women Workers: Viewed in the Light of Labor Regulations," *Journal of International Women's Studies*, vol. 12, no. 1, 2011, pp. 68-78; K. M. Olsen, A. L. Kalleberg & T. Nesheim, "Perceived Job Quality in the United States, Great Britain, Norway and West Germany, 1989-2005," *European Journal of Industrial Relations*, vol. 16, no. 3, 2010, September, pp. 221-240.

working conditions in the readymade garment (RMG) sector and weak capacity to negotiate.<sup>7</sup> Bangladeshi garment sector workers earn some of the lowest wages in the region. As of August 2013, the monthly minimum wage for entry-level workers in the garment sector was US\$39 per month – about half of the lowest rate in other major garment-exporting countries, such as India, Pakistan, Sri Lanka, Vietnam and Cambodia.<sup>8</sup> Bangladesh has the potential to capitalize on its low-cost labour, using it as its comparative advantage over other countries.

Improving working conditions in Bangladesh's readymade garment industry is crucial for achieving sustainable growth in the country. The country experienced relatively high economic growth over the past two decades, mainly due to garment exports. But irregular growth of garment sector has contributed to poor working conditions and resulted in some of the worst industrial disasters on record.<sup>9</sup>

Recent accidents have brought the issue of occupational health and safety risks in the Bangladeshi garment sector to world attention. Workers in factories in Bangladesh making clothes for western firms continue to suffer from poor working conditions after a factory collapse (Rana plaza) that killed 1,100 people – one of the worst industrial disasters on record which prompted widespread promises of reforms.<sup>10</sup> Thousands of factories have since been checked for structural problems with dozens closed and others refurbished, and many more helped to improve working conditions of workers in initiatives partly paid for by western retailers. Although the government has taken some concrete action in the past few years to address health and safety issues, poor conditions remain a challenge in many garment factories across the country.<sup>11</sup>

<sup>7</sup> Karmojibi Nari, "Evaluation Report of SEEMA Project" (Dhaka: Care Bangladesh, 2015); P. Paul-Majumder & A. Begum, *Engendering Garment Industry: The Bangladesh Context* (Dhaka: The University Press, 2006).

<sup>8</sup> H. Khan, *The Idea of Good Governance and Politics of the Global South: An Analysis of Its Effects* (New York: Routledge, 2011).

<sup>9</sup> J. Reinecke, & J. Donaghey, "The 'Accord for Fire and Building Safety in Bangladesh in Response to the Rana Plaza Disaster,'" in A. Marx, G. Rayp, L. Beke, & J. Wouters (eds.), *Global Governance of Labor Rights* (Cheltenham, UK: Edward Elgar Publishing, 2015), pp. 257-277; P. Paul-Majumder, "Health Status of the Garment Workers in Bangladesh: Findings from a Survey of Employers and Employees" (Research Report Series 1) (Dhaka: Bangladesh Institute of Development Studies, 2003).

<sup>10</sup> K. G. Moazzem, A. Adiba & F. Sehrin, *Post Rana Plaza Developments: Rana Plaza Tragedy and Beyond - A Follow Up on Commitments and Delivery* (Dhaka: Center for Policy Dialogue, 2014); S. Akhter, "Endless Misery of Nimble Fingers: The Rana Plaza Disaster," *Asian Journal of Women's Studies*, vol. 20, no. 1, 2014, pp. 137-147.

<sup>11</sup> Ministry of Labour and Employment (MOLE), *Implementation Status of National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Ready-Made Garment Sector in Bangladesh* (Dhaka: Government of Bangladesh, MOLE, 2014); M. Steinisch, R. Yusuf, J. Li, O. Rahman, H. M. Ashraf, C. Strumpell, J. E. Fischer, & A.

A growing body of literature has emerged in the last decade which provides a profile of the working conditions of garment industries in Bangladesh.<sup>12</sup> Few of the studies document that working conditions in the RMG sector are below standard and do not meet the ILO standards.<sup>13</sup> Moreover, labour standards and rights are commonly ignored in the RMG factories in the country.<sup>14</sup> The poor housing, sanitation and health care, as well as the extensive exploitation of labour prevalent in factories became a focus for development partners. Poor practices include the absence of trade unions, informal recruitment, irregular payment, sudden termination, wage discrimination, excessive work, and abusing child labour. Moreover workers suffer various kind of diseases due to the unhygienic environment and a number of workers are killed in workplace accidents, fires and panic stampedes.<sup>15</sup> Absence of an appropriate mechanism to ensure the enforceability of the available laws for protecting workers' rights and maintaining workplace safety continues to be a concern in the RMG sector.<sup>16</sup>

Despite the success of the RMG sector, poor working conditions in the factories and a lack of social compliance are serious concerns which have led to labour unrest and damage to institutions and property. As a result, there is a rising fear in Bangladesh that the RMG sector may face a decline in demand. Social

Loerbroks, "Work Stress: Its Components and Its Association with Self-reported Health Outcomes in a Garment Factory in Bangladesh—Findings from a Cross-sectional Study," *Health and Place*, vol. 24, 2013, pp. 123-130.

<sup>12</sup> F. Tania & N. Sultana, "Health Hazards of Garments Sector in Bangladesh: The Case Studies of Rana Plaza," *Malaysian Journal of Medical and Biological Research*, vol. 1, no. 3, 2014, pp. 11-117; N. J. Chowdhury & H. Ullah, "Socio-Economic Conditions of Female Garment Workers in Chittagong Metropolitan Area—An Empirical Study," *Journal of Business and Technology*, vol. 5, no. 2, 2010, pp. 53-70; M. M. Monjur, "A Study on Labour Rights Implementation in Readymade Garment (RMG) Industry in Bangladesh: Bridging the Gap between Theory and Practice" (Master's thesis, Australia, University of Wollongong, 2007); N. Mahtab, "Female Garment Workers: Economic and Social Security in NGO Coalition on Beijing Plus Five Bangladesh (NCBP)," in S. Khan (ed.), *Role of NGO in Effective Implementation of PFA and CEDAW in Bangladesh* (Dhaka: NGO Coalition on Beijing Plus Five, 2003).

<sup>13</sup> S. Dasgupta, "Attitudes towards Trade Unions in Bangladesh, Brazil, Hungary and Tanzania," *International Labour Review*, vol. 14, no. 1, 2002, pp. 413-440.

<sup>14</sup> N. Khosla, "The Ready-Made Garments Industry in Bangladesh: A Means to Reducing Gender-Based Social Exclusion of Women?" *Journal of International Women's Studies*, vol. 11, no. 1, 2009, pp. 289-303.

<sup>15</sup> M. Z. Rahman, "Accord on Fire and Building Safety in Bangladesh: A Breakthrough Agreement?" *Nordic Journal of Working Life Studies*, vol. 4, no. 1, 2014, pp. 69-74.

<sup>16</sup> J. Rahman & T. Langford, "Why Labour Unions Have Failed Bangladesh's Garment Workers," in S. Mosoetsa & M. Willams (eds.), *Labour in the Global South: Challenges and Alternatives for Workers* (Geneva, ILO, 2012), pp. 87-106.

compliance in the RMG industry is a key requirement for most of the world's garments buyers.<sup>17</sup> It ensures labour rights, labour standards, fair labour practices and a code of conduct.

While the need and evidence for programming on improving the working conditions of women in RMG sector is gradually increasing in Bangladesh, no study on this issue exists in Gazipur. In support of national efforts towards implementation of fundamental labour rights and protection of female workers, and in light of the progress made in the past few years in the country, this study aims to contribute to provide information concerning the working conditions of women in RMG sector. The purpose of this study is to explore the current situation of working conditions in the context of the RMG industry in Bangladesh with a view to improve the economic and social well-being of female workforce.

Specifically, the objectives of the study are:

- 1) To examine the experiences of discrimination among female workers in the RMG sector, and to determine the nature of harassment against them;
- 2) To understand the measures and provisions provided by the employer relating to the health and safety of workers; and
- 3) To determine whether the garment factories have any anti harassment or occupational health and safety committee through which female workers can voice their concerns to management to improve their condition.

## Methods

A cross-sectional study design was undertaken in the study area. Quantitative method of data collection was employed to collect the information from the female garment workers. Survey with a structured questionnaire was administered in women workers in the RMG sector of Gazipur who were recruited from the intervention areas of CARE Bangladesh and its partner organizations.

The study was carried out in Gazipur city representing RMG sectors of the country. Of the districts of Bangladesh, Gazipur represents numerous workers of RMG sectors, and CARE Bangladesh and its partner organizations offer large scale services (awareness program) in this city corporation. This area was purposively selected because of the higher concentration of RMG workers.

The target population for the survey consist of female garment workers who are currently working in the intervention sites (CARE-SHEVA OIKKO project) of Gazipur city area. Specifically, the workers are those who are working in the selected RMG factories located at Gazipur Sadar, Konabari and Joydevpur. The

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<sup>17</sup> F. Ahamed, "Working Conditions in the Bangladesh Readymade Garments Industry: Is Social Compliance Making a Difference?" (PhD thesis, Australia, La Trobe University, 2011).



task of identifying garment workers was carried out by the help of CARE Bangladesh and its partner organizations.

With having a well-defined target population, probability sampling approach was used in the selection of sample. For the sample size estimation, we have data from previous study ( $p = 95\%$ ) which indicates a gain in skill among female workers towards building human and social capital.<sup>18</sup> With precision of  $\pm 5\%$ , and a level of confidence of 95%, allowing a deviation of 5 from true population percentage, the sample size required is 73. The original sample size was inflated by a safety margin of 75%, i.e. 128 to achieve a significant result. The sample size was proportionally allocated (in 18 centres) by areas of Gazipur City Corporation on the basis of the number of garments workers recorded at the registrar of CARE Bangladesh and partner organization.

Simple random sampling technique was used to select the study sample. Primarily eighteen centres were selected from Gazipur Sadar, Konabari and Joydebpur, and then 128 female workers were selected randomly from the list of the participants under the OIKKO centre. To meet the target of 128, female garment workers were interviewed proportionately from each of these 18 centres.

The data collection instrument was predominantly quantitative. Data collection was accomplished in four-week time (from January to February 2016). All workers were interviewed by female interviewers individually in private at OIKKO centre offices across the study area. Confidentiality and anonymity were ensured for all respondents, and retraction of consent at any stage of participation was allowed.

Data were entered in computer and were analyzed using SPSS for Windows (version: 20). Descriptive analysis was conducted by running frequency tables, calculating means and medians.

### **General Characteristics of the Respondents**

The general characteristics of the respondents are summarized in Table 1. The average age of the respondents is 25 years (range 18-40,  $SD = 5.4$ ). Nearly half (44.5%) of the women were within the age range followed by the age range 24-29 (29.7%). Of the total, only 6% were aged over 36 years. The majority (82.0%) of the respondents had attended school. A sizeable proportion (36.7%) of the women had completed IV to V year level of education, with only 7% having passed the higher secondary level certificate. Only 8.6% of women had completed the secondary level, and similar proportion (8.6%) of the women was illiterate. With respect to marital status, married women constituted the vast majority of garment workers (75.0%). About 1.6% of the respondents were widowed and 3.1% were divorced.

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<sup>18</sup> Karmojibi Nari, *Final Evaluation of SEEMA Project* (Dhaka: Care Bangladesh, 2015).

Table 1  
General Characteristics of the Respondents (n=128)

Characteristics	Number	Percent
<i>Age</i>		
18-23	57	44.5
24-29	38	29.7
30-35	25	19.5
36+	8	6.2
Mean 25.0 yrs, Range = 18-40, SD = 5.4, Median = 25.0		
<i>Marital status</i>		
Unmarried	21	16.4
Married	96	75.0
Separated	5	3.9
Divorced	4	3.1
Widowed	2	1.6
<i>Ever attended school?</i>		
Yes	105	82.0
No	23	18.0
<i>Education completed</i>		
Illiterate	11	8.6
Can sign only	11	8.6
Year I-III	10	7.8
Year IV-VI	47	36.7
Year VII-IX	29	22.7
SSC	11	8.6
HSC and above	9	7.0

### Employment History

In the garment industry, women are mostly employed at the lower category of jobs, like operator, finishing helper, and the nature of these jobs is very monotonous since there is no possibility for personal creativity, expression and fulfilment in these jobs. Table 2 shows the job categories of the respondents. More than half (51.6%) of the participants interviewed in this survey were operators, who has to sew a small part of garment throughout her long working hours. A quarter (26.6%) of the sample reported being helper. The remaining was found to be engaged as a quality checker (7.8%) and sewing operator (7.0%). The proportion of other job categories illustrated in the table was insignificant.

The Table-1 also shows the job duration of the workers in the current enterprise. The majority of the workers (55.5%) have been in employment for one to two years. While as many as 25.8% workers had spent three to four years in the industry, only 12.5% had spent five or more years in the current job. Of the remaining, 6.3% had been in employment with the current employer for a period between four and five years.

In Bangladesh workers employed by garment factories do not require to sign any document although the law defines that employer is responsible for payment. In this sample, about half (53.1%) of the workers reported receiving any appointment letter. The Table shows that almost one quarter (24.2%) of the workers received written document from employers, illustrating job description. More than three-quarter (92.2%) of the worker had identity card.

Monthly income of the respondents is shown in Table 2. About one-quarter (28.9%) of the respondents had earned salary between Tk. 6,000 and Tk. 7000, followed by 20.3% whose income ranged between Tk. 5,000 and Tk. 6,000. Approximately half (47.7%) of respondents reported monthly salaries in excess of Tk. 7,000, with only 3.9% earning less than Tk. 5,000 per month. The average monthly income of the respondents was Tk. 7,727.2.

Respondents were asked if the monthly wage they are getting from the current factory is enough to live well with their family. Out of 128 female garment workers, 73 (57%) stated that the amount they are getting is not enough to live well.

This study assessed the level of access to earned leave by female garment workers (Table 2). When asked if the workers had ever taken any earned leave in the factory where they have been currently working, only a small proportion (18.0%) stated that they got their leave.

Table 2  
Employment History of the Respondents

Variable	Number	Percent
<i>Job categories of the respondents</i>		
Operator	66	51.6
Helper	34	26.6
Quality checker	10	7.8
Sewing operator	9	7.0
Supervisor	1	0.8
Machine operator	2	1.6
Other*	6	4.7
<i>How long have you been working in the current factory? (n=128)</i>		
1-2 yr	71	55.5
3-4 yr	33	25.8
4-5 yr	8	6.3
5+ yr	16	12.5
Mean = 1.8 yrs		
<i>Documents provided by the current employer (n=128)**</i>		
ID card	118	92.2
Appointment letter	68	53.1
Job description	31	24.2
Attendant card	62	48.4

Other	5	3.9
<i>Salary earned by the respondents in the last month? (n=128)</i>		
<5000	5	3.9
5000-6000	26	20.3
6000-7000	37	28.9
8000+	60	47.7
<i>Monthly wage getting from current factory enough to live well (n=128)</i>		
Yes	55	43.0
No	73	57.0
<i>Did you take any earned leave from this factory in the last one month? (n=128)</i>		
Yes	23	18.0
No	105	82.0

\* Other includes jobs such as cutting, finishing, printing and linking. \*\* Multiple response.

### Occupational Health and Safety

Respondents' occupational health and safety issues are presented in Table 3. Although safety need for the worker is mandatory to maintain in all the factories, a lot of accident is occurring every year in most of the factories. The most common causes for the accidents are: lack of signs for escape routes, including lack of proper exit route to reach the place of safety. In addition, adequate staircases are not provided to aid quick exit and doors or opening along escape routes are not fire resistant. Lack of awareness among the workers and the owners are also important causes for accident. However, in recent times, the situation has improved much and the garment factories are fulfilling the requirement of emergency exit. Considering this, questions were asked to examine if the workers had ever experienced or witnessed any accident during their time in garment industry. Overall, the data show that occurrences of accident are moderately high in this sample. Nearly half (45.3%) of the workers claimed that they had either witnessed or experienced an accident or injury during their time in garment industry. When asked what type of injury they had witnessed, the most commonly reported reason was needle injury or a hook that accounted for about 36% of work-related hand injuries. Some of the workers reported having finger cut by scissors or machine (22.4%) and getting their hair/scarf wrapped around the sewing machine (5.2%).

The Table-2 also shows workers' knowledge and awareness of emergency exit, including employers' involvement in fire evacuation drills for emergency fire exit. A large majority (90.6%) of workers claimed that their factory have emergency exit in case of fire or other emergency. When asked of the emergency exit gate or staircase remains locked during working hour, about one-fourth (28.1%) stated 'yes'. A large majority of respondents (95.3%) reported that their employer conducts fire evacuation drills for emergency fire exit.

Occupational health and safety committee is an important initiative towards ensuring safe work places and preventing accidents in garment industry. By establishing a committee, enhanced awareness among the representatives of employers and workers would directly contribute to safe work places. Active functioning of the mandatory occupational health and safety committees can contribute to greater participation of workers representatives in work place safety measures. Considering this, female workers were asked to state if there is any occupational health and safety committee in their factory. Of the workers in this sample (n=128), more than half (60.2%) reported that their factory had such a committee.

Table 3  
Occupational Health and Safety

Questions	Number	Percent
<i>Have you ever experienced and/or witnessed any accident or injury during your time in garment industry (n=128)</i>		
Yes	58	45.3
No	70	54.7
<i>What type of injury did you observe there? (n=58)</i>		
Needle injury/hooked into finger	21	36.2
Finger cut down by scissor/needle/machine	13	22.4
Finger cut down by cutter/machine	9	15.5
Hair/scarf got stuck into the sewing machine	3	5.2
Cut on leg during pulling machine	2	3.4
Hand burnt by machine	2	3.4
AC felt down into head	1	1.7
Injured in leg while stepping down during earthquake	1	1.7
Light burst and caused fire	1	1.7
Other*	5	8.6
<i>Does your factory have any emergency exit in case of fire or other emergency? (n=128)</i>		
Yes	116	90.6
No	12	9.4
<i>Does the emergency exit gate/staircase remain locked during working hour? (n=128)</i>		
Yes	36	28.1
No	87	68.0
Sometimes remain closed	4	3.1
Don't know	1	.8
<i>Does your employer conduct fire evacuation drills for emergency fire exit? (n=128)</i>		
Yes	122	95.3
No	6	4.7
<i>Is there any Occupational Health and Safety Committee in your factory?</i>		
Yes	77	60.2
No	51	39.8

\* Other includes road accident, slipped on wet toilet floor, getting faint.

### Harassment and Discrimination in the Workplace

Although women garment workers in Bangladesh are empowered they are still being exposed to harassment and verbal abuse. Verbal and physical abuse such as slapping, pulling hair including shouting to the garment workers by their supervisors is very common. If the domestic workers are young girls, they become victim of sexual harassment. This study acknowledges the existence of harassment at work, and the definition of sexual harassment used in this study limits itself to the workplace. Harassment is taken to be conduct that undermines the individual worker's right to dignity – rather than the violation of her modesty. Moreover, sexual harassment includes any unwelcome sexually determined behavior (direct or implied) such as physical contact and advances, unwelcome communications or invitations, demand or request for sexual favors, sexually cultured remarks, showing pornography, and other physical, verbal or non-verbal conduct of a sexual nature.

Only nearly a quarter (21.9%) of the workers in this sample reported about some kind of harassment at their current work place, while the rest (78.1%) said they never experienced harassment in their work place (Table 4). When asked what type harassment they had experienced, the vast majority (89.3%) of the respondents reported about facing slang language. Physical harassment has been faced by 3.6% garment workers. Besides, occurrences of sexual harassment (e.g. touching, patting, rubbing or asking for sex) at the work place of the garment workers were reported at 3.6%. Threat of termination or demotion was reported by similar proportion of respondent (3.6%). Further data show that female workers are commonly subject to harassment by their supervisors (92.9%) and Line Managers (32.1%).

Under the Labour Law, factories are supposed to provide a safe working environment and prohibit any form of harassment. The policy of anti harassment committee within a factory intends to prohibit any form of harassment and also details procedures to follow. When questions were asked if the factory (where the female workers are working) had any anti-harassment committee, the majority (60.9%) claimed that such a committee exists within their factory (Table 4). Further question was asked to state if the committee was helpful, a large majority (91%) claimed that the committee was helpful to prevent harassment and to assist the victim.

Table 4  
Harassment and Discrimination in the Factory

Questions	Number	Percent
<i>Have you faced any harassment in this factory? (n=128)</i>		
Yes	28	21.9
No	100	78.1
<i>What was the type of harassment? (n=28)</i>		
Verbal (e.g. slang/bad language)	25	89.3

Sexual harassment (e.g. touching, patting, rubbing, asking for sex)	1	3.6
Physical harassment	1	3.6
Threat (termination, demotion)	1	3.6
<i>By whom the harassment was perpetrated? (n=28)*</i>		
Supervisor	26	92.9
Line manager	9	32.1
Co-worker	3	10.7
Higher officer (e.g. GM/PM)	2	7.1
Owner/son of owner	5	17.9
Hired muscleman	3	10.7
Others	2	7.1
<i>Does your factory have any anti harassment committee? (n=128)</i>		
Yes	78	60.9
No	50	39.1
<i>Is it helpful to you and your co-workers? (n=78)</i>		
Yes	71	91.0
No	7	9.0

\* Multiple responses.

Gender-based discrimination in work place is fairly prevalent according to female factory workers' report in the study population. In the occupational setting, discrimination takes the form of behaviours and thoughts, and expressed by employers (mostly by supervisors) against female workers. Female factory workers were asked to state if male and female workers are treated differently by the employer based on promotion, leave, bonus or related issues. Table 5 contains information regarding experiences of discrimination among female workers. The data show that quarter proportion (25.8%) of respondents reported being the subject to unequal treatment by the employer based on sex. The results show that nearly half (48.5%) of the workers reported having experience of discrimination with regard to promotion in their factory. Discrimination against entitled leave was found in similar proportion of respondents (48.5%) in the sample. Moreover, discrimination related to job permanency was common among the workers, reported at 39.4%. A smaller proportion of female workers (6.1%) stated that they had experienced discrimination concerning providing compensation of workers.

Table 5  
Experiences of Discrimination among Workers

Questions	Number	Percent
<i>Is a male or female worker in this factory treated differently by the employer because of their sex? (n=128)</i>		
Yes	33	25.8
No	94	73.4

Don't know	1	.8
<i>Are male and female workers in this factory being discriminated against based on these services? (n=33)</i>		
Promotion	16	48.5
Entitled leave	16	48.5
Job permanency	13	39.4
Bonus	6	18.2
Compensation of workers	2	6.1
Appointment letter	1	3.0
Other	9	27.3

## Discussion

Although the study has yielded some important findings, its design is not without flaws. A number of caveats need to be noted regarding the present study. Firstly, recall bias represented a threat to the internal validity of this study, because of using self-reported data. All data in the study were obtained by self-report and are subject to recall bias or may be underreported or over reported. Recall of information depends entirely on memory which can often be imperfect and thereby unreliable. In this survey, female garment workers found it difficult to remember or accurately retrieve incidents that happened in the past regarding the length of service in RMG sector or length of overtime in the month preceding the survey. Reliance on self-reported time frame to calculate overtime, income and expenditure is likely to result in low accuracy.

Secondly, the questionnaire contains some questions that, if answered properly, might damage the factory's image. In this type of questions, the respondents might provide socially acceptable answers. Finally, the survey was conducted in a very short time mostly at night so we were not able to recruit more sample.

The findings of the survey show that on average female workers have been working in the current factory for 1.8 years, and they tend to stay in the same position (mostly helper or operator), with nearly 51% reporting an operator position. The data show that married women constituted the vast majority of garment workers (75.0%) and the average age of the respondents is 25 years, and nearly 20% are classified in that age range of 30-35 years, therefore demonstrating less interest in leaving a stable job.

Most female workers are not given any appointment letter. Factory owners often give appointment letter and pay slips that do not actually reflect the amount of money given to the worker. Moreover, the owner does not indicate money subtracted for food, housing, electricity and the like. Employers may also write the pay slips to make it seem as if they are paying more than they do so that they



appear to be in line with the minimum wage. Out of the 128 female workers interviewed in Gazipur district, around half (53.1%) said that they had received appointment letter. None of these individuals had a job description letter. Not issuing an Identification (ID) card or an appointment letter is a problem for workers. While switching jobs, they cannot produce evidence of job experience due to lack of appointment letters and ID cards. Moreover, they cannot take legal recourse in court in cases of unfair dismissal or entrenchment. The owners can simply deny the existence of a worker by not issuing an ID card and appointment letter. This indicates a disparity in workplace power relations - a countervailing force of organised labour at the point of production may sweep away the power relations.

It appears that it is relatively easy for employers to ignore or violate the provisions in the legal framework, resulting in widespread and systematic human rights violations. In this study, only 18% of workers reported to have enjoyed earned leave in their current employment. Previous research on the labor situation (RMG sector) in Bangladesh also found that a substantial proportion of regular female workers in the country were denied both paid annual leave and sick leave.<sup>19</sup> The garment industries run by foreign investors tend to comply with the Labor Law more than the locally owned factories. A general disregard for the law and for labor rights continues to be a problem for local owners or non-compliance factories.<sup>20</sup>

The working conditions in garment factories, and their impacts on the health of garment workers, continue to be some of the most pressing concerns with regards to the garment industry in Bangladesh, and an area where urgent reform is needed.<sup>21</sup> The findings of the study show that nearly half (45.3%) either have ever experienced and/or witnessed accident or injury during their time in garment industry. This study exposes some worrying statistics with regards to workplace conditions and specifically safety concerns. For instance, nearly one-third (28.1%) of the workers said that employers kept emergency doors locked during working hours, putting workers at risk of death in the event of a fire, although about 90% stated that their factories have emergency exit in case of fire or other emergency.

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<sup>19</sup> K. Farhana, M. Syduzzaman & M. S. Munir, "Present Status of Workings in Readymade Garments Industries in Bangladesh," *European Scientific Journal*, vol. 11, no. 7, 2015, pp. 564-574.

<sup>20</sup> R. D. Mariani & F. Valenti, *Working Conditions in the Bangladeshi Garment Sector: Social Dialogue and Compliance* (Netherlands, Delft University of Technology, 2013).

<sup>21</sup> S. Akhter, A. F. M. Salahuddin, M. Iqbal, A. B. M. Malek & N. Jahan, "Health and Occupational Safety for Female Workforce of Garment Industries in Bangladesh," *Journal of Mechanical Engineering*, vol. 41, no. 1, 2010, pp. 65-70.

Occupational health and safety committee plays a vital role in preventing work-related injuries, and are an important part of what is called the internal responsibility system. This system, based on cooperation between employers and employees, improves the overall understanding of occupational health and safety issues in the workplace. To a large extent the analysis of workers' vulnerability is related to the role of occupational health and safety committee within the factory. In this study, the majority (60.2%) of the participants stated that the factories in which they are working have occupational health and safety committee that will positively affect the health and safety of workers.

Within the factory context, power lies in the hands of management, particularly among supervisors. Female workers are likely to be subject to bullying and harassment at work, and arbitrary managerial decisions may see them dismissed for no reason. Although levels of sexual harassment of women within the factories are low (3.6%) in this sample, research conducted in 2003 by Centre for Policy Dialogue (CPD) found that gender-based violence is frequent in the areas around the factories.<sup>22</sup> When asked if female workers ever experienced harassment in the current factory, nearly one-fourth (21.9%) reported occurrences of such harassment. Sometimes, women have to work in crowded factories and they experience harassment from male colleagues such as supervisors and line managers (32.1%). The data in this sample show that harassment by their supervisors (92.9%) and line managers (32.1%) was very common.

Sexual harassment is not that prevalent as per the responses from the garment workers. However, it may be the case that, sexual harassments go unreported due to the fear of being fired from the job without a prior notice. The workers are totally dependent on their income from the garments, and the garments authority does play that card each and every time they have a chance to.

## Conclusion

It is a prime duty for us to provide a better working place for the RMG workers of Bangladesh who have given our economy a strong footing. Over the last three decades, garment industries have created jobs for millions of people, especially for women, and lifted them from poverty and given them a magnificent life. The civil society along with other government authorities can put pressure on the garments to make them follow the international guidelines of labour laws. The workers want their salaries on time, proper bonuses, voluntary overtime schedule, no verbal and physical harassment, mandatory leaves, paid maternity leaves,

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<sup>22</sup> Center for Policy Dialogue (CPD) and World Bank, *Bangladesh's Apparel Sector in Post-MFA Period: A Benchmarking Study on the Ongoing Re-structuring Process* (Dhaka: CPD and World Bank, 2007).

compensation in case of an in-house accident, and occupation security. The government can certainly look into these issues to ensure that the existing policies are being implemented properly.

Based on the study findings, the following are recommendations that can be considered:

- Ensure that all workers in RMG factories are given contracts with clear terms of employment that abide by the current labour standards and signed by both parties.
- The labor officer needs to increase monitoring of labour conditions at garment factories and follow up with proper enforcement of laws and standards.
- Create women's welfare committees within workers' associations to support women's participation in associations, and to ensure the inclusion of women's perspectives and concerns in conversations with management.
- Factory management needs to be convinced of the use of preventing violence against female garment workers. Changing behaviours or beliefs with a few trainings is not effective; management should provide more engagement.<sup>23</sup>

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<sup>23</sup> I would like to thank Ms. Humaira Aziz, Director, Women and Girl's Empowerment Program, CARE Bangladesh and Mr. Abu Taher, Team Leader, CARE-SHEVA OIKKO project who provided the opportunity to conduct the study.

## **Factors Contributing to Absenteeism, Private Practice and Corruption in Sub-district Health Service Delivery in Bangladesh**

Mohammad Shafiqul Islam\*

**Abstract:** This study aims at examining the various socio-economic and political factors that contributing to absenteeism and mis-management in health service delivery in Bangladesh. This is a qualitative case study which consists of 68 respondents from rural and urban health service organizations. The urban health care providers are found to work with greater enthusiasm to provide good quality health services. This may be attributed to their greater motivation to work (with less absenteeism), responsibility and accountability, facilitated by better facilities and greater exposure to national and international healthcare professionals and organizations. On the other hand, inadequate facilities such as children's schooling or one's own career betterment mean there is less motivation and greater absenteeism in the rural area (Chhatak). There are better opportunities for the doctors in the urban area (Savar) to do after-hour private practice (allowed by the government), however the lack of such opportunity in the rural area ensures that doctors in Chhatak seek private practice in the nearest urban area, which leads to greater absenteeism. The doctors in the rural health centres are found to be less accountable to their duties. A weaker management in Chhatak also contributes to absenteeism among its doctors.

**Key Words:** Absenteeism, Private Practice, Corruption, Socio-Economic and Political Factors, Health Services.

### **1. Introduction**

The quantitative indicators of maternal and child health in Bangladesh have improved significantly over the last several years. Data from the World Bank show that the Maternal Mortality Ratio (MMR) declined from 322 per 100,000 live births in 2001 to 170 in 2013.<sup>1</sup> Life expectancy at birth increased from 45 years in 1970 to 70 years in 2013, and Infant Mortality Rate declined from 94 per

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\*Associate Professor, Department of Public Administration, Shahjalal University of Science and Technology, Sylhet.

<sup>1</sup>World Bank, "Health Indicators," *Countries: Bangladesh*, (2013), Accessed on 7th September 2014, <http://data.worldbank.org/indicators#topic-8, 1-3>.

1,000 live births in 1990 to 33 in 2013. However, the quality of health service delivery is still inadequate.<sup>2</sup> Quality of health care is defined as the degree to which health services for individuals and populations are consistent with current professional knowledge and standards, and increase the likelihood of desired health outcomes.<sup>3</sup> A number of components enable patients to achieve desired health outcomes e.g., affordability, accessibility, efficiency, effectiveness and utilisation comprise quality health services.<sup>4</sup> This study used maternal health as indicators to understand the factors contributed to absenteeism, private practice and corruption in the quality of health service delivery, as the maternal health indicators have been changed significantly during the last decade. Moreover, the health service organizations used as cases in this study are mainly maternal and child health as those services is very crucial health care delivery in Bangladesh. In addition, no other studies based on maternal health services have been used for understanding the reasons of absenteeism, private practice and corruption in Bangladesh.

## 2. A Brief on Health Administration

Health services are organized under the supervision of the Ministry of Health and Family Welfare (MoHFW), a centralized and bureaucratic organization, headed by a cabinet minister. This organization is responsible for implementing, managing, coordinating and regulating health service delivery which is divided into two branches: health services and family planning, administered by separate directorates.<sup>5</sup> Primary Health Care (PHC) is not free, but requires only a very small fee for service as defined under government provisions. This health care is provided through a four-tiered system of government-owned and staffed facilities at the *union* (lowest administrative unit) level all the way up to the central/regional level which is based on an administrative hierarchy (see Figure

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<sup>2</sup> Bangladesh Health Facility Survey (BHFS), "Revised Final Report", *University of South Carolina, Columbia, USA and ACPR, Dhaka, Bangladesh*, (2012), 15.

<sup>3</sup> M.R. Chassin, and R.W. Galvin, "The Urgent Need to Improve Health Care Quality, Institute of Medicine National Roundtable on Health Care Quality," *Journal of American Medical Association* 280, no. 11 (1998), 1000-1001.

<sup>4</sup> E.H. Bradley et al., "Developing Strategies for Improving Health Care Delivery: Guide to Concepts, Determinants, Measurement, and Intervening Design," *HNP Discussion Paper-World Bank*, (2010), 12; Al-Qutob et al., "Assessing the Quality of Reproductive Health Services," *The Policy Series in Reproductive Health*, no.5 (The Population Council Regional office for West Asia and North Africa, 1998), 5-6.

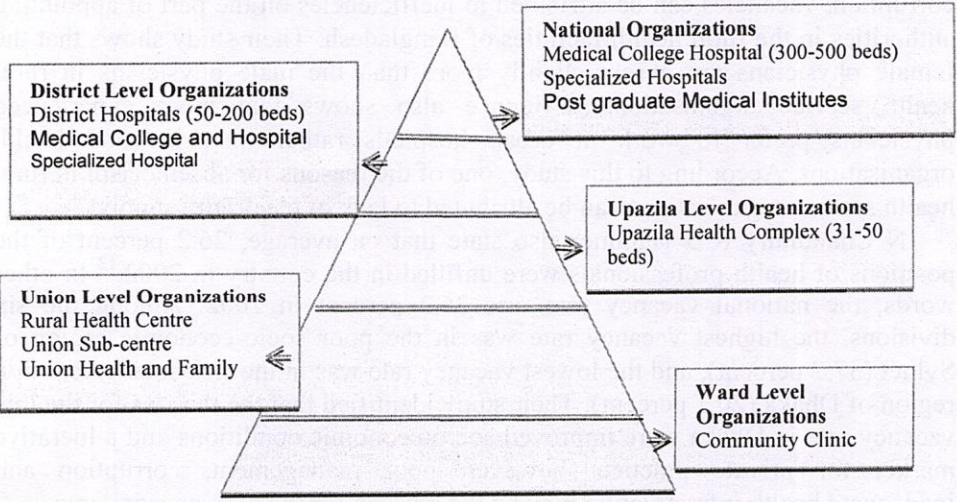
<sup>5</sup> F. Ara, "Key Issues to Health Governance in Bangladesh," *The International Conference of Challenges of Governance in South Asia* (Kathmandu, 2008), 12.

1).<sup>6</sup> The local elected officials are able to supervise health officials for improving health services; however they have no administrative authority to take action in implementing health services. The local health service bureaucracy, who is structured by hierarchy, is mainly responsible for implementing health activities.

The health services department at an upazila provide services through the upazila health complex (UHC). An UHC has under it, union sub-centres and community clinics as the lowest tier of administrative unit (ward level).<sup>7</sup> Domiciliary services e.g., services at the patients’ homes are provided through field staff of the department of health service organizations in order to make health services accessible to grassroots people. The upazila health administrator (that is, the upazila health and family planning officer) is mainly responsible for guiding the health staff including field workers to promote quality of healthcare.<sup>8</sup>

Figure 1

**Administrative Hierarchy of the Health System in Bangladesh**



Source: Directorate General of Health Service, *Health Bulletin 2011* (Dhaka: Management Information System (MIS), 2011), 2.

<sup>6</sup> Malay Kanti Mridha et al., “Public-sector Maternal Health Programmes and Services for Rural Bangladesh,” *Journal of Health, Population and Nutrition* 27, no.2 (2009), 129.

<sup>7</sup> Directorate General of Health Service, *Health Bulletin 2014* (Dhaka: Management Information System (MIS), 2014), 21-22.

<sup>8</sup> Directorate General of Health Services, *Health Bulletin 2014*, 21.

Osman states that sources of finance for the health sectors in Bangladesh consist of a combination of different ones, which include households, government revenue, donors and the community through Non-Governmental Organizations (NGOs). Osman states that the majority of health expenditure comes from households, accounting for 45.6 percent of the total health expenditure in Bangladesh in 2006.<sup>9</sup> Of the remaining expenditure, 26.6 per cent comes from government revenue, 25.8 percent from external donors, and 2 percent from community sources through NGOs.

Absenteeism of qualified health professionals contributes to the mismanagement of the health system. N Chaudhury & J Hammer identify and examine various factors that influence doctors' absenteeism and vacancies.<sup>10</sup> It might be useful to explain the difference between absenteeism and vacancies. Absenteeism refers to employed doctors staying away from work without approved leave, while vacancy refers to unfilled positions or approved positions of doctors to which no one is appointed. While absenteeism is a form of corruption, vacancies can be attributed to inefficiencies on the part of appointing authorities in the rural health facilities of Bangladesh. Their study shows that the female physicians are absent slightly more than the male physicians in rural health service organisations. Evidence also shows that more experienced physicians prefer to work at urban hospitals rather than in rural health organisations. According to this study, one of the reasons for absenteeism in rural health service organizations can be attributed to lack of electricity supply.<sup>11</sup>

N Chaudhury & J Hammer also state that on average, 26.2 percent of the positions of health professionals were unfilled in the country in 2002.<sup>12</sup> In other words, the national vacancy rate was 26.2 percent in 2002. Among the six divisions, the highest vacancy rate was in the poor socio-economic region of Sylhet (37.7 percent), and the lowest vacancy rate was in the rich socio-economic region of Dhaka (20.1 percent). Their study identified that the reasons for the low vacancy rate in Dhaka were improved socio-economic conditions and a lucrative market for private practice; however, poor management, corruption and inadequate health infrastructure may be the reasons for the high vacancy rate.

K. Afsana conducted an ethnographic study and assessed the cause of an additional charge to gain admission to hospital.<sup>13</sup> Afsana's study showed that medicine and laboratory tests were not available to public hospitals due to

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<sup>9</sup> F. A. Osman, "Health Policy, Programmes and System in Bangladesh: Achievements and Challenges," *South Asian Survey* 15, no.2 (2008), 272.

<sup>10</sup> N. Chaudhury & J. Hammer, "Ghost Doctors: Absenteeism in Rural Bangladeshi Health Facilities," *World Bank Economic Review* 18, no. 3 (2004), 423-424.

<sup>11</sup> *Ibid.*, 430.

<sup>12</sup> *Ibid.*, 429.

<sup>13</sup> K. Afsana, "The Tremendous Cost of Seeking Hospital Obstetric Care in Bangladesh," *Reproductive Health Matters* 12, no.24 (2004), 171.

massive corruption and illegal private practice;<sup>14</sup> consequently, health care users spent extra money in order to meet treatment related expenses. Afsana's study also indicated that under-resourced hospitals, inadequate budget and poorly paid staff from doctors to ward boys, created space for corrupt practices such as unofficial fees and theft of hospital supplies in Bangladesh.<sup>15</sup> Poor governance particularly the lack of accountability can contribute to corruption, which may lead to poor health care quality.

R. Murthy's study found that marginalized groups and sexual and reproductive rights based groups are poorly represented in the forums for participation, and those hierarchies of power between and amongst health personnel, e.g., policy makers, managers, doctors and workers and the public play out in these forums.<sup>16</sup> Community financing has not lead to enhanced service accountability. As a result of these limitations, community participation in health sector reforms has rarely strengthened accountability in health services.

S. Ahmed et al. assess women's economic, educational and empowerment status for understanding maternal health service utilisation in developing countries.<sup>17</sup> Their study shows that poor women use less modern contraception, pay fewer visits to antenatal care, and use skilled birth attendance less often than do richer women. The study also demonstrates that educated women have utilised maternal health care more often than less or uneducated women. Similarly, women with the highest empowerment scores used modern contraception more including other maternal health services than did women with a lower empowerment score.<sup>18</sup> Their study clearly indicates that women's household wealth, educational attainment and decision-making power are associated with the use of maternal health services.

S. Chowdhury shows the level of quality of maternal and newborn health care facilities in Bangladesh.<sup>19</sup> This study finds that both clients and providers expressed dissatisfaction for inadequate quality of care represented by poor cleanliness, long waiting time with less consultation time, poor compassion by providers, inadequate supply of drugs and unnoticed cost for services varied by

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<sup>14</sup> Ibid., 176.

<sup>15</sup> Ibid., 177-78.

<sup>16</sup> R. Murthy and B. Klugman, "Service Accountability and Community Participation in the Context of Health Sector Reforms in Asia: Implications for Sexual and Reproductive Health Services," *Health Policy and Planning* 19 (Suppl. 1), (2004), 78, 84.

<sup>17</sup> S. Ahmed et al., "Economic Status, Education and Empowerment: Implications for Maternal Health Service Utilisation in Developing Countries," *PLoS ONE* 5, no.6 (2010), 3-4.

<sup>18</sup> Ibid., 3.

<sup>19</sup> S. Chowdhury et al., "Assessment of Quality of Care in Maternal and Newborn Health Services Available in Public Health Care Facilities in Bangladesh," *Bangladesh Medical Research Council Bulletin* 35(2009), 53, 56.



level of facilities. Inadequacy in human resource and absenteeism and poor laboratory service were reported to worsen the condition especially at lower level of service delivery. The poor behaviour of any health care provider or absenteeism can be readily changed with improved supervision, support, training and individual's motivation. Accountability and punishment for ill conduct and incentives for good performance should be in place for encourage retention of doctors and nurses peripheral health centres.

Above studies show the reasons of absenteeism and high vacancy of health professionals of rural health service organizations in Bangladesh. Studies also show the inadequate resources, illegal private practice, poor institutional capacity and corruption are caused of poor health care delivery. In addition, studies focused on women's socio-economic status and how it affects on maternal health care. However, studies have not been found on how various socio-economic and political factors contributed to absenteeism, private practice and mis-management in health service delivery.

### 3. Methodology

The analysis is based on qualitative case studies (mixture of descriptive and hypothesis generating) comprising 68 in-depth interviews of national informants, healthcare managers, health service professionals, elected representatives and local informants, as well as five focus group discussions each consisting of seven to eight health service users. The study has been conducted in two areas in rural (the Chhatak sub-district) and urban (the Savar sub-district) in Bangladesh. These two areas were selected based on socio-economic status and the progress of maternal and child health in Bangladesh.<sup>20</sup> As a mainly qualitative study, the study analyses of respondents' views and experiences in order to gain an understanding of the views of factors contributing to absenteeism, private practice, and corruption in health service delivery. Besides, secondary sources of data from the literature reviews were used in this study for understanding accountability of health service delivery.

Several factors are caused of absenteeism of doctors as the researcher explored through field data particularly in rural health service organizations, which affect quality of health service delivery. These factors are: inadequate policy, improper referral system, lack of better working environment, inadequate facilities, and the lack of opportunity for higher studies.

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<sup>20</sup> B. Sen, & Z. Ali, "Spatial Inequality in Social Progress in Bangladesh, Programme for Research on Chronic Poverty in Bangladesh (PRCPB)," *Working Paper-1* (Bangladesh Development Studies, 2005), 3-5. The Dhaka district (the Savar sub-district) has the lowest human poverty index (26.51%). Conversely, the Sunamganj district (the Chhatak sub district) has the highest human poverty index (39.44). The Study by Sen and Ali shows that the districts which have lower income poverty level, also tend to have a lower human poverty index, reduced child mortality and low fertility rates, p.4.

#### 4.1 Lack of Adequate Planning and Bureaucratic Influence

There are several factors with regard to planning that affect doctors' absenteeism in their health service organizations. One of these factors is inadequate policy on posting or transfer. A planned posting mechanism may reduce absenteeism. For instance, the local Reporter explained that two Chhatak UHC doctors are from the local area and have relatively better attendance at their hospital compared to the doctors who is from outside Chhatak. Posting the local doctors is also a very helpful strategy to reduce financial pressure of the locally employed doctors as local postings help in cutting down the cost of living.

Sub-district health service organisations require an adequate referral system. For this, the researcher suggested that elementary level of training in health services e.g., basic health care delivery would enable someone to work as a paramedic or a medical assistant, while secondary level training in health service for common diseases and/or primary clinical treatment such as that in Bachelor of Medicine/ Bachelor of Surgery (MBBS) would enable someone to work as a doctor (general practitioner) and tertiary level training e.g., specialisation in particular diseases would enable someone to work as a specialist. This process can balance the system and reduce absenteeism. Moreover paramedics have low financial expectations in comparison with graduate doctors as they only have a diploma qualification and are used to living in rural areas. In addition, most of the upazilas have the same family planning program, but rural and urban upazilas have different features: such as different density of population, different economic condition and different characteristics of the locality. None of these issues has been considered in the making of plans for improvement, which adversely affects the quality of health service delivery.

Health administrator reported that higher level officials from the Directorate General Health Services (DGHS) issue office orders and sometimes make phone calls to sub-district health service organizations and issue instructions for transferring doctors/health care staff to other health service organizations. The administrator claimed that sub-district health service organizations have too little power and authority to go against these instructions. He further claimed that some of the local doctors are sometimes able to manage official orders/recommendations from higher authorities through their political or administrative connections. Such doctors may not feel the necessity to be accountable to their UHC. In this regard, the local members of parliament (MP) pointed out that by dint of bureaucratic influence, a significant number of doctors manipulate the office rules to get released from the rural UHC subsequently doctors' absenteeism is higher and people receive inadequate health service delivery.

Further, a strong referral system is required for improving the quality of health service delivery. For this, the density of population and rural-urban location of the UHC should be considered for preparing health policies.

#### 4.2 Suitable Working Environment and Opportunities for Higher Study

Elected representative reported that rural has several community clinics (CC), but those clinics do not have a friendly environment and are not suitable for doctors or even for community care providers to work in. The Sub-Assistant Community Medical Officer (SACMO) in Savar, interviewed in this study, nevertheless argued that the graduate doctors work at the CCs and the union sub centre at urban upazila for 2-3 days a week as per their schedule. He also argued that one of the reasons for this is the good working environment of the urban CCs, and that, therefore, people receive sufficient health service delivery. In addition, he claimed that doctors are available and present at the CC due to adequate supervision.

The Medical Representative in this research noted that graduate doctors receive medical education from medical colleges which are located in district centres; some of medical colleges are located at the Divisional Headquarters level. Thus, working in sub-district rural health care organisations might be uncomfortable for graduate doctors. Several local informants in Chhatak pointed out that the graduate doctors tend to get used to urban living while working in an urban-based organization and it becomes difficult for them to adjust to rural living when they are posted in a rural health care organizations. Chaudhury and Hamer's study<sup>21</sup> however shows that female and experienced physicians are unwilling to work in rural health centre; that is one of the reasons for higher doctor's vacancy in rural health centres.

The Medical Technologist (X-ray) in Chhatak, said that graduate doctors have a tendency to move to urban-based health care organizations, as rural hospitals have no surgical instruments, and doctors are unable to use their practical knowledge and skills beyond providing treatment in primary healthcare. For example, a doctor graduating from the Dhaka Medical College receives high level training but if this doctor works at an elementary level healthcare centre such as an UHC, he cannot use his learned skills due to a lack of medical provisions and instruments at the UHC.

Additionally, it was also argued that the doctors' absenteeism in the rural UHC is in part due to inadequate educational facilities for their children. Rural Upazila does not have good educational institutions; consequently doctor absenteeism is high there. For instance, the majority of Chhatak UHC doctors live in Sylhet city where there are better educational facilities. Doctors and other health care providers are happy to work at Savar UHC due to the availability of good educational facilities for their children, either in Savar or in Dhaka. In sum, this lack of adequate educational facilities for children is a factor that leads to high absenteeism of doctors at the UHC in Chhatak.

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<sup>21</sup> N. Chaudhury, & J. Hammer, 427-28.

The Newspaper Reporter claimed that the doctors are absent from this rural health centre, not because of poor facilities, but mainly because of a lack of commitment on their part. However, the Reporter said that several graduate doctors, who are residents of Chhatak are happy to work at the Chhatak Upazila Health Centre. With regard to rural absenteeism the Health Inspector in this research reported:

Government sends graduate doctors to rural areas and all of the facilities are also available there. I have seen that some of doctors are working in Chhatak hospital and afterwards they were posted to Sylhet medical hospital but still they do private practise in Chhatak. Some doctors live in urban areas but work in rural areas. People of rural areas respect graduate doctors. I think, doctors can do better living in rural areas. Some local doctors live in Chhatak and they are doing well”.

The majority of field health care providers in Chhatak pointed out that doctors have tended to move to urban health care organizations from rural organizations for the purpose of higher studies. They claimed that this was identified as one of the major reasons for lack of interest in working in Chhatak. Conversely, the field health care providers in Savar, interviewed in this research claimed that doctors can avail themselves of training facilities, higher studies, and improved information from working in the urban UHC which ultimately enriches their career. Key informants and focus group participants, when asked to compare urban and rural, perceived that absenteeism was lower in urban compared to rural.

#### **4.3 Why Do Clients Move to Private Health Service Organisations?**

Generally, wealthier people do not take services from the UHC of Savar. They tend to get services from private facilities in Dhaka for good quality health care. Moreover, private hospitals provide special care, which is not available to public providers. As well, Savar is an industrial area where people are able to afford to spend money on medical expenses.

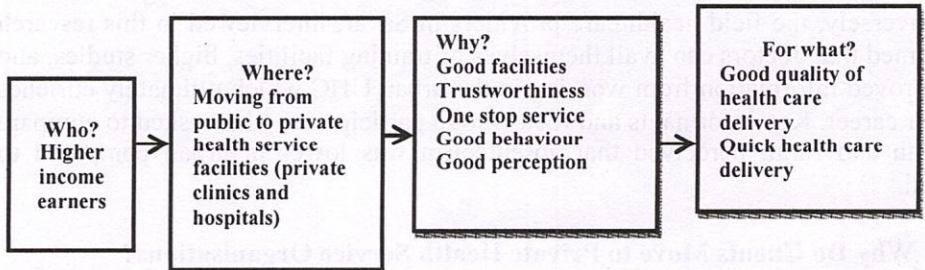
On the other hand, poorer people go to public hospitals, as they cannot afford private treatment expenses. They have a limited income, which does not allow them to spend money on private facilities. The public health facility is the only option for poorer people to obtain health care. Low-income earners may frequent public hospitals to acquire free medicine. Service users in Savar argued that they get services free of costs, but services from private facilities cost more which is not affordable for them. Respondents also explained that the government has a moral obligation to poor people who have no means of accessing private facilities.

A local newspaper reporter in Savar, said that higher income earners are more private service-centred as they lack trust in public health care and the health professionals. He also said that richer people believed that private hospitals

provide improved services as several private hospitals have digital machines for X-rays, ultra-sonogram that provide patients with efficient health service delivery. He further stated that the majority of Savar clients are garment workers who believe that public hospitals indulge in corruption and have doctors who are rude to the patients and lack in sincerity, and have long queues and waiting times that contribute to inadequate health service delivery. Additionally, inadequate human resources, inefficient ambulance services, and insufficient equipment discourage clients from going to public health care organisations.

The Medical Representative noted that some clients believe that they do not get good services from UHC, although urban hospital has sufficient consultant doctors and an improved operation theatre, which are not available at the rural-based UHC (see Figure 2).

Figure 2  
Sequential Mechanisms of Clients Moving from Public to Private Health Care Facilities



Source: Field Data, 2013.

Additionally, the majority of rural informants pointed out that hospital staff are unfriendly and they mostly annoy the clients. They also remarked that doctors were negligent and provided limited time to clients which contributed to poor quality health service delivery. Conversely, doctors from private clinics behaved in a friendly manner, which leave the patients feeling very satisfied with the services provided. Moreover, a private clinic provides incentives to patient for recommending other patients to come to the private clinics. Afemikhe's study<sup>22</sup> also found higher satisfaction of private health service delivery because of motivation of health professionals as well as adequate supervision, monitoring and coordination.

<sup>22</sup> J.A. Afemikhe, "Health Care Provision and Patients' Satisfaction with Tertiary Health Facilities in Benin City, Nigeria," *Journal of Health Management* 13, no. 2(2011), 152.

Field data shows that clients go to private hospitals as a result of a lack of one stop services in the public health care organisations (see Figure 1), where the service users receive only prescribed advice from the specialised doctor. He also noted that a limited number of medicines and medical tests are available at UHC which do not fulfil client demand. For example, the UHC is able to provide very simple examinations such as urine and blood tests whereas it is unable to provide services regarding ultra-sonogram. Consequently, clients move to private facilities where one stop services are available.

#### **4.4 Politics in Private Practice**

Politics is one of the factors that work favourably to allow the private practice of doctors. One academic in this study said that the government has direct or indirect support from the doctors' association in order to gain political power; consequently, adequate strong initiatives cannot be taken with regard to a doctors' mismanagement. This is a challenge for the health administration to ensure accountability and provide adequate health service delivery. The academic also gave an example during the period of President Ershad's government (1982-1990). A rule had been made that doctors must work eight hours in hospital and that no public doctor is allowed to do private practice outside the hospital. The main objective of this rule was to make the doctors accountable to the hospital to promote adequate health service delivery. Doctors however, jointly protested against this ruling, some of them resigned from their jobs and created pressure on the government to repeal the rule. Meanwhile, the opposing political party made this issue a part of their agenda and worked in support of the doctors. As a result, the government cancelled the provision and the doctors got the opportunity to undertake private practice. This continues until today. Therefore, political influence assists doctors to earn money through private practice that limits the accountability of doctors. As a result, improvements in the health service provided by the sub-district health service organizations in Bangladesh require longer time and optimistic initiatives by the respective policy makers.

#### **4.5 The Impact of Private Practice and Middlemen on Government Health Service Delivery**

Most government-employed doctors indulge in private practice which does not benefit the poor people. This was stated at a focus group discussion comprising service users of Chhatak, conducted in this study (see Box 1). An elected representative interviewed in this research noted that private practice offers a means of earning money for doctors, but it weakens the health system. The elected representative also noted that the main cause of uncontrolled private practice is the result of poor accountability of health service management. Respondents claimed that several Chhatak UHC doctors work in private clinics

during office hours. However, doctors are only able to do private practice off office hours. Respondents also claimed that in the absence of graduate doctors, the Sub Assistant Community Medical Officer (SACMO) provides services to clients, which are not of the same quality as those provided by a doctor. Thus, private practice by doctors affects the quality of health service delivery.

Box 1

**Private Health Service Increases the Sufferings of Poor People**

Most doctors are not available in rural hospitals due to their high involvement in private practices. Public doctors become private doctors during office hours of duty and we have to go to a private doctor to get necessary services. None of the doctors would give any prescriptions without money. If we cannot pay, this makes the doctor angry. Sometimes hospital doctors provide services only at his/her residence and we need to pay Tk.150 to Tk.300 for every visit. One day I visited a public doctor in his private chamber and paid less than Tk.50. The doctor threw the money at me. Doctors do not understand the suffering and pain of poor people. Doctors prescribe medicine and its cost is Tk.1000. We cannot afford to buy this medicine and we borrow money from our friends and relatives in order to buy medicine and pay doctor's fee.

Clients go to private clinics in the absence of public doctors which provide doctors an opportunity to earn extra money; such a trend is a threat to ensuring accountability. For instance, a patient spends Tk.5 on adequate health services, that patient would not have to spend Tk.1500 for private facility services. However, a respondent in this study argued that even though private practice affects adversely on public services but people get more benefit even clients require paying money for getting health services. Respondents emphasised the better quality of private health services<sup>23</sup>, a view shared by Andaleeb<sup>24</sup> and Afemikhe.<sup>25</sup> But some respondents argued differently and stated that doctors' private practices reduces the quality of public health care as the doctors do not willingly provide services to public health service organisation (see Figure 2).

The nature of private practice is slightly different between rural and urban areas. One of the reasons for this is adequate supervision and another is the

<sup>23</sup> S.S. Andaleeb, N. Siddiqui, & S. Khandakar, "Doctors' Service Orientation in Public, Private, and Foreign Hospital," *International Journal of Health Care Quality Assurance* 20, no. 3(2007), 261.

<sup>24</sup> S.S. Andaleeb, "Service Quality in Public and Private Hospitals in Urban Bangladesh: A Comparative Study," *Health Policy* 53 (2000) 35-36.

<sup>25</sup> J.A. Afemikhe, "Health Care Provision and Patients' Satisfaction with Tertiary Health Facilities in Benin City, Nigeria," *Journal of Health Management* 13, no. 2(2011), 152-153.

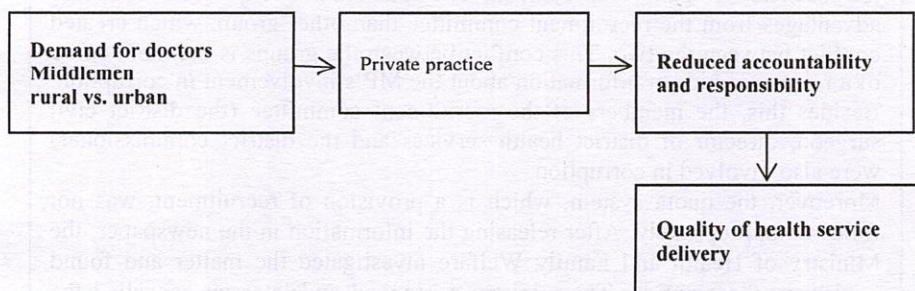
ethical values of doctors. In the case of Savar, most doctors are from Dhaka where they have their private practice, and a limited number of them work in Savar's private clinics after office hours as permitted under government provisions. On the other hand, respondent claimed that most of the rural doctors are involved in private practice during office hours, which is unethical and contrary to organizational regulations. This happens due to these doctors' poor accountability to their higher authorities in rural organizations (see Figure 2).

The provision of private practice affect doctor's accountability because doctors are highly involved on private practice for earning money refuting the rules of the organization, however, some respondents argued positively about the benefits of private practice as the government provides inadequate health service delivery. In addition, the rural health service organization has a lack of supervision, leading to poor accountability and health service delivery.

Middlemen help clients to transition from public to private hospitals as doctors refer patients to private clinics, even when these services are available in public organizations. Private clinics tempt public doctors by offering them good salaries to work there. This motivation affects the doctors' accountability to the public organization (see Figure 3). This also reduces the quality of health service delivery.

Figure 3

### Private Practice Factors Reducing Accountability and Quality of Health Service Delivery



Source: Field Data 2013

The influence of middlemen (people who work as agent) is present in both rural and urban UHCs. However, the situation has improved in urban in recent times as a result of effective supervision and monitoring. Currently, doctors work in the hospitals during office hours and concentrate on their private practice after hours. However, the conditions in rural have not improved due to a lack of adequate supervision. Besides this, corruption is another important factor contributing to poor quality of health service delivery, which is discussed in the following section.



#### 4.6 Corruption in Health Service Delivery

Elected representatives and local informants of Chhatak confirmed evidence of financial corruption in the recruitment process for lower level employees at the Chhatak UHC. For instance, the recruitment process for hiring new employees in Chhatak did not maintain appropriate official procedures due to dishonest and irresponsible behaviour on the part of the district civil surgeon as well as the recruitment committee members (see Figure 4).<sup>26</sup> The Ministry of Health and Family Welfare accused the civil surgeon of many complaints concerning corruption. As a result, the government initially postponed the recruitment process and subsequently cancelled it due to massive financial corruption. With regard to financial corruption, one of the respondents recounted how the corruption process works in the recruitment system<sup>27</sup> (see Box 2).

##### Box 2

#### Corruption in Chhatak's UHC Recruitment Process

The Sunamganj civil surgeon's office recruited a total of 120 Class 4 (supportive staff). To get a job at the UHC, each employee provided between Tk.2, 80,000 and Tk.3, 00,000 to the recruitment committee. Five Sunamganj district MPs have been elected from the Awami League (AL) political party. However the MPs are locally divided into two groups due to local politics, which is well known by the local residents. These five MPs have political influence over the recruitment committee and they received money from the job seekers to gain employment. The dominant group received more advantages from the recruitment committee than other group, which created conflict between the two. This conflict between the groups is the main cause of a release of hidden information about the MP's involvement in corruption. Besides this, the members of the recruitment committee (the district civil surgeon, director of district health services and the district commissioner) were also involved in corruption.

Moreover, the quota system, which is a provision of recruitment, was not followed appropriately. After releasing the information in the newspaper, the Ministry of Health and Family Welfare investigated the matter and found evidence of corruption. The ministry postponed and later on cancelled the recruitment process.

**Source:** Interview with a staff UHC Chhatak.

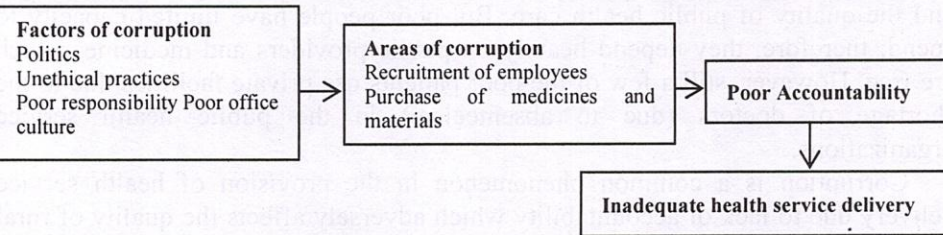
<sup>26</sup>The civil surgeon is the head of the district health administration who is authorised to recruit Class 4 employees (supportive staff) for sub-district health service organisations.

<sup>27</sup> The recruitment Class 3 and Class 4 employees have to follow a government quota system under which disadvantaged groups of the society can avail of the opportunity to earn their livelihood.

The DG health service has a Tender Procurement Committee, which is formulated through political consideration. Respondents also noted that this politically biased committee also became involved in corruption and purchased poor quality products at cheaper prices. The medical representative in Savar, interviewed in this research reported that politics is not the major factor; the Tender Committee takes illegal money from pharmaceutical companies subsequently, and then supplies poor quality medicines. Nurunnabi and Islam's study<sup>28</sup> also found the inadequate implementation of patients' bill of rights as well as the lack of public participation are causes of corruption in health services.

Figure 4

### Factors Contributing to Corruption and Poor Accountability to the UHC



Source: Field Data 2013

As the above discussion shows, corruption affects the quality of health service delivery particularly the rural health service organization because of lack of ethical values of politician as well as their poor political commitment. The researcher did not find evidence of corruption in Savar such as that in Chhatak Upazila. This implies that Savar has better health service management and better accountability to control the risk of corruption in the delivery of health services.

To summarise, the quality of health service delivery depends on doctor's behaviour as well as the socio-economic conditions of people. Evidence has found that rural people, who generally have poor socio-economic backgrounds, are deprived of good health services from the graduate doctors. But this not so in the urban UHC, because the health service seekers in urban are socio-economically more developed which enables them to receive good behaviour and good quality of health services from the doctors. Besides this, bureaucratic influences limit accountability and quality of health care. Moreover, political factors are highly influential mechanisms in terms of the doctors' postings and private practice. All of these activities are done through the political influence. As the politics works as a tool of influence, negating the organisational rules, the

<sup>28</sup> M. Nurunnabi, & S.K. Islam, "Accountability in the Bangladeshi Privatized Healthcare Sector," *International Journal of Health Care Quality Assurance* 25, no. 7(2012), 638.

existence of such a politically biased system does not make it possible to ensure accountability and quality of health service delivery.

## **6. Conclusion**

Absenteeism of doctors is higher at rural compared to that in urban UHC, because of better facilities such as scope for the doctors' own higher education; their children's education and private practice are available in urban health service organizations. One of the causes of absenteeism is inadequate government policies and planning to meet the expectations of doctors who work in rural areas. Private practice affects the doctors' responsibility and contributes to poor accountability. Data show that healthcare seekers, who can afford to do so, seek health services from private facilities, as they do not trust the level of efficiency and the quality of public health care. But poor people have limited capacity to spend; therefore, they depend heavily on public providers and medicine, which are free. However, still a few of the poor patients use private facilities due to the shortage of doctors (due to absenteeism) in the public health service organizations.

Corruption is a common phenomenon in the provision of health service delivery due to lack of accountability which adversely affects the quality of rural health service delivery. However, unlike rural, there is no evidence of corruption in urban. Therefore it can be assumed that the doctors in urban UHC are more accountable and provide better health service delivery. On the other hand, the poorer people get a lower quality of health service. Politics makes the health service organisation weaker and less accountable. The poor socio-economic conditions of health care seekers, particularly in rural, are taken advantage of by the doctors by being less accountable to their patients. In other words, the rural doctors are professionally less accountable than urban doctors.

## **Violence against Women in Rural Bangladesh: A Study on Selected Villages of Rajbari District**

Kazi Muhammad Wazir Hyder\*

**Abstract:** This study has highlighted the violence against women in rural Bangladesh within the home and the community in the selected villages. The findings has showed that violence against women affects all components of society as it appears in public, family and intimate contexts and can be experienced by women at any stage of their life cycle. This illustrates that about 34.30% of the rural women were the victims of physical violence and 42.44% of the women faced health consequences of violence in the area. The data suggest that most of the violence occurred in a range of situations; poverty 21.51%, not paying dowry 15.70% lack of education 12.79%, gender inequality 8.14%, and lack of awareness 9.30%. However, the study has made some suggestions for combating the violence against women in rural Bangladesh for the future.

### **1. Introduction**

Violence against women is an extensive issue of discussion. It can affect women of any age, class, race, religion, sexuality, or ability. It is a common occurrence in most societies of Bangladesh. It is also a daily and often deadly fact of life for most of the women and girls in Bangladesh. Both the rural and urban areas of Bangladesh, conventionally the women who have less social status and education, economic insolvency and dependency are the segment of violence. Moreover, women have a higher incidence of poverty than men in the society as their earning access is lower in relation to men. Also the economic conditions of women are more severe than the men of the society, and the increasing numbers of women are underprivileged in terms of income, wealth, decision making and participation. So, significant number of women experience more than one types of violence every day. It has been observed that mainly fours types of violence, i.e. physical, psychological, economic and sexual abuse and violence are prevalent throughout Bangladesh. Most of the victims (93%) reported in the

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\* Lecturer, Social Work, Rajshahi Education Board Model School & College, Rajshahi.

study that they had experienced physical violence; only 13 per cent reported of having experience of sexual violence, 91 percent victims reported economic violence and 84 percent reported psychological violence committed by their husbands.<sup>1</sup> Violence against women has been identified as one of the priority areas that call for undertaking study and action immediately. Population-based studies report, between 12% and 25% of women have experienced attempted or completed forced sex by an intimate partner or ex-partner at some time in their lives.<sup>2</sup> In the South Asia region, violence has assumed multi-dimensional forms, such as, trafficking in women and girls, domestic violence, sexual abuse, violence at work place, forced prostitution, child abuse, etc. Recent addition to the already manifold problems is 'Fatwa'.<sup>3</sup> In Bangladesh, women face various forms of violence, ranging from wife abuse to rape, dowry killings, acid throwing, sexual harassment, and sexual slavery through trafficking in women among which domestic violence is widely prevalent both in urban and rural areas as an everyday matter of women's lives.<sup>4</sup> Consequently, societal norms and traditional values associated with gender roles and supremacy within households and society tend to trigger, dictate and provoke violence against women in Bangladesh.<sup>5</sup> Violence against women has no boundaries of geography, culture or wealth and as long as it continues, none can claim to be making real progress towards equality, development and peace in the world. Violence may be defined as physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.<sup>6</sup> Rural women experience multiple forms of violence including domestic violence, rape, dowry deaths, sexual harassment, suicide, forced marriage, trafficking and

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<sup>1</sup> Taslima Khatun and Khandaker Farzana Rahman, "Domestic Violence against Women in Bangladesh: Analysis from a Socio-legal Perspective," *Bangladesh e-Journal of Sociology*. Vol. 9, No. 2. (2012) p.22. [http://www.unifem.org/gender\\_issues/violence\\_against\\_women/factsfigures.php](http://www.unifem.org/gender_issues/violence_against_women/factsfigures.php) [accessed on October 03, 2012].

<sup>2</sup> World Health Organization (WHO), *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, WHO, Geneva, Department of Gender and Women's Health, (2003) p. 47.

<sup>3</sup> M. A. Mannan, "Violence against Women: Marital Violence in Rural Bangladesh," CPD-UNFPA Paper 20, (2008) p. 1.

<sup>4</sup> H. Zaman, "Violence against Women in Bangladesh: Issues and Responses," *Women's Studies International Forum*, vol. 22, no. 1, (1999) p. 37.

<sup>5</sup> M. A. Koenig et. al., "Women's Status and Domestic Violence in Rural Bangladesh: Individual and Community Level Effects," *Demography*, 40:269-288, (2003) p. 269.

<sup>6</sup> K. Afsana, S.F. Rashid and W. Thurston, *The State of Women's Domestic Violence Health Policy Communities in Bangladesh*, (Dhaka;BRAC, 2005) p. 33.

other psychological, physical and financial oppression. The most common and frequent type of physical violence suffered by women during last 12 months was: "slapping" (reported by 32% women), followed by "kicking" (10.4%), "beating with a stick" (reported by 7.6% women), "pulling by the hair" (reported by 5%), "hurling objects at wife" (reported by 4.1%), etc.<sup>7</sup> Factors that generally increase women's vulnerability to some types of violence include age, inequality, disability and poverty. The consequence of all forms of violence and abuse affect the rural women deadly in Bangladesh.

The findings of the present study demonstrate that about 34.30% of the rural women are the victims of physical violence and 42.44% of the women face health consequences of violence. The number of women who suffer from slapping and torture by husbands and in-laws are really very large. The data suggest that most of the violence occurs in a range of situations; poverty 21.51%, not paying dowry 15.70% lack of education 12.79%, gender inequality 8.14%, lack of awareness 9.30% and for the failure of serving quick meal, take care of children, quarrelling with the in-laws, religious miss-belief etc. As an agro-based society, the women of Rajbari district often face different types of violence against them. The present study has justified that violence against women has much significant impact on the health and socio-economic status of the rural women in Bangladesh. No doubt, it affects the health and wellbeing of children and young people who are the eyewitness of violence against their mothers and other women. The costs to society of responding to violence against women and the overall economic impact are momentous and measurable. So, violence against women has become one of the most noticeable social issues in rural Bangladesh.

The Declaration on the elimination of violence against women, UN Resolution 48/104 defines violence against women as any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life.<sup>8</sup> The Beijing Platform for Action retakes the above definition and stresses that "in all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture.

'CEDAW'<sup>9</sup> defines discrimination against women as "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

<sup>7</sup> M.A. Mannan, The Final Evaluation of CARE Bangladesh's PROTIRODH Project, *Bangladesh Institute of Development Studies*, E-17, (2010). p.5.

<sup>8</sup> M. Chen, Poverty, Gender and Work in Bangladesh", *Economic and Political Weekly*, Vol. XXI, No.5, February 1, (1986) p.3.

<sup>9</sup> Declaration on the Elimination of Violence against Women, (CEDAW), Resolution No. A/RES/48/104, New York, United Nations, 23, February, (1994) Under "Settings," <http://www.thedailystar.net/law/2010/10/03/index.htm> [accessed on February 09, 2012].

irrespective of their marital status, on a basis of equality with men and women, of human rights and fundamental freedom, in the political, economic, social, cultural, civil or any other field.” (Article One)

Violence against women is considered as a violation of human rights. Bangladesh Constitution has given equal rights to women. Article 27 of the Constitution says, "All citizens are equal before the law and are entitled to equal protection of law". Since the Beijing Platform for Action (1995), the Government of Bangladesh has also identified violence against women as a priority issue. Given this recognition, incidences of violence against women today receive greater attention than they did a decade ago.

The general objective of the present study was to explore violence against women in rural Bangladesh. The specific objectives were: a. to analyze the socio-economic characteristics of the victimized women; to seek out the forms of violence against rural women; to identify the causes of violence against women; and to explore the psycho-social consequences of violence against rural women in Bangladesh.

## **2. Methodology**

The present study was carried out using an exploratory social survey. Both qualitative and quantitative data were used for this study. The study was carried out on Rajbari district of Dhaka division. Both primary and secondary sources of data were used in the study. The primary data were collected through interview, case study and focus group discussion (FGD). Secondary data were collected from the concerned government offices and non-government organizations operating activities in the study area. In the selection of the study area, attention was to a number of aspects, which was very necessary to complete the study successfully. The researcher used purposive sampling and stratified sampling method for conducting the study. Purposive sampling was used to select the victimized women to comprehend the events of violence, women behaviors and other elements which were associated with the causes of violence. The field survey for the present study was conducted in the four Upazilas namely Pangsha, Baliakandi, Goalandaghat and Rajbari Sadar under the district of Rajbari. After selecting the Upazilas, the researcher has taken four villages from the four Upazilas purposively. Subsequently selecting the villages, the researcher used stratified sampling method as a probability sampling technique wherein the researcher divided the entire population into different subgroups or strata, then randomly selected the final subjects proportionally from the different strata. Within the period of January to June 2012, the researcher had collected data from 172 women and girls from the four selected villages. Data social status of women such as age, education, religion, marriage, family size, etc and violence related information such as knowledge about violence, causes of violence, consequence of violence, types of violence and sources of legal help etc, were

collected using questionnaire through one to one interview. Additionally, tools like FGD and case studies were also used to collect data for the present study. Crosscheck interviews were conducted with key informants such as 4 school teachers, 3 local leaders, 2 lawyers, 4 NGOs officials, 2 human rights workers, 2 Upazila social service officers and 1 police officer to verify the information from the questionnaire interviews and FGDs. The study area, sample size and the data collection methods are shown Table 1.

Table 1  
Study Area, Sample Size and the Data Collection Methods

District	Upazilas	Villages	Sample size	Case studies	FGDs	Data collection methods
Rajbari	Pangsha	Kalikapur	45	1	1	Questionnaire interviews, FGD and case studies
	Baliakandi	Islampur	45	1	1	
	Goalandaghat	Basantapur	42	1	1	
	Rajbari sadar	Ujanchar	40	1	1	
Total			172	4	4×10=40	

### 3. Socio-economic Status of Respondents

The effort was made to focus briefly on some important features of the women from the selected villages. Socio-economic characteristics of the women influence their knowledge about violence, attitudes and belief about the sources of violence, consequences of violence, information about legal aid and justice, measures about the protection of violence and decision-making process. Violence against women in rural Bangladesh are influenced by their various characteristics as well as some other socio-economic aspects such as; age distribution, religion, level of education, marital status and family types etc.

The Socio-economic and demographic characteristics of a specific population shows their status or position in the community or in the society. The socio-economic information about the age, religion, level of education of education, marital status and family type etc, and the type of violence; physical, psychological, sexual, domestic and financial of women in the selected villages of Rajbari district are also collected. The problem is to identify the socio-economic factors that influence the nature, type and intensity of violence against women. The major factors due to which women are subjected to violence in Rajbari are identified by interacting directly with the women living in the selected areas. A set of comprehensive and methodical questionnaire were developed based on the discussion with the distinguished researchers, sociologist and experts of Rajshahi University.

The information of socio-economic characteristics of selected respondents is presented in Table 2. The Table 2 shows that the greater part of participants was in the age group 11-20 and 21-30 years which constitute 48.26% and 28.40% of



the total respondents. The lion's share of the respondents 80.81% was Muslim, 15.70% was Hindu and only 1.74% belong to the religion of Christianity. On the subject of the educational status, the majority of the respondents 51.74% were illiterate, 23.84% had signature knowledge only, 13.37% had primary level of education and only 2.91% of the women had HSC or equivalent. The Table 2 also reveals that about 73.84% of the respondents were married and 72.67% reside in the joint family.

Table 2  
Socio-economic Characteristics of Respondents

Particulars	Number of Respondents	Percentage (%)
<b>Age</b>		
11-20	83	48.26
21-30	49	28.49
31-40	21	12.21
41-50	12	6.98
51+	7	4.07
Total	172	100.00
Average age: 24.51, SD of age 13.08		
<b>Religion</b>		
Muslim	139	80.81
Hindu	27	15.70
Christian	3	1.74
Others	3	1.74
Total	172	100.00
<b>Level of Education</b>		
Illiterate	89	51.74
Can sign only	41	23.84
Primary level	23	13.37
Secondary level	14	8.14
HSC/Equivalent	5	2.91
Total	172	100.00
<b>Marital status</b>		
Unmarried	31	18.02
Married	127	73.84
Separated	11	6.40
Widowed	3	1.74
Total	172	100.00
<b>Family types</b>		
Nuclear	47	27.33
Joint	125	72.67
Total	172	100.00

Source: Field Survey, 2012

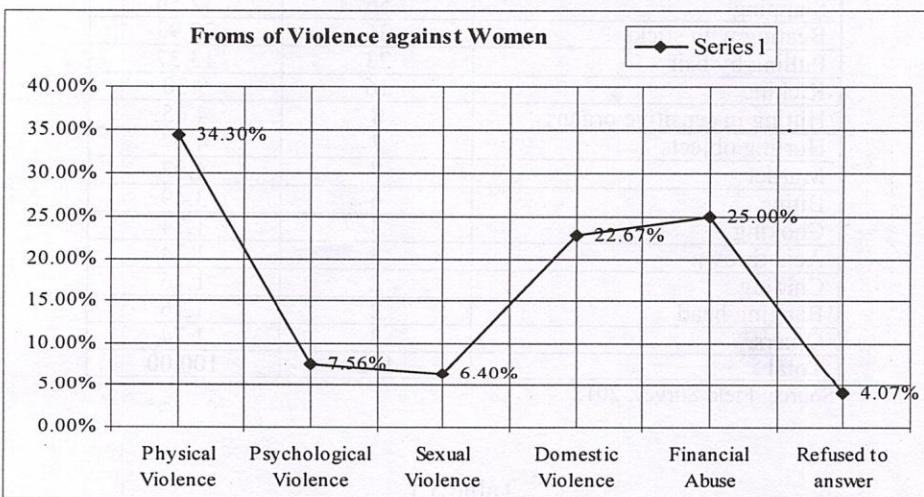
#### 4. Forms of Violence against Women

In Bangladesh mainly five forms of violence against women is very common. The universal declaration of CEDAW has also stated physical, psychological, sexual, domestic and economic appearance of violence against women. On the basis of the factors associated to violence against women and the focus on the

genetic approach which generally covers various forms of violence against women are presented in the Figure 1.

Analyzing the data regarding forms of violence, 34.30% of the respondents said that they experienced physical torture in their lives which ranks the top position in the figure. The Figure 1 also shows that 25.00% of the respondents faced financial violence and 22.67% of the respondents had to tolerate domestic violence which was very severe. The respondents were also asked to give their opinion on the other forms of violence which were widespread in the selected areas. The result shows that psychological and sexual forms of violence were less prevalent as compared to other types of violence.

Figure: 1  
Different Forms of Violence



Source: Field Survey, 2012

### 5. Types and Causes of Physical Violence against Women

The findings of the study clearly show that of all the forms of violence that women face, physical violence is the most widespread in terms of its severity and endemic nature. Table 3 and 3.1 extensively differentiates the types and causes of physical violence against women in rural Bangladesh. Table 3 reveals that the most common and frequent type of physical violence suffered by women during last 12 months were, 'slapping' reported by 32.56% of women, followed by 'beating with sticks' 20.93%, 'pulling by hair' 13.37%, 'kicking' 9.30%, 'hitting on sensitive organs' 4.65%, and 'hurling objects at wife' reported by 4.07% of women, etc. On the other hand, regarding the question about the causes of violence against women, Table 3.1 demonstrates that 21.51% of the respondents were of the opinion that poverty was the strongest cause of committing physical

violence against them. Negative relationship between low level of educational attainment of the women and not paying dowry were observed as the causes of physical violence against women. The study findings show that 15.70% of violence was committed for not paying of dowry and 12.79% for the low level of educational attainment of women. Table 3.1 also reveals that 9.30% of physical violence occurred for the lack of awareness about rights, 8.14% for gender inequity, 7.56% for the quarrel with in-laws and 6.98% taken place for the socio-cultural restrictions respectively.

Table 3  
Types of Physical Violence against Women

Types of Physical Violence	Respondents	Percentage
Slapping	56	32.56
Beating with sticks	36	20.93
Pulling by hair	23	13.37
Kicking	16	9.30
Hitting in sensitive organs	8	4.65
Hurling objects	7	4.07
Murder	7	4.07
Biting	6	3.49
Choking	3	1.74
Acid thrown	3	1.74
Chiding	2	1.16
Banging head	2	1.16
Others	3	1.74
Total	172	100.00

Source: Field Survey, 2012

Table 3.1  
Causes of Physical Violence against Women

Causes of Physical Violence	Respondents	Percentage
Poverty	37	21.51
Not paying dowry	27	15.70
Low level education	22	12.79
Lack of awareness about rights	16	9.30
Gender inequality	14	8.14
Quarrels with in-laws	13	7.56
Socio-cultural restrictions	12	6.98
Take care of children	10	5.81
Failure of serving quick meal	8	4.56
Not having a son	7	4.07
Religious miss-belief	4	2.33
Others	2	1.16
Total	172	100.00

Source: Field Survey, 2012

## 6. Types and Causes of Psychological Violence against Women

In order to scoop out the data collected about types and causes of psychological violence against women; it is found from the Tables 4 and 4.1 that pressure for dowry which constitutes 20.35% was the main type of violence against women and poverty which constitutes 20.93% was the key cause of committing violence against them. Table 4 also shows that the other types of violence commonly committed against women in rural Bangladesh were verbal abuse 15.70%, threat for divorce 13.95%, threat for further marriage 8.72%, stop talking 8.14% and neglect during sickness 7.56%. On the other hand, Table 4.1 shows that 18.02% of violence commits for the cause of giving birth of a girl child, 13.37% for not paying the dowry, 10.47% for low level of education, 8.72% for lack of awareness and 8.14% for gender inequity which were very awful causes of violence against women in the selected villages.

Table 4

### Types of Psychological Violence against Women

Types of Psychological Violence	Respondents	Percentage
Pressure for dowry	35	20.35
Verbal abuse	27	15.70
Threat for divorce	24	13.95
Threat for further marriage	15	8.72
Stop talking	14	8.14
Treats to go paternal home	13	7.56
Misbehave with children	13	7.56
Neglect during sickness	13	7.56
Not giving enough food	10	5.81
Threat to oust from home	5	2.91
Others	3	1.74
Total	172	100.00

Source: Field Survey, 2012.

Table 4.1

### Causes of Psychological Violence against Women

Causes of Psychological Violence	Respondents	Percentage
Poverty	36	20.93
Birth for girl child	31	18.02
Not paying dowry/money	23	13.37
Low level education	18	10.47
Mistrust	15	8.72
Lack of awareness	15	8.72
Gender inequality	14	8.14
Socio-cultural restrictions	10	5.81
Religious miss- belief	7	4.07
Others	3	1.74
Total	172	100.00

Source: Field Survey, 2012.

### 7. Types and causes of sexual violence against women

Sexual violence means any unwanted sexual act or activity. The findings of the study show that there were different kinds of sexual violence in the study areas and which had numerous causes. Table 5 reveals that the most prevalent and repeated type of sexual violence faced by women were, 'child sexual abuse' reported by 25.58% of the respondents and 'sexual harassment' reported by 17.44% of the respondents. Again the Table shows that as the types of violence, 'sexual assaults' 14.53%, 'sexual exploitation' 12.21%, 'ritual abuse' 8.14% and 'rape within relationships' 6.40% are largely noticeable. Regarding the questions about the causes of sexual violence against women, Table 5.1 illustrates that habitually 28.49% of violence was committed for 'loss of control over emotions' and 19.19% of violence was committed for 'alcohol and drugs consumption'. Table 5.1 also reveals that moreover 13.95% of sexual violence occurred for 'destruction of property', 8.72% for 'unemployment', 7.56% for 'a person being insulted' and 6.40% of sexual violence mainly taken place for 'bad neighborhoods'.

Table 5  
Types of Sexual Violence against Women

Types of sexual violence	Respondents	Percentage
Child sexual abuse	44	25.58
Sexual harassment	30	17.44
Sexual assaults	25	14.53
Sexual exploitation	21	12.21
Ritual abuse	14	8.14
Rape within relationships	11	6.40
Forced marriage	8	4.65
Trafficking	5	2.91
Rape	2	1.16
No answer	12	6.98
Total	172	100.00

Source: Field Survey, 2012.

Table 5.1  
Causes of Sexual Violence against Women

Causes of sexual violence	Respondents	Percentage
Loss of control over emotions	49	28.49
Alcohol and drugs consumption	33	19.19
Destruction of property	24	13.95
Unemployment	15	8.72
A person being insulted	13	7.56
Bad neighborhoods	11	6.40
Peer pressure	7	4.07
Having a lack of awareness	7	4.07
Isolation	5	2.91
Intolerance /ignorance	3	1.74
Others	5	2.91
Total	172	100.00

Source: Field Survey, 2012.

### 8. Consequences of Violence against Women

Violence against women has a rippling effect that can go on for years and affect the generations to come. It has several types of consequences which include physical or health, psychological, social and economic. The different types of effects are almost similar for all kinds of violence. It has long term consequences for both the physical and psychological well being of women with fear being the most pronounced effect. The information of the FGD relates that fear of violence prevents many women from living independent lives. The largest part of the participants of FGDs, 82.50% notified that consequences of violence restrict their free movement, makes them seek, male protected and encourages vulnerability. Furthermore it reduces their self-esteem that additionally reinforces dependency. Additionally, the contributors of case studies were the survivors of violence. So, they confirmed that depression, trauma related symptoms such as sensory associations, sleep disorders and suicide ideation were common effects of violence. When a woman is exposed to these forms of violence, there are consequences to her physical, mental, emotional well-being, and these lead to impacting any children, she might have as well as social and economic costs.

Table 6 demonstrates the foremost appearance of the consequences of violence against women. It reveals that the health consequence of violence was crucial in all forms of violence against rural women in Bangladesh which comprises the uppermost 42.44 % of total consequences. The economic cost of violence against women is significant. From the Table 6 it is found that economic consequence of violence against women holds the second position in the column which constitutes 29.65%. In addition, it reveals that violence against women has also social and psychological consequences which were alarming and constitute 16.28% and 9.88% of cost of violence respectively.

It is mentioned above that the consequences of violence against women on health and economic condition of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. It addresses mainly the concrete or disposed violence against rural women in Bangladesh which are the sustained consequences of violence against them. Furthermore table 6 has presented the opinion on various forms of consequences of violence against women.

The Table 6 shows that the health consequences which represents 42.44% of total consequences of violence was crucial and results in serious outcomes such as fractures 26.03%, chronic pain syndromes 17.81%, permanent disability 15.07%, pregnancy complications 12.33%, death 8.22%, and the other forms of consequences which were higher rates of infant mortality, gastro-intestinal disorders, unsafe abortion, etc. The economic cost of violence against women which constitutes 29.65% was also extensive. Various forms of economic consequences of violence; loss of working ability 45.10% and subjected to recruitment and promotion 27.45% are significant. Regarding the various forms

of social consequences of violence; inability to work 25.00%, drug addiction 14.29%, perpetuation of violence 17.86%, social condemnation 10.71% and acid burn 7.14% were largely noteworthy. The Table also shows that a range of psychological consequences of violence were prevalent in the rural community. Women who are the victims of psychological consequences of violence are more likely to be the most vulnerable in their later life. It can be mention that anxiety, depression, attempted to suicide 29.41%, eating and sleep disorders 17.65%, post-traumatic stress disorder 11.76%, and fear and anger 11.76% were the various shapes of the psychological consequences of violence against rural women in Bangladesh.

Table 6  
Consequences of Violence

Consequences	Forms of Consequences	Respondents	Percentage	Total
Health	Fractures	19	26.03	73 (42.44)
	Chronic pain syndromes	13	17.81	
	Higher rates of infant mortality	4	5.48	
	Permanent disability	11	15.07	
	Gastro-intestinal disorders	5	6.85	
	Unwanted pregnancy	2	2.74	
	Pregnancy complications	9	12.33	
	Unsafe abortion	4	5.48	
	Death	6	8.22	
Social	Drug addiction	4	14.29	28 (16.28)
	Inability to work	7	25.00	
	Housing instability	2	7.14	
	Perpetuation of violence	5	17.86	
	Acid burn	2	7.14	
	Rape	2	7.14	
	Custodial violence	1	3.57	
	Social condemnation	3	10.71	
	Rejection from family/society	2	7.14	
Economic	Loss of working ability	23	45.10	51 (29.65)
	Subjected to recruitment & promotion	14	27.45	
	Dependency	5	9.80	
	Deficit source of livelihood	9	17.65	

Psychological	Anxiety, depression, attempted suicide	5	29.41	17 (9.88)
	Eating and sleep disorders	3	17.65	
	Poor self-esteem	2	11.76	
	Post-traumatic stress disorder	2	11.76	
	Self harm	1	5.88	
	Sexual disability	1	5.88	
	Fear and Anger	2	11.76	
	Upset/confusion/frustration	1	5.88	
Others	Colored remarks	1	33.33	3 (1.74)
	Humiliation	1	33.33	
	Disparity in employment	1	33.33	
Total				172 (100.00)

Source: Field Survey, 2012

## 9. Conclusion

Violence against women in the rural society of Bangladesh seriously affects the ability of women to achieve equality. In most cases majority of the abused women were found to remain silent about their experience of violence. The FGDs and case studies done for the study illustrates that the main reasons behind this silence was the high acceptance of violence within society, stigma and fear of greater harm, fear of challenging existing social norms and patriarchal values and tarnishing family honour, own reputation, lack of an alternative place to go to and fear of endangering the children's future. So, from the present study, it is found that violence against women is not only the incidence of violence against women which limits the women's lives, but the fear of violence which affects their daily existence, how they dress, where they go, with whom they associate, and their mode of moving. The information of the FGDs demonstrates that violence against women continues to be a significant and persistent social and economic problem in Bangladesh with serious impacts on women's health, life and social survival. It is a matter of hope that the Bangladeshi government commits itself to respect and fulfill the rights of women and to work towards the elimination of violence against women through international conventions, covenants and treaties. Withdrawing its reservations to Article 2 and Article 16.1(c) of CEDAW will allow the full implementation of the convention and for the promotion of women's full enjoyment of their rights including those related to family life. Regarding these options the present study has explored the prevalence and significance of violence against women within the four walls of home and the



community in the study villages. The study has explored that women's experience of violence is created by their race, colour, religion, political or other opinion, national or social origin, property, education, marital status, sexual orientation, age, or disability. To eradicate violence against women and help women to achieve lives of equality and dignity, it is necessary to provide them adequate redress and support from the stakeholders. The study suggest that rural women should be socio-economically empowered through the expansion of mass education, training and community participatory activities to fight back at violence and injustice as it raises self worth and enhancement with resources to fight her battle. Legal aid and judiciary must be strengthened for free legal assistance, advice, advocacy and court support services. And the issue of violence against women should be appended in educational curriculum at all levels to be aware of gender parity and equity.

## **General Perception of the Rural Married Women about Social Stigma: A Study on Gopalpur Village of Natore District**

Sumana Akter,\* Md. Nazmul Hoque\*\*

**Abstract:** The present study shows stigma related everyday perceptions of women in the rural context of Bangladesh. Perceived stigma is defined in this study as the individual's personal feelings about the stressor, such as embarrassment, shame, or deviance and individual's projections of this feelings onto others, which may or may not accurately reflect network member's and/or society's feelings about the stressor. Their fear of rejection or insult may lead to impaired perceptions of support availability and social interactions as well as to increased withdrawal from their network of family and society. Stigma in relation to education, religion, occupation, skin color, sickness, husband and children, attraction to other male, gender, marital status, and sterility are explored. Influences of income, family type and number of household members on stigmatization are also evaluated in this study.

**Key Words:** Social Stigma, Stigmatization, Women's Perception

### **1. Introduction**

People who are stigmatized possess an attribute or aspect of self that is devalued by others.<sup>1</sup> Some stigmas are immediately visible to others and hence have the potential to elicit negative treatment across a wide variety. Shelton, Alegre and Son (2010) found that "members of stigmatized groups (i.e. blacks and women) are more concerned with how other in-group members will perceive them when they do not confront perpetrators of prejudice than they are with how out-group members (i.e. whites and men) will perceive them when they do confront perpetrators of prejudice."<sup>2</sup> Individuals stigmatized by society, based on their

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\*Lecturer, Department of Sociology, Varendra University, Rajshahi.

\*\* Assistant Professor, Department of Sociology, University of Rajshahi.

<sup>1</sup> J Crocker, B Major and C Steele, "Social Stigma" *The Handbook of Social Psychology*, eds. D T Gilbert and S T Fiske (Boston: McGraw-Hill, 1998), pp.505-509.

<sup>2</sup> J N Shelton, J M Alegre and D Son, "Social Stigma and Disadvantages: Current Themes and Future Prospects", *Journal of Social Issues*, vol. 66, no.3 (2010), pp. 618-633.

group affiliation or illness, may not feel the stigma as intensely as one might expect. In other words, individuals and society's perceptions of stigma are probably acting, to some degree, as the cause and effect of each other. Perceived stigma is related to negative perceptions of others, negative interaction with others and perceived and actual restrictions in social activities. Women who perceive a stigma may feel that those who live with them and their stressor on a day to day basis are more accepting and understanding, whereas those outside the household are more judgmental.

This study aimed to explore the general perceptions of the rural married women about social stigma associated with their daily social living along with structural elements.

## 2. Methodology

**2.1 Study Area and Duration:** Gopalpur village under Baraigram Thana of Natore district has been selected purposively. This study was carried out for a period of 2 years from 2012 to 2013.

**2.2 Sampling Framework:** Before collecting final data a preliminary baseline survey was conducted and a total of 1309 households and 1519 married women were recorded. In the study, about 15% of the total (N=218) married women as well as households were selected through simple random sampling technique. Both individual and household was considered as the unit of analysis of the study. In achieving the objective, blending of several Participatory Rural Appraisal (PRA) and other methods such as scheduled interview, informal meeting, focus group discussion (FGD), spot observation, and non-participant observation were employed. Both open and close ended questions were used. The term 'normal' regarding perception of stigma denotes stigmatized person takes the stigma as bearable a usual thing where abnormal means stigma is perceived as unbearable and unusual.

**2.3 Data Analysis:** Collected data were tabulated and subjected to different analyses using statistical software SPSS (Statistical Package for Social Sciences, version 15).

## 3. Perceptions of Women Regarding Stigma Due to Education

Ignorance is ugly and education is light. Gaining knowledge broadens one's mind and creates understanding about surroundings as well as the larger society. Society often limits knowledge for women beyond a narrow confine so that they are not educated.<sup>3</sup> In the study area the perception of women about education is

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<sup>3</sup> L E Hamamsy, *Early Marriage and Reproduction in Two Egyptian Villages* (Cairo: UNFPA, 1994).

discriminatory. Most of the women said formal education is not so important for the women and their educational qualification should be less than their husbands. Society blamed the woman who is more qualified than her husband in terms of formal education. This phenomenon is considered shame for men and the women also.

It was revealed from the study that majority respondents both stigmatized and non-stigmatized women believed that this type of stigma which was generated for lack of sufficient education is normal. This result was found for 96.79% women (n=184 stigmatized and n=27 non-stigmatized).

#### **4. Perceptions of Women Regarding Stigma Due to Unable to Read Religious Books**

The women as well as other people in the rural societies believe that everybody should have to read the religious book especially for the women. They should pray for the wellbeing of the family and for their husbands. Many peasants do not let their daughter leave the house to go to school and the like because they fear that their girls will gain a sense of freedom, which is always dangerous. By venturing out, the girls will also gain knowledge of the world of men, and if they learn to read, they will read the wrong kinds of books, not the Koran.<sup>4</sup> Reading religious books is encouraged for the women in rural areas of Bangladesh. All the women were agreed that person who does not know how to read holy religious books should be stigmatized. Even stigmatized respondents believed that this is natural that they would be stigmatized for this. This was very conspicuous from the survey that rural people especially women had great faith in their religions.

#### **5. Perceptions of Women Regarding Stigma Due to Occupation**

The perceptions of the rural women in the study area regarding stigma due to their occupation is different. In case of stigmatized respondents, majority 77.78% took this stigma abnormally. They believed that this should not be happened as they work hard for their families. Some who were housewife and stigmatized (16.66%) received this stigma normally. They mentioned that as they did not earn for the family it is very normal for others to stigmatize them. Whereas majority 92.66% non-stigmatized respondents believed that stigmatization because of professions is normal. However, 0.5% non-stigmatized respondents made no comment regarding this issue.

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<sup>4</sup> R Adams, *Development and Social Change in Rural Egypt* (Syracuse: Syracuse University Press, 1986).

### 6. Perceptions of Women Regarding Stigma Due to Dark Skin Colour

Women live inside the house. So their skin colour should be fair enough. The beauty of the women is expected in the society. Perceptions of rural women regarding stigma due to skin colour are shown. From the survey this was revealed that 6.67% stigmatized and 29.26% respondents believed that stigmatizing dark skinned women is normal. But majority respondents from both stigmatized (83.33%) and non-stigmatized (68.62%) categories believed that they had no control over it so stigmatizing them is injustice. However, opinions of a small portion of the respondents (3.21%) have varied regarding this issue.

### 7. Perceptions of Women Regarding Stigma Due to Sickness

World Health Organization (WHO) defined "health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." It is said that the Goddess of good luck left that house whose wife/woman is sick. So sickness of wife is considered the fate of any family. Among the stigmatized women, majority (95.88%) women have taken the stigma abnormally. They mentioned that sickness is not a matter of choice, and they could not bring it willing to blame for this reason should not be given. However similar opinion was expressed by maximum (83.47%) non-stigmatized respondents. But 15.70% non-stigmatized women have mentioned that it is normal that a sick woman would be stigmatized.

### 8. Perceptions of Women Regarding Stigma Due to Husband's Activity

Women in particular are identified in terms of their father's and husband's position.<sup>5</sup> The status of wife depends on her husband's activities. As women are considered nurse and a part of their husbands they are responsible for activities by their husbands. This is natural for every woman.

Mixed perceptions were observed in the study area in case of both stigmatized and non-stigmatized women. Maximum 49.24% stigmatized women did not consider this type of stigma normal, and they believed that their husbands were responsible for this stigma; blame should be given to husbands not their wives. But a considerable portion of stigmatized women (34.09%) stated that stigmatizing themselves based on their husband's activities is normal. On the other hand maximum 51.16% non-stigmatized respondents have stated that this type of stigma is normal. Opinion of a considerable portion of both stigmatized (16.67%) and non-stigmatized (22.09%) respondents varied with situation, they believed that this type of stigma is situation-dependent *i.e.* sometimes normal and sometimes abnormal.

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<sup>5</sup> M B Hadley et al., "Why Bangladeshi Nurses avoid 'Nursing': Social and Structural Factors on Hospital Wards in Bangladesh", *Social Science and Medicine*, no. 64 (2007), pp. 1166-77.

### **9. Perceptions of Women Regarding Stigma Due to Children's Activity**

Mothers are stigmatized for the activities by their children. This is found especially when the children are daughters. In our societies, especially in rural societies, a woman lost her mental strength when she gave birth to a daughter. So the responsibility of a daughter's activities goes to her mother. Mothers also took this phenomenon as natural.

All most all the respondents from both categories (91.94% stigmatized and 100% non-stigmatized) believed that it is very normal that mothers would be stigmatized due to children's activities. A small portion of stigmatized women have mentioned that this type of stigma should be situation-dependent.

### **10. Perceptions of Women Regarding Stigma Due to Attraction to Other Male**

The Bangladeshi Islamic culture prohibits physical touch between non-family females and males.<sup>6</sup> In the society the women who are attracted to other male is hatred and society never tolerate this. The perceptions of stigmatized, non-stigmatized and overall respondents in the study area regarding stigma due to attraction to other male was revealed. Perceptions varied wide between stigmatized and non-stigmatized women. 60% stigmatized women considered this stigma abnormal, followed by sometimes normal or abnormal and no perception (20% each). All the non-stigmatized women mentioned that this stigma is very much normal for the women who were attracted to a male other than husband.

### **11. Perceptions of Women Regarding Stigma Due to Gender**

Gender means different roles, responsibilities and expectations of women and men in societies and cultures, which affect their ability and their incentive to participate in development projects and lead to a different project impact for women and men. These roles, which are learned, change over time and vary widely within and between cultures. Men hold primarily a single role- that of the economic provider, which is nevertheless undergoing change. Women combine productive and reproductive roles. Their activities which are often viewed as non-economic generally carry no monetary compensation and are usually excluded from the national income account. Ideally both men and women are of similar importance in the society. But in Bangladesh, men are the golden ring, they are valuable. On the other hand women born for the men and they are men's nurses. Among the stigmatized women in the study area, majority 76.55% respondents considered this stigma abnormal. A small portion of stigmatized women (4.14%) did not clear their perception regarding this issue.

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<sup>6</sup> Ibid.

### **12. Perceptions of Women Regarding Stigmatization of Widow, Divorced or Women Married More than Once**

It is said that widow, divorced or a woman married more than once are born with bad luck. They are bad luck for the societies too and this is the perception of societies to them. Women themselves are responsible for their condition. They are deprived by the grace of God/Allah.

Various perceptions of the respondents regarding stigmatization of widow, divorced or women married more than once are shown. Majority 71.05% stigmatized respondents considered this stigma abnormal. Again maximum 49.44% non-stigmatized women stated that this type of stigma is normal. A vital part of the non-stigmatized respondents have mentioned that stigma for this reason should be situation-dependent.

### **13. Perceptions of Women Regarding Stigma Due to Childlessness**

Giving birth of babies is the primary role expectations from families over the world. Even in western nations, women encounter stigma if they do not become mothers.<sup>7</sup> Motherhood, in a word, serves critical cultural functions in India's hierarchical society- stratified by gender, caste, and class- that are masked by psychological or sentimental discourses e.g. it is natural for a woman to want to bear a child. "Women are ultimately expected to marry and reproduce." Women's body is presumed faulty when the couple is childless.<sup>8</sup>

In agrarian society childlessness is the curse for society. Sometimes society treats them as a devil/witch, sometimes a woman of bad luck. Various perceptions of both stigmatized and non-stigmatized women in the study area regarding stigma due to childlessness are shown. 71.43% stigmatized believed that it was unfair to stigmatize them. However, mixed opinions were recorded from the non-stigmatized women. Almost similar portion of the non-stigmatized women believed that this stigma was normal (44.96%) and abnormal (42.20%).

### **14. Perceptions of Women Regarding Stigma for Having Son/Daughter Only**

Without sons women have financial difficulty in old age. For sustaining the family name son is expected. Bearing and rearing children are central to a woman's power and well-being, and reproduction brings her instead concrete benefits over the life course.<sup>9</sup>

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<sup>7</sup> S A Taylor and E J Langer, "Pregnancy: A Social Stigma?", *Sex Roles*, vol. 3, no. 1 (1977), 28-29.

<sup>8</sup> C K Riessman, "Stigma and Everyday Resistance Practices: Childless Women in South India", *Gender & Society*, vol. 14, no. 1, (2000), pp. 111-135.

<sup>9</sup> Ibid.

In rural society most of the parents want that their first child will be a son. After that they expect a daughter. Actually the parents of the son do not face any difficulty. But the parents of the daughter have to face many difficulties, especially the mother. In the society, the women were found stigmatized for having daughter only. They stated that they feel sorry but took this stigma normally.

More than 95% stigmatized believed that it was unfair to stigmatize them, *i.e.* abnormal. Of the non-stigmatized women, majority (53.76%) respondents considered this stigma normal.

Relationship between Social Stigma and Some Other Factors:

### **15. Income of Respondents**

The Pearson correlation test (Bivariate, two tailed) between level of income of married women and stigmatization has revealed that there is a highly negative correlation between income and stigma ( $r = 0.956$ ;  $p < 0.01$ ). With the rise of income of the women in the study area, stigmatization decreases. Those women with low income are generally prone to stigmatization. Most of the women in the study area are housewives and characterized by low level of income.

### **16. Family Size and Household Members**

Joint family was thought ideal and that was the reality in Bangladesh. But in course of time due to urbanization, employment facilities and social mobility family breakdown is now a recognizable feature. Married women living in both joint and nuclear family were stigmatized. However, the stigmatization was more in joint families in the study area. There are both positive and negative functions of family members in a family environment. Multiple actors make their interaction in big size families. A strong positive correlation ( $r=0.925$ ;  $p < 0.01$ ) was also observed between stigmatization and number of household members, *i.e.* the more the member the more the stigmatization.

### **17. Conclusion**

The present study explores general perceptions of the rural married women about the patterns of social stigma. Not all the individuals experience the same level of stigma, even though they have the same socially stigmatized stressor. Even so, the results suggest that feelings of stigma are less likely to affect the marital relationship that is characterized by emotional closeness and day to day interactions than other extended family relationships that is characterized by less frequent contact and possibly less emotional closeness. Perceptions of stigma



powerfully affect individuals view not only of their network but also of themselves. Furthermore, although these results cannot directly address the idea of a vicious circle between perception of stigma and depression or social support, they suggest that perceptions of stigma may start an individual on a dangerous psychological path. Every patterns and perceptions about social stigma demands further deep analysis to explore the historically significant socio-cultural concomitants and its results.

## **Health Inequality in Bangladesh and a Critical Appraisal of the Seventh Five Year Plan Measures**

Rejaul Karim Bakshi\*

**Abstract:** Inequality in health and poverty are inter-related. Ill health can stimulate poverty through reduced productivity and employability, on the contrary, poverty forces people to under unhygienic condition. For poor population, bodies are their main assets and staying healthy is identical to the livelihood for them. The empirical findings of this paper show persistent health inequality in Bangladesh. The Seventh Five Year Plan recognizes importance of health but our analysis shows that allocation in this plan are inadequate compared to the minimum health expenditure advised by WHO required for basic life-saving services, and thus calls for affirmative action.

**Key Words:** Economic Planning, Antenatal Health, Maternal Health, Nutrition, Bangladesh.

### **1. Introduction**

Health is a form of human capital and therefore an input into the growth process, as well as an end product. Health of a population critically influences its education, productivity and the process of development.<sup>1</sup> Countries with educated, healthy populations are in a better position to prosper, especially in a favourable policy environment.<sup>2</sup> Improvement in factors like calorie intake and life expectancy has been found significantly correlated to economic growth. Health improvements have accounted for about 11 percent of economic growth in low-income and middle-income countries – and its returns become even larger when economic value of the additional life-years are considered.<sup>3</sup>

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\* Professor, Department of Economics, Rajshahi University.

<sup>1</sup> D. R. Gwatkin, S. Rustein, K. Johnson, E. Suliman, A. Wagstaff and A. Amouzou, *Socioeconomic differences in health, nutrition and population in Bangladesh* (Washington: The World Bank, 2000), pp. 7-11, [<http://www.WorldBank.org/hnppublications>]; C. G. Victora, A. Wagstaff, J.A. Schellenberg, D.R. Gwatkin, M. Claeson and J.P. Habicht, "Applying equity lens to child health and mortality: More of the same is not enough". *Lancet*, 362(2002), pp. 233-241.

<sup>2</sup> U. Grant, *Health and Poverty Linkages: Perspectives of the chronically poor* (Washington: Chronic Poverty Research Centre, 2005), p.9.

<sup>3</sup> World Health Organization, *Health, Economic Growth and Poverty Reduction* (Geneva: World Health Organization, 2002), p.17.

However, health and poverty share a bi-directional relationship. Health is both a cause and effect of poverty. Ill health stimulates poverty through reduced employability, whereas, poverty can create poor health by forcing people to reside in unsanitary conditions. Poor nutrition weakens the body's defence against infection, leaving the body more vulnerable.<sup>4</sup> Since the vast majority of the poor population is involved in manual work, their bodies are their main assets. Ill health, therefore, imposes a higher level of risk on the poor relative to the wealthier population. The relationship also works positively. Good health is essential for productivity, while productive livelihood strategies are fundamental to sustaining one's health status.<sup>5</sup>

Bangladesh has achieved tremendous success in providing safe delivery of babies, immunisation, antenatal and neonatal care in the recent past. The proportion of babies delivered in health facilities has increased from just 8% in 2000 to 37% in 2016. Antenatal coverage during pregnancy period by skilled health professionals has increased from 33% to 64% during the same period.<sup>6</sup> However, there are large disparities in the maternal and child's health.<sup>7</sup> Rural mothers are lagging behind the urban moms accessing antenatal and neonatal health care facilities. The rich-poor gap accessing antenatal care is alarming: while 90% of the rich women got necessary antenatal care, this is only 36% for the poor. The poorest children are twice as likely to die before their 5th birthday, and to be malnourished than the richest.<sup>8</sup> Children born to the illiterate mothers are more likely to be malnourished, underweight and die before turning five compared to those having mothers with secondary education. The country has only 7 health professionals (doctors, nurses and midwives) per 1000 inhabitants compared to a minimum threshold of 23 set by WHO.<sup>9</sup> The health care facilities of the country, thus, fell short of minimal required criterion by any means.

Researchers, however, argued that poorer health condition, and the inequality in health is neither inevitable nor insurmountable. Though, inequalities in health status and access to health services are disfavoursing the poor women and children

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<sup>4</sup> U. Grant, *Health and Poverty Linkages: Perspectives of the chronically poor* (Washington: Chronic Poverty Research Centre, 2005), pp.9-10.

<sup>5</sup> World Health Organization, *Health, Economic Growth and Poverty Reduction* (Geneva: World Health Organization, 2002), p.18.

<sup>6</sup> Unicef, *State of the World's Children* (Washington: Unicef, 2016), pp.12-13.

<sup>7</sup> H. Perry, *Health for all in Bangladesh: Lessons in primary health care for the twenty-first century Dhaka, Bangladesh* (Dhaka: The University Press Limited, 2000); R. Jahan, "Securing maternal health through comprehensive reproductive health services: lessons from Bangladesh". *American Journal of Public Health*, 97(2007), pp.1186-1190.

<sup>8</sup> Unicef, *State of the World's Children* (Washington: Unicef, 2016), pp.12-13.

<sup>9</sup> World Health Organization, *Health, Economic Growth and Poverty Reduction* (Geneva: World Health Organization, 2002), pp-16-17.

substantially.<sup>10</sup> Accessing health services is higher by individuals with higher socioeconomic status than those with lower socioeconomic status.<sup>11</sup>

In Bangladesh, a number of public health facilities are in place across rural and urban areas. These include Upazila Health Complex; Family Welfare Centres (FWCs) at the Union level to provide antenatal and postnatal care. There are also paramedics, trained drug-sellers and traditional medicine practitioners.<sup>12</sup> However, there are still various obstacles delivering health services including lack of availability, accessibility, quality of services and other socio-economic constraints. This paper, in this context, explores the state of maternal and child health in rural Bangladesh with special reference to the Seventh Five Year Plan (FY2016-FY2020) of the country. It investigates in particular:

Antenatal and delivery care indicators for mother:

- i) Antenatal care obtained from trained health provider
- ii) If mother took Tetanus during pregnancy
- iii) If checked up regularly (4 visits for check-ups) during pregnancy<sup>13</sup>
- iv) If delivery done at health service place.

Postnatal health-care indicators for mother:

- v) Postnatal care obtained from health professional
- vi) If mother given Vitamin A postpartum
- vii) Amount of rest-days after delivery

Postnatal children's health-care:

- viii) If the baby were visited by child specialist
- ix) If tested for blood sugar after birth, and
- x) If tested for bilirubin after birth.

<sup>10</sup> A.T.M.I. Anwar, J. Killewo, M.E. Chowdhury and S.K. Dasgupta, *Bangladesh: Inequalities in utilization of maternal health care services –Evidence from Matlab* (Washington: The World Bank, 2004), [<http://www.WorldBank.org/hnppublications>]; D. R. Gwatkin, S. Rustein, K. Johnson, E. Suliman, A. Wagstaff and A. Amouzou, *Socioeconomic differences in health, nutrition and population in Bangladesh* (Washington: The World Bank, 2000), [<http://www.WorldBank.org/hnppublications>]; M.H. Rahman, W.H. Mosley, S. Ahmed and H.H. Akhter, "Does service accessibility reduce socioeconomic differentials in maternal care seeking? Evidence from rural Bangladesh". *Journal of Bio-Social Science*, 40(2007), pp.19-33.

<sup>11</sup> M. A. Koenig, K. Jamil, P. K. Streatfield, T. Saha, A.S. Ahmed, S.E. Arifeen, K. Hill and Y. Haque, "Maternal health and care-seeking behavior in Bangladesh: Findings from a national survey". *International Family Planning Perspectives*, 33(2007), pp.75-82.

<sup>12</sup> S.M. Ahmed, M. Petzold, Z. N. Kabir and G Tomson, "Targeted intervention for the ultra poor in rural Bangladesh: Does it make any difference in their health seeking behavior?" *Social Science and Medicine*, 63 (2006), pp.2899-2911; R. Amin, N. Shah and S. Becker, "Socioeconomic factors differentiating maternal and child health-seeking behavior in rural Bangladesh: A cross-sectional analysis". *International Journal for Equity in Health*, 9(2010), pp. 2-4, <http://www.equityhealthj.com/content/9/1/9>.

<sup>13</sup> WHO (2012) recommends 4 specific visit for ante natal care (ANC): 1st visit during 8-12 weeks of pregnancy; 2nd visit during 24-26 weeks; 3rd visit in 32 weeks; and 4th visit during 36-38 weeks.

## 2. Research Methods

Health-seeking behaviour in rural Bangladesh is the result of three distinct factors: predisposing, enabling, and need.<sup>14</sup> The predisposing factors (i.e., age, family size, educational level of mother and father, occupation of the household head, exposure to mass media, and women's mobility), and enabling factors (i.e., income quintiles, distance from Upazila Health Complex, distance from FWC, involvement with NGOs, attachment with community) are considered as significant covariates affecting health-seeking behavior. Enabling factors simply enables households to access certain health services of their need. However, the actual health-seeking behaviour at the prenatal and postnatal stages, childbirth, or general illness are need based.<sup>15</sup> This paper explores the role of the predisposing and enabling factors affecting postnatal, neonatal and children's health-seeking behaviour in Northern Bangladesh.

It is assumed that the neonatal, postnatal and the children's health-seeking behaviour from modern health service providers by households in rural Bangladesh to be poorer among mothers with lower socioeconomic strata than those with higher socioeconomic strata. Such inequality is presumably due to the differences in physical and socioeconomic characteristics, availability of modern health services, transport costs and social prejudice. Households with lower socio-economic background are more likely to rely on traditional medication lacking scientific knowledge about the real causes and cures of illnesses. They are also the section mostly ignored by the public health practitioners. In contrast, households with higher socio-economic strata and higher education are usually better informed about the types of services available and the places where such services are available at specified costs.

This study uses survey data from 66 villages in three northern districts of Rangpur division. The survey consists of 874 married and breast-feeding mothers (delivered within last one year). The survey was a "baseline survey" for a wider sustainable development project by *Banchte Shekha*, a local NGO, in an attempt to identify and address the pertinent problems the villagers face in everyday life. A purposive random sampling technique was used to select the respondents. We excluded District headquarter in selecting Upazila; thereafter we also excluded Upazila headquarter (Sadar Union) in choosing Union. Unions and Villages are then chosen randomly from the remaining population. A team of 15 members were trained to enumerate data. *Banchte Shekha* officers were monitoring and

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<sup>14</sup> R. Amin, S. Pierre, A. Ahmed and M. Huq, "Integration of an essential services package (esp) in child and reproductive health and family planning with a microcredit program for poor women: Experience from a pilot project in rural Bangladesh". *World Development*, 29(2010), pp.1611-1621.

<sup>15</sup> R. M. Andersen, *A Behavioral Model of Families' Use of Health Services* (Chicago: Center for Health Administration Studies, University of Chicago, Illinois, USA: 1968), pp. 12-14.

supervising the data collection for the whole period. A two-day workshop was held at *Banchte Shekha* to train the data enumerator and the supervisors. The training consisted of classroom lectures, role-playing, and practice sessions. About 12 to 15 respondents were interviewed daily from each of the 66 villages and data were processed and computerised the same day of collection. The data were collected in March and April 2014.

The survey was conducted using a structured and pre-piloted questionnaire. Written and informed consent were taken before any interview; respondents were free to skip any question if they like to do so, and could also withdraw from interview anytime. Respondents were ensured full privacy, personal safety and comfort. Women respondents were interviewed privately about contraception, mobility and health expenditure such that they feel easy and respond without any bias or favour.

We investigate the antenatal and postnatal health-seeking behaviour of the mothers as well as the health care for their children born within past one year. The socioeconomic covariates included in our analysis are: household income, households' position in the income quintile, social network and social capital, mother's education, father's education, occupation of the household head, association with NGO, distance from Upazila health complex, mother's exposure to Radio/Television, and women's mobility outside home. Income is used in the first regression model as the total income of the household. However, in the modified model we include the income quintiles with the 1<sup>st</sup> quintile as the reference point. Occupations were classified into four categories: 1) agriculture, 2) service, 3) petty business and self-employed, and 4) unskilled labourers (day labourers, rickshaw pullers, informal job employees, and unemployed). The first regression model, therefore, is specified as:

$$H_i = \alpha_0 + \beta_1 Y_i + \beta_2 T + \gamma_i X_i + \mu \quad (i)$$

where,

$H_i$  lists the antenatal, neonatal and postnatal health-seeking behaviour mentioned above,

$Y_i$  is the income of the household,

$T$  is the generalised trust of the respondent towards community, and

$X_i$  includes other controls such as age, education, occupation, association with NGOs, distance from Upazilla Health Complex, access to Radio/TV and women's mobility outside home.

The second model quantifying the extent of inequality in health is specified as:

$$H_i = \alpha_0 + \beta_1 Y_q + \beta_2 T + \gamma_i X_i + \mu \quad (ii)$$

Here,  $Y_q$  represents income quintiles of the households.

Our main interest in this paper is to explore the role of income across different quintiles affecting health-seeking behaviour in rural Bangladesh. This strategy enables us to explore the extent of health-inequality persists in Bangladesh. Finding and quantifying such inequality, if exists, are important to

identify the nature and causes of ill-health, malnutrition, under-five mortality rates, maternal mortality rates, school drop-outs and issues like this across different strata of the society. Findings of this kind are, therefore, of immense policy implication.

The second objective of this study is to explore role of community engagement in improving health-seeking behaviour in rural Bangladesh. For this, we use the notion of social capital captured through generalised trust in the community. We asked respondents whether they can trust their neighbours to rely in need (such as taking to hospital, buying medicine, help to pick children from school, comes with trustworthy advises, etc.).

### 3. Findings from Survey

This section describes survey results obtained from estimating equation (i) and (ii) mentioned above. Before that we present descriptive statistics of some key indicators used in our analytical framework in Table 1. The final column of the table shows that less than two-third (about 62.9%) mothers were taking antenatal care from trained health practitioners. Mothers' taking Tetanus vaccine during pregnancy also stands at 65.32%; roughly 64.8% mother visited professional health practitioners four-times during pregnancy necessary for safe child delivery<sup>16</sup> about three-quarter (74%) give birth children at health places, 72% took postnatal child-care, only 59% mother took Vitamin A postpartum, mother's rest after child-birth is 9 days on an average, only 56% children were visited by child specialists, about 48% of the children were tested for blood sugar and only 53.24% were tested for bilirubin.

It can also be seen that 82% of the respondents trust the community that they can rely on their neighbour of getting help in day to day necessity, average schooling of mothers is just over 4 years while that of fathers is 6 years, 18% households are associated with NGOs, 17% mother had access to Radio or Television and 41% mother has mobility and could go outside home alone.

Table 1  
Descriptive Statistics

Variables	Mean (Standard Deviation)
Antenatal care from trained health provider (%)	0.629 (0.42)
Mother took Tetanus during pregnancy (%)	0.653 (0.52)
Check up regularly (4 visits) during pregnancy (%)	0.648 (0.39)
Delivery at health service place (%)	0.739 (0.41)

<sup>16</sup> World Health Organization, *Health, Economic Growth and Poverty Reduction* (Geneva: World Health Organization, 2002), pp. 34-36; H. Perry, *Health for all in Bangladesh: Lessons in primary health care for the twenty-first century Dhaka, Bangladesh* (Dhaka: The University Press Limited, 2000), pp-21-23.

Postnatal care from health professional (%)	0.719 (0.45)
Mother given Vitamin A postpartum (%)	0.591 (0.29)
Rest-days after delivery (# of days)	9.410 (2.49)
Baby visited by doctor/child specialist (%)	0.564 (0.46)
Tested baby's blood sugar after birth (when advised)	0.476 (0.44)
Tested bilirubin of the baby after birth (when advised)	0.532 (0.33)
Trusts most of the community (%)	0.821 (0.59)
Mother's education (years of schooling)	4.352 (4.42)
Father's education (years of schooling)	6.145 (4.33)
Association with NGO (% of hh)	0.181 (0.38)
Distance from Upazila Health Complex (in km)	4.430 (3.31)
Mother access Radio/TV (% of hh)	0.173 (0.29)
Mother goes outside alone (%)	0.411 (0.61)
Sample Size	874

The pictures of inequality in antenatal and postnatal health care in the study area are presented in Table 2. Panel (A) of the table shows that antenatal care (ANC) taken by mother from trained health service providers stands at 34.2% for the first income quintile, and the rate goes up gradually to 37.3%, 74.6% 82.2% and 86.2% for the following income quintiles. The final column of the table shows that the ratio of ANC taken from trained health provider by the first income-quintile to that of the fifth income-quintile is less than unity-indicating persistence of inequality in antenatal care across income classes in the survey area: the ratio of 0.40 indicates that for every 10 mother in income 5th income quintile there is only 4 mothers taking antenatal care from trained health professional.

Table 2

**Antenatal and Postnatal Cares Across Different Income Quintiles (in %)**

Indicators	Quintile 1	Quintile 2	Quintile 3	Quintile 4	Quintile 5	Ratio of Q1 to Q5
<b>(A) Antenatal Care (ANC) of Mothers:</b>						
ANC from trained health service provider (%)	34.2	37.3	74.6	82.2	86.2	0.40
Mother took Tetanus during pregnancy (%)	31.4	58.5	75.4	77.1	84.2	0.37
Check up regularly (4 visits) during pregnancy (%)	23.1	45.4	77.7	88.7	89.2	0.26
Delivery at health service place (%)	41.3	59.4	79.7	93.7	95.6	0.43



<b>(B) Postnatal Care of Mothers:</b>						
Postnatal care from health professionals (%)	37.6	58.7	77.5	91.2	94.7	0.40
Mother given Vitamin A postpartum (%)	17.4	44.5	67.7	78.8	87.4	0.20
Rest-days after delivery (# of days)	3.2	4.12	9.5	13.6	16.7	0.19
<b>(C) Postnatal Care of Children:</b>						
Baby visited by child specialist	21.2	37.3	65.6	76.4	81.5	0.26
If testes blood sugar of child after birth	13.2	34.4	59.5	63.4	67.7	0.19
If tested for bilirubin of the child after birth	17.7	34.6	63.5	71.7	78.7	0.22
<b>N=874</b>						

In terms of taking Tetanus during pregnancy, it can be seen that about 31.4% mother of the first income quintile took Tetanus during pregnancy against 58.5%, 75.4%, 77.1% and 84.2% across second to fifth quintiles respectively. The ratio of mothers taking Tetanus in the first quintile to the fifth quintile is 0.37 indicating persistent inequality across income groups in taking Tetanus by mothers during pregnancy.

Table 2 also shows that only 23.1% mother in the first income quintile visited health centres regularly (at least 4 times during pregnancy) compared to 45.4%, 77.7%, 88.7% and 89.2% for the subsequent income quintiles. The inequality ratio between the first and the fifth income quintile is 0.26 implying that for every 10 mothers in the fifth income quintile there are only 2.6 mothers in the first income quintile visiting health facilities regularly. The scenario of inequality is also evidenced for delivery at the health centres. About 41.3% of the mothers in the first income quintile went to health centres for delivery compared to 95.6% in the final income quintile.

The inequality in postnatal care of mothers are shown in panel B of Table 2. About 37.6% mother of the first income-quintile took post-natal care from trained health professionals. This rate stands at 58.7%, 77.5%, 91.2% and 94.7% for the successive income quintiles. The final column of the Table 2 shows the inequality ratio of postnatal care taken by mothers across the first and final income quintile. The ratio standing at 0.40 suggest that for every 10 mothers of the fifth income quintile taking postnatal care there are only 4 mothers taking such services in the first income quintile.

Only 17.2% mothers were given postpartum Vitamin A in the first income quintile compared to 87.4% in the fifth and final income quintile. The inequality ratio is very high: 0.20 in this case, suggesting that for every 5 mothers in fifth quintile there were only 1 mother in the bottom quintile taking postpartum vitamin A. Similar pattern of inequality is depicted in the case of taking rest by mothers where the number of restdays taken by mothers after delivery were as low as 3.2 days in the first income bracket compared 16.7 days in the final group.

Panel C of the Table 2 further postulates inequality of health in terms of postnatal children's care. The final column of the Table 2 shows inequality ratio across the first and the final income quintile is as low as 0.26 for the baby visited by child specialist doctor; 0.19 for if the child tested for blood sugar afterbirth; and 0.22 for if the child were tested for bilirubin after birth. Table 2, thus, captures the persistent spread of inequality in both the prenatal and postnatal health of mothers and the newborn across income brackets in the study area.

Tables 3-5 below present the regression results for the determinants of antenatal & postnatal cares taken by mothers and the children. The determinants of antenatal care taken by mothers during pregnancy are presented in Table 3. We considered four specific antenatal cares taken by mother: Antenatal care from trained health provider; if mother took tetanus during pregnancy; if mother went for health check-up regularly (4 visits) over the pregnancy period, and child delivery at health service place.

Table 3  
Determinants of Antenatal Care of Mothers

(1) VARIABLES	(2) Antenatal care from trained health provider	(3) Mother took Tetanus during pregnancy	(4) Check up regularly (4 visits) during pregnancy	(5) Delivery at health service place
Household income	0.121*** (4.14)	0.112*** (2.62)	0.116*** (3.46)	0.223*** (6.45)
Income quintile 1	0.041 (0.55)	0.044 (1.43)	0.042* (1.71)	0.042*** (3.31)
Income quintile 3	0.078*** (4.57)	0.067** (2.15)	0.077** (2.10)	0.072*** (3.46)
Income quintile 5	0.128*** (6.77)	0.113*** (2.13)	0.141*** (6.23)	0.155*** (9.34)
Trusts most of the community	0.122** (2.22)	0.147** (2.31)	0.091*** (7.25)	0.150*** (6.45)
Mother's education	0.141*** (2.92)	0.137* (1.87)	0.111** (2.32)	0.087*** (2.34)
HH Occupation	0.001 (0.36)	0.001 (0.75)	0.002 (1.10)	-0.069 (-1.20)
Association with NGO	0.043**	0.051*	0.002	0.061**

Distance from Health Complex	(2.26) -0.004	(1.83) -0.004*	(1.10) -0.075	(2.04) -0.041***
Mother Radio/TV access	(-1.52) 0.006	(-1.72) 0.005	(-1.24) 0.012	(-3.30) 0.013
Mother goes outside alone	(1.45) 0.063**	(1.56) 0.056**	(1.44) 0.078***	(1.25) 0.123**
	(2.29)	(2.12)	(4.66)	(5.17)
Observations	874	874	874	874

Robust *t*-statistics in parentheses, \*\*\* *t* value significant at 1%; \*\* *t* value significant at 5%; \* *t* value significant at 10%.

Column 2 of Table 3 shows that income plays positive and significant role in determining mother's antenatal care taken from trained health provider. The coefficient of household income indicates that is significant at 1% level. The results are insignificant for the first income quintile while significant with rising income in the subsequent income quintiles. This indicates heteroscedastic effect of income on antenatal care: that is income has robust effect only when it is bigger and diverse but has no effect when is small. Among other covariates, generalised trust of the community, mother's education, NGO membership and mother's mobility out of home appear significant determinant of antenatal care taken by mothers. These results indicate that the probability of mothers taking antenatal care goes up with increasing community bonding and neighborhood trust; increasing mother's education and mobility; and increasing involvement of households with NGOs.

Column 3 of Table 3 shows the determinants of whether mother took Tetanus during pregnancy. The results are positive and significant for household income, trust mother's education, NGO membership and women's mobility. The results are consistent with the established literature that pregnancy care is higher amongst better off households, with increasing education, knowledge, social connection and mobility. The persistent inequality of health across income groups is evidenced from the fact that Tetanus taking is insignificant in the first income quintile but significant in the higher income quintiles. The similar results of persistent health inequality are also evidenced in case of mother's check-up during pregnancy (Column 4), and for the determinants of children's delivery at health places (Column 5).

The determinants of postnatal care of mothers are shown in Table 4. We investigated three particular types postnatal care for mothers: postnatal care from trained health professions; if mothers were given Vitamin A postpartum; and number of rest days mothers took after delivery. Column 2 of the Table 4 shows that household income is positive and significant to affect postnatal care of mothers from health professionals. The positive effect of income is essentially

driven by the upper quintiles of income—as evidenced by the significant results of quintile 3 and 5 while insignificant in the first income quintile. The results indicate that postnatal care taken by mothers is significantly higher among the higher income groups than in the lower brackets. Among other regressors, household social capital captured through trust of the community, mother's education and mobility outside home and membership in NGO affect postnatal care positively.

Likewise, income also appears significant for the determinants of mothers given Vitamin A postpartum, and number of rest-day's mother taken after delivery. That is, mothers are seen to take more rest days with rising income, and are also taking Vitamin A postpartum more often. Social capital, mothers' education, mobility and household's association with NGO also play crucial role. It is evident from the results that household head's occupation, distance from health complex and access to radio & television are not that important in the choice and practice of postnatal care.

Table 4  
Determinants of Postnatal Care of Mothers

VARIABLES	(2) Postnatal care from health professional	(3) Mother given Vitamin A postpartum	(4) Number of rest- days after delivery
Household Income	0.231*** (4.12)	0.111* (1.76)	0.122* (1.85)
Income quintile 1	0.032 (1.11)	0.032 (1.19)	0.014 (1.43)
Income quintile 3	0.074** (2.25)	0.067** (2.22)	0.081** (2.17)
Income quintile 5	0.167*** (5.33)	0.173*** (8.44)	0.176*** (6.45)
Trusts most of the community	0.094*** (2.71)	0.116** (2.11)	0.126*** (7.75)
Mother's education	0.007* (1.88)	0.006** (2.22)	0.06 (1.34)
Occupation of the HH	0.004 (0.56)	0.034 (1.09)	-0.066 (-1.11)
Association with NGO	0.004* (1.73)	0.002* (1.79)	0.004* (1.84)
Distance from Upazila Health Complex	0.003 (1.02)	-0.005 (-1.04)	-0.011* (-1.70)
Mother access Radio/TV	0.011 (1.46)	0.008 (1.14)	0.012 (1.25)
Mother goes outside alone	0.047** (2.17)	0.044** (2.16)	0.092* (1.87)
Observations	874	874	874

Robust *t*-statistics in parentheses, \*\*\* *t* value significant at 1%; \*\* *t* value significant at 5%; \* *t* value significant at 10%.

Table 5 shows results for the determinants of postnatal care of children. We consider here three distinct measures of postnatal care of children: if the baby visited by child specialist; if the baby tested for blood sugar after birth; and if tested for bilirubin after birth. In all cases, the results indicate no effect of income in the first quintile but positive and significant effect in the higher income groups. The result again confirms persistent inequality in terms of postnatal child care. Household's social capital, mother's education, mobility out of home and association with NGO are seen to play significant and positive effect on all the three measures of postnatal child care considered. Apart from that, occupation of the household head affects the determinants of children's bilirubin test positively.

Table 5  
Determinants of Postnatal Care of Children

VARIABLES	(2) Baby visited by child specialist	(3) If tested blood sugar of the baby after birth	(4) If tested bilirubin of the baby after birth
Household Income	0.095* (2.31)	0.083** (2.29)	0.067* (1.74)
Income quintile 1	0.043 (1.10)	0.136 (1.09)	0.035 (0.86)
Income quintile 3	0.123*** (2.77)	0.034** (2.19)	0.056** (2.13)
Income quintile 5	0.178*** (3.46)	0.177*** (2.56)	0.163*** (4.23)
Trusts most of the community	0.083*** (2.96)	0.094** (1.99)	0.085*** (2.74)
Mother's education	0.115** (2.12)	0.082** (2.15)	0.084** (2.25)
Occupation of the HH	0.006 (1.03)	0.041 (1.24)	0.054* (1.79)
Association with NGO	0.004* (1.81)	0.071* (1.91)	0.065* (1.76)
Distance from Upazila Health Complex	-0.083 (-0.98)	-0.084 (-0.75)	0.054 (1.32)
Mother access Radio/TV	0.094 (1.14)	0.045 (1.45)	-0.032 (-1.36)
Mother goes outside alone	0.032** (2.43)	0.033* (1.77)	0.041** (1.98)
Observations	874	217	563

Robust *t*-statistics in parentheses, \*\*\* *t* value significant at 1%; \*\* *t* value significant at 5%; \* *t* value significant at 10%.

Overall, our empirical findings suggest strong and persistent inequality in maternal and children's health in the survey area. The antenatal care of mothers, the postnatal care of mothers, and the postnatal care of children are mostly visible amongst the higher income groups. The effect of income is insignificant for almost all indicators for the households at the bottom quintile in determining and accessing antenatal and postnatal health measures but is statistically significant at the subsequent income quintiles. The results also indicate that mother's education and mobility out of home, social capital and participation with NGO can positively affect antenatal and postnatal care and consequently can be thought of as great instruments to eliminate such inequality from the society.

#### **4. Health Strategies in the 7th Five Year Plan: A Critical Appraisal**

The Seventh Five Year Plan acknowledges the implication of health in fostering economic development and in achieving SDGs. It emphasizes to create conditions whereby the people of Bangladesh have the opportunity to reach and maintain the highest attainable level of health. The Plan recognizes health "as a fundamental human right and, therefore, the need to promote health and to alleviate ill health and suffering in the spirit of social justice. The goal is to achieve sustainable improvement in health, nutrition, and reproductive health, including family planning, for the poor, particularly of vulnerable groups – women, children, the elderly and the poor".<sup>17</sup>

The Seventh Five Year Plan, however, accepts that country's progress in terms of antenatal, neonatal, children's health and nutrition are far from satisfactory level. As it states, "Bangladesh remains one of the countries with the highest level of malnutrition among developing countries, with children and women the most affected. Neonatal mortality has been difficult to contain. Lack of skilled attendance at birth, child marriage and teenage pregnancy continue to endanger women and children".<sup>18</sup> It also mentions that despite the legal age of marriage is 18, 65% of women are married before reaching the legal age, with one-fourth of teenage girls having given birth. There is a growing consensus that no equity in health care will be achievable until there is equity in inputs including but not limited to gender, geography, poverty, illiteracy, etc. But unfortunately, Bangladesh is lagging behind in the health sector in terms of skilled personnel and resources provided. According to a WHO estimate, Bangladesh has a shortage of more than 60,000 doctors, 280,000 nurses and 483,000 technologists. The scenario in Bangladesh is in fact the worst of its kind in South Asia. Table 5 shows that Bangladesh has only 7.7 health professional per 10,000 population, which is just over one-quarter of the minimum requirement of 23 professionals to WHO standard.

<sup>17</sup> Ministry of Planning, *Seventh Five Year Plan (FY2016-FY2020): Accelerating Growth, Empowering Citizens* (Dhaka: Government of Bangladesh, 2015), p.533-534.

<sup>18</sup> *Ibid*, 534.

The results in Table 5 indicate necessity of a comprehensive policy and necessary investment in the health sector in Bangladesh sooner than later. The Seventh Five Year Plan, in this context aims at achieving certain key objectives improving health and nutrition status in line with SDGs. Specific targets set in this connection are summarized in Table 6.

Table 5  
Doctors/Nurses/Dentists per 10,000 population in South Asia

Country	Health Professionals/1000 population
Bangladesh	7.7
Pakistan	12.5
India	14.6
Sri Lanka	21.9
WHO's minimum requirement	23

Source: Bangladesh Health Watch.<sup>19</sup>

Table 6  
Health, Nutrition and Population Targets in the 7th FYP

Sl	Indicator	Base year's information	Target by FY20
1	Life Expectancy at birth	70.4	72
2	Total Fertility Rate (children per woman)	2.3	2
3	Under-five Mortality Rate (per 1,000 live births)	46	37
4	Infant Mortality Rate (per 1,000 live births)	38	20
5	Maternal Mortality Ratio (per 100,000 live births)	170	105
6	Proportion of underweight among under-five children (%)	32.6	20
7	Proportion of stunting among under-five children (%)	36.1	25
8	Proportion of births attended medically trained provider (%)	42.1	65
9	Contraceptive Prevalence Rate (%)	62.4	75
10	Proportion of children fully vaccinated by 12 months (%)	78	95
11	Proportion of births in health facilities by wealth (ratio of lowest and highest quintiles) quintiles	1: 4.6	1: 3.5
12	TB case detection rate (%)	53	75

Source: Seventh Five Year Plan

With a view to achieving the targets mentioned in the 7th FYP, the planned development resource allocations in constant (FY2016) prices and current prices are shown in the Table 7 below.

<sup>19</sup> Bangladesh Health Watch, *Status of Health in Bangladesh* (Dhaka: Bangladesh Health Watch 2013), p.3.

Table 7  
**ADP Allocation for Human Development in the 7th FYP**  
 (billion taka)

Ministry of Health and Family Planning	FY2016	FY2017	FY2018	FY2019	FY2020
ADP allocation at <b>constant</b> FY2016 prices	53.3	64.4	72.2	81.6	92.8
ADP allocation at <b>current</b> prices	53.3	67.9	80.9	96.3	115.0

Source: Seventh Five Year Plan.

However, an unbiased examination of this allocation is essential to validate practicability of the objectives set in the 7FYP. A closer look can show us to what extent this allocation of ADP is suitable in addressing the growing need of the health sector in Bangladesh in terms of total population and per capita income.

Table 8  
**Projected ADP Allocation for Health, Per Capita Income and Growth**

Indicators	FY2016	FY2017	FY2018	FY2019	FY2020
Projected Health expenditure (in million Taka, constant price)	53300	64400	72200	81600	92800
Population projection (million)	160	162.08	164.19	166.32	168.48
Projected Per capita health expenditure (in Taka)	333	397	439	491	551
Per capita health expenditure (in USD, assuming \$1=80Tk)	4	5	5.5	6.1	6.9
Growth rate (%) of per capita health expenditure	-	19.3	10.7	11.6	12.3
Per capita health expenditure as % of WHO recommended \$44	11%	11.36%	12.5%	13.86%	15.68%
Per capita income projection (in taka)	111,943	123,137	135,451	148,996	163,896
Health expenditure as % of per capita income	0.30	0.32	0.32	0.33	0.34
Health expenditure as % of per capita income—compared to WHO's recommended of 5%	6%	6.4%	6.4%	6.6%	6.8%

Source: 7th Five Year Plan

Table 8 shows projection of health expenditure, population growth, per capita income growth and per capita health expenditure in Bangladesh in the next five years under 7th Five Year Plan. The health expenditure target is set at 53,300 million taka for the fiscal year 2016 with a target increase to taka 92,800 million in the fiscal year 2020. Population projection for this period is starting from 160



million to end at 168.4 million in 2020. Per capita health expenditure is set at taka 333 (US\$ 4) in fiscal year 2016 which is far below than that of WHO's minimum requirement of \$44 for primary health.<sup>20</sup> Per capita health expenditure, assuming constant foreign exchange rate, is set at \$5, \$5.5, \$6.1, and \$6.9 in the subsequent years that are still significantly lower than WHO's recommendation. Projected health expenditure in this plan ranges from 0.30 to 0.34 percentage of per capita income, against WHO's (2003) recommendation of 5%. The target growth rate in health expenditure during the 7FYP ranges from 10.7% to 19.3%. Keeping in mind that implementation of annual development program (ADP) in Bangladesh is ranging from seventy to ninety percent<sup>21</sup>, the proposed expenditure growth in health may not be materialized at the end. In such a case in which ADP targets are unattained, there might be no or little increase in actual health expenditure during this period.

Even if the allocation of ADP is successfully spent, the expenditures on health as a percentage of per capita (the second last row) show no such improvement and are less than 0.4 percent in all years. Provided that the state of health and health expenditure is poor in the country, such stagnant figures are very unlikely to change the health scenario in Bangladesh in the years to come under 7FYP.

### 5. Conclusion

The empirical findings of this paper indicate persistent inequality in maternal and children's health in the survey area. It shows that maternal and child health indicators are relatively better in higher income quintiles compared to the lower income cohorts. The Seventh Five Year Plan duly acknowledges the importance of human development. It emphasizes on sustainable improvement in health, nutrition, and reproductive health, including family planning, for the poor, for sustainable development of the country and in achieving SDGs. However, our analysis shows that the health sector targets and associated resource allocation set out in the 7FYP are far from adequate considering the gaps in health across income of the society. The findings of the paper, thus, calls for prioritization of health objectives, expansion of resource allocation and full implementation of the allocated resources in order to improve health inequalities persisting in the country.<sup>22</sup>

<sup>20</sup> World Health Organization, *Spending on Health: A Global Overview* (Geneva: World Health Organization, 2012), pp. 7-9, <http://www.who.int/mediacentre/factsheets/fs319/en/>.

<sup>21</sup> Ministry of Planning, *Seventh Five Year Plan (FY2016-FY2020): Accelerating Growth, Empowering Citizens* (Dhaka: Government of Bangladesh, 2015), pp. 6-8.

<sup>22</sup> An earlier version of this paper was presented in the Regional Conference of Bangladesh Economic Association at University of Rajshahi on July 2016..

## **Reserved Seats in Local Government and Women Empowerment: A Capability Approach**

Shajeda Aktar\*

**Abstract:** Introducing quota seats for women in the political offices is thought to trigger women's empowerment. The government of Bangladesh introduces universal adult franchise in the quota seats at the local government bodies in 1997. The introduction of direct election was thought to boost women's active political participation and empowerment from the grass root. This paper, attempts to explore women's empowerment at the local government system in Bangladesh in light with the capability approach proposed by Sen (1999) and Nussbaum (1999, 2000). The paper examines women's empowerment from primary data and offers necessary policy recommendation in light with empirical findings.

**Key Words:** Quota Seats, Reserved Seats, Direct Election, Women Empowerment, Local Government.

### **1. Introduction**

Women are marginalized and often excluded from politics in almost all nations irrespective of their level of income, literacy, culture and socio-religious norms. Introduction of gender quota is advocated by development practitioners as the fast-track to trigger women's representation at various levels of government and to bring women in the mainstream political arena.<sup>1</sup> At the same time researchers and women activists view local government as an important entry point for pioneering gender interests because local institutions are smaller, closer and are readily accessible to the local community.<sup>2</sup> This is particularly important for a country like Bangladesh where women are largely excluded from outside activities due to conservative social structure, poverty and income inequality.

Increasing participation of women is essential in a democratic society in order to ensure representation of all social groups, ensuring every citizen's rights and promoting the widespread development of human well-being. Democratic

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\* Associate Professor, Department of Public Administration, University of Rajshahi.

<sup>1</sup> M.L. Krook, *Politicizing Representation: Campaigns for Candidate Gender Quotas Worldwide* (New York: Columbia University, 2005), pp.31-33; D. Dahlerup, and L. Freidenvall. "Quotas as a fast track to equal representation for women", *International Feminist Journal of Politics* 7, no. 1(2005), pp. 26-48.

<sup>2</sup> M. Mukhopadhyay, *Decentralisation and Gender Equity in South Asia: An Issues Paper* (Canada: The International Development Research Centre, 2005), pp.17-19.

rule cannot be meaningful in a society which keeps a large section under represented and under voiced. Political equality is a pre-requisite in democracy: women should be equal citizens with men and, therefore, should enjoy equal share in the political decision making process.<sup>3</sup> However, studies show that women's representation in political office, high salaried jobs, parliaments and ministerial positions are far from proportionate in terms of equity in the real world. Even after the Beijing Declaration in 1995, improvement at this point is far from satisfactory. Women's representation in parliamentary bodies is still only 20.4 percent across the world.<sup>4</sup>

Women are kept out of the political turmoil in developing countries with the common excuse that they are not capable enough to shoulder responsible positions and not emotionally strong enough to carry out challenging jobs.<sup>5</sup> In Bangladesh, since the nation's independence, women have never occupied more than 10 per cent of positions in the cabinet, parliament, or in government employment.<sup>6</sup> Male domination is visible everywhere in this patriarchal society where women are traditionally confined to a domestic role. Female literacy rates are below that of the men, as are their employment opportunities and income.<sup>7</sup> To improve women's status in society women leaders, policy makers, NGOs, donors and community leaders are all emphasizing increasing women's participation in development initiatives, as well as in the national and local government political process.

Bangladesh is an active participant and signatory of the Beijing (1995) Declaration, and in line with this, in 1997 the national government introduced

<sup>3</sup> M. Tremblay, "Democracy, representation and women: A comparative analysis". *Democratization*, 14, no. 4(2007), pp. 533-553; N. Kabeer, "Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment", *Development and Change*. 30, (1999), pp. 435-464.

<sup>4</sup> IDEA. *Quota Project: Global Database of Quotas for Women*, (<http://www.quotaproject.org/aboutQuotas.cfm>, site visited 23 November 2016).

<sup>5</sup> A. M. Goetz, *Decentralization and Gender Equality, Striving for Gender Equality in an Unequal World* (Washington: United Nations Development Programme, 2004); N. Chowdhury, "Gender issues and politics in a patriarchy", *Women and Politics Worldwide* (B. J. Nelson and N. Chowdhury (eds). New Haven: Yale University Press, 1994), p.21.

<sup>6</sup> BBS, *Statistical Year Book*, (Dhaka: Bangladesh Bureau of Statistics, 2014); S. Nazneen and S. Tasneem. "A silver lining: Women in reserved seats in local government in Bangladesh". *IDS Bulletin*, 41 no. 5(2010), pp. 35-42.

<sup>7</sup> N. Kabeer, "Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment". *Development and Change*. 30 (1999), pp. 435-464; S. Aktar, "Women empowerment, participation and leadership in the local government system of Bangladesh: A study of the elected women members of Union Parishads", *Journal of Bangladesh Public Administration Training Centre*, 8 no. 3(2006), pp. 32-48.

direct election in the quota seats for women through the Local Government (Second Amendment) Act 1997.<sup>8</sup> In this Act provision was made that one-third of seats in these bodies would be reserved for women and would be filled through universal adult franchise known as direct election. Prior to the introduction of direct election in the reserved seats, women could only contest in the general seats open for both men and women. Very few women contested the earlier elections because of cultural norms in this conservative society. For example, in the 1988 Union Parishad election out of a total of 114,699 candidates women comprised only 863 (0.7 percent) and in 1992 election there were 1135 women candidates out of 169,643 (0.7%).<sup>9</sup> In the 1997 election (Union Parishad), after the enactment of the Act, the situation changed and as many as 44,134 women were contesting in 14,029 reserved seats for women, followed by 39,419 women candidates in the 2003 elections.<sup>10</sup> However, to maximise the societal benefits of that enthusiasm, it is essential to study how the provision of direct election affects and changes the electoral participation of the women representatives, their roles and performance, the hindrances they encounter in ensuring women's empowerment in the local government bodies. This paper, in this context, attempts to explore the capability and achievement of the elected women representatives at the local government bodies exercising agency, choice and decision making—in line with the capability approach.<sup>11</sup>

The rest of the paper is organized as follows: Section 2 presents capability approach. In Section 3 we discuss methodology of the study; while empirical findings are presented in Section 4; and finally Section 5 concludes the paper.

## 2. Human Capability Approach: Ability to Pursue One's Own Goal

The Capability Approach considers the true manifestation of development is the freedom of people to live a life they value. Accordingly, development is the expansion of people's capability in working, educating, learning, being sheltered,

<sup>8</sup> S. Aktar, "Problems and potentials of women empowerment in the local government system in Bangladesh". *Social Science Journal* 15(2009), pp. 42-59; J. Moin, *Women Empowerment in Local Government System of Bangladesh*, (Rajshahi: Rajshahi University, 2004).

<sup>9</sup> M. Islam, "Political empowerment in Bangladesh in world perspective: An analysis". *Rajshahi University Studies, Part-C*, no. 8(2000), pp. 95-119.

<sup>10</sup> Unnayan Padokkhep. *Steps: Gender Equality, Human Rights and Governance* (Dhaka: Step Towards Development, 2003), pp.23-24.

<sup>11</sup> A. K. Sen, *Development As Freedom*, (New York, London: Oxford University Press, 1999), pp.14-15; M. Nussbaum, *Sex and Social Justice*, (New York: Oxford University Press, 1999), pp.29-32; M. Nussbaum, "Capabilities as fundamental entitlements: Sen and social justice", *Feminist Economics*, 9 no. 2(2003), pp. 33-59.

being politically active and enjoying a healthy life.<sup>12</sup> The key focus of development should not emphasize income levels or consumption, rather capabilities—people’s potential for doing and being: “the ability to satisfy certain crucially important functioning up to certain minimally adequate levels”.<sup>13</sup> In such, resources are only means which often cannot guarantee people’s well-being as people’s abilities to convert resources into capabilities and functioning differ due to personal, socio-political or environmental constraints. Capability Approach, therefore, focuses on *agency*: the ability of people to set and pursue their own goals and interests.<sup>14</sup> It emphasizes individual action at the forefront: how she acts or refuses to act; and how she chooses or declines. It views people as *active agents* rather than as *patients* who might or might not have material well-being.

Nussbaum (1999, 2003) considered capabilities to be closely linked with human rights<sup>15</sup> She emphasized on a dignified life for women as human beings, a life that has truly human functioning. Accordingly, certain rights for women are necessary to establish gender equality, such as, bodily integrity, the right to live free from domestic violence, and freedom from sexual harassment at home and in the workplace. Accordingly, there are 10 capabilities that are central requirements to a dignified life, a minimum requirement for social justice, and that these human capabilities are the barometer in the analysis of women’s empowerment:

#### Central Human Capabilities

1. **Life.** Being able to the end of a human life of normal length; not dying prematurely, or before one’s life is so diminished as to be not worth doing.
2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. **Senses, Imagination and Thought.** Being able to use imagination and thought in connection with experiencing and producing works and events of one’s own choice. Being able to use one’s mind protected by guarantees of

A. K. Sen, *Development As Freedom* (New York, London: Oxford University Press, 1999), pp.3-7.

<sup>13</sup> Ibid, pp.7.

<sup>14</sup> Ibid, pp.41-42.

<sup>15</sup> M. Nussbaum, *Sex and Social Justice* (New York: Oxford University Press 1999), pp.13-14; M. Nussbaum, “Capabilities as fundamental entitlements: Sen and social justice”. *Feminist Economics*, 9 no. 2(2003), pp. 33-59.

freedom of expression with respect to both political and artistic speech, and freedom of religious exercise.

5. **Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; and justified anger. Not having one's emotional development blighted by fear and anxiety.
6. **Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life (which entails one's protection for the liberty of conscience).
7. **Affiliation.**
  - A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; and also protecting the freedom of assembly and political speech.
  - B. Being able to be treated as a dignified being whose worth is equal to that of others. This entails protections against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin.
8. **Other Species.** Being able to live with concern for and in relation to animals, plants and the world of nature.
9. **Play.** Being able to laugh, to play, to enjoy recreational activities.
10. **Control over One's Environment.**
  - A. **Political.** Being able to participate effectively in political choices that govern one's life; having the right of political participation, protection of free speech and association.
  - B. **Material.** Being able to hold property; having employment on an equal basis with others; being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

Source: M. Nussbaum, *Creating Capabilities: The Human Development Approach* (Chicago: Chicago University Press, 2011), pp. 5-6.

The reservation of seats for women and the provision of direct election can also be seen in line with the capability approach that attempts to promote political participation for all citizens.

### 3. Methodology of the Study

Women's empowerment through direct election in the reserved seats is an ongoing process and requires in depth field research for which we choose the qualitative method. The research is an ethnographic in nature attempting to explore the activities and behavior of the respondents, to describe the place and circumstances in which they live, and to analyze the changes they make to their community as well as the way they make those changes<sup>16</sup>. To do this we used

<sup>16</sup> Denzin, N. K., and Y. S. Lincoln, *Handbook of Qualitative Research* (California: Sage Publications, 2000), p.23.

flexible options and research tools such as an interview, questionnaire survey, case study, participant observation, and focus group discussion.

The research was conducted in Rajshahi district of Bangladesh. Among the 55 Union Parishads in Rajshahi of 10 union parishads (randomly selected) from 3 Thanas were selected for the study. There are 3 reserved seats in each union parishad for women representatives, so 30 women representatives are elected from 10 union parishads as the main respondents. Besides, data were also collected from 20 male representatives and 20 knowledgeable respondents outside politics including women community leaders, NGO officials, journalists, and academics who have valuable insights about political representation.

#### **4. Empirical Findings: Women in the Local Government System**

##### **4.1 Familiarity about Local Government Functioning**

The performance of the elected women members depends on the extent to which they are familiar with the functions and scope of the local government institution. The survey data show most of these rural elected members (73%) had moderate knowledge and only 6.7% claimed to have substantial knowledge. Approximately 20% respondent mentioned very little or no understanding of local government and the potential role of women.

During focus group discussions it was also evidenced that these rural women representatives' know-how about how local government functions was poor than expected. The poorer knowledge of the women representatives is also evidenced in other studies. Recall that most of the women representatives do not read newspapers, do not own radio/television and were not involved with political parties. All these factors contributed to women's limited knowledge about the functioning of the local government bodies which might seriously impede women's empowerment in the LGIs.

The rural women member's limited knowledge of local government could have led them abstaining from wider responsibilities of the local government institutions. Because, better knowledge possesses greater influence in power relations and determines the balance and boundaries in challenging power inequalities among agents.<sup>17</sup>

The women members opined that they did not know much about LGIs functions at the beginning but later they got capacity building training from NGOs and government offices. The training helped them learn about the functions of the LGIs, the role of elected women representatives, the number of standing committees in the LGIs and women members' roles in those, the scope

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<sup>17</sup> J. Gaventa and A. Cornwall, "Power and Knowledge", *The Sage Handbook of Action Research: Participative Inquiry and Practice*, 70(2001), p. 72.

and strategy of conducting *shalish*<sup>18</sup> and so on. Following capability approach, the data, therefore, indicate that women representatives' improved knowledge through training about the functioning of the LGIs is a considerable step to accomplish their role and capability and making a difference in the lives of women. This is because, identification of valuable functioning is the building block, but capability is the accomplishment of a particular set of functions by choice.<sup>19</sup> Training, accordingly, helps broaden women representatives' knowledge, expansion of choice, exercise active citizenship and to the empowerment at the grass-root government institutions.

#### 4.2 Participation in the Standing Committees

The Local Government Ordinance specifies various Standing Committees through which local government activities are executed and implemented. According to the Ordinance, these standing committees should include both the male and female members and the chairman. It is expected that the women members would be able to establish their position in the local government institutions through participating in these standing committees. However, the study finds that about 78% of the women members in the rural areas claimed that they were assigned to the lower ranked committees like women and children's welfare, family planning, mass education and tree plantation where the budget and resource allocation are very small. Most of the women representatives were excluded from strategic committees like finance, establishment and audit, but were included in other committees to comply with the target figure of the ordinance. The women members felt that they were discriminated and were not given the opportunity to work in these standing committees. Thus, the research finds that although the provision of the standing committees in the local government ordinance provided rural women members opportunity to work for their locality and to exercise strategic needs, it was not fully realized due to non-cooperation from the male representatives. Thus, the formation of standing committees with a complete male majority does not help women's voices to be heard and to command their strategic needs in the LGIs. The number game challenges the institutional efficacy of mainstreaming gender at the local government bodies and to expand women representatives' choice and 'capability' in performing roles at LGIs.

#### 4.3 Attendance in the Local Government Meetings

The active empowerment of women requires women members to attend local government meetings regularly and participate in decision-making process. These meetings provide women members the necessary opportunity to raise local

<sup>18</sup> *Shalish* is the informal jurisdiction to solve petty disputes by the local leaders.

<sup>19</sup> A. K. Sen, *Development As Freedom* (New York, London: Oxford University Press, 1999), p. 23.



development agendas. This study found that most of the women members (83%) do attend the General Meeting regularly, and 17% were irregular in attending meetings due to reasons as communication problems, maintaining families and short notices of meetings. Respondents, however, mentioned that they were not informed about the Special Meetings very often, and the chairmen contact only the male representatives for such as they male members are enough to suffice the quorum requirement.

During interview the male members and chairmen, however, tried to make cases, e.g., women members are engaged with domestic chores, cannot come to an emergency for special meetings, and leave meetings quickly. The male representatives were, thus, seen to have strong belief of public-private divide. Women members, however, argued that their domestic work were not causing any problem attending meetings as they have helping hands at home, and that they contested election with the ambition to play certain roles out of domestic chores.

Participation at local government meetings is important for the women representatives to raise voice and to achieve strategic gender interest challenging gendered division of labour, eliminating inequality in domestic work including child rearing, access to reproductive health and inequality in legal rights. However, the data show that the presence of strong patriarchal attitudes and institutional loophole hinder gender mainstreaming in the local government institutions in the present study.

#### **4.4 Expressing Opinions**

Expressing opinion in the meetings without any pressure is essential for women empowerment. The survey data, however, show that as much as 70% of the respondents could not express opinions freely in local government meetings. The women members stated that their presence in the meetings were not welcomed by the male members and their opinions were seldom heard. Accordingly, the working environment in the local government institutions is unfriendly and the male members do not take them cordially and have a general tendency to superimpose their opinions over women's regardless of the merit of the reasoning. One woman, thus, explained,

The male members are not open-minded. They do not take us with equal weight and dignity. They make deliberate chaos in the meetings so that we cannot talk. Whenever we speak in the meeting they start side-talks, smoke, whisper to the next person and laugh at us. They do not want to listen to us and do not want to agree with our arguments.

Women members further mentioned that they were verbally attacked, abused and insulted by male members in the meetings if they disagree with the opinion of their male counterparts.

Women respondents, however, mentioned that the fellow women members take their opinion with importance but they are the minority in the local government institutions, unable to form the necessary critical mass to influence decision-making process. To many researchers, such an institutional arrangement appeared to be gender-blind, in that it does not challenge existing gender-norms and eventually ends up with systematic marginalisation of women, e.g., their unheard voice, unequal participation and under representation in the local government bodies.<sup>20</sup> The unheard voice of women and their neglected opinions at the local government body eventually mean that the local government body had failed to offer enough space to utilize what researchers called women's capability, choice and agency in order to mainstream gender and empower women at the grassroots.<sup>21</sup>

#### 4.5 Protest When Necessary

The ability to protest when necessary gives women representatives the opportunity to raise their voice against any injustice and build women's strategic needs emphasized.<sup>22</sup> In this study, about 70% of the women representatives mentioned that they protested when they disagreed with the male counterparts. The respondents who did not protest mentioned that they were in the minority in the local government, so there was no meaning of protesting. They further opined that the male representatives did not like to see them challenging and they fear of being intimidated by the male representatives if they protest. It is observed that the differences in protests come mainly from the difference in education and political background: the educated and politically active women representatives were seen to be more vocal in local government institutions. The majority of the women representatives, however, opined that by expressing disagreement they put pressure on male representatives to consider their arguments. As one rural woman member mentioned:

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<sup>20</sup> C. Moser, "Safety, gender mainstreaming and gender-based programmes". *Women in the City: On Violence and Rights*. (A. Falu (eds), Chile: Women and Habitat Network of Latin America 2010), pp. 77-95; N. Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought*. (Verso Books 1994).

<sup>21</sup> N. Kabeer, "Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment". *Development and Change*. 30 (1999), pp. 435-464; A. K. Sen, *Development As Freedom* (New York, London: Oxford University Press 1999), pp.7-8.

<sup>22</sup> C. Moser, "Safety, gender mainstreaming and gender-based programmes". *Women in the City: On Violence and Rights*. (A. Falu (eds), Chile: Women and Habitat Network of Latin America 2010), pp. 77-95; N. Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought*. (Verso Books 1994).

**Mrs JK: Your voice is your strength.**

Mrs JK was an UP member elected from Charghat. Her constituency was prone to natural disaster like flood and storm every year. During rainy season, a storm badly hit in her area. The villagers were under the sky without any food and shelter for days. The district office allocated some food, warm clothes and medicines for each of the affected villages. But the Chairman allocated the relief materials equally to all 9 Wards. She asked him that he cannot distribute the food and other assistances to any Wards that were not affected. She argued that there were only 3 Wards affected and that this emergency relief allocated by the district office must go to only to those areas. The Chairman wasn't listening but she kept protesting. At one stage other members from the storm hit Wards joined to support her points. Eventually the chairman agreed to distribute all emergency reliefs within the affected areas.

The story above indicate that protest in the event of any injustices helped women representatives to get their voices heard, enhanced agency in the decision-making process, and came up with meaningful achievement. However, most of the women members mentioned that despite protest, they often fail to convince the male representatives. The male representatives are so stubborn and they ignore women's points using their majority numbers. Thus, the reservation of one-third seats merely increased the female numbers on board, but failed to render necessary critical mass to establish their voice, agency and strategic needs in the LGIs. The inefficacy of the institutional set-up rendering women a necessary critical mass calls for bringing gender-specific policy reform in order to mainstream gender and foster women's strategic needs at the local level politics. This is imperative, as political outcomes are essentially the products of institutional settings, norms and practices.<sup>23</sup> Accordingly, the empowerment achievements of the women representatives are no different from the proportionate number, scope and opportunity offered by the Local Government Ordinance 1997.

**4.6 Involvement in Development Projects**

Local government bodies undertake various development projects every year to serve the locality. Getting proper share of these development projects is not only important for serving the community but also important to overcome the public-private divide and for the strategic needs of the elected women representatives in the local government system. However, there is no specific guideline over the distribution of projects in the local government ordinance. Typically the UP

<sup>23</sup> M. L. Krook, *Politicizing Representation: Campaigns for Candidate Gender Quotas Worldwide*. (New York: Columbia University 2005), pp.12-21; B. G. Peters, *Institutional Theory in Political Science*. (New York: Printer 1999), pp.33-48.

chairman submits project proposals at the Upazila level. Once the Upazila approves it, the UP chairman is responsible to execute the designated project with the help of the members of his choice.<sup>24</sup> Since the chairman represents the UP at the Upazila, the members remain unaware about the project outcomes.

In this study, about 73% of the women members claimed that male members were getting a bigger share of the development projects compared to that of the women. For other 27% of the women representatives, they had close attachment with the chairmen that helped them get a fairer share of the projects. However, they mentioned that even such 'equal numbers' of projects were not enough for them to cover the three-time bigger constituencies they represent. One woman member argued.

The male member's constituency is smaller (1 Ward) in comparison to ours (comprising 3 Wards). Thus, to serve our locality and to fulfil our election pledges we should get more development projects than the male representatives. In practice we are getting at best the equal number of projects, and equal number of projects means we are actually getting only one-third of the development works per Ward compared to the male members.

Thus, the very process that is supposed to empower women instead provides a means to dis-empower women's agency and voice at the local government institutions. The quota seats of this kind which does not offer enough space to challenge existing gendered division of labour is gender-blind and needs certain gender-specific reforms in order to augment women's capability and agency in the decision-making process.

The discrimination in project distribution in the LGIs is so severe that women members felt helpless and under severe stress in fulfilling their election pledges to their voters and to family members as well. One respondent recalled:

I live in a remote village that has only a muddy road to the local bazaar. During rainy season it becomes terrible as the only road we have goes under water. Children cannot go to school, trading becomes difficult and even doctors do not want to visit a patient at home due to this. The villagers elected me with the promise that I will make a new road. I have requested our chairman many times but failed to get any project. All the road development and maintenance projects are allocated every year to some male members who are his close allies. It is three years now and voters are already turning their face from me. I am afraid they will not vote for me next election.

Another rural woman also mentioned:

My husband and my family spent a huge amount of resources during my election campaign. My supporters, relatives and neighbours all spent their valuable time and effort expecting some development work to be

<sup>24</sup> M. Mukhopadhyay, *Decentralisation and Gender Equity in South Asia: An Issues Paper* (Canada: The International Development Research Centre 2005), pp.33-34.

implemented. They expected that I would bring them fortune by bringing some development projects. All the expectations are in vain now as I could not bring any single project.

This story, however, reminds us that apart from women's empowerment, self-interest remains a key motivation for the women representatives of this study to secure development projects. Considering that during elections many of the women representatives were financed by their husbands and family members, it indicates the women members' intention to repay them through access to development projects.

The allocation of development projects, like this, instead of becoming an empowering instrument for women representatives becomes a further source of helplessness and disempowerment in this survey. However, when we interviewed the male members and chairmen, they denied any sort of discrimination. They argued that because women members' constituencies are 3 times bigger, male members are, therefore, very closely attached and familiar with their voters' problems and local needs. Conversely, women members do not know much about the problems of their localities as their constituencies are bigger and communication and ties with the voters are weak. Implementation and distribution of projects through male members, as a result, are preferred. The male members further claimed that they (3 male members) are there for three wards of a woman member's constituency, and when they are working in the area the job is done for her and she can better enjoy time at home without bothering projects. There is, hence, a clear condescension from the male members about the role and authority of the women members in the LGIs. Such obvious consignment of structural barriers and the influence of visible power impaired the attainment of gender mainstreaming at the local government institutions.

As a male chairman who argued,

There is no hard and fast rule that we have to include women members in every single committee. The Union Parishad manual does not say who will come in which committee. When some additional development projects come, we need to sit urgently and form committee to meet project requirements. So we finalise these projects at our convenience.

The women members said that the quorum of the Union Parishad (UP) meeting is attained without the need for women members' presence (there are 10 male and 3 women members and the quorum needs presence of 7 in the Union Parishad meeting), which often leads to deliberate exclusion of women members in these important meetings allocating projects. According to the social relation approach, the institutional setbacks evidenced in this study result in systematic marginalization of women instead of attaining the stated objective of their empowerment.

#### 4.7 Building Capacity: Empowerment of the Disempowered

Women empowerment in the local government system in a developing country like Bangladesh is a challenging task, especially in the rural areas where most of the women representatives are housewives and little educated. Empowerment of these disempowered sections of the society requires capacity building at the forefront in order to make them prepared to challenge traditional gender-power relations and patriarchal prejudices. As argued, the women's quota could bring tokenism and proxy candidature, and only massive capacity-building and support from women's organizations could eliminate such a possibility.<sup>25</sup> Accordingly, transformative capacity building is an essential component to the process of women empowerment.

In this study all the women representatives spoke of the usefulness of training. They mentioned that since they did not have prior political experience, training appeared helpful for them in performing roles in the LGIs. The rural women representatives of this study mentioned that they had received some training programmes offered by the government and non-government agencies covering important areas: roles and responsibilities of members and UP ordinance, women's and human rights, how to conduct *shalish*, how to talk in the meeting and argue when disagreeing, and resource and office management. These rural women members stated that training was very useful for them to understand the functioning of the UP and their roles. It also helped to defy the traditional gender norms and patriarchal barriers that were putting limits to their mobility and participation in outdoor activities. As one woman member mentioned,

I had no idea about how the UP functioned before training. I used to sit down passively in the meeting. I couldn't ask any question and had no option other than agreeing with whatever the male representatives were doing. After training I found myself a different woman. It opened my eyes providing useful ideas about the UP. It seemed that I was reborn! Now I can talk at the meetings, can counter any opinion and raise any issue that I believe worth telling.

Another rural woman mentioned that training helped to establish their rights in the UP. She explained,

Before training all the standing committees were headed by male members. The chairman and male members didn't propose our names to lead these committees. During training we learnt that there was a specific rule from the government that 3 women members should head 3 standing committees. So after training I raised this issue in the meeting and the male representatives were forced to accept us in those positions.

Training also enabled women members to think beyond their own empowerment, but rather the empowerment of the wider community of women. As Mrs T. from Puthiya mentioned,

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<sup>25</sup> D. Dahlerup and L. Freidenvall. "Quotas as a fast track to equal representation for women". *International Feminist Journal of Politics* 7, no. 1(2005), pp. 26-48.

During training we learnt that women empowerment requires elimination of all injustices against women in society. It was mentioned that violence against women including dowry, divorce, polygamy, physical assault by husbands are the worst form of injustice. Before training I was not sure what to do when a victim of domestic violence came to me. Now I call for *shalish* in the event of violence against women (*narir biruddhe sohingshota*) and rush to police station and take legal steps if necessary.

It is, therefore, apparent that training boosted these rural women representatives' capability to accomplish, what researchers called, women's basic needs and strategic gender interests. However, training for women representatives is necessary but not sufficient. As one NGO worker explained,

Training for women representatives would enhance their capacity to work. But women empowerment requires congenial situation such that women's enhanced capacity can be used. Extensive training for male representatives about gender-power relations, women's basic and fundamental human rights are necessary to change their behaviour.

## 5. Conclusion

The introduction of reserved seats in the local government institutions in Bangladesh provided an opportunity to bring marginalised women into mainstream politics and to enhance their capability making active choice in the decision-making process—as emphasised by the Capability Approach. However, the field data of this study reveals that there were some structural constraints that put serious impediments to the effective participation of women in the functioning of local government institutions in the rural areas in Bangladesh. The institutional ambiguity producing overlapping constituencies for each woman representative; the strong patriarchal attitude of the male representatives towards women; the absence of specific roles and responsibilities for women representatives; and the literacy drawbacks and lack of knowledge about the workings of the LGIs among women representatives were important concerns. The institutional loophole of the reservation of women's seats overlapping with three male members is the most critical hurdle to attain women's empowerment in the LGIs in Bangladesh. Findings of this study, therefore, calls for institutional re-arrangement and to re-constitute women member's constituency equivalent to the size of that of a male member and without overlapping to ensure a level playing field for women. The study findings also show that women's empowerment requires friendly working environments that can be developed through advocacy and awareness-raising training programmes for the male representatives focusing on women's fundamental human rights consistent with the capability approach. Finally, empirical findings also suggest that women representatives should be given extensive training on capacity building and the rules and regulations of the LGIs.

## **Towards Ensuring the Right to Divorce for Hindu Women in Bangladesh**

Sharmin Afroj,\* Asma Bint Shafiq\*\*

**Abstract:** The right to divorce is recognized in almost every religion. Accordingly, personal laws contain specific provision on it. The personal law of Hindus in Bangladesh lacks such provision. Although the largest Hindu majority country India has already introduced the provision for divorce through the Hindu Marriage Act 1955, the Hindu community in Bangladesh cannot even dream of this right still today. The worst sufferer of the absence of this right is Hindu women, whereas such absence rarely affects Hindu males due to the existence of polygamy. Discrimination against women is a common phenomenon in most societies of the world. Bangladesh is not an exception to this. Here every community either majority or minority uses religion as a weapon to perpetuate discrimination against women. In today's Bangladesh the right to divorce should be introduced in Hindu law to reduce Hindu women's sufferings resulted from such discrimination.

### **1. Introduction**

Discrimination against women is a common feature in most societies of the world. Despite their contribution in all areas of life, women are subject to discrimination in various ways and they suffer mostly in silence because of several barriers and impediments. Bangladesh is not an exception to this. Indeed, the women of Bangladesh irrespective of religion remain second class citizens due to the constraints emanating from the societal, religious and cultural institutions. These institutions have first misinterpreted, then perpetuated and lastly restricted the rights of the Bangladeshi women to participate fully in the society, to develop their potentials as human beings, and to enjoy the opportunities and rights guaranteed to them by the Constitution of Bangladesh and other international human rights instruments ratified by Bangladesh. The constraints are due to the stronghold of social norms, customs and traditions

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\* Assistant Professor, Department of Law, University of Chittagong, Chittagong.

\*\* Assistant Professor, Department of Law, University of Chittagong, Chittagong.

The authors wish to thank Mr. Nirmal Kuman Saha, Associate Professor, Department of Law, University of Chittagong for his thoughtful comments and encouragement.



which lag far behind the economic, political and legal reforms. Moreover, subservience and submission of women are stressed in our society, which render a Bangladeshi woman incapable of defending herself or facing the world.<sup>1</sup>

The picture of submissiveness is more agonizing towards Hindu women of Bangladesh. The Hindu communities in Bangladesh mostly follow the centuries-old *Dayabhaga* law, which has been subjected to piecemeal reforms through legislative and judicial interventions following the independence of Indian subcontinent in 1947. As the traditional *Dayabhaga* law does not recognize the right of divorce, spouses cannot divorce each other. Although the existence of polygamy helps a husband to get rid of an unhappy marriage, a wife faces immense challenge, if she wishes to break the marital tie. She becomes more vulnerable when she has to live with her husband, despite the incidents of domestic violence or the presence of any other reasonable causes of staying separate from him. Though Hindu women in Bangladesh have been subject of such unfortunate situation from the ancient period, the governments rarely paid attention to this. One of the major factors behind such ignorance might be that as this group of women belongs to the minority community, the protection of their interests could not have achieved much importance as that of majority. Thus the orthodox Hindu law has been left largely untouched.<sup>2</sup> The unchanged nature of Hindu law largely increases the sufferings of married Hindu women.

Like most religions of the world, Hinduism is fundamentally a male dominated religion. The subordinate position of women is summed up in the famous injunction of Manu (an ancient law-giver, who is considered as the leading authority in Hindu law), who prohibited divorce. He says “Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence”.(Manusmriti 9.3). Although during the Vedic period, Hindu women enjoyed a fair amount of freedom and equality, in the Post-Vedic Period, the status of women suffered a setback when various restrictions were put on women’s rights and privileges by Manu.<sup>3</sup> However, India the largest Hindu Majority country in the world has overcome the situation through legislation and judicial intervention. It has introduced the provision of divorce by the Hindu Marriage Act, 1955 going beyond the scope of traditional Hindu law, which helps alleviating discrimination against women. On the other hand the Hindu women in Bangladesh still live in the domain of discrimination because as of 2017, divorce is a myth to them.

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<sup>1</sup> Sigma Huda, “Bangladeshi Women and Development”, accessed February 2, 2017, <http://about.jstor.org/stable>.

<sup>2</sup> Sara Hossain, “Women’s Rights and Personal Laws in South Asia” in *Human Rights of Women*, ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994), 482.

<sup>3</sup> Mamta Rao, *Law Relating to Women and Children* (Lucknow: Eastern Book Company, 2012), 27-28.

Against this backdrop this paper attempts to search the scope and necessity of introducing the right to divorce for Hindu spouses in Bangladesh. In so doing it focuses on the consequences of absence of such right, which particularly refers to the violation of human rights of Hindu wife resulted from such absence. It also highlights on comparative provisions of other religions allowing the right to divorce. This paper discusses the legislation of India relating to this right with special emphasis, which might constitute useful example for Bangladesh. Finally it explores the ways to introduce the right to divorce for the purpose of removing the discrimination against Hindu women in Bangladesh.

## 2. Scope of the Right to Divorce under Orthodox Hindu Law

Marriage, according to Hindu law, is a holy union for the performance of religious duties.<sup>4</sup> It is a ceremony whereby spouses are united spiritually, mentally and physically in the sacred bond of matrimony.<sup>5</sup> So, undoubtedly a lot of importance has been attached to the institution of marriage under Hindu law. In *Shastric* Hindu law, Hindu marriage is treated as a sacrament or a *sanskara*. It is the last of the ten sacraments observed by Hindu men for purifying their body, and perhaps the only form of purification recommended for women.<sup>6</sup> Unlike Muslim marriage it does not assume the character of a contractual union. Being a sacrament Hindu marriage signifies a permanent tie which once tied cannot be untied. That means marriage creates an indissoluble union between a husband and his wife which continues even in the next world. As such divorce is not allowed in Hindu law except in certain communities where it is permitted by customs.

There is no doubt about the sacramental nature of Hindu marriage but to a limited extent, it assumes the characters of a contract. According to the Contract Act, 1872 there are various elements of contract i.e. offer, acceptance, consideration. These elements might be found in Hindu marriage as well. A reference to Manu shows that there is actually a gift of the bride. Thus, an essential part of the marriage ceremony is the transfer of the bride by the guardian what is called *kanyadan*. It fulfills all the requirements of a gift under the Hindu law.<sup>7</sup> It is, therefore, clear that to some extent a marriage is a gift, a

<sup>4</sup> Sunderlal T. Desai, *Mulla Principles of Hindu Law* (New Delhi: Butterworths, 1998), 753.

<sup>5</sup> Md. Azizul Haque, *Hindu Law in Bangladesh: Theory and Practice, A Comparative Study on Principles, Statutes and Precedents on Hindu Law in Bangladesh* (Dhaka: University Publications and Titu Publications, 2014), 37.

<sup>6</sup> Mridulkanti Rakshit, *The Principles of Hindu Law* (Chittagong: Kamrul Book House, 2008), 74.

<sup>7</sup> Werner F. Menski, *Hindu Law: Beyond Tradition and Modernity* (New Delhi: Oxford University Press, 2003), 282.

contract. Another important element of contract is promise which is also seen in Hindu marriage. In a Hindu marriage, the bridegroom has to promise that he will look after his wife. On the other side, the bride also promises that she will be faithful to her husband.<sup>8</sup> Furthermore, there are two essential ceremonies of Hindu marriage- *saptapadi* and nuptial before the sacred fire.<sup>9</sup> When *saptapadi* takes place, both the parties to the marriage make seven promises to each other which they are bound to fulfill.

Although under traditional Hindu law, consent of the parties to the marriage is not mandatory, under the Child Marriage Restraint Act, 1929, both the parties must attain the age of majority, which is 21 years for male and 18 years for female. So, the consent given by the parties below the required age will not be considered as consent under the said Act. There are also some decided cases where it has been accepted that Hindu marriage *is not only a sacrament, but also a contract*.

- (i) The Bombay High Court observed, "Marriage of Hindu children is a contract made by their parents."<sup>10</sup>
- (ii) The Allahabad High Court expressed the view that a Hindu marriage is not only a sacrament, but also a contract.<sup>11</sup>
- (iii) The Madras High Court, observed, "A marriage whatever else it is, i.e., a sacrament and institution, is undoubtedly a contract entered into for consideration, with co-relative rights and duties."<sup>12</sup>
- (iv) The Calcutta High Court observes that in the eye of law marriage deals should be treated as civil contracts giving rise to important civil right.<sup>13</sup>

In view of the above mentioned cases, it can be concluded that under the ancient and uncodified Hindu law, a Hindu marriage was not only a sacrament but also a contract.

Although marriages were deemed indissoluble, in certain exceptional circumstances, the sages allowed a woman to abandon her husband and take another. Vasistha said: "A damsel betrothed to one devoid of character and good family and afflicted by impotency, blindness and the like or an outcaste or an

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<sup>8</sup> Ibid.

<sup>9</sup> Saptapadi means seven steps. The fire which is the witness of nuptial is called nuptial fire.

<sup>10</sup> *Purshottamdas vs. Purshottamdas*, Accessed 28 August 2017, <http://www.shareyouressays.com/117255/hindu-marriage-whether-a-sacrament-or-a-civil-contract-essay>.

<sup>11</sup> *Bhagwatti Saran Singh vs. Parmeshwari Nandar Singh*.

<sup>12</sup> *Muthusami vs. Masilamani*.

<sup>13</sup> *Anjona Dasi vs. Ghose*.

epileptic or an infidel or incurably diseased....should be taken away from him and married to another". But this text is confined to betrothal.<sup>14</sup> Some texts sanction the dissolution of matrimonial union. Narada (who relied upon an earlier version of Manusmriti) laid down five situations in which a woman could take another husband. The celebrated text of Narada is: "Another husband is ordained for women in five calamities, namely, if the husband be unheard of, or be dead or adopts another religious order or impotent or becomes outcasted".<sup>15</sup> According to Parasara, a woman may marry again for all the reasons cited by Narada.<sup>16</sup> Statements to the same effect made by Devala and Katyana are cited in Ratnakara and Parashara Madhaveya.<sup>17</sup> Although Narad and Parashar have nowhere specifically mentioned of the validity of divorce or dissolution of marriage, it is not possible to imagine of a situation of remarriage of the woman in four out of five above mentioned situations without invoking assumed dissolution of marriage. Valid dissolution of marriage in whatever form is implicit in their views.<sup>18</sup> Kautilya's Arthashastra also stipulated certain situations in which either the husband or the wife could divorce each other: mutual enmity, apprehension of danger and desertion for justifiable reasons.<sup>19</sup>

Probably on the basis of these texts the Hindu Widow Remarriage Act, 1856 was passed. But Manu holds in clear terms that husband is the lord and master of his wife, must be obeyed and adored even if devoid of all virtues [Manu V] and must be obeyed as long as he lives and wife should remain faithful to his memory even after his death [Manu V] as well as he should be worshipped like God even though he is a man of bad character with no qualities, or a goon [Manu 1].<sup>20</sup> So, according to Manu there is no scope of remarriage of a Hindu woman in any situations. But in Bangladesh a Hindu woman is permitted to remarry after the death of her husband under the Hindu Widow Remarriage Act, 1856, which is contrary to the texts of Manu. It is pertinent to mention here that among the smritikars, Narada smriti is more progressive and Manu smriti is more conservative. Although there is a faithful resemblance with certain texts of Manu, Narada differs from Manu on a number of interesting and important points. One great merit of Narada smriti is that it states the law in a straightforward manner in a logical sequence which is readily assimilated and in a style which is both clear

<sup>14</sup> Paras Diwan, *Modern Hindu Law* (Faridabad: Allahabad Law Agency, 1999), 59.

<sup>15</sup> *Narada Smriti*, XII, 106-110.

<sup>16</sup> *Parasar Sanghita*, Chapter IV.

<sup>17</sup> Zakir Hossain Khan, *Hindu law of Bangladesh* (Dhaka: Law Book Company, 2010), 41.

<sup>18</sup> M. Shah Alam, "Review of Hindu Personal Law in Bangladesh", *Bangladesh Journal of Law* 8, N0s. 1 &2, (2004):46.

<sup>19</sup> Flavia Agnes, *Law and Gender Inequality, the Politics of Women's Rights in India* (New Delhi: Oxford University Press, 2006), 14.

<sup>20</sup> Paras Diwan, 58.

and attractive. Narada is renowned for the progressive and advanced views expressed by him on a number of matters.<sup>21</sup> Narada smriti reflected more accurately the changing demands of time in a long intellectual evolution. It further continued on a progressive track. Remarkable political, economic and social progress preceded the compilation of the code of Narada.<sup>22</sup>

In a case nearly a century ago it was observed by the Judicial Committee of the Privy Council that the early versions of the Laws of Manu were very ancient and it might be doing great mischief to construe the words of the original texts literally, unaided by the gloss that had been put upon them by writes and commentators of authority.<sup>23</sup> As a result, a number of the precepts of Manu have been undoubtedly altered and modified by modern law and usage.<sup>24</sup> According to scholars, the stipulation in Manusmriti against remarriage of wives appears to be a later insertion.<sup>25</sup> Although there is no dispute about the paramount authority of Manu, it should be borne in mind that the Dayabhaga School, which is followed in Bangladesh is not based on any particular Code but purports to be a digest of all the Codes, whereas the Mitakshara School is based on the Code of Yajnavalkya which is mainly founded on Manusmirti.<sup>26</sup> So, in this 21<sup>st</sup> century it would not be logical to adhere to the provisions of Manu regarding the right to divorce which will only increase the sufferings of those spouses to whom marriage comes not as a blessing but as a curse. For this reason India had introduced the right to divorce through legislation.

### 3. The Concept of Divorce under Hindu Law

The term 'divorce' comes from the Latin word '*divortium*', which means 'to set aside', 'to separate'. Divorce is the legal cessation of a matrimonial bond. Divorce puts the marriage to an end, and the parties revert back to their unmarried status and are once again free to marry. All rights and obligations of husband and wife are terminated. Divorce is not based on any single ground because the problems in conjugal life are numerous on the basis of which different theories of divorce are being discovered with the passage of time.

The grounds of divorce may be looked at from two aspects (i) Marriage is an exclusive union, and if it is not so, it ceases to be marriage. Adultery destroys the very foundations of marriage. Marriage also implies that parties will live with each other in harmony and in mutual confidence. Cruelty or an apprehension of

<sup>21</sup> Sunderlal T. Desai, 25-26.

<sup>22</sup> M. Shah Alam, 24.

<sup>23</sup> *Pedda Ramappa v. Bengari Seshamma*, *The Indian Law Reports*, (ILR) (On appeal from the Madras High Court, 1880), 8.

<sup>24</sup> Sunderlal T. Desai, 55.

<sup>25</sup> Flavia Agnes, 14.

<sup>26</sup> Sunderlal T. Desai, 53.

cruelty undermines this basic requirement of marriage. The assumption of marriage is that both the parties will live together; if one party deserts the others, this assumption no longer exists. Thus, adultery, cruelty and desertion are destructive to the very foundation of marriage.

(ii) Looked at from another angle, the grounds mentioned above are the matrimonial offences committed by one of the parties to marriage. In that sense, divorce is regarded as mode of punishing the guilty party who had rendered himself or herself unworthy of consortium. This gives rise to the guilt or offence theory of divorce.<sup>27</sup>

The justification for introducing divorce is elucidated by J. Krishna Iyer in one of his judgments, "While the stream of life, live in marital mutuality, may wash away smaller pebbles, what is to happen if intransient compatibility of minds breaks up the flow of stream itself. Thus it is crystal clear that when the relationship is not going good unnecessarily maintained on papers where the feeling of love, trust does not exist and no scope of recovery of relationship is there, it is better to end the relationship, incompatibility is often a major reason for unhappiness, when friends can end their relation, then why not couples".<sup>28</sup> A marriage is a union of husband and wife for whole of life, but their relation might be strained and they would like to live away from each other. It is to be remembered that owing to their sexual relations, interdependence and social censure it is difficult for them to live without each other for a long time. Therefore, there must be some stronger reason for them to live apart and get divorced. There should be complete absence of emotional attachment between them and they must develop intense hatred and acrimony against each other so much so that there is only in name, a dead one or only a shell sans substance. It is now beyond the hope of salvage. It is therefore an irretrievable breakdown of marriage where marriage has ceased to exist both in substances that divorce should be seen as a solution and as an escape route out of difficult situation.<sup>29</sup>

#### 4. Justification for Introduction of the Right to Divorce under Hindu Law

As mentioned above there is no concept of divorce under traditional Hindu law. Thus whenever any of the parties to a Hindu marriage tries to come out of bad marriages in Bangladesh, they face difficulty, resulting in great sufferings of both the parties. The interesting point to note here is that not only the wife but also the husband can become the sufferer of a bad marriage, because neither of them can divorce each other. But the fact which makes great injustice to a Hindu woman is that though a Hindu man can enter into many irrevocable ties of marriage, a

<sup>27</sup> Paras Diwan, 62.

<sup>28</sup> *Aboobacker vs. Manu*, All India Reporter (AIR), (Kerala High Court, 1971), 663.

<sup>29</sup> "The Marriage Laws (Amendment) Bill 2010", accessed February 2, 2017, [www.lawteacher.net/family-law/essays,divorce under Hindu law Essays-at4/12/14](http://www.lawteacher.net/family-law/essays,divorce%20under%20Hindu%20law%20Essays-at4/12/14).

woman cannot. It raises polygamy and as such, the absence of provision for divorce makes very little difference to men. Furthermore, a Hindu man can abandon his wife without any reason and the abandoned wife is compelled to live an insecure life which is clearly violation of human rights.<sup>30</sup>

Like Hindu law polygamy is permitted under Muslim law, but there is a limitation regarding number of wives, which is absolutely absent in Hindu law. Moreover, some provisions of the Muslim Family Laws Ordinance 1961 impose restriction on the right to polygamy, which may lead to punishment of the husband. The Hindu Marriage Act 1955 of India contains more preferable provisions as regard polygamy, as it totally prohibits polygamy. It says that the bridegroom must not have another wife living at the time of marriage and contravention to this requirement is punishable under the Act. The absence of such provisions in Bangladesh's legal system makes Hindu wives more vulnerable.

In the case of exceptional circumstances when a wife and her husband cannot live together anymore without doing harm to each other, dissolution of marriage might pave the way for both to live a better life. Divorce could only be considered as solution for an incurable disease that unfortunately affects the marriage bond. This would keep the institution of marriage as an abode of love and harmony which is actually the divine will.<sup>31</sup> Some marriages are bound to fail and all societies have to devise methods for dealing with unsuccessful marriages; divorce is one of those ways.<sup>32</sup> We have to consider divorce as a necessity. It is not an antithesis of marriage, but it strengthens the institution of marriage, since it offers a type of escape value for the release of undesirable tensions of marriage.<sup>33</sup> The Government of Bangladesh should take initiatives to reform traditional Hindu law, which will help Hindu spouses to break an unbearable marriage tie through divorce. In order to avoid a probable outcry that might happen in the case of enactment of proposed legislation on divorce, Bangladesh might follow examples of India. The arguments made during the reformation of Hindu personal law by Indian government might be useful tools for Bangladesh government to be used against those who are likely to protest the proposed reform.

#### **4.1. Lesson from India's Experience**

It appears from various reforms made to Hindu personal laws in India that they have come about due to the separation of family laws from religion. Such

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<sup>30</sup> "Final Report of the Law Commission on Reforms of Hindu Family Law", accessed 19 October, 2014, [www.lawcommissionbangladesh.org/reports.htm](http://www.lawcommissionbangladesh.org/reports.htm).

<sup>31</sup> M. Shah Alam, 45.

<sup>32</sup> Werner F. Menski, 455.

<sup>33</sup> *Ibid.*

progressive changes have fundamentally based upon the concept of equality with little reference to the *smritis* and the laws of Manu and other religious norms.<sup>34</sup> Evidence from India as well as other countries demonstrates that personal law system can be more modern having enormous capacity to adjust with new situations. It can also be immensely helpful to women whose basic human rights might be less protected by a modernist, uniformizing, secular, right-based model of law.<sup>35</sup> However, as mentioned earlier the government of Bangladesh rarely shows any interest to enact such legislation. It is not only the minority issue which prevents the state from passing laws, but Hindu community also often themselves hinders the process. In spite of Law Commission's repeated urge on the reformation of Hindu law the Government remains silent fearing a backlash from Hindu minority.

Hindu leaders are divided on the idea of reform. Some Hindu scholars joined with women's groups in 2011 to organize consultations across Bangladesh to introduce divorce, but other conservatives Hindu leaders oppose such reform. Even the most reasonable demands of Hindu women and women right's activists- for example allowing divorce at least on a few grounds including cruelty and abandonment—have gone nowhere.<sup>36</sup> The fear of losing vote banks in the election and the opposition of the conservative Hindu leaders discourage most of the governments to enact legislation on the right of divorce for Hindus. But the government should not escape its obligation of protecting rights of citizens including the right of Hindu spouse to divorce, merely on the ground that there is no strong unanimous voice from Hindu community demanding such reformation. Whenever attempts are made to introduce reforms in personal law, there is always a tendency to stop it by using religion, especially when that reform would affect women's right. It also happened in India at the time of introduction of drastic reforms in classical Hindu law. The government had to face vehement protest from the conservatives who were against any sort of reforms to orthodox Hindu law.

In 1941 the colonial government under the chairmanship of Sir Benegal Narsing Rau established the Rau Committee in India, which reported that time, had come for a Hindu Code. Social progress and modernization could only be achieved through fundamental reforms, which recognized gender equality. The Code was to be shaped with the aid of orthodox, conservative and reformist Hindus and by a comprehensive blending of the best of the current schools of Hindu and the ancient texts. The 1947 Committee recommended abolishing the

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<sup>34</sup> Kirti Singh, "Obstacles to Women's Rights in India" in *Human Rights of Women*, ed. Rebecca J. Cook, 380.

<sup>35</sup> Werner F. Menski, 597.

<sup>36</sup> Aruna kashyap, *The Daily Star*, October 3, 2012, [http:// www.wunm.com/.../102212\\_ban\\_ba.-Family\\_Laws\\_For\\_Muslims,\\_Hindus,\\_Christians,\\_Give\\_men\\_more\\_power](http://www.wunm.com/.../102212_ban_ba.-Family_Laws_For_Muslims,_Hindus,_Christians,_Give_men_more_power).



joint family property system, the introduction of the assimilation of civil and sacramental marriages and the introduction of divorce for the higher castes.<sup>37</sup> During the debates over the Hindu Code bills in the General Assembly, large segments of the Hindu population protested and held rallies against the bills. Numerous organizations were formed to lobby for the defeat of the bills and massive amounts of literature were distributed throughout the Hindu population. There was a great deal of vocal opposition to Hindu Code Bill by an orthodox section of Hindus on the ground that it would be impossible to give legislative form to the specious and complicated structure of Hindu Law.<sup>38</sup> In the face of such vocal opposition, Jawharlal Nehru, the Prime Minister, had to justify the Hindu Code bills. When it became clear that the vast majority of Hindus did not support the bills, he insisted that despite being the minority, those who supported the Hindu Code Bills were modern and progressive. He also argued that those who dissented would eventually change their position when confronted with the realities of modernity.<sup>39</sup>

The representatives of Hindu fundamentalists parties termed the Bill as 'anti-Hindu' and 'anti-Indian' and raised the demand for a uniform code as a delaying tactic. The women parliamentarians who had initially propagated a uniform code reversed their position and supported the Hindu law reform.<sup>40</sup> When the Hindu Marriage Bill was presented in the Parliament proposing the inclusion of the provision for divorce, a lively debate was held on whether Hindu marriage is a sacrament. N.C.Chatterjee, then leader of the Hindu Mahasabha, quoted many modern authorities on Hindu law supporting the sacramental nature of marriage, and made a fervent appeal to the Parliament not to tamper the nature of Hindu marriage and introduce divorce into it. B.R.Ambedkar, the then law minister replied that the Sanskrit *sanskara* was not the exact equivalent of the English word 'sacrament' as generally understood by Christians. Nehru, on the other hand, went on to neutralize Mr Chatterjee's argument by insisting that not only marriage but all forms of human relationship should have an element of sacrament; more so in the case of the intimate relationship of husband and wife, but is it a sacrament '*to tie up people to bite each other and to hate each other?*'<sup>41</sup> Here lies the great justification for introducing the right to divorce in traditional Hindu law. Accordingly despite vehement protests the bill was passed. But the Government decided to split up the Code and pass it in installments. Thus came into existence the four major enactments of codified

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<sup>37</sup> Hindu Code Bills, accessed 28th August, 2017, <https://www.revolvy.com/main/index>.

<sup>38</sup> Paras Diwan, 49.

<sup>39</sup> Hindu Code Bills.

<sup>40</sup> Flavia Agnes, 79.

<sup>41</sup> Indra Deva, *Sociology of Law, Religion, Law and Secularism* (New Delhi: Oxford University Press, 2005), 166-167.

Hindu law, i.e., Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Adoptions and Maintenance Act, 1956, and Hindu Minority and Guardianship Act, 1956. Through these enactments an attempt was made to ensure the modern notions and norms of human rights, one of the fundamental elements of which is equality between man and woman. Undoubtedly the way of reforming traditional Hindu law particularly introduction of the right to divorce, in India was not so smooth. But as the government had firm determination to reform classical Hindu law, they made it possible and created a milestone in the history of the women's advancement in the Indian society. But even in this 21<sup>st</sup> century no Hindu women of our country can think of such a right.

The Law Commission of Bangladesh submitted a report to the Ministry of Law, Justice and Parliamentary Affairs in 2012 to introduce the right to divorce in Hindu law.<sup>42</sup> The report reveals that in a survey conducted on the necessity of the right to divorce in Hindu law eighty percent voted in favour of this right. It also shows that the non-existence of the right to divorce results in violation of human rights as well as makes the women ultimate sufferer. So the right to divorce in Hindu law should be introduced on certain specific grounds with the intervention of the court along with the right to remarriage of both the parties.

#### **4.2. Analysis of Indian Legislation Relating to the Right to Divorce**

The main object of the Hindu Marriage Act, 1955 is to protect and preserve a Hindu marriage rather than to allow it to disintegrate. However, the right to divorce got statutory recognition for the first time in Indian history through this Act. This Act establishes divorce on the fault theory, and enumerates nine fault grounds in Section 13(1) on which either the husband or the wife could sue for divorce, and two fault grounds in Section 13(2) on which wife alone could seek divorce. According to Section 13(1) of this Act, on a petition presented by either the husband or the wife, any marriage may be dissolved by a decree of divorce on the ground that either party –

- (I) Has after solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
- (II) Has, after solemnization of the marriage, treated the petitioner with cruelty; or
- (III) Has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- (IV) Has ceased to be a Hindu by conversion to another religion; or
- (V) Has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind

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<sup>42</sup> “Final Report of the Law Commission of Bangladesh on the Reforms of Hindu Family”

- and to such an extent that the petitioner cannot reasonably be expected to live with the respondent; or
- (VI) Has been suffering from a virulent and incurable form of leprosy; or
  - (VII) Has been suffering from a venereal disease in a communicable form; or
  - (VIII) Has renounced the world by entering any religious order; or
  - (IX) Has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive.

Among these grounds adultery, desertion, cruelty, insanity, leprosy, venereal diseases are typical fault grounds while others such as conversion to another religion or renunciation of world are of religious grounds.<sup>43</sup> According to Section 13(2), a wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground that –

- (i) The husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or
- (ii) Her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age, but before attaining the age of eighteen years.

This Section gives an exclusive right to a Hindu woman to divorce her husband if the husband is guilty of unnatural offences such as rape, sodomy or bestiality and she is also given the right to repudiate the marriage before attaining the age of eighteen years if she was married before attaining the age of fifteen years.

Originally based on the guilt or offence theory, the divorce could be obtained if one of the parties to the marriage was guilty of a matrimonial offence and the other was innocent. In 1964 by the Hindu Marriage (Amendment) Act, a form of breakdown theory was introduced in Hindu law by inserting Section 13(1A). The reason to introduce this theory is that if a marriage has broken down beyond all possibilities of repairs, then it should be brought to an end, without looking into the causes of breakdown and without fixing any responsibility on either party.<sup>44</sup> Section 13(1A) runs as follows:

Either party to a marriage may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upward after the

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<sup>43</sup> Paras Diwan, 117.

<sup>44</sup> Ibid, 66.

passing of a decree for judicial separation in a proceeding to which they were parties; or

- (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upward after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

Further, the Marriage Laws (Amendment) Act, 1976 inserted a new Section 13-B under which divorce by mutual consent is recognized because the very foundation of marriage is mutual fidelity, and if for any reason the parties feel that mutual fidelity cannot continue, they should have freedom to dissolve the marriage, as only by dissolution, fidelity can be preserved. Divorce by mutual consent means that the law recognizes the situation that has existed for some time and in effect says to the unhappy couple 'if you think that your marriage cannot continue and if you both are convinced that it should be dissolved, that marriage will be dissolved.'<sup>45</sup> Section 13-B lays down that a petition for divorce by mutual consent may be presented jointly by both the spouses with the following averments:

- (i) That they have been living separately for a period of one year.
- (ii) They have not been able to live together, and
- (iii) They have mutually agreed to live separately.

The latest amendment which is taken place to the Hindu Marriage Act, 1955 is the Marriage Laws (Amendment) Act, 2010 through which a new theory of divorce named as irretrievable breakdown of marriage as a ground of divorce is introduced subjected to the condition that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition. Furthermore it states that a wife has right to 50% of the immovable residential property owned by her husband regardless of whether the property was acquired before or during the marriage.

Thus following the Act of 1955 India has incorporated new grounds of divorce through amendments to the Marriage Act, whereas Bangladesh's Hindu community is still struggling to get the right to divorce recognized.

## 5. Consequences of Non-recognition of the Right to Divorce

Because of the absence of the right to divorce a Hindu wife cannot walk out from her bad marriage. Consequently she suffers from violation of number of human rights, such as right to liberty, dignity and above all happiness. Now some case studies will be shown here to reveal how the non-absence of the right to divorce leads to violation of their human rights.

<sup>45</sup> Ibid, 64.

**Case study 1:**

Torulata Rani 24, is having a tough time raising her son by herself at Dukshin Cowra village in northern Nilphamari District, 350 km away from Dhaka. Her husband Sreepodo, deserted the family six years ago, as she had failed to pay the dowry. Although Sreepodo has got married again, Rani cannot remarry until his death. It appears from this that misdeeds of their husbands cause sufferings to many poor wives, which go unredressed.<sup>46</sup>

**Case Study 2:**

Namrata N., a Hindu wife was tricked by her husband into drinking acid. Namrata is dependent on a feeding tube connected to her intestine as her food pipe and stomach are burnt. Namrata wants to divorce her husband, but cannot do so under Hindu law in Bangladesh.<sup>47</sup>

**Case study 3:**

Chondrima, an abandoned wife managed to get a job to maintain herself and her daughter. Her husband never tried to know their whereabouts nor provided them any financial assistance. Chondrima's attempt to break the nominal marital tie was a failure due to the absence of provision for divorce in Hindu law.<sup>48</sup>

The cases mentioned above reflect the situation of many Hindu women who suffer immensely due to the non-existence of the right to divorce. Although the inner meaning of marriage is accomplishment of religious and worldly functions by way of greater harmony and love between wife and husband, in many cases marriage fails to accomplish its purposes. Drug addict husbands mercilessly beating up their wives to extract money for the next dose, greedy husbands asking wives to get more money from her home, HIV virus affected husbands spreading virus to the innocent wives, etc. are common instances of violations of human rights of wives irrespective of religious backgrounds. The Hindu wives have no option but to live with their husbands even in such circumstances. This causes violation of many human rights including the right to life, the most

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<sup>46</sup> The Marriage Laws (Amendment) Bill 2010.

<sup>47</sup> "Bangladesh: Discriminatory Family Laws fuel Female Poverty", accessed 20 October, 2014, <http://www.hrw.org/news/2012/09/16/bangladesh-discriminatory-family-laws-fuel-female>.

<sup>48</sup> Nibedita Das Purkayastha, *The Hindu Women's Rights and Family Law of Bangladesh*, (Dhaka: Utso Prokashan, 2009), 118-119.

invaluable right recognized in the Constitution of Bangladesh.<sup>49</sup> Moreover, when a husband tortures his wife, how can she lead a dignified life? If a wife remains always under the threat of physical and mental abuse, how can she contribute in the development of national life? The Constitution of Bangladesh guarantees the right of women to participate in the development of national and public life.<sup>50</sup> But if a person remains unhappy in personal life, it would not be possible for him to think about the public life. As the women constitute half of the population, it should be the duty of the state to create such a situation where women can contribute in the development of the country.

## 6. Conclusion

Prevalent aged-old traditions, orthodox social norms, conservative values, economic dependency, gender discrimination, violation of human rights and above all the inadequate governmental efforts to introduce reforms in personal law make the life of most of the Hindu women undignified and disconsolate. In the 21<sup>st</sup> century where India is trying to introduce new theories of divorce, in Bangladesh still the right to divorce is a myth to the Hindu community. The proposed reforms can only be done by conferring equal rights to every citizen in all respect, irrespective of sex, caste, creed and community. The government of Bangladesh should follow India's examples, which tend to protect human rights through reformation of personal laws.

Different NGOs, civil society, women's rights groups have been creating pressure for decades upon the government to enact the law of divorce for Hindus. It is pertinent to mention here that on 20 January, 2015, the High Court Division issued a rule on the government asking it to explain the reason why a Hindu woman would not be allowed to divorce her husband.<sup>51</sup> The time has come to recognize that denial of individuals' rights on the ground only that they are women is a human rights violation. State practices that expose women to degradation, indignity, and oppression on account of their sex should be independently identified, condemned, compensated, and preferably prevented.<sup>52</sup> So, it is the responsibility of every state to bring their domestic law and practice into conformity with their obligations under international law to protect and

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<sup>49</sup> Article 32 declares "No person shall be deprived of life or personal liberty save in accordance with law".

<sup>50</sup> Article 19 (3) provides "The State shall endeavor to ensure equality of opportunity and participation of women in all spheres of national life."

<sup>51</sup> Turan Ashabur, "Hindu Women's Divorce Rights", *The Daily Star*, February 24, 2015, accessed 14 February, 2017, [www.thedailystar.net/law-our-rights/hindu-women-divorce-rights-3558](http://www.thedailystar.net/law-our-rights/hindu-women-divorce-rights-3558).

<sup>52</sup> Rebecca J. Cook, "State Responsibility under the Convention on the Elimination Against Women", in *Human Rights of Women*, ed. Rebecca J. Cook, 228.

promote human rights of all including most vulnerable sections of society, such as women. The government of Bangladesh should not escape its obligation on any ground whatsoever. It should take immediate steps to alleviate the hardship of Hindu women by reforming orthodox Hindu law. Such reformation might not transform an unhappy marriage happy, but it could help a Hindu woman to get rid of an unhappy marriage, that deprives her from the right to live a happy and dignified life.

## **The Legal Protection to Consumer's Rights in Bangladesh**

Abdullah-Al-Monzur Hussain\*

**Abstract:** The issue of consumer protection is not simply a middle-class issue but a matter of vital importance for the less well-off members of society. Despite these eccentricities and also being an old issue, little development has occurred in the legal concepts which govern the much altered the relationship between consumer and supplier or, manufacturer or, seller in the market. This article concisely describes the existing legal provisions in the area of consumer protection and critically analyse sthe Consumer Rights Protection Act, 2009. It also comprehensively examines its legal and institutional framework to encounter problems faced by the consumers of Bangladesh.

### **Introduction**

The issue of consumer rights protection has gained importance in the world, predominantly in western countries in the last century. Afterwards, it gained importance in the developing countries. The right of consumers received international recognition after the United Nations promulgated the basic guide lines regarding Consumer Rights Protection in 1985.<sup>1</sup> The guidelines stipulate that all citizens, regardless of their incomes or social standing, have basic rights as consumers.<sup>2</sup> Almost all the countries of the world, including Bangladesh now have consumer protection legislations to ensure fair trade practices and to prevent consumers from exploitation. By the end of the 20th century, the issue of consumer rights protection became almost like a movement all over the world. Consumer rights include the right to safety, the right to be informed, the right to choose and the right to be heard. A global consumer movement led by Consumer International, a global federation of over 250 consumer organizations, added four more rights; the right to satisfaction of basic needs, the right to redress, the right to education and the right to a healthy environment. In Bangladesh the Consumer Rights Protection Act, 2009, was passed by the Parliament on 5th April 2009 to

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\* Assistant Professor & Coordinator, Department of Law, Canadian University of Bangladesh, Banani, Dhaka, Bangladesh.

<sup>1</sup>United Nations Guidelines on Consumer Protection of 1985.

<sup>2</sup> UN Guidelines for Consumer Protection as expanded in 1999 in Guidelines III A, B, C, D, E, F, G, and H.



eliminate deception and fraud to protect consumer's interest. Due to poverty, unemployment and illiteracy, reluctance of enforcement of the consumer rights protection law, people of Bangladesh face consumer rights problems. Action by mobile courts created some awareness about quality of food sold in Bangladesh in recent years. But still there is controversy whether the action of mobile court is for publicity or for the correction of sellers' conduct.

### **Historical Background of Consumer Rights Protection**

Movement for protection of rights of consumers can be traced back to the Code of Hammurabi in ancient Babylon during 1795-1750 BC. With the passage of time, the formation of the Consumer League of New York<sup>3</sup> towards the turn of the 19th century provided the platform to fight for the protection of consumer rights and sovereignty and gradually the consumer movement grew across the US having its worldwide repercussion. Following the establishment of the International Organization of Consumers Unions in 1960, known today as Consumers International (CI), the movement extended into Asia, Latin America, and Africa in the 1970s and 1980s and throughout the former Soviet Union in the 1990s. However, for the first time in 1962, the consumer's sovereignty and their rights were constitutionally recognized in the US. It was the illustrious US President John F. Kennedy who remarked on March 15, 1962, "If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and national interest suffers"<sup>4</sup> and moved the consumers' bill of rights in the US Congress. The rights of the consumers were equated with national interest. He provided four basic rights; right to safety, right to choose, right to information, and right to be heard. After thirteen years president Gerald Ford added the right to education to the existing list. The Consumers International (CI), the umbrella body for 250 organizations in over 115 countries, expanded the charter of consumers rights contained in US bill from five to eight. The other three rights are right to basic needs, right to representation and right to healthy environment. On the basis of this charter, the United Nations adopted its guidelines for Consumer Protection in April 1985. Gradually, in the process of economic liberalization and globalization, these landmark guidelines have opened the eye of many national governments, consumer associations and activists and social scientists resulting in formulation and introduction of progressive legislations in their respective countries.

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<sup>3</sup> D. A. Aaker and G. S. Day, *Consumerism*, 4th edition (New York: The Free Press, 1984), p.2.

<sup>4</sup> Zahidul Haque and Sayed Abul Basher, "Protecting Rights of Consumer: Enactment of Appropriate Laws Necessary," ([http://dept.econ.yorku.ca/~basher/consumerism\\_TI.pdf](http://dept.econ.yorku.ca/~basher/consumerism_TI.pdf)).

### Issues of Consumer Rights in Bangladesh

The word "Consumer" denotes a person who purchases goods and services for personal use. The thought of consumer has been developed through various formats in various countries as per their legal need. Now when a consumer buys any goods or service, their rights over that goods or service must be protected. The Constitution of the Peoples' Republic of Bangladesh directly indicates the provision regarding consumer protection in the Article 18<sup>5</sup>; it indicates the importance attributed to the nutritional status of the people and basic principles and measures for protecting consumers from products, processes and services, which can endanger their health and safety. Consumer Association of Bangladesh (CAB) has been established on 1978 with a view to achieving broader goals of protection and promotion of consumer rights.<sup>6</sup> CAB has been campaigning for consumer rights related issues and has been working to create awareness among the citizens since its creations. This organization first proposed a draft law regarding solely on consumer rights,<sup>7</sup> thus the Consumer Rights Protection Act, 2009 enacted after long revelation. Besides this on 9th April 1985, the United Nations General Assembly in its 39th Session approved a Consumer Rights Protection Policy, since then the UN is pursuing its member countries to enact consumer protection law.<sup>8</sup> There is lot of consumer issues in Bangladesh. It includes every kind of product, process and service. Mainly in Bangladesh proper service providing factor are the consumer issues like Medical service, Legal service; Security service or service by Law enforcing agencies; Telecommunication service; Energy Regulatory service; Transport service that includes Air, water, land i.e. motor vehicles and railway etc. The predominant among all the consumer issues in our country is unsafe food hazards. Food adulteration, harmful preservatives used for food preservation, inadequate quality control, artificial ripening using formidable chemicals and methods, unhealthy manufacturing chemicals, methods, unhealthy manufacturing process, low quality ingredients, unhealthy and dirty food makers, unhealthy food preparation in restaurants are common food safety concerns in Bangladesh. Alarming increase

<sup>5</sup>The Constitution of the Peoples' Republic of Bangladesh, Article 18 (1) states, "The state shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health."

<sup>6</sup>Md. Sahidur Rahman, Abdullah-Al-Faruque and Shameena Ferdousy, "Consumer Protection Movement in Bangladesh: Status and Challenges," *Journal of the Institute of Bangladesh Studies*, Vol. XXVI 2003, p.137.

<sup>7</sup>Ibid, p.139.

<sup>8</sup>Ratna Yesmin, Consumer Protection Rights Act and the Helpless Consumer, *Observer Magazine*, 2 June 2006.

in adulteration of foodstuffs has created a strong public opinion for combating the ferocity of the offence. Mixture of poisonous chemicals like sodium cyclamate, formalin, fertilizer and harmful colors with food has become a cause of common concern. At present with the price hike, adulterated and imitated articles of essential goods flooded the market and no protest and agitation from the innocent and silent consumer is making a worst situation for the consumers of Bangladesh where still majority of the population is illiterate, who are easily being deceived by the seller. Besides, improper marketing measures, one sided contract terms by the seller and inadequate information facilities make the consumer suffer most in our country.

### **Consumer's Rights in Bangladesh**

Before 2009 there was no comprehensive law in Bangladesh to protect the rights of consumers, but there was scattered and modest mention for the protection of consumer rights in different sections of laws which are inadequate and failed give protection to the consumers for the lack of proper enforcement. The Constitution of the People's Republic of Bangladesh, under its 'Fundamental Principles of State Policy' part recognizes the rights of consumers to a limited extent. The provisions relating to consumer protection deals with Article 15 and Article 18 of the Constitution,<sup>9</sup> they remain mostly non-enforceable in the courts of law.<sup>10</sup> However these provisions are mainly focused on the vital issues of 'health' and 'food' than on other consumer rights. Besides the constitutional provisions, there are other provisions of law existing in Bangladesh which are concern for consumer protection, such as;

### **The Penal Code, 1860**

The Act stated offences relating to weights and measures from Sections 264 to 267. For offence committed under these sections shall be punished with imprisonment up to one year or with fine or with both. Under Sections 268 to 278 stated offences relating to public health, safety and convenience and the highest punishment for contravention is two years imprisonment and fine is not specified except adulteration of food, polluting water and weather in that case only one thousand to five hundred taka shall impose as fine. Again case laws also give a quiet inference interpretation of laws like in *Mohammad Nazrul Islam vs. State*<sup>11</sup> court held that mere possession of any alleged adulterated food in any premises by itself will not constitute an offence under Section 272 of the Penal Code unless it is alleged and proved thereof.

<sup>9</sup> Part II of the Constitution of the People's Republic of Bangladesh.

<sup>10</sup> Tureen Afroz, 'Consumer Protection Law: The Bangladesh Perspective' paper presented in seminar organized by BSTI, 16 July 2007.

<sup>11</sup> 1983 BLD 65.

**The Sales of Goods Act, 1930**

This Act has defined the rights and duties of a seller as well as a buyer/consumer. It stated that if the specific goods at the time the contract were made perished or become as damaged as no longer to answer to their description is void<sup>12</sup> and goods perishing before sale but after agreement to sale, the agreement thereby avoided.<sup>13</sup> The buyer may refuse to accept the goods if the goods sent after stipulated time<sup>14</sup> or, goods is of wrong quantity<sup>15</sup> but rejection must be made within reasonable time.<sup>16</sup> According to Section 41 the buyer has right to examine the goods, to ascertain whether they are in conformity with the contract.

**The Seeds Ordinance, 1977**

The Act was amended in 1997 and 2005 by parliament as The Seeds Act, 1997 and The Seeds Act, 2005 accordingly. This Act has restricted Seed Dealers of carrying on the business without the registration of seeds by the board and also specifies of Labeling of Seeds containing the details about the seed and the packet. If anyone contravene any provision this Ordinance or prevents a Seed Inspector from exercising any power conferred upon him, shall be punishable with imprisonment up to thirty days or with fine up to taka five thousand. Again the Court may forfeit the seed for which contravention took place, to the Government.<sup>17</sup> The Ministry of Agriculture developed The Seed Rules, 1998, which contains various regulations and rules for the entire seed industry.

**The Tea Act, 2016**

Tea Ordinance, 1977 has been repealed by this Act.<sup>18</sup> Under Section 25 of the Act no person is entitled to manufacture tea except in a registrar tea factory and no person shall possess, store, buy, sell or agree to buy, or offer for sale, any tea except tea manufactured in such factory.

**The Agricultural Produce (Grading and Marketing) Act, 1937**

This law is another step in the than society by the Government to make rules to safeguard consumers by letting them know the quality of agricultural produce<sup>19</sup> through gadget Notification, fixing the grade designation<sup>20</sup> to indicate

<sup>12</sup> The Sale of Goods Act, 1930, Section 7.

<sup>13</sup> Ibid, Section 8.

<sup>14</sup> 1933 All, 404; 144 IC 82.

<sup>15</sup> The Sale of Goods Act, 1930, Section 37.

<sup>16</sup> 1946 Mad 69: (1945) 2 MLR 418

<sup>17</sup> The Seeds Ordinance 1977, Section 20.

<sup>18</sup> Act 38 of 2016.

<sup>19</sup> The Agricultural Produce (Grading and Marketing) Act, 1937 provides, Section 2

(a) "agriculture produce" includes all produce of agriculture or horticulture and all

the quality of any scheduled<sup>21</sup> articles (Section 3). Section 4 and 5 of the Act states accordingly that whoever, marking with grade designation mark without authorization shall be punishable with fine up to five hundred taka and for counterfeiting grade designation mark shall be punishable with imprisonment up to two years or with fine or with both.

### **The Imports and Exports (Control) Act, 1950**

This Act has been enacted to prohibit or control import and export into Bangladesh and outside of Bangladesh accordingly. If any person contravenes any provision of this Act or any order shall according to Section 5 of the Act be punishable with imprisonment for a term up to one year or with fine or with both. The Import Policy Order 2003-2006 has been promulgated under the authority of Import and Export Control Act 1950 and as such, the same acquired the status of law.<sup>22</sup>

### **The Bangladesh Hotels and Restaurants Act, 2014**

The Bangladesh Hotels and Restaurant Ordinance, 1982 has been repealed by The Bangladesh Hotels and Restaurant Act, 2014. Section 16 (1) of the Act protects the consumers right by stating that no guest will be ejected or opposed to give any services, if the guest is obeying all the rules and regulations and paying rents and other levied taxes of a restaurant or hotel be forced unjustifiably to be ejected without any valid reason. But if any person or the owner contravenes any of the provision of this Act shall be punishable for a term not exceeding six months or with fine not exceeding taka two lakh or with both.<sup>23</sup>

### **The Iodine Deficiency Disorder Prevention Act, 1989**

This law is enacted to prevent Iodine deficiency disorder in Bangladesh. According to section 4 prohibits import and produce, stored, distribution or exhibit without iodized salt in Bangladesh for feeding purpose. Further, on the packet of the salt it must state the name and address of the manufacture company, quantity, manufacture and expire date, the maximum retail price and a declaration regarding iodized salt.<sup>24</sup> If any person contravenes of this Act shall be

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articles of food or drink wholly or partly manufactured from any such produce, and fleeces ad the skins of animals.

<sup>20</sup>The Agricultural Produce (Grading and Marketing) Act, 1937 provides, Section 2 (d) "grade designation" means a designation prescribed as indicative of the quality of any scheduled articles.

<sup>21</sup> The Agricultural Produce (Grading and Marketing) Act, 1937, Schedule: 1. Fruit, 2. Vegetable, 3. Eggs, 4. Dairy produce, 5. Tobacco, 6. Coffee, 7. Hides and Skins.

<sup>22</sup>Sultan Uddin Ahmed Vs Government of Bangladesh, 58 DLR 31.

<sup>23</sup>The Bangladesh Hotel and Restaurant Act, 2014, Section 19.

<sup>24</sup>The Iodine Deficiency Disorder Prevention Act, 1989, Section 6 (e).

punishable with imprisonment for up to three years or with fine up to five thousand taka or with both. A comprehensive monitoring and quality control system maintains by Bangladesh Small and Cottage Industries Corporation (BSCIC) and UNICEF.

### **The Trade Marks Act, 2009**

Both the Merchandise Marks Act, 1889 and the Trade Marks Act 1940 has been repealed by the Trade Marks Act, 2009.<sup>25</sup> Section 2(5) of this Act defines "False trade description" as any trade description which is untrue or misleading or deceptive in a material respect as regards the goods or services to which it is applied. In a renowned case *Nabisco Biscuit and Bread Factory Ltd. vs Baby Food Products Ltd.*<sup>26</sup> court held that any attempt to imitate as nearly as possible, without infringing the Trade Marks Act, will be an attempt to register the mark by fraud. Again the Court has power to act for any suit filed on a misrepresentation of fact.<sup>27</sup> The highest punishment for offences under this law may be of two years imprisonment or fine up to two lakh or with both.<sup>28</sup>

### **Trademark Rules 2015**

The Trademark Rules stated the process of registration of a Trademark and every application will be examined under rule 14 to ensure the mark applied for is unique and had not used by any other. Rule 15 stated the procedure for objection of the application and resolve procedure thereby.

### **The Essential Commodities Act, 1957**

This Act was passed with a view to provide for price control and regulation of trade and commerce in Bangladesh in respect of certain commodities to uphold the consumer rights. Section 3 of this Act empowers the government to make any Order to regulate and control the price, supply, distribution of essential commodities for daily life. If any person contravenes any order made under Section 3 shall be punishable with imprisonment up to 3 years or with fine or with both, and Court may direct to forfeit the property for which the contravention took place, to the Government.

### **The Food Safety Act, 2013**

This Act repealed the former laws The Pure Food Ordinance, 1959 and the Pure Food (Amendment) Act, 2005. It is purported to control and ensure safety food by exercising proper scientific method for food production, import, processing,

<sup>25</sup> Act of 2009 of Act no. IXX.

<sup>26</sup> 58 DLR 287.

<sup>27</sup> *Bonlac Foods Ltd Vs Unilac Sanowara (BD) Ltd*, 59 DLR 332.

<sup>28</sup> The Trade Marks Act, 2009 (Act of 2009 of Act no. IXX), Sections 71 to 78.

storing, delivery, distribution and sale. Contravention of such provisions shall be punishable according to the schedule of the Act. Mobile Courts Act, 2009 will be applicable to adjudication of any offence committed under this law. Bangladesh Food Safety Authority (BFSA) has been formed with a vision to 'safe food for all to protect life and health' and with a mission to protect the consumers' health and life. Temporarily about 242 safe food inspectors are working under the Ministry of Health and Ministry of Food.<sup>29</sup>

### **The Essential Articles (Price Control and Anti Hoarding) Act, 1953**

As per this law the government may fix the maximum prices of essential articles<sup>30</sup> and require the trader to exhibit in conspicuous places a list showing the maximum prices so that the consumer may not be deceived and also prohibits against purchase, sale, etc., at prices exceeding the maximum price<sup>31</sup> as well as could compel the trader holding stock to sale to specified person.<sup>32</sup> If any person contravenes of this Act, shall be deemed to have committed an offence under Section 3 of the Hoarding and Black Market Act, 1948, and the provisions of that Act shall apply accordingly.<sup>33</sup>

### **The Cantonments Pure Food Act, 1966**

This law is only applicable in the area of all cantonments in Bangladesh preventing the adulteration of food in cantonments areas.<sup>34</sup> Section 3 of this Act prohibits any person of giving any false warranty in writing in respect of any food sold by him. The Act states whipping as punishment procedure in every stanza which is primitive, albeit this long after the provision kept as it is without any amendment.

### **The Standard of Weights and Measures Ordinance, 1982**

This law has been amended in 2001 as The Standard of Weights and Measures (Amendment) Act, 2001.<sup>35</sup> The Act was enacted to make provision for the establishment of standards of weights and measures based on the metric system. Section 23 stated the mandatory provision for using some information regarding

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<sup>29</sup> *Business Times*, Published on May 2017, Available at <<http://bfsa.gov.bd/images/pdf/Chairman-BFSA-Interview-at-ICE-Magazine.pdf>>

<sup>30</sup> The Essential Articles (Price Control and Anti Hoarding) Act, 1953, Section 3.

<sup>31</sup> Ibid, Section 4.

<sup>32</sup> Ibid, Section 7.

<sup>33</sup> Ibid, Section 13.

<sup>34</sup> The Cantonments Pure Food Act, 1966, Section 4 to 13, states, the general provision regarding food adulteration and Sections 23 to 32 have stated the penalties and procedure for such food adulteration crime.

<sup>35</sup> The Standards of Weights and Measures (Amendment) Act, 2001, (Act no. VI of 2001).

identity, quantity, accurate number of the commodities, sale price etc. on the package. The law, inter-alia, provides penalty for use of nonstandard weights or measures which may amount to three thousands taka or six months of imprisonment.

### **The Bangladesh Standard Weight and Measures (Labeling of Goods) Rules 2007<sup>36</sup>**

This rule has framed some mandatory indication to lay down the information on the packaged goods and on the other hand this rule also relaxes some products from stating the manufacture and expiry date, prices etc.<sup>37</sup> The problem is not always lies within the seller, the consumers are also seen reluctant to view over the packets of goods to examine whether the particulars of the product are given correctly and adequately or not.<sup>38</sup>

### **The Special Powers Act, 1974**

Special Powers Act is a rigorous law to penalize black marketing and adulteration of foods. Under Section 25 of this law, if anyone is found guilty of hoarding or dealing in the black-market shall be punishable with death or with imprisonment for life or with rigorous imprisonment for a term up to fourteen years, and shall also be liable to fine. It also provides penalty up to five years imprisonment with fine for adulteration of, or sale of adulterated food, drink, drugs or cosmetics.<sup>39</sup>

### **The Formalin Control Act, 2015**

This Act has been enacted for the purpose to control formalin import, production, distribution, storage, sale and use, and to prevent the misuse of formalin as harmful chemical for preservation of foods. Sections 20 to 31 of this law have stated the penal provision for misusing formalin. BSFA (Bangladesh Safety Food Authority) is also taking this law under their umbrella to implement and work with it. However regular meeting among the implementing bodies and proper coordination between different bodies under different laws may facilitate to control the use of formalin in a speedy and effective manner.<sup>40</sup>

<sup>36</sup>S.R.O. No 04-Law/2007, Published on 18th January 2007.

<sup>37</sup>Rule 5, The Bangladesh Standard Weight and Measures (Labelling of Goods) Rules 2007.

<sup>38</sup>Ratna Yasmin, 'Consumer Rights Protection Act and the Helpless Consumer,' *Observer Magazine*, published on June 2, 2016.

<sup>39</sup>The Special Powers Act, 1974, Sections 26, 27, 28, 29, 30 & 30A.

<sup>40</sup> Available at <<http://www.thedailystar.net/law-our-rights/law-vision/formalin-control-few-steps-strategies-ahead-1210813>>



### **The Bangladesh Standard and Testing Institution Ordinance 1985**

The BSTI Ordinance provides for the establishment of an Institution for standardization, testing, metrology, quality control, grading and marking of goods. The institution can bring any product under BSTI's compulsory certification marking after approval of the government. Ordinance prohibits of sale, distribution and commercial advertisement of any product that does not have any approval from BSTI. Section 30 to 32 protects certain rights of the consumers by bringing some offences (like improper use of standard mark, disregard of export or sale restrictions etc.) within the ambit of this law.

### **The Mobile Courts Act, 2009**

According to Section 5 of this Act Government or district magistrate shall empower the executive Magistrate to maintain law and orders and to prevent crime as well as to take into cognizance and try various offences under a number of laws as per schedule including a good deal of legislations having consumer implications.

### **The Water Supply and Sewerage Authority Act, 1996**

This piece of legislation was enacted to ensure safe drinking water. Any interference according to schedule of the Act, with the supply of water or any negligent activities which has the tendency of contaminating the water supply is said to be punishable for a term not exceeding six months of imprisonment or with fine not more than ten thousand taka or with both under Section 52 of the Act.

### **The Smoking and Use of Tobacco Goods (Control) Act, 2005**

Bangladesh Government enacted this law to control smoking and production of tobacco. Later on in 2013, this law has been amended named as, 'The Smoking and Tobacco Products Usage (Control) (Amendment) Act, 2013'.<sup>41</sup> As per the new inserted law, any kind of advertisement of tobacco products is prohibited and the statutory caution to the effect that smoking is harmful for health etc. is to be legibly printed on the packet of tobacco products to aware the consumers. Contravention of such provision shall be punishable up to six months of imprisonment or with fine of taka two lakh or both. To control tobacco and implementation of this law 'National Tobacco Control Cell' under The Ministry of Health And Family Welfare is to be presented, in pursuant to this laws the ministry issued nine pictorial health warnings which are to display in various places for awareness.<sup>42</sup>

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<sup>41</sup> Act of 16 of 2013.

<sup>42</sup> Smoke Free Status of Indoor Public Places Workplace and Public Transport, available at <<http://www.tobaccocontrollaws.org/legislation/country/bangladesh/sf-indoor>>

**The Drugs Act, 1940**

This law prohibits importing of certain drugs that are not standard quality, misbranded drugs etc. and prohibits manufacture and sale of certain drugs that might have a prejudicial effect on the consumers.<sup>43</sup> Whoever manufactures for sells, stocks, or exhibits for sale or distributes any drugs contravenes this law<sup>44</sup> and also provides any false warranty or misuse of warranty to a purchaser shall be punishable for a term with imprisonment and fine as well.<sup>45</sup> The Government of Bangladesh took National Drug Policy in 2005. This policy focused on three features pointed out by WHO are price limitation, quality, safety and efficacy, and rational use.<sup>46</sup>

**The Bengal Drugs Rules, 1946**

Rule 5 states the procedure to be followed on receipt of the sample and it is stated that on receipt of a package from an Inspector containing a sample for test or analysis, the Government Analyst shall compare the seals on the packet with the specimen impression received separately and shall note the condition of the seals on the package. Under Rule 6 the report of result of test or analysis provides on the basis of an application from a purchaser for test. Any Confiscation of drugs by any person convicted under Chapter IV of the Act, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation.

**The Drugs (Control) Ordinance, 1982**

Under Section 11 of the Act, Government shall fix the maximum price of the drugs so that the consumers may not be deceived. Section 8 prohibits of manufacture, import, distribute, stock, exhibit or sale etc., of certain medicines, contravention of such provision by any person shall be punishable with rigorous imprisonment or with fine.<sup>47</sup> This law also controls advertisement and claims in respect of drugs without any prior approval from licensing authority, contravention of which shall be punishable offence.<sup>48</sup>

**The Bangladesh Energy Regulatory Commission (BERC) Act, 2003**

Section 54 of the Act exclusively deals with the complaints and disposal of consumer's grievances. Consumers can file their complaints through written format or over telephone. The Licensee shall within seven days from the date of

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<sup>43</sup> The Drugs Act 1940, Sections 10 and 18 accordingly.

<sup>44</sup> Ibid, Section 27.

<sup>45</sup> Ibid, Section 28.

<sup>46</sup> Available at, <<https://www.ncbi.nlm.nih.gov/pubmed/16756785>>

<sup>47</sup> The Drugs (Control) Ordinance. 1982, Section 16.

<sup>48</sup> Ibid, Section 27.

the complaint lodge, dispose the complaint matter but if he fails to do so then the aggrieved consumer can file a written application to the commissioner (BERC) to take necessary step regarding the matter. The commissioner shall within seven days pass necessary order and his order shall be final (Section 55).

### **The Local Government (Paurashava) Act 2009**

Pourashava Ordinance 1977 has been repealed by this Act.<sup>49</sup> Section 47 read along with Schedule 2 of the Act sates various functions of the Parishad, it includes to protect public tranquility, service of public well fare e.g. control of environmental pollution, road construction, ensure safe water supply adequately, control any unlicensed import commodities and sale etc. For any action contrary to Schedule 5 of the Act shall be punishable under Section 89 with fine up to fifteen thousand taka. Right to information has also been ensured by this Act.

### **The Local Government (City Corporation) Act, 2009**

There are six city corporations namely Dhaka, Chittagong, Rajshahi, Khulna, Sylhet and Barisal. These six city corporations are governed by the said Act.<sup>50</sup> This Act also provides similar kinds of responsibilities to be performed for public welfare similar to the Paurashava Act, 2009. Schedule three of the Act describes in detail about the functions of the city corporations. In one hand the city corporation has to maintain peace and tranquility in the city, on the other hand has to be concern peoples' comfortibility as per their earnings. In a case *Mayor, Dhaka City Corporation vs. Dhaka Metropolitan Rickshaw Drivers Welfare Samity* Court held,<sup>51</sup> "Rikshaw can be considered as a vehicle...This kind of vehicle is might be only source of income for a huge numbers of poor people and it is inhuman for a puller but helpful and cheaper for an ordinary passenger."

### **The Fish and Fish Product (Inspection and Quality Control) Ordinance, 1983**

This Ordinance is to provide for inspection and quality control of fish and fish products. According to this law no person shall export or sell for export any fish or fish products, which is decompose, unwholesome or contaminated with pathogenic organisms. Further no person suffering from leprosy, tuberculosis or such other contagious diseases shall catch, handle, carry or process or fish or fish products or work in fish processing and fish packing plant and establishment. Penalty for contravention of such provision shall be punishable with imprisonment for six months or with fine up to taka five thousand or with both.

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<sup>49</sup> Act 58 of 2009.

<sup>50</sup> Previously these city corporations were guided by separate Ordinance and Acts which are repealed by the Act of 2009.

<sup>51</sup> 65 DLR 518.

**The Fish and Fish Product (Inspection and Quality Control) Rules, 1997**

This rules explained sets of procedure regarding processing, inspection etc. of fish and fish products. Rule 5 states that no such materials, chemicals or container shall be used in fish processing which may contaminate decompose or cause to be unhygienic, any person contravenes such provision be fined up to ten thousand taka or his license be cancelled. Rule 8 states marking cartons, containers, etc. shall be labeled in English or in the language of the customer and of course particulars of the products shall be printed clearly so that the consumers can be assured of its quality and quantity.

**The Breast-milk Substitutes, Child Food, Commercially Produced Child's Extra Food and Particulars of using such Products (Regulation of Marketing) Act, 2013**

Any substitute of breast milk has been discouraged by this Act. It also stated some provisions that clearly prohibit any kind of promotional advertisement of substitute milk under section 4 of the Act. Section 6 sets some rules including clear message of 'nothing is substituted for or equivalent or superior to breast-milk,' also a precaution messages of 'substitute of breast milk is not the main source of child nutrition' or 'commercially produced child food is not the main source of nutrition' etc. Contravention of any provision of this law shall be punishable offence.<sup>52</sup> Provided that if any child become sick or died because of using such product, the company shall be liable to be imprisoned for a term of ten years or with fine of taka fifty lakh or with both.

**The Animals Slaughter (Restriction) and Meat Control Act, 1957**

An Act to provide for restriction on the slaughter of certain animals and for control of consumption of meat thereof. The Act restricts any sale, serve, supply or sold any food containing meat on a prohibited day as well as slaughtering animals of different age and sex. If anyone found guilty by a competent court shall be punished with imprisonment up to six months or with fine up to taka 1000 or with both. This Act has been amended in 1985 named The Animals Slaughter (Restriction) and Meat Control (Amendment) Ordinance, 1957.

**Consumer Rights Protection Act, 2009**

This law has been enacted in want of massive demand for consumer's right. The entire Act discussed above are not satisfactorily could minimize the need of consumer rights protection, hence this law enacted. Section 18 states that there will be an office named Ministry of National Consumer Rights Protection and

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<sup>52</sup>The Breast-milk Substitutes, Child Food, Commercially Produced Child's Extra Food and Particulars of using such Products (Regulation of Marketing) Act, 2013, Section 12.

this office shall execute all the functions and also will be responsible for any decision taken by this authority. Sections 37-56 have stated various offences and the punishment procedure for such offences. Still this Act is yet to be better, however have some achievements as well, such as firstly this Act is the long cherish achievement (for more than twenty years since the UN address the issue) in the area of consumer right protection. It is intended to provide the consumer simple, speedy (proceeding ends within 90 days) and inexpensive redress to grievance, award relief and compensation whatever appropriate through stipulating the establishment of National Consumer Rights Protection Council (NCRPC).<sup>53</sup> It requires the government to establish the National Consumer Rights Protection Directorate.<sup>54</sup> The Act can be termed as a comprehensive law, makes the existing laws relevant for the country's market economy. It allows an aggrieved consumer claiming monetary compensation; the claim could be five times more than the economic harm suffered by the consumer. However the law contains inadequateness in some important areas such as the Act does not provide for the establishment of separate tribunals or courts to try consumer offences or an aggrieved consumer to move to the civil courts for claiming 'monetary compensation' unless the consumer directorate initiates the criminal procedure in the magistrate's courts. Though the aggrieved consumer may directly file a civil suit claiming compensation however the advalorem court fees are to be paid discourages consumers to the access to justice. The Act fails to give protection to the consumers in some areas, such as investors in the share market; the non-banking finance companies charge very high cost of service and high rate of interest from the investors without intervention from the regulators.

### **Overall Discussion on Problems of Application, Implementation and Limitation of Existing Laws of Bangladesh**

The laws discussed above are all in active legislative; however the application and implementation of these laws are still to some extent necessary. Some laws are very aged, like, The Animals Slaughter (Restriction) and Meat Control Act, 1957; Drugs Act, 1940; The Cantonments Pure Food Act, 1966; The Essential Commodities Act, 1957; The Essential Articles (Price Control and Anti Hoarding) Act, 1953; The Imports and Exports (Control) Act, 1950; The Agricultural Produce (Grading and Marketing) Act, 1937 should revise once again and make amendment as per necessary. Again some Acts have been amended however is not monitored properly to ensure the proper implementation like The Bangladesh Hotels and Restaurants Act, 2014. Lack of monitoring cell and absence of yearly monitoring report in every aspect regarding consumer protections is one of the deficiencies to enhance the consumer rights. The

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<sup>53</sup>The Consumer Rights Protection Act, 2009, Section 5.

<sup>54</sup>Ibid, Section 21.

punishment provisions of these laws are very lenient, low amount of fine and imprisonment is insufficient to prevent the deprivation of the consumer. Moreover the sellers are richer than the fine imposed, this disproportionate punishment never impede them to commit the offence further. In terms of court procedure in Bangladesh are bit lengthy and complex hence to get the remedy it makes the consumer being harassed, waste of money and time consuming. Because of these most of the people are afraid of facing any trial at court rather they feel relaxed to accept or compromise of what is happening. Mobile Court, Special Tribunal, Drug Court, the Food (Special Court) have been established to control the market, however these Courts also have limitations of imposing punishment and fine, moreover sudden presence in market by the Mobile Court to monitor the market and imposing fine instantly might create panic amongst the seller but irregular monitoring split the image of such situation. Coordination amongst the ministry and organizations and other institution who works to upheld the consumer rights and protection is demanding however BFSA is working to coordinate the ministries to work together to ensure Food Safety in the country. Consumer rights also includes "Services"<sup>55</sup> that has been taken in consideration of money, however service taken from professionals like doctors or advocates cannot be ensured since there is no specific statutory law to make them responsible.

### Recommendations

The enactment of the Consumer Rights Protection Act, 2009 is a pragmatic approach of the Government to ensure consumer's right that ultimately ensures right to life. But now it is time for the government to adopt changing and improving some provisions of the 2009 to ensure its aim and goal, which are;

- Take effective measures to improve the conditions by establishing market-control authorities, monitoring price of essential commodities checking standards of various articles and ensuring safety products to the consumer.
- Constitute a 'Consumer Redress Authority';
- Give up court fees for filing a suit on the protection of consumer rights;
- Allow individual consumers to lodge complain directly to the police or criminal Court;
- Need to establish a special 'Market Court' by giving special jurisdiction to punish offenders on spot.
- Give exact definition of various products;

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<sup>55</sup> Consumer Rights Protection Act, 2009, Section 2 (26) provides, "Service" means transport, telecommunication, water supply, drainage, fuel, gas, electricity, construction, residential hotel and restaurant and health services, which is made available to its users in exchange of price but does not include the services rendered free of cost.

- Need to bring change in the provision of 'utmost good faith'
- Established a Complain Box where anyone can easily submit complains. As example in every ward commissioner office or town hall market.
- Awareness of both buyers or, consumers and sellers is very important, therefore, there should be a mandatory provision in the 2009 Act to give responsibility to create awareness to the proposed National Consumer Rights Protection Council and National Consumer Rights Protection Directorate.

### **Conclusion**

The consumers of Bangladesh yet stand far away to seek redress against unfair trade practices or unscrupulous exploitation of consumers. The existing legal provisions which have been mentioned above were not adequate to protect the rights of the consumer of Bangladesh with the demand of changing time. Therefore it needs the call for a new comprehensive law which will be able to high light all the issues and protect the rights of consumers in Bangladesh. It can be said that the Consumer Right Protection Act, 2009 is an appreciable step of the government to give importance and dealing with issues of consumers. But the 2009 Act is not yet to be called a comprehensive law to combat the issues faced by the consumers in Bangladesh. Some issues are suggested as recommendations to make this Act as a comprehensive act for combating all the obstacles faced by the consumers.

## **Sexual Intercourse on Promise of Marriage: A Legal Analysis**

Md. Abdur Rahim Mia\*

**Abstract:** Section 375 read with section 90 of the Penal Code, 1860 along with judicial decisions provides the basic framework of law on rape in Bangladesh. Section 375 of the PC does not address the situations where consent is obtained through fraud and misrepresentation of facts, in particular, whether a breach of promise to marry amounts to misconception of fact, and qualifies as rape or not. On many occasions, complainant victims are given false promise of marriage in the near future if they have sexual intercourse with the accused. This sort of false promise cannot be remedied by the court of Bangladesh since the intent and object of making such an agreement are immoral. The main inadequacy of the law is that there is no specific meaning of 'consent'. As the proof of complainant's consent is a basic requirement for securing an acquittal the accused may legitimately argue in his defence that the intercourse was consented to. Therefore consent given for sex on false promise of marriage should be scrutinized to determine whether this consent is free consent or not under the ambit of the definition of rape and other Bangladeshi laws. The existing laws do not seem to have any application to give relief to the victims of such cases. It has been suggested in this article that a comprehensive law should be enacted to allow relief both of civil and criminal nature.

### **1. Introduction**

There is no law to prohibit consensual adult sex in Bangladesh and a couple may have a sexual relationship before marriage. Premarital consensual sex of adult male and female is immoral and against the tenets of every religion.<sup>1</sup> Most of the love affairs between males and females turn into sexual intercourse before marriage in Bangladesh.<sup>2</sup> Sometimes in this relationship of sexual intercourse when the male denies to marry, a female file rape complaints against the male

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\* Associate Professor, Department of Law, University of Rajshahi, Rajshahi.

<sup>1</sup> Consensual sex is where both partners agree to participate in a sexual intercourse.

<sup>2</sup> Kajalie Shehreen Islam and Srabonti Narmeen Ali, "The Price of Passion," *The Daily Star*, 2 September 2005, p.7; Nawmi Naz Chowdhury, "Law on Character Evidence: A Barrier for Rape Survivors Seeking Justice?" *The Daily Star*, 5 December 2015, p. 8.



after giving consent to have sex with him.<sup>3</sup> Deceit or misconception of fact and false promise of marriage relating to this type of sexual intercourse are the key factors to accuse the culprits. The necessary ingredients of the definition of 'rape' under section 375 of the Penal Code (PC) are 'sexual intercourse with a woman' and the 'absence of consent.'<sup>4</sup> Yet there is no statutory definition of the word 'consent'. Section 90 of the PC prescribes that consent obtained via 'misconception of fact' is not consent. These two sections do not give any direction about pre-marital sex on promise to marry when the intention of the accused was *malafide* and he had clandestine motives. As the proof of complainant's consent is a basic requirement for securing an acquittal, the accused legitimately argues in his defense that the intercourse was consented to. Therefore, whether sexual intercourse on consent obtained by making a promise of marriage is rape or not is a debatable issue. Higher Courts of Bangladesh do not entertain these cases as rape whereas and Higher Courts of India have prescribed different views in this regard. If the consent for sex is obtained on a false assurance or promise of marriage, the consent should be considered as non-consent.<sup>5</sup> Consent given by a minor girl before statutory age cannot be treated as a valid consent. There is a need to understand the notions of passive submission and deceitfully obtained consent. In case of sexual intercourse on promise of marriage, the accused is supposed to know his capability of the 'promise to marry' and the way how breaking that promise could affect the female. The question of determining consent can be tricky at times, and the dilemma becomes apparent when it comes to sexual intercourse on a false promise to marry.<sup>6</sup> That the accused makes a false promise to satisfy his lust, should have to fall within the ambit of rape. The legislature should amend the law to do away with any ambiguity. The aim of this article is to analyze whether sexual intercourse amounts to rape if made on a promise of marriage. Many rape cases on false promise of marriage have been filed in Bangladesh,<sup>7</sup> but to the utter

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<sup>3</sup> Aarefa Johari, "Can Sex after a False Promise of Marriage be Called Rape?" *The Daily Star*, 8 November 2006, p.7

<sup>4</sup> Act No XLV of 1860. The Penal Code of 1860 may be called PC throughout the study.

<sup>5</sup> This paper understands false promise as distinct from breach of promise, such that unlike in the later, in the former the promise is made without any intention to perform. See *Deelip vs. State of Bihar*, AIR 2005 SC 203, at Para. 36.

<sup>6</sup> Gayatri Chadha and Amitabh Tewari, "Does Sexual Intercourse On A False Promise To Marry Amount To Rape?" available at <http://www.legalera.in>, last accessed on 24 December 2015

<sup>7</sup> *Golam Ahmed vs State*, 64 DLR (2012) 93; *Kamal Hossain alias Md Kamal Pramanik vs State*, 61 DLR (2009) 505; *State vs Anoar Hossain Pintu*, 61 DLR (AD) (2009) 108; *Monwar Mollik vs State*, 59 DLR (2007) 301; *Zitu Ahsan vs State*, 59 DLR (2007) 528; *Emdadul vs State*, 57 DLR 21; *Sohel Rana vs State*, 57 DLR (2005) 591;

disappointment of the author, it has been found that the Judges of the Supreme Court did not argue on justification of consent under the provision of section 90 of the PC, whereas such arguments are available in many Indian cases. For this reason the author refers to some Indian cases as found suitable for developing the argument of this case.

## 2. Sexual Intercourse before Marriage under Different Religion

In every religion sexual intercourse is allowed only within the marital tie and in most of the religions sex outside marriage without having an intention to marry is a punishable crime. In Islam, *zina* is a serious crime and a major sin as well as an evil way that leads one to hell and requires public punishment.<sup>8</sup> Islam requires that Muslim society punish both unmarried male and female, who have engaged in premarital sex, with 100 lashes in public.<sup>9</sup> Islam teaches that a male and female can build up a good relationship founded on marriage and has established marriage as the legitimate means for satisfying sexual desire. Islam does not recognise love affairs between a male and female outside marriage as a form of interaction and involvement. Though premarital consensual sex in Hinduism is acceptable, but such relations stemming from lust or unwilling to end in marriage

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*Abul Kashem vs State*, 56 DLR 132; *Alam (Md) vs State*, 54 DLR 298; *Abdul Quddus vs State*, 44 DLR 441; *Tariq Habibullah vs State*, 43 DLR 440; *Abed Ali vs State*, 34 DLR 366; *Mazharul alias Bhulan vs State*, 10 BLC 209; *Anaddi alias Ayenuddin vs State*, 6 BLC 310; *Misti vs State*, 6 BLC 138 etc.

<sup>8</sup>*Zina* is an unlawful sexual relation of Muslims who are not married to one another through a marriage. It includes extramarital sex and premarital sex, such as adultery (consensual sexual relations outside marriage), fornication (consensual sexual intercourse between two unmarried persons), and homosexuality (consensual sexual relations between same-sex partners). Islam considers premarital and extra marital sex as a crime against Allah. As a *hudud* crime (serious crime according to Quran and Sunnah), it must be dealt with a fixed punishment. See Muhammad Salim Ewa, *Punishment in Islamic Law: A Comparative Study*, American Trust Publications, 1982, available at [wikipedia.org](http://wikipedia.org), last accessed on 28 December 2015; Sakah Saidu Mahmud, *Sharia or Shura: Contending Approaches to Muslim Politics in Nigeria and Senegal*, Lexington, 2013, available at [wikipedia.org](http://wikipedia.org), last accessed on 28 December 2015; Sura Al-Isra 17:32; Al-Noor 24:3, *Al Quran*; 'The woman and the man guilty of adultery or fornication - flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment'. See Sura 24:2, *Al Quran*.

<sup>9</sup> For extra marital sex, the punishment required by Sharia is 100 lashes followed by stoning to death in public. But when an unmarried male commits adultery with an unmarried female, they should receive one hundred lashes and imprisonment for one year. See *Sahih Muslim*, 17:4191

are considered punishable.<sup>10</sup> In Hinduism, sexual matters are left to the judgment of those involved and not a matter to be imposed through law.<sup>11</sup> Hinduism allows premarital sex with 'attached woman' but directs the man to marry such woman, with whom he had consensual intercourse.<sup>12</sup> If a man has intercourse with an unmarried woman, who consents to it, it is no offence, but he shall deck her with ornaments, worship her, and thus bring her to his house as his bride.<sup>13</sup> *Manusmriti* considers adultery as a source of personal trauma and social disorder and prescribes rules for the property, maintenance and divorce rights of spouse not involved in the adultery, and the rights of offspring if produced from sex outside marriage.<sup>14</sup> In Judaism, premarital sex is not considered as a crime, but traditionally not approved of.<sup>15</sup> Judaism has prohibited adultery and incest. The negative attitude towards premarital sex, to a large degree, reflects the overwhelmingly positive attitude towards sex within marriage.<sup>16</sup> According to the Bible, a man was not prohibited from having sexual relations with a woman, as long as it led to marriage. The Bible never explicitly states that a woman and a man may not have sexual intercourse prior to marriage; therefore, no sanction was imposed for premarital sex, but it was considered a violation of custom.<sup>17</sup> The precepts of Buddhism disapprove of fornication and adultery.<sup>18</sup>

<sup>10</sup> Wendy Doniger O'Flaherty, *The Origins of Evil in Hindu Mythology* (California: University of California Press, 1980), p.7

<sup>11</sup> Ramanathan and Weerakoon, *The Cultural Context of Sexual Pleasure and Problems: Psychotherapy with Diverse Clients*, pp.173-174, Quote –“In this (Hinduism smritis) doctrine, sexual matters are not to be legislated but are left to the judgement of those involved;” Sexual behavior of Hindus are also governed by the prevalent practices of the society. See Richard Lariviere, *The Naradasmrti*, 2001, pp. 391–393.

<sup>12</sup> The term 'attached woman' includes a woman who is either married and protected by her husband, or a woman is not married and protected by her father. See *Naradasmrti*, 13.71-72, 13.60-61.

<sup>13</sup> Julius Jolly, *Naradiya Dharmasastra* (London: Trubner and Co, 1876), pp. 87–88; *Naradasmrti*, 13. 72.

<sup>14</sup> Patrick Olivelle, *Manu's Code of Law* (London: Oxford University Press, 2004), pp. 32, 325–329.

<sup>15</sup> In Judaism, marriage is referred to as kiddushin, which comes from the Hebrew word for 'holy.' Holy things are things that are set apart and made special and unique. Here, when sex is reserved for marriage, it too is considered holy. Most Jewish authorities disapprove of premarital sex because it does not take place within the context of kiddushin. See “Jewish Views on Premarital Sex,” available at [myjewishlearning.com](http://myjewishlearning.com), accessed on 23 November 2015.

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

<sup>17</sup> See, “Premarital Sex,” in the Jewish Virtual Library, available at [jewishvirtuallibrary.org](http://jewishvirtuallibrary.org), accessed on 23 December 2015.

<sup>18</sup> Yoshinori Takeuchi, *Buddhist Spirituality: Later China, Korea, Japan, and the Modern World* (New Delhi: Motilal Banarsidass, 1993), p. 169.

### 3. Promise to Marry as a Social Agreement

Promise to marry is an agreement between a man and a woman to marry each other in a future date. Promise of marriage is known as a *betrothal* or an engagement to be married.<sup>19</sup> There is no recognition of engagement or *betrothal* in Islamic law. It is simply an agreement to marry, not marriage but it can be broken off with or without a reason.<sup>20</sup> Marriage, according to the Muslim law is a civil contract and there must be offer and acceptance held in presence of two witnesses which results in the man and the woman living with each other and supporting each other within the limits of what has been laid down for them in terms of rights and obligations.<sup>21</sup> Engagement or *betrothal* or assurance of marriage is prior formality of marriage contract, which has been established by custom. Though this can be accomplished by showing that both parties had a clear intent for the agreement to be binding, it has no legal consequence except moral value, if it is not in writing. In order to recover for breach of this promise, the plaintiff must establish that the two parties had a valid existing contract to marry. In Hindu Law, *ashirwad* is allowed which is similar to *betrothal* or engagement.<sup>22</sup> There is no statutory law regarding the remedy for the breach of

<sup>19</sup> Betrothal refers to a religious ceremony confirming an agreement to marry. Historically, a betrothal was performed months or years before the parties wedded. It was in theory as legally binding as a marriage and created an impediment to marriage with any other person, but not in an insurmountable impediment. In modern form, the betrothal is usually part of the marriage ceremony. See for more Details: Garner A. Bryan, *Black's Law Dictionary*, Ninth Edition (USA, 2009), pp. 609 and 182.

<sup>20</sup> Mansura Akter and Tahmina Haq, "Breach of Promise of Marriage: An Urge for Asking Legal Remedy," *Bangladesh Research Publications Journal*, Vol-10, Issue-1, 2014, pp.77-82, available at <http://www.bdresearchpublications.com>, accessed on 12 January 2016.

<sup>21</sup> Marriage is based on few conditions. When these conditions are fulfilled, a man and a woman are proclaimed as husband and wife and can live together and carry on their marital duties. These are:

(i) There should be a proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other party. A Muslim marriage requires proposal 'Ijab' from one party and acceptance 'Qubul' from the other side. This must be done in one sitting.

(ii) The parties must be legally competent.

(iii) There must be two male or one male & two female witnesses, who must be sane and adult. and

(iv) Marriage must be performed by observing the religious rites and social formalities.

<sup>22</sup> In Bengal matrimony, 'Ashirwad' is the ceremony, which is organized two-three day prior to the wedding day. 'Ashirwad' is a confirmation of the marriage alliance. During the 'Ashirwad' ceremony, the groom's family visits the bride's home, where they shower the bride with lots of blessings and gifts, which include saris for the bride, jewellery like gold ring, chain, sweets, betel nuts, etc.

marriage promise or *ashirwad*. The Hindu bride whose marriage is dismissed after fixing a *lagna* or the best time for being married, the lady is turned into a *lagnabhrasta* which can be termed as loser of good luck. Even, it becomes very tough for that woman or their family members to escape from their fate of carrying virgin life forever. In fact, the woman declared *lagnabhrasta* faces numerous religious bars for the arrangement of marriage.<sup>23</sup> It is clear that personal law permits engagement ceremony, but does not recognize it as marriage. Sex after engagement or betrothal is clearly premarital sex and it cannot be treated as marital rape if the woman is sexually exploited. It also happens in Bangladesh that a girl surrenders herself to a boy who comes in contact with her through a formal ceremony of engagement; she does it not because she loves him or wants to have pleasure with him, but because she doesn't want to disappoint her future husband. Neither engagement nor *ashirwad* nor fake registrations of marriage legalize sex.

#### 4. Enforceability of Promise to Marry

Muslim marriage is essentially a civil contract. Hindu marriage is a sacred obligation and it does not recognize marriage as a contract. According to the Contract Act, 1872, any agreement enforceable by law is a contract. A contract must have a valid offer and acceptance and must be in writing. Under the Contract Act, 1872, a deceived agreement for immoral purposes cannot be enforced.<sup>24</sup> If the parties to marry are incapable of creating a valid agreement due to a legal disability, a lawsuit for breach of marriage promise cannot be sustained. For example, a Bangladeshi citizen is not allowed to marry a foreigner; or where the girl is below 18 years of age. A breach of contract cannot be remedied when a marriage is unlawful due to incest. Breach of promise involves an individual's right to prosecute or make a claim against another individual who has reneged on a promise. It may also be interpreted that breach of promise to marry is different from a case of false promise to marry. Each case has its own peculiar facts which may have a bearing on the weight of evidence, keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence. In Bangladesh, an aggrieved person can claim compensation or damages for breach of promise to marry when promise to marry is proved and such breach is actionable under section 74 of the Contract Act, 1872.<sup>25</sup> Breach of promise to

<sup>23</sup> Mansura Akter and Tahmina Haq, p. 3.

<sup>24</sup> Section 23, The Contract Act, 1872.

<sup>25</sup> Section 74 states that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. 73. When a contract

marry may also attract an offence of cheating under section 415 of the PC. According to this section when a male promises a female to marry without any intention of getting married and breaks the promise, it is false representation and would certainly amount to cheating. Again, the Contract Act can be a defense against the promisor for misconception or the breach of promise with intent to defraud.<sup>26</sup>

Section 74 of the Contract Act, 1872 read with section 23(c) of the Specific Relief Act, 1877 clearly allows a contracting party to marriage to claim damage or specific performance of it.<sup>27</sup> The decisions of the Indian High Courts have given remedy to young minor girls against promise to marry under section 415 of the PC.<sup>28</sup> It means that there are both civil and criminal remedies for breach of promise to marry available under the present statutory law. The word 'fraud' is only defined in section 17 of the Contract Act, 1872. It is important to note that the remedies provided in the Contract Act are civil in nature but some of the words defined in the Contract Act, such as fraud, coercion, undue influence are essentially related to criminal matters. At the present form of the Contract Act, it is not possible to give criminal remedy to the complainant victim except civil remedy. It is possible to rewrite the law by giving appropriate remedy for breach of promise to marry either by inserting provision in the Contract Act or by enacting a new statute in this regard.

### 5. Consensual Sex and Bangladeshi Laws

Sexual intercourse on promise to marry is a consensual sex in nature. The laws of Bangladesh do not prohibit consensual sex of two persons of opposite sex except section 497 of the PC,<sup>29</sup> 3rd to 5th clause of section 375 of the PC and

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has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

<sup>26</sup> Sections 18, The Contract Act, 1872; Sections 17, The Contract Act, 1872; Mansura Akter and Tahmina Haq, p. 5.

<sup>27</sup> Section 23(c) provides that where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled can file a suit for specific performance of that contract.

<sup>28</sup> See Chapter 6.2.

<sup>29</sup> In Bangladesh, the offence of adultery is punishable crime under section 497 of the PC. This section makes only men having sexual intercourse with the wives of other men without the consent of their husbands punishable and women cannot be punished even as abettor; Adultery is a form of extramarital sex. It is sexual infidelity to one's spouse. It originally referred only to sex between a woman who was married and a person other than her spouse. *Encyclopedia Britannica*, s.v., "Adultery." available at <http://www.britannica.com>, last browsed on 27 December 2008, as said: 'Whoever as sexual intercourse with a person who is and whom he knows or has a reason to believe to

explanation clause of section 9 of the Prevention of Women and Children Repression Act, 2000 (PWCRA).<sup>30</sup> Section 497 of the PC does not attract sexual intercourse as an offence of adultery when an unmarried female consents to make sexual intercourse with a married male on promise to marry. According to section 375 of the PC, rape is forceful sexual intercourse with a woman without her consent and consensual sexual intercourse is treated as rape when consent has been obtained by putting her in fear of death or of hurt or when the man knows that he is not her husband, and that her consent is given because she believes herself to be lawfully married or when she is under fourteen years of age. This section does not specify and define consent in case of sexual intercourse with the woman, when such consent is obtained by a man on promise to marry or fraud. According to the explanation of section 9 of the PWCRA, a man is said to have committed rape if he has sexual intercourse without lawful marriage with a woman not being under sixteen years of age, against her will or with her consent obtained by putting her in fear or by fraud. It also means that consensual sexual intercourse between two persons of opposite sex without fear or fraud is not a crime and in another sense it is permitted. Though this section decreases age of consent with adding a new word 'fraud', but does not explain the scope of 'fraud'. Section 375 of the PC and Section 9 of the PWCRA are silent whether consent of sexual intercourse on false promise of marriage is fraud or not.

#### **6. Fraud or Misconception of Fact as an Ingredient of Rape**

From the scrutiny of Bangladesh laws, it is clear that consensual sex as well as premarital sex is allowed in Bangladesh except adultery and sex with the child. Since section 9 of the PWCRA has placed a term 'fraud' in the rape definition, question comes whether consent of woman on premarital sex obtained from false promise of marriage is under the ambit of 'fraud' or not. This section does not define 'fraud' and fraud' also has not been defined in the PC. Therefore it is ambiguous that which activities will be within the framework of fraud. On many occasions in Bangladesh, victims are given false promises of marriage in near future if they agree to have sexual intercourse with the defendants. The rapist gives her full assurance of marriage and establishes physical relationship with the victim woman. Then he either hides away or denies the whole thing. The victim cannot even ask for justice here, while she is led towards living a scandalous life. In some cases victim becomes pregnant. The rapist refuses to marry the woman and refuses to accept the responsibilities of the child as well. The woman is deprived of giving her child a father's name. Lacking that name, the woman has to live in the society with a stigma. The *Fact Finding Committee of*

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be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery.'

<sup>30</sup> The Act may be called PWCRA throughout the study.

*Jahangirnagar University Rape Case* revealed that more than 20 female students were raped and over 300 were sexually harassed by such promises.<sup>31</sup> This sort of sexual intercourse on false promise to marry cannot be remedied by the court since the occurrence is not covered by section 375 of the PC and section 9 of the PWCRA. In Bangladesh, many women especially teenage girls are very much emotional in nature and have a tendency to believe her lovers or promisers. On the other part, the accused who knows his failure to keep promise intentionally causes damage to the soul and physique of the girl. He commits an act of brazen fraud leading her to believe that he will marry her. This kind of consent obtained by the accused cannot be said to be consent and it should have no legal value.

There is no clause in the PC that specifically labels premarital sex on promise to marry and the breach of a marriage promise as rape. According to section 90 of the PC, a consent is not consent as intended by any section of this Code, if the consent is given by a person under fear or injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception. This section prescribes that if the perpetrator obtains consent and is aware of misconception of fact, it cannot be deemed as valid consent. Therefore, it is clear that in a love affair, if the victim, under a misconception of fact that the accused was likely to marry her, submits to his lust, such an act is not consensual. Bangladeshi court, ignoring the meaning of misconception of fact, appears to have considered section 375 of the PC and section 9 of the PWCRA in defining rape. Bangladeshi Courts have a tendency to invoke section 375 of the PC and 9 of PWCRA according to which a man is said to commit rape on a woman if he 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.<sup>32</sup> According to section 375 of the PC, 'fraud or misconception of facts' indicates only when the woman consents to intercourse mistaking the person to be her husband. This section did not mention false or broken promises underlining the fact that consent is really about the woman's state of mind at the time of the act and her willingness to partake in it, the reason for the same being of no relevance at all. Therefore, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act is conscious of the fact or should have a reason to believe that but for the fear or misconception, the consent would not have been given.<sup>33</sup> Consent given pursuant to a false representation regarding

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<sup>31</sup> A Khan, "JU expels five students for involvement in the incidents," *The Independent*, 3 October 1998.

<sup>32</sup> Aarefa Johari, "Can sex after a false promise of marriage be called rape?" *The Daily Star*, 8 November 2006, p.7.

<sup>33</sup> Gayatri Chadha and Amitabh Tewari, "Does Sexual Intercourse on a False Promise to Marry Amount to Rape?" available at <http://www.legalera.in>, accessed on 24 December 2015.



intention to marry could be considered consent given under misconception of fact or fraud.

### 6.1 Cases of Sexual Intercourse on Promise of Marriage in Bangladesh

The Appellate Division of Bangladesh did not try any case relating to sexual intercourse on false promise of marriage. In the case of *Sohel Rana vs State*, the High Court Division of Bangladesh (HCD) held that if the victim girl agreed to have sexual intercourse with the accused as he promised to marry her, the accused cannot be held guilty of committing rape.<sup>34</sup> This Court also adjudicated that regular intercourse with a willing partner does not constitute rape.<sup>35</sup> In the case of *Zitu Ahsan vs State* the HCD said that if sexual intercourse is committed on victim's consent in the absence of any threat or any fraudulent activities, it does not attract any ingredients of offence of rape.<sup>36</sup> In the case of *Monwar Mollik vs State* complainant victim named Momena Khatun above the age of 16 years agreed to have sexual intercourse with the accused because the accused promised to marry her.<sup>37</sup> The HCD observed in this case that the accused would not be held guilty of rape for having sexual intercourse with the victim after having promised to marry her and such conduct though socially condemnable and morally reprehensible would not constitute an offence under section 375 of the PC. In *Kamal Hossain alias Md Kamal Pramanik vs State* the HCD explained that since the relationship between the appellant and the victim girl grew out of their fascination and the girl mixed with appellant consciously at her own peril and the appellant knew the fate of the victim girl and took that opportunity of free consent and mixing it could not fall within the purview of any legal action.<sup>38</sup> Similar opinion has been found in the judgment of the case of *Golam Ahmed vs State*.<sup>39</sup> In this case the HCD said that if the accused agrees to marry the victim and obtains her consent, who allows the accused to have sexual intercourse with her, such sexual intercourse does not constitute an offence of rape under the law. It is clear that the Higher Courts Division of Bangladesh did not consider sexual intercourse on promise to marry a rape. In case of sexual intercourse on promise of marriage, if a teenage girl consents to the act and continues to indulge in such activity until she becomes pregnant, it is an act of promiscuity on her part but is also a fraudulent act of the accused. If a woman agrees only on the promise of marriage, but the promise turns out to be false, it is not consent according to section 90 of the PC. As a perpetrator invades a victim by indulging in sexual intercourse with her in order to appease his lust and all the time knowing that he

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<sup>34</sup> 57 DLR (2005) 591.

<sup>35</sup> Ibid.

<sup>36</sup> 59 DLR (2007) 528.

<sup>37</sup> 59 DLR (2007) 301.

<sup>38</sup> 61 DLR (2009) 505.

<sup>39</sup> 64 DLR (2012) 93.

will not marry her, he commits an act of brazen fraud. According to the spirit of section 90 of the PC, a man can be convicted for rape whereas if there was a false promise from the beginning and it was made in return for sexual favours. Bangladeshi Courts could justify it in all the cases under section 90 of the PC.

## 6.2 Cases of Sexual Intercourse on Promise of Marriage in India

Contrast decisions from the Higher Courts of India are of much relevance where consent obtained with a false promise to marry at a future date has given relief to the victim. In *Jayanti Rani Panda vs State of West Bengal* the High Court (HC) of Kolkata held that this kind of permission given by the girl to make sexual intercourse cannot be treated as consent and such consent cannot condone the offence.<sup>40</sup> In *Saleha Khatdon vs State of Bihar* the HC of Patna argued that it was a fraudulent practice on victim and the victim was deceived by false assurance.<sup>41</sup> The Court further said, consent obtained by deceitful means is no consent and it must come within the ambit of ingredients of the definition of rape. In the case of *Tekam alias Tekram vs State of Madhya Pradesh* it was found that sexual intercourse was committed with the prosecutrix on the promise that the accused will marry her.<sup>42</sup> The HC of Chhattisgarh opined in this case that the prosecutrix being a blind girl naturally wanted to get herself married and to be settled and secured in safe hands. This psychological weakness has been exploited by the accused by giving false pretext and promise of marriage and on the basis of fraud the sexual intercourse was committed on her. The Court held that there was no consent and no perversity or illegality has been committed by the Court below to convict the accused under Section 376 of Indian Penal Code (IPC).<sup>43</sup> In the case of *Mahesh Balkrishna Dandane vs State of Maharashtra* it was found that an uneducated poor girl was induced into a sexual relationship after promise of marriage and the accused suppressed his first marriage to have sexual relation with the girl.<sup>44</sup> Considering the circumstances, the HC of Bombay declared that this sexual intercourse would be an offence under section 375 of IPC. Further clarifying the legal position on such cases the Court said that a case where the girl agrees to have sexual intercourse on account of her love and passion for the boy and not solely on account of the misrepresentations made to her by the boy or a

<sup>40</sup> 1984 Cri.LJ 1535; See also *Hari Majhi vs. The State*, 1990 CrL. L.J 650 and *Abhoy Pradhan vs. State of West Bengal*, 1999 CrL. L.J 3534.

<sup>41</sup> 1989 Cri.L.J. 202 (Pat.), Para 8; Surya Bala and Rahul Saha, "Make no Promises and Tell Me no Lies: A Critique of *Deelip Singh Vs State of Bihar* AIR 2005 SC 203," *NUJS Law Review* (National University of Juristic Science, Kolkata), vol 1, 2008, p. 153.

<sup>42</sup> Criminal Appeal No. 2554 of 1997, High Court of Chhattisgarh, Criminal Appeal u/s 374 (2) of the Criminal Procedure Code.

<sup>43</sup> The term of 'Indian Penal Code' of 1860 may be called 'IPC' throughout the study.

<sup>44</sup> 2014 (4) Crimes 37 (Bom.)

case where a boy, on account of circumstances, which he could not have foreseen or which are beyond his control, does not marry her despite having all good intention to do so, has to be treated differently. Thus it is clear from the case laws that where the prosecutrix agrees to sexual intercourse and the accused promised to marry the victim it could not be guilty of rape in all circumstances.

The reactions of the High Courts of India are mixed as regards sex under promise to marry. In *Hari Manjhi vs State of West Bengal* the HC of Kolkata held that the sexual intercourse with a girl above 16 years, who voluntarily agrees for sexual intercourse on assurance of marriage, does not amount to rape.<sup>45</sup> The Court also argued that the adult girl had adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting to. In *State of Karnataka vs Anothnidas* the HC of Karnataka ruled that a case of breach of promise would not be covered by 'misconception of fact' within the meaning of section 90,<sup>46</sup> and hence, sexual intercourse, consent to which was obtained by making a promise which was later breached, would not be rape.<sup>47</sup> While explaining 'misconception of fact' the Court understood false promise as a fraud and noted that there is a small category of cases which would come within the ambit of rape if the consent of the woman is by playing fraud on her; in such case fraud has got to be clearly established.<sup>48</sup>

Examining the question of consent in case of sex on promise to marry, the Supreme Court of India (SCI), in 2003,<sup>49</sup> in the case of *Uday vs State of Karnataka* in 2005,<sup>50</sup> in the case of *Deelip Singh @ Dilip Kumar vs State of Bihar* in 2007,<sup>51</sup> and in the case of *Pradeep Kumar Verma vs State of Bihar*,<sup>52</sup> considered this issue and came to the conclusion that when the accused's promise is not false and is not made with the sole intention to seduce the prosecutrix to indulge in sexual acts such an act will not amount to rape, but agreed that when the accused's promise is false and is made with the sole intention to seduce the prosecutrix to indulge in sexual acts such fraudulent acts cannot be said to be consensual and will amount to rape. In 2008 in the case of *Yedla Srinivasa Rao vs State of AP* the SCI after scrutinizing the facts and circumstances of the case before it observed that the intention of the accused right from the beginning was not *bonafide* and the poor girl submitted to the lust of the accused completely

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<sup>45</sup> *Hari Manjhi vs State of West Bengal*, 1998 Cr LJ 560 (Cal); *M.C. Prasanam vs State*, 1999 Cr LJ 998 (col).

<sup>46</sup> ILR 2000 Kar 266; Surya Bala & Rahul Saha, "Make no Promises and Tell Me no Lies: A Critique of *Deelip Singh Vs State of Bihar* AIR 2005 SC 203," *NUJS Law Review*, vol. 1, 2008, p.152.

<sup>47</sup> *Ibid.*, Para 1.

<sup>48</sup> *Ibid.*

<sup>49</sup> The term of 'Supreme Court of India' may be called 'SCI' throughout the study.

<sup>50</sup> AIR 2003 SC 1639.

<sup>51</sup> AIR 2005 SC 203.

<sup>52</sup> AIR 2007 SC 3059.

being misled by the accused who held out the promise for marriage.<sup>53</sup> The SCI held that the accused persuaded a girl of tender age that he would marry her and the consent was not obtained voluntarily but under a misconception of fact and the accused right from the beginning never intended to fulfill the promise. Such consent cannot condone the offence. In 2013, finding answer to the questions raised by the Judges, such as—‘can yesterday’s sex be tomorrow’s rape?’, ‘can failed affair lead to rape charges?’ and ‘is pre-marital sex shocking?’, the SCI in case of *Deepak Gulati vs State of Haryana* observed that,

Every breach of promise to marry is not rape. Consent obtained from victim by making false promise of marriage amounts to cheating or deception which leads to misconception of fact - But distinction should be made between not fulfilling false promise by accused and mere breach of promise occurring due to circumstances beyond his control. Court must be assured that accused from the very beginning acted with *malafide* intention of seducing prosecutrix by making false promise of marriage and not keeping his promise. Mere breach of promise without *malafide* intention cannot amount to deception.<sup>54</sup>

Thus the case laws show that a woman, who is given a vague, non-deceitful promise of marriage, has sex but is not raped. But a man who from the beginning never intends to marry, but makes deceptive promises to obtain sex is a rapist. According to the SCI, every case should be decided on the basis of its existing circumstances. In 2003 the SCI acquitted a man because ‘promise to marry does not mean much when two young people are overcome with love and passion’. But in 2006 a man was convicted of rape because he had ‘no intention to marry the girl right from the beginning’. Again in 2013 the SCI made a clear distinction between a ‘mere breach of promise’ and ‘a false promise’. At the present moment Indian subordinate courts follow this direction. Due to absence of any strict law the courts of Bangladesh have opportunity to take into consideration the decisions of the Apex Court of India.

### **7. Promise of Marriage after Rape and Subsequent Sexual Intercourse before Marriage**

After rape or forcibly committed sexual intercourse, sometimes a rapist gives a marriage promise and subsequently makes sexual intercourse again before

<sup>53</sup> Criminal Appeal No. 1369 of 2004, Supreme Court of India, Date of Judgment: 29 September 2008; (2008) 11 SCC 615.

<sup>54</sup> (2013) 7 SCC 675; In case of *Deepak Gulati vs State of Haryana*, Supreme Court of India also remarked that there should have adequate evidence to show relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There must, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact.

marriage with the consent of woman. Consequently, this woman may become pregnant and often the rapist refuses to marry her. In *Abed Ali vs State* the complainant was induced after rape by a false promise of marriage and consequently she became pregnant.<sup>55</sup> The defendant denied bearing any responsibility. The HCD argued that both the parties are responsible for this occurrence and it cannot be treated as an offence of rape as because the complainant was a willing partner here for sexual intercourse. Furthermore, in the case of *Lukus Miah vs State* the HCD held that when the victim of alleged cohabitation knew that there was no marriage between her and the accused and that the latter only compromised to marry her on some future date such allegation cannot be considered rape.<sup>56</sup> In the case of *Sohel Rana vs State* the HCD observed that there was no allegation that the accused obtained victim's consent under threat or by practicing fraud upon her before such intercourse and held that regular intercourse with a willing partner does not constitute rape.<sup>57</sup> The Court also opined that when the first occurrence of sexual intercourse was not one of rape his subsequent acts of intercourse with or without her resistance could not be treated as rape. It means the subsequent intercourse with a victim without her consent is not a rape. This opinion of the Court may invite further rape against the same victim. In the case of *Dileep Singh vs State of Bihar* the appellant was charged and convicted under section 376 of the IPC for committing rape of a minor girl. The victim claimed that the accused raped her against her will and later consoled her that he would marry her. Accordingly on account of the promise for marriage made by him she agreed to have sexual relations with him. After conceiving she filed a case. Although the trial court and the HC of Bihar convicted the accused, the SCI set it aside and argued that,

Consent given by a woman believing the man's promise to marry her would fall within the expression 'without her consent' vide clause (ii) to section 375 IPC, only if it is established that from the very inception the man never really intended to marry her and the promise was a mere hoax. When prosecutrix had taken a conscious decision to participate in the sexual act only on being impressed by the accused's promise to marry her and the accused's promise was not false from its inception with the intention to seduce her to sexual act, clause (ii) to section 375, IPC is not attracted and established.<sup>58</sup>

But in the case of *Shing alias Dilip Kumar vs State of Bihar* it was found that firstly accused committed rape on victim against her will and consent but subsequently he held out a hope of marrying her and continued to satisfy his

<sup>55</sup> 34 DLR 366.

<sup>56</sup> 43 DLR 230.

<sup>57</sup> 57 DLR (2005) 591.

<sup>58</sup> AIR 2005 SC 203.

lust.<sup>59</sup> The SCI opined that if a girl did not understand the result or consequences of indulging into such acts and the accused promised her to marry but he never intended to marry right from the beginning the consent of the girl is of no consequences and falls in the section 375—‘without her consent’.

## 8. Conclusion

In Bangladesh sexual intercourse between males and females on false promise of marriage often continue till females become pregnant. Bangladesh is a conservative country regarding sex related matter and pre-marital sex is a pretty massive taboo for large parts of its population and false promises of marriages are used to gain consent for sexual intercourse. When sexual intercourse is committed on the promise that the accused will marry the victim her consent for sexual intercourse is dependent on that promise. As victim girl wants naturally to get herself married and this psychological weakness can be exploited by the accused by giving false pretext and promise of marriage and on the basis of fraud the sexual intercourse is committed on her. If a person persuades a girl below 18 years of age by assuring to marry her and obtains her consent to make sexual intercourse such fraudulent consent cannot be said to be consent. Consent of any girl in particular below 18 years with the false hope of getting married is not taken into account for rape under section 375 of the PC. In Bangladeshi society the marriageable age certifies 'sexual intercourse' for girls at 18 years old and above. Sexual intercourse on promise to marry depends upon the fact whether the accused from the inception did not intend to marry or because of subsequent eventualities he could not marry. In case where sexual intercourse before marriage is committed on the basis of promise to marry the court must carefully examine whether the accused had actually wanted to marry the victim, or had *malafide* motives, and had made a false promise to this effect only to satisfy his lust. The courts cannot and should not give such a license to those who keep on looking for opportunities to exploit the sentiments and vulnerability of women who perceive marriage as a pious bonding; and not as a union of two bodies. Allowing such persons to go scot free after exploiting poor and helpless girls in this manner could never have been the intention of the legislature which considered rape to be such heinous as to attract imprisonment for life. From the above discussion it is clear that women's consent for sexual intercourse which is obtained on the false promise of marriage cannot be considered as valid consent. If section 375 of the PC is taken into consideration alongwith section 90 of the PC, such kind of physical relationship will tantamount to rape. It is true that the existing laws of Bangladesh relating to consent prescribed in sections 375 and 90

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<sup>59</sup> (2005) 1 SCC 88; also see *Jayanti Rani Panda v. State of West Bengal*, (1984) Cr.LJ 1535.

of the PC represent the masculine understanding and does not take into account the feminine perceptions, particularly when her capacity to consent is emotionally overpowered by the promise of marriage. Consent for sexual intercourse which obtained from women on the basis of false promise to marry should be brought within the ambit of the offence of rape. Also the consent of woman for sexual intercourse obtained by deceit or fake marriage and thereby causing her to believe that she was married should be brought within the ambit of the offence of rape. In cases where a girl below 18 years of age has given consent for sexual intercourse on the basis of promise to marry the consent should not be treated as consent and such type of intercourse should be brought within the ambit of the offence of rape. On the other hand the Contract Act does not seem to have any application to give relief to the victims in case of breach of promise to marry. A chapter can be inserted in the Contract Act by giving appropriate remedy for breach of promise to marry or a new statute such as 'Agreement to Marry Act' can be enacted in order to give relief to the victims.

## **The State of Governance in the Conservation of Ponds in Rajshahi City Corporation**

A.K.M. Mahmudul Haque<sup>\*\*</sup>, S. M. Akram Ullah<sup>\*</sup>

**Abstract:** The significance of ponds in maintaining biodiversity cannot be denied anyway. But urban ponds in Bangladesh are rapidly disappearing in an alarming rate though there are sufficient policies in this regard. Multiple government authorities are charged with implementing these policies into practice. In Rajshahi Metropolitan Area, a large number of ponds are being reduced every year to accommodate residential, commercial and industrial structures. Here, the state of governance in the conservation of ponds is now in a big question. The main objective of this study is to explore the role of different government organizations in the conservation of ponds in Rajshahi City. It is an empirical research mainly based on primary data collected through questionnaire survey and key informant interview from the local government officials, civil society members and the owners and neighbors of the ponds that have already been filled up. The findings reveal that the existing rules and regulations of conservation of ponds are not put into effect properly which is resulting into rapid reducing of ponds in the study area.

### **1. Introduction**

Bangladesh has one of the highest man-water ratios in the world<sup>1</sup>. At the current level of population, for every eight persons, there is an acre of water. Ponds and tanks comprise 336,000 acres i.e. about 10% of total inland water area (excluding the paddy fields, which remain under water for more than six months in a year).<sup>2</sup> These ponds and tanks have great ecological, commercial and socio-economical importance and value in Bangladesh. They contain many components of biodiversity like flora and fauna of important local, national and regional importance. Yet, these water bodies, especially ponds, are changing and

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<sup>\*</sup> Professor, Department of Political Science, University of Rajshahi.

<sup>\*\*</sup> Associate Professor, Department of Political Science, University of Rajshahi.

<sup>1</sup> M. Salar Khan, et al., ed., *Wetlands of Bangladesh* (Dhaka: Bangladesh Centre for Advanced Studies, 1994), p. 2.

<sup>2</sup> M Sekandar Khan, *Multiple of Water*, quoted in A Atiq Rahman, et al., ed. *Environmental Aspects of Surface Water Systems of Bangladesh* (Dhaka: University Press Limited, 1990), p. 166.



converting into different forms due to development interventions. Consequently, the aquatic biodiversity have also been decreasing and migrating to other places to a large extent. Surrounding people have also been suffering as they used to use water for their daily bathing and other household needs. Government of Bangladesh has enacted a number of laws and policies in different periods for the conservation of urban ponds. In Rajshahi Metropolitan Area, different governance institutions like Rajshahi City Corporation (RCC), Rajshahi Development Authority (RDA), Department of Environment (DOE), Rajshahi, District Administration of Rajshahi, etc. are mainly responsible for the proper enforcement of these rules and regulations. But different reports reveal that the present state of conservation of ponds in Rajshahi is deteriorating day by day (Haque<sup>3</sup>, Siddiqui<sup>4</sup>, The Dhaka Mirror<sup>5</sup>, The New Age<sup>6</sup>, The Financial Express<sup>7</sup>, The Daily Star<sup>8</sup>, etc.). To find out the reasons behind this situation, an empirical and in-depth investigation is needed. The research findings would help take appropriate steps to promote the level of governance to conserve the urban ponds in Bangladesh.

### 1.0 Conceptual Framework

Governance is “the system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector. It is the way a society organizes itself to make and implement decisions- achieving mutual understanding, agreements and action.”<sup>9</sup> An analysis of governance focuses on the formal and informal actors involved in decision making and implementing the decisions made and the formal and informal structures that have been set in place to arrive at and implement the decision.<sup>10</sup> Governance can be used in several contexts.

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<sup>3</sup> A K M Mahmudul Haque, *Environmental Governance of Urban Local-Government in Bangladesh: Policies and Practices*, Unpublished Ph.D Dissertation, (Rajshahi: Institute of Bangladesh Studies, University of Rajshahi, 2015), pp. 184-206.

<sup>4</sup> Mahbub Siddiqui, “Rajshahi Mohanogorir Hariye Jaoa Pukur o Dighi (Disappeared Ponds of Rajshahi City)” quoted in Md. Mahbubur Rahman, ed. *Rajshahi City: Past and Present*, Seminar Volume (Rajshahi: IBS, Rajshahi University, 2012), pp. 170-226.

<sup>5</sup> The Dhaka Mirror, *Dirt Filling in Ponds Continues in Rajshahi*, February 03, 2011.

<sup>6</sup> *The Daily New age*, 11 February 2011.

<sup>7</sup> The Financial Express, *Re-excavation of Ponds in Rajshahi*, March 21, 2013.

<sup>8</sup> The Daily Star, *MP filling up ponds: Rajshahi Development Authority serves fresh notice on him*, February 20, 2012.

<sup>9</sup> UNDP, *Strategy Note on Governance for Sustainable Human Development Program* (New York: United Nations Development Program, 2004), available at: <http://www.undp.org>. Accessed on June 3, 2017.

<sup>10</sup> United Nations Economic and Social Commission for Asia and Pacific (UNESCAP, 2007), *What is Good Governance?* Available at:

Governance in the conservation of ponds is an important aspect of environmental governance. Environmental governance refers to the processes of decision-making involved in the control and management of the environment and natural resources.<sup>11</sup>

Environmental governance describes how decisions about the environment are made and who makes such decisions. It includes the formal and informal institutional arrangements for resource and environmental decision-making and management. It includes and extends beyond the State to involve the private sectors and civil society organizations. Thus, it involves a range of institutions, social groups, processes, interactions and traditions, all of which influence how power is exercised, how public decisions are made, how citizens become engaged or disaffected, and who gains legitimacy and influence and achieves accountability.

### 3.0 Research Methodology

The study is exploratory in nature. Both primary and secondary data have been used in this research. Secondary data have been collected through document study techniques of relevant publications, journals, articles, books, research reports, newspapers, etc. Relevant literature was also amassed through internet browsing. Primary data have been collected through face to face interview by using closed and open ended questionnaire from 64 respondents of Rajshahi City Corporation, such as; Professionals (Key Informants), top executives of RDA, RCC, DoE of Rajshahi and District Administration of Rajshahi (DAR), and owners and neighbors of ponds that have already been filled up. Sampling distribution has been shown in the following table.

Table 1  
Sample Distribution

Respondents	Sampling Procedure	Technique of Data Collection	Sample Size
Professionals	Purposive Sampling	Key Informant Interview	10
Executives of RDA, RCC, DoE and DAR	Purposive Sampling	Face to face interview using Questionnaire	4
Owners of Ponds & Neighbors	Purposive Sampling	Face to face interview using Questionnaire	50
<b>Total Respondents</b>			<b>64</b>

<http://www.unescap.org/pdd/prs/Projectactivities/Ongoing/gg/governance .asp>, Retrieved on June 10, 2012.

<sup>11</sup> Saliem Fakier, et. al. *Environmental Governance*, p. 5. Available at: [soer.deat.gov.za/dm.../Environmental\\_Governance-Backg round\\_Paper\\_WU45](http://soer.deat.gov.za/dm.../Environmental_Governance-Backg round_Paper_WU45), accessed on June 3, 2017.

### Socio-demographic Characteristics of the Respondents

The table 2 indicates that the far majority (72%) of the respondents is male, where as a little proportion (28%) is female. Regarding education of the respondents, it is found that the highest number of respondents (26.0%) had higher secondary level of education, while 20.0%, 24.0%, 16.0% and 10.0% completed the primary, secondary, graduate and post graduate level of education, respectively. The lowest number of respondents (4.0%) is illiterate.

The age distribution of the sample indicates that 16.0% respondents belong to the young age group of 30-40 years and 60% respondents (24.0% and 36.0%) belong to the middle age group of 40- 60 years while 14.0% and 10.0% belong to the higher age group of 60-70 years and 70 and above, respectively. Table 2 also shows that most of the respondents (52.0%) are businessmen; while 30.0% are engaged either in government job or in private job with 18.0% have come from other categories.

Table 2  
Socio-demographic Characteristics of the Respondents

Sex of the Respondents	Frequency	Percentage (%)
Male	36	72.0%
Female	14	28.0%
<b>Educational Qualification of the Respondents</b>		
Illiterate	2	4.0%
Primary (I-V)	10	20.0%
Secondary (VI-X)	12	24.0%
Higher Secondary (X-XII)	13	26.0%
Graduate	8	16.0%
Post Graduate	5	10.0%
<b>Age of the Respondents</b>		
30-40 years	8	16.0%
40-50 years	12	24.0%
50-60 years	18	36.0%
60-70 years	7	14.0%
70> years	5	10.0%
<b>Occupation of the Respondents</b>		
Job/Service	15	30.0%
Business	26	52.0%
Others	9	18.0%

#### 4.0 Legal Framework to Govern Urban Ponds in Bangladesh

The Bangladesh Environment Policy 1992 prescribes for ensuring sound utilization of all water resources such as, rivers, canals, ponds, lakes, haors, baors etc. and all other water bodies and keeping water resources free from pollution.<sup>12</sup> Sustainable, long term, environmentally sound and scientific exploitation and management of the underground and surface water resources will be ensured. The Policy also prevents activities, which diminish the wetlands/natural habitats of fish and encourage rehabilitative measures in this area.

Bangladesh Environment Conservation Act, 1995 restricted filling or changing class of the water bodies [Section 6(e)]. The Act states that notwithstanding anything contained to the contrary in any other law for the time being in force, water bodies which are marked cannot be filled or changed the class in an another way. But the condition is that, for the sake of indispensable national interest, restrictions regarding wetland may be relaxed by taking clearance certificate from the Department.

Mega city, Divisional Town and District Town's municipal areas including country's all the municipal areas' playground, open space, park and natural water reservoir Conservation Act, 2000 states that except the condition of this Act, playfield, open space, park and natural water bodies which are marked cannot be changed its classification, or used in an another way, or it cannot be rented, leased or cannot be handover any other use (Section 5). Section 8 of this Act contains different types of penalty etc. for the violation of this Act. The person will be penalized as either not more than 5 years in jail or not more than 50 thousand taka or the both. If the class is changed at any land or its portion by breaking the provisions of section (5), then the authority will protest the owner of the land or the Law breaker through legal notice and command to destroy the illegal building structure and no compensation will be given notwithstanding anything contained to the contrary in any other law. Any building or infrastructure, established by breaking this law, will be captured by the concerned authority on the command of court.

The Local Government (City Corporation) Act, 2009 contains some clauses/sub-clauses regarding water body conservation. According to this Act, Corporation will be responsible for conservation and management of water bodies within the city in accordance with the provisions of Water Body Act (Sub-clause 8.16). The Corporation may, and if so required by the Government shall take such steps with regard to the excavation and re-excavation of tanks and the

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<sup>12</sup> *Haor* is the low-lying area, usually near a river, which goes under water for the whole rainy season. These are particularly common in the area of greater Sylhet and Kishorgonj and Netrokona Districts. *Haors* are among the greatest sources of fish resource. In winter, many migratory birds come to *haors* from abroad. The biggest *haor* "Tanguar Haor" has been declared a World Heritage Site. A *baor* is a small *haor*. A *haor* of less than 3 acres in area is considered as a *baor*.

reclamation of low-lying areas as it thinks fit, or, as the case may be, the Government directs (Clause 25).

### 5.0 Uses of Ponds

The main purpose for draining ponds is to create land. The second most common reason behind pond draining is household use of water for drinking, bathing and washing. Ponds, in many cases, were originally dug to meet the need for drinking water. In some cases, large community ponds were constructed on the initiative of benevolent landlords, as a work of public welfare. Until the late 1960s, when tube wells were widely dug as a policy of the East Pakistan Government, ponds remained the chief source of drinking water in the rural areas. In many areas, ponds still compete with tube wells as a source of drinking water, as many people use the pond to drink as a matter of habit.

The current uses of ponds are identified by different authors as: (a) household use including drinking, bathing and washing, (b) fisheries, (c) duck rearing, (d) irrigation, and (e) cattle watering. Household use outweighs all other uses, but recently, fisheries use has grown very quickly in importance.

### 6.0 Trends of Filling of Ponds in Rajshahi City

Rajshahi is one of the eleven metropolitan cities of Bangladesh. It has an area of 96.72 sq. km. There were 4,283 ponds in Rajshahi Municipality in 1961. The number of ponds in the city declined as, in 1981, there were 2,171 ponds. Total ponds were only 729 in 1991.<sup>13</sup> According to the most recent data, there are only 313 ponds in the city.<sup>14</sup> The rapid decline in the number of ponds will have a bad effect on the city dwellers in future. The continued loss of ponds is leading to depletion of biodiversity and is displacing the wetland-based socio-economic activities.<sup>15</sup>

### Year of Filling the Ponds

Table 3 shows that, before the 1980s, the rate of filling up of ponds was very low. Only 24 ponds out of 252 were filled up within 30 years (from 1950 to 1980). However, the rate of pond loss increased rapidly in the last quarter of the twentieth century. 63 ponds were filled up between 1980 and 2000. Within the first decade of the present century, 140 ponds (the highest amount and more than 55%) were destroyed. This trend is continuing year-by-year.

<sup>13</sup> The Dhaka Mirror, *Dirt Filling in Ponds Continues in Rajshahi*, February 03, 2011.

<sup>14</sup> Rajshahi Development Authority, 2011.

<sup>15</sup> M. Salar Khan, et al., ed., p. 2.

Table 3  
Year of Filling the Ponds

Year	Frequency	Percentage (%)
Up to 1950	1	0.40%
1951-1960	2	0.79%
1961-1970	4	1.59%
1971-1980	17	6.75%
1981-1990	27	10.71%
1991-2000	36	14.29%
2001-2010	140	55.55%
2011-2012 (only two years)	12	4.76%
Exact Year Not Known	13	5.16%
<b>Total: 252</b>		<b>100.00%</b>

Source: Developed by the researchers based on Mahbub Siddiqui, *op. cit.*, 2012.

### Who Filled the Ponds in the City?

Table 4 shows that, among the filled ponds, the greatest number (85.32%) were filled up privately by the owners of the ponds. Only 14.68% of lost ponds were filled up by state agencies (Rajshahi Development Authority, Rajshahi City Corporation, Rajshahi University, Bangladesh Railway, and other educational institutions, mainly for the purpose of infrastructural, communicational and educational development).

Table 4  
Who Have Filled the Ponds in the City?

Who fills in ponds			Frequency	Percentage (%)
Privately by the Owners of the Ponds			215	85.32%
By State Agencies	RDA	13	37	14.68%
	RCC	4		
	RU	2		
	Railway	2		
	Others	16		
<b>Total: 252</b>			<b>100%</b>	

Source: Developed by the researchers based on Mahbub Siddiqui, *op. cit.*, 2012.

### Purposes for Filling up Ponds

Most of the ponds (41.27%) were filled up for commercial purposes like, plot/flat business, building of commercial centers, etc. 28.58% of the ponds were filled up for residential purposes, 4.36% for educational purposes, 5.16% of the ponds were filled up for transport purposes and rest of the ponds were filled up for other purposes like construction of mosques, playgrounds, parks, government office buildings, etc. Table 5 shows the data.

Table 5  
Purposes of Filling the Ponds

Purposes			Frequency	Percentage (%)
Residential			72	28.58%
Commercial	Plot Business	81	114	41.27%
	Others	23		
Educational			11	4.36%
Transport			13	5.16%
Not in use yet			29	11.50%
Other Purposes	Mosque	7	23	9.13%
	Playground	4		
	Park	2		
	Govt. Off. Building	4		
	Others	6		
Total: 252				

Source: Developed by the researchers based on Mahbub Siddiqui, *op. cit.*, 2012.

### 7.0 Present State of Governance in the Conservation of Ponds of RCC

The responsibility to govern the ponds of Rajshahi City is not vested in any single agency. According to the legal framework, mainly four organizations govern ponds: Rajshahi Development Authority (RDA); Rajshahi City Corporation (RCC); Directorate of Environment (DoE) of Rajshahi District; and Rajshahi District Administration (DAR) are empowered to conserve the ponds of the city. The role of these organizations has been evaluated on the basis of field data collected through face-to-face interviews.

#### Committee for Conservation of Ponds

To govern the ponds of the city effectively, the assigned authorities should be always taking legal and practical initiatives. In this regard, these authorities should have a strong committee charged with conservation of ponds. In RDA, there is a six-member committee headed by the Chief Executive Officer, named 'Committee of Water Body Conservation and Monitoring'. Such committee system was introduced at the end of 2012 following an Order from the High Court of Bangladesh. Before that, there was no such committee or authority in RDA. However, the present committee is in charge of monitoring and taking necessary steps to conserve only the water bodies which are listed in the Master Plan prepared in the year of 2004.

On the other hand, in RCC, DoE of Rajshahi and District Administration of Rajshahi (DAR) there are no special committees to look after water bodies. In RCC, this function is performed by the 'Standing Committee for Improving Environment'. In DoE of Rajshahi, the Senior Chemist and in DAR, an Additional Deputy Commissioner is in charge of water body conservation of RCC. Recently, a central monitoring cell has been formed to monitor the status of conservation of ponds, with a combination of the representatives from

different agencies of Rajshahi city: DAR, RCC, RDA, DoE Rajshahi, Rajshahi Metropolitan Police, etc. The Deputy Commissioner of Rajshahi is acting as the President and the Chairman of RDA is acting as Secretary of this monitoring cell.

### **Responsibility of Committees in the Conservation of Ponds**

The main function of the Water Body Conservation and Monitoring Committee is to conserve the marked and listed water bodies of the city so that these cannot be filled in or changed in classification of land without prior permission from the proper authority. Committees of concerned organizations will take necessary steps to implement relevant provisions of the Environment Conservation Act 1995 (amended in 2010) and the Mega City, Divisional Town and District Town's Municipal areas including the Municipal Areas Playground, Open Space, Park and Natural Water Reservoir Conservation Act, 2000. Key informants have been interviewed to understand the actual performance of such committees.

Most of the key informants (ADC of DAR, Chief of Heritage Rajshahi, Executive of BELA) inform that these committees exist only on paper, not in practice. There is a complaint section in these organizations where complaints are received regarding the violation of the Acts. Yet, action is rarely taken on such complaints. The RCC Chief Executive says that they are not the legal authority to conserve ponds: the DoE and the RDA have this power and duty. So RCC does not take any active initiatives to protect ponds of the city, except the ponds which are owned by them. On the other hand, when RDA and DoE get any news of filling in any ponds in the city, they usually do not play any effective role, except serving a notice to stop the filling of ponds. The offender can then choose to stop or to continue.

### **Public Development Works through Filling up Ponds**

According to the legal framework, if any State agency wants to construct any building or infrastructure, after filling of water bodies, such organization has to take permission for changing the classification of land from the proper authority. However, different reports reveal that RDA, RCC and other State agencies did construct buildings and infrastructures after filling of several water bodies, ignoring mass protests by city dwellers.

The daily "New Age" has reported that the RCC authorities, ignoring mass protest, had filled two ponds with soil at Baliapukur. The Corporation said that the filling was essential to widen a road. However, the city dwellers claimed that the RCC had filled up the ponds for other purposes. The RCC also filled another pond with land at Tikkapara, in January of 2011, to build a residential building.<sup>16</sup>

<sup>16</sup> *The Daily New age*, 11 February 2011.



However, the Chief Executive Officer of RCC said that they had not constructed any road, building or market after filling up any pond.

RDA itself also constructed infrastructure like roads, markets, buildings, etc. by filling up ponds in the city. In this regard, RDA authorities said that there is no strict restriction to construct any infrastructure and market or building through filling up of ponds. In these cases, they only need to follow the Ministry's Land Acquisition and Requisition Manual. RDA added that they do not build any infrastructure or building by filling up ponds which are listed in the RDA Master Plan. They say that they do not have any obligation regarding the ponds which are mentioned only in Mutation Papers but not in the Master Plan.

### **Approval of Building Plan/Design**

RDA is the supreme authority to approve the plan and design of buildings in the city. Accordingly, RDA should prevent construction of any building or other infrastructure by filling up ponds or other water bodies. At the time of approving any plan, RDA must investigate the documents about the nature and classification of the land which will be built on. They can conduct the investigation from the Land Registration Certificate (*e.g.* whether the class of land is a water body, submerged land, cultivable or filled land, *etc.*). They can serve a notice or letter to the RCC and DAR to collect information or to report any objection to the title or construction.

Data have been collected from RCC, DAR and RDA concerning this matter. RCC and DAR inform that RDA does not seek any opinion or maintain coordination with them when they investigate the documents and pass on any plan for building or infrastructure. On the other hand, RDA says that they are not bound to do this. Rather, if RCC wants to do any development work, they must get a NOC from RDA. RDA further says that, since 2011, they have not approved any building or housing plan based on filling up ponds that are listed in the Master Plan.

### **Change of the Classification of Land**

In Rajshahi city, the RDA is the supreme authority to approve the application of changing the classification of land (for example, from "water bodies which are listed in the Master Plan"). On the other hand, DAR is another authority to give permission to change the classification of water bodies which are listed in the Mutation Paper.

According to the legal framework, if it is needed to change the classification of the land or any part thereof, the owner will apply to the authority (RDA/DAR) by writing the cause of the proposed change. The authority will examine and investigate the rationality of changing the class of land within the stipulated time. At the time of investigation, they will consider:

- a) if the class of applied water body is changed, how much will it hamper the goal of the Master Plan;
- b) the extent of adverse impact of changing the classification as proposed on the environment and on the inhabitants of the city.

However, most of the respondents stated that, in the RCC, the owners of the ponds or water bodies do not apply to the RDA or DAR when they fill up their ponds or water bodies violating the Water Body Conservation Act. RDA, RCC and DAR also do not take any mentionable action against the violators. Their action remains limited only in serving a notice, carried by their office peon, to the owner of land, giving a threat take the offending owner to court over such illegal activities. In this connection, RDA says that they have already filed four such cases in court. RCC says that RDA is fully responsible for this matter. RDA also says that they are only liable to preserve the ponds listed in the Master Plan.

### **Connection of Drains with Ponds**

In some cases, city drains, particularly ardent drains, are connected with water bodies. This practice is badly affecting the users of ponds and biodiversity. Neither RCC nor RDA takes any action in this regard.

During Key Informant Interviews, a key informant (Chief of the NGO Heritage Rajshahi) stated that the owners of ponds connect their drains with the pond as the first step in filling the pond. Later, they connect their septic tank with the water bodies. They think that, if drains and septic tanks are connected with the ponds, the relevant stakeholders will avoid using that particular pond. Eventually, such pond will be unused and will not give any benefit for the surrounding inhabitants. So, it will be easier for the owner to fill the pond without much protest from the dwellers.

RDA says that it is not their responsibility but RCC's to disconnect such illegal connection of drains and septic tanks with water bodies. On the other hand, RCC says that there are some connections of ardent drains with ponds but not with *pacca* (brick-built) drains. Initiatives have been taken to make such ardent drains *pacca*.

### **Re-excavation of Ponds**

According to the legal framework, if any water body is filled by anybody, RDA and DoE have the power to order the person who filled it to re-excavate that water body. RDA and DoE have been asked about this matter. They have replied that they generally file cases against the guilty person and inform it to the higher authority. RDA has filed such type of four such cases in the court, but none has reached in final decision.

RCC has submitted a project to the Government to re-excavate and develop 53 ponds of the city. After getting approval from the Government, steps will be taken to re-excavate these ponds. Under another project, RCC has re-excavated

and developed the ponds and lake of Shaheed A H M Kamruzzaman Park. Most of the key informants say that RDA or RCC does not take any initiatives to re-excavate ponds in the city.

### Action against Illegal Buildings and Infrastructure

According to the legal framework, any building or infrastructure, established by breaking the law, is liable to be seized by the local authority on application to a competent court. While research shows that many ponds have been filled up illegally no action has been taken yet by the RDA, RCC, or DoE to seize any of the illegally built construction. Actually, RDA and DoE did not take any legal steps against law breakers except serving legal notice in this regard.

### Punishment of the Offenders for Illegal Filling of Ponds

The legal framework prescribes that, if any person fills a water body illegally, he will be penalized by fines or imprisonment. The authority will give notice to the owner of the land or the law breaker through legal notice and command him to destroy the illegal building structure. No compensation will be given for such destruction, notwithstanding anything contained to the contrary in any other law. From the field survey, it appears that a wide range of ponds have been filled in Rajshahi City illegally. RDA, RCC, DAR or DoE have still not taken any action against these cases. They only send a legal notice to the violators. Thus, people are becoming encouraged to fill their water bodies for residential or commercial or plot business purposes.

Table 6  
Punitive Measures against the Illegal Filling of Ponds

Variables	Frequency (%)	
	What kinds of punitive measures against the illegal filling of ponds	Legal Notice
Jail		00 (00%)
No Action		24 (48%)
Fine		4 (8%)
Not Known		2 (4%)

Source: Field Survey, 2014..

During interviews, RDA and RCC have replied that the main causes behind their inability to use their enforcement powers are: lack of manpower, lack of logistic support and political influence or pressure. Most executives of the governing authorities and most of the respondents agreed that the existing laws regulating urban water bodies are weak. Authorities have also expressed that the punitive measures that are provided by the laws are not sufficient and appropriate. If any person violates the Act, he is penalized as either not more than 5 years jail or not more than 50 thousand taka or the both. A key informant (Chief of Civil Society Organization) suggests that illegal filling of ponds or

water bodies should be treated as a cognizable offence, meaning that the violator may be arrested immediately without warrant.

Most of the respondents (48%) state that no punitive measures are taken by the governing authorities to protect ponds. 40% of respondents reply that RDA or RCC only serves a legal notice against the lawbreaker. A small proportion (only 8%) reported that they had to pay fines and the rest of the respondents (4%) did not answer. Table 6 shows the data.

### Steps towards Public Consciousness

Data have been collected from the RCC, RDA and DoE about what kinds of steps are taken by these bodies to increase public consciousness against illegal filling of water bodies in Rajshahi city. Almost all the bodies state that they take some steps to create consciousness among the city dwellers. RDA does this through advertisement in the local newspaper, distribution of leaflet, miking, cable television advertisement, etc. RCC creates public awareness to conserve ponds for the ecological balance through the Ward Councilors, who arrange different Ward meetings for this purpose. DoE arranges different meetings and seminars in this regard and advertises through local newspapers. Besides, they give special emphasis on this issue of ponds conservation in the meetings of District Coordination Committee and Environment Day Meeting (5 June each year).

However, it seems from the interviews that these activities are not effective in creating public consciousness about the need to protect water bodies. Respondents think that the government bodies charged with conservation of water bodies in the city have yet to take any mentionable initiative against the filling operations or to create public consciousness regarding this mater.

Table 7  
Nature of Lost Ponds of RCC

Variables	Frequency (%)	
	Yes	No
Whether the lost ponds contained water for the whole year	42 (84%)	8 (16%)
Whether the lost ponds were used for fish cultivation	47 (94%)	3 (6%)
Whether the local inhabitants used the lost ponds for their household works, washing and bathing	46 (92%)	4 (8%)

Source: Field Survey, 2014.

### Nature of Lost Ponds

The Environment Policy 1992 and the Protection and Conservation of Fish Act 1950 mainly emphasize on the conservation of fisheries and prohibit any attempt to destroy fish, etc. The Local Government (City Corporation) Act 2009 requires that the City Corporation set apart suitable places for public bathing and for washing clothes (in the place of pond, which is the traditional site for these activities).

The field survey indicates (Table 7) that the lost ponds used to serve as fisheries and places of bathing and household washing. Most of the respondents (84%) said that the lost ponds contained water for the whole year and only 16% ponds became dry during dry season. 94% of the total ponds were used for fish cultivation. The large majority (92%) of the respondents said that the lost pond's water was used by the local inhabitants for bathing, household work and other purposes. Only 8% of the respondents had a different reply.

### Permission During the Filling of Ponds

The water body conservation frameworks strictly prohibit the change of the classification of natural water bodies without the permission of local authorities. 52% of the respondent owners of lost ponds reply that they filled up their ponds for their own purposes. 48% say that the ponds were filled up by buyers. Respondents have also been asked, whether they know or not, if they wish to fill up any pond, that they have to take permission from the RDA. Most of the respondents (78%) say that they know this and only 22% reply in the negative. However, at the time of filling of their ponds, 76% of respondents did not take any permission from the local authority. Only a few (10%) said that they had such permission and 14% did not answer (Table 8).

Table 8  
Taking of Permission to Fill up Ponds

Variables		Frequency (%)
Have you filled your pond by yourself?	Myself	26 (52%)
	Powerful person	24 (48%)
Do you know, if you want to fill any pond, you should take permission from proper authority?	Know	39 (78.0%)
	Do not know	11 (22.0%)
Did you take permission from the proper authority during filling your pond?	Yes	5 (10.0%)
	No	38 (76.0%)
	No answer	7 (14.0%)

Source: Field Survey, 2014.

### Dirt Filling in the Ponds of RCC

The legal frameworks regulating water bodies, especially the Playground, Open Space, Park and Natural Water Reservoir Conservation Act 2000, prohibit filling of water bodies with dirt or solid waste. In this regard, it is the duty of the Corporation to conserve and manage water bodies within the city in accordance with the provisions of this Act.

Yet dirt filling in ponds is a common practice in Rajshahi City. It is a continuous activity in the city, violating the laws. The City Corporation authorities and RDA fail to implement the laws for the sake of the city dwellers

as well as the environment.<sup>17</sup> Even the RCC, ignoring mass protest, filled two ponds with dirt at Baliapukur, as explained before. Most of the key informants state that the owners fill their ponds with dirt without taking any permission from concerned authorities. RDA or RCC is yet to take any initiative against these kinds of filling operations.

Most of the respondents in the field survey (82%) have replied that dirt-filling is continuing in RCC, while 18% of respondents do not know about this. In an another question, 6% respondents think that dirt-fillers take permission from the authority during dirt-filling of ponds, but 64% of the respondents report that no permission was taken by the dirt-filler when they filled their ponds. 30% of respondents do not know about this. 60% of the respondents state that RDA and RCC do not take any action to prevent dirt-filling of water bodies.

Table 9  
**Dirt-filling in the Ponds of RCC**

Variables	Frequency (%)	
Do you know that dirt-filling of ponds is continuing in RCC?	Know	41 (82.0%)
	Do not know	9 (18.0%)
Do you know whether dirt-fillers take permission from the authority during dirt-filling of the ponds?	Yes	3 (6.0%)
	No	32 (64.0%)
	Not known	15 (30.0%)
Does RDA/RCC take any step to prevent dirt-filling of ponds?	Yes	6 (12.0%)
	No	30 (60.0%)
	Not known	14 (28.0%)

Source: Field Survey, 2014.

The New Age, a leading newspaper, confirmed the results found in this survey. They commented that dirt-filling of ponds is going on, violating the legal framework. They said that the City Corporation and RDA fail to implement the law.<sup>18</sup>

### 8.0 Problems of Governance in the Conservation of Ponds

The data in this study identified following problems that resist the effective governance for conservation of ponds in the city.

#### Lack of Coordination

Coordination means participation among concerned organizations for the achievements of common goals. Yet there is a very little coordination and cooperation among the service- providing authorities like RCC, RDA and DoE for the governance of water body conservation of the city of Rajshahi. The

<sup>17</sup> *The Dhaka Mirror*. February 03, 2011.

<sup>18</sup> *The Daily New Age*, 3 February, 2011.

existing legislation also does not clearly spell out the particular responsibility of governing organizations like RDA, RCC, DoE and DAR for conservation of ponds in the city. For this reason, blaming each other for weak performances is a common matter. As a result, the ponds are rapidly disappearing.

### **Problems of Capacity Building**

Almost all the agencies, especially RCC, RDA, DoE and DAR, are incapable of undertaking any successful steps against the illegal filling of ponds in the city, due to the lack of adequate trained manpower and technical capacity. In RDA, the Town Planner is in charge of ponds conservation. In DoE, a Chemist and in DAR, the ADC (revenue) is mainly responsible for these activities. But none of these has relevant training on the conservation of ponds.

### **Shortage of Manpower and Transport**

Sufficient manpower is a must for ensuring effectiveness and efficiency in service delivery. In interviews, the executives of almost all the governing organizations have agreed that they do not have sufficient manpower, transport and logistic support and that hampered the effective governance of ponds conservation in the city.

In RDA, the town planner is only person who looks after this matter, in addition to the prescribed duty of approving housing plans in the city. In DoE, there is only 1 inspector and 1 Senior Chemist. They have to do a high volume of work regarding inspection of the environmental conservation situation in the city, including approving environmental clearance certificates. So, due to huge shortage of manpower and transport, RDA and DoE cannot regularly inspect the state of conservation of water bodies in the city. They cannot check whether the concerned rules and regulations are being properly implemented in the governance of water body conservation.

### **Absence of Strong Civil Society**

Lack of civic participation in policy decisions and in the implementation process of RCC, DoE, and RDA is a major problem of governance of environment. In the city, there is an absence of strong civil society organizations that can lead any movement against the illegal filling of urban ponds and awareness-building campaigns for environmental protection.

There are some environmental civil society organizations in the city, which are working on the environment, like Heritage Rajshahi, NGO Forum, BELA, Rajshahi Paribesh Andolon (RAPA). Occasionally, they go on demonstrations and start movements to make public consciousness. However, they fail to influence the authorities as they lack widespread public support.

In spite of this general observation, the contribution of Civil Society Organizations cannot be denied in some cases. In December 2010, the Heritage

Rajshahi filed a Writ Petition in the High Court. That led the court to issue a rule prohibiting the filling up of ponds and other water bodies in the RDA area without the approval of the DoE. It has protected the ponds in the RDA Master Plan since 2011 and caused the formation of the Water Bodies Conservation and Monitoring Committee.

### **Lack of Accountability**

Accountability means the answerability of the decision-makers of concerned organizations to the citizens. The field survey shows that there is no active body or committee which effectively or regularly supervises, monitors and inspects the state of governance of the ponds in the city. The data shows that the role of governing authorities, like DoE, RDA, RCC, is limited only to serve legal notices against the illegal filling operations.

### **Problems in Rule Application and Adjudication**

The Rule of law *vis-à-vis* environmental justice is essential for effective environmental governance. Yet lack of efficient application of existing rules and regulations and improper adjudication indicates the governance failure to conserve ponds in the city. Lots of building has taken place on the illegally filled-up water bodies in the city, which is prohibited by law. RDA, in this regard, approves the plan and design of the proposed building. It should check the classification of the land while passing on the design of building in this regard. It is possible in theory but not done in practice.

### **Lack of Active Role of Law Enforcing Agency**

Law enforcing agencies like the Rajshahi Metropolitan Police are empowered to take legal action against illegal filling of ponds in accordance with the Rajshahi Metropolitan Police Ordinance. However, they do not do so. In this case, proper coordination between the law enforcing agencies and other governing organizations should be strengthened. Action should be taken by the Police Commissioner to force owners to re-excavate the filled ponds by putting them on remand and threat of full prosecution with fines and imprisonment.

### **Lack of Strategic Vision**

Lack of strategic vision about the environmentally-friendly development of Rajshahi City is another problem of urban government bodies and parastatal service providers in environmental governance. There is no local or national consensus about the infrastructural development of the city. Rajshahi Metropolitan Development Plan (2004-2024) was prepared by RDA without consultation with civil society and concerned service providers. Political leaders of urban-local government have no vision and commitment about the long-term development needs and opportunities of the city dwellers.



### **Pressure from the Influential Person**

The governing organizations cannot perform their duty properly to conserve ponds in the city because of being pressure from political persons, high officials, and influential persons of the city. The Daily Star (February 20, 2012) reports that “a pond in Rajshahi is being filled up by a Member of Parliament of the ruling party for the construction of a multi-storied building, despite a court ruling and RDA’s warning twice. The MP, however, said that RDA had no right to serve notices as the land was not earmarked as a pond in land documents.” Besides, the officials of RDA and DoE cannot perform their duties properly because they are sometimes threatened by the miscreants and criminals. Sometimes it is impossible even to take pictures of illegal filling of ponds.

### **9.0 Conclusion**

Rajshahi has a piped water system but it does not extend everywhere and pressure is often low. So, people still use ponds for washing themselves, their clothes and their animals: sometimes even for drinking. Ponds also are important reservoirs for rainwater in the dry season and contribute to the weather and ecosystems of the city. They help make the storm water and waste water sewerage system workable: without them, flood will again become a common problem every monsoon season. Once there were a huge number of ponds in the city but these ponds are disappearing every day. Owners fill them full of drain and septic tank water so people cannot use them and then sell them to land developers for illegal earth-filling to accommodate housing and other commercial building. Due to the high price of land and high demand, the developers turn toward low-cost wetlands like ponds. Multiple authorities are responsible to govern the ponds of the city. There is a little coordination among them, their respective jurisdictions are unclear and they often shift responsibility to one another. Their normal response to illegal destruction of a pond is to issue a notice to stop and then take no further action. They are subject to political, and sometimes criminal, interference in doing more. Most landowners know that they cannot destroy a pond without the permission but most do not even bother to apply. According to the Water Body Reservoir Conservation Act 2000, the authority only can fine not more than 50,000 Taka or ask a court for 5 years jail. On the other hand, according to RDA Ordinance, the RDA can fine only 500 Taka if someone fills a pond. The Police have power to arrest and prosecute illegal pond fillers but never do. There is 'Committee of Water Body Conservation and Monitoring', in the city headed by the Deputy Commissioner. But this committee exists only on paper, not in practice. There is a complaint section in these organizations where complaints of filling of ponds are received. Yet effective action is rarely taken on such complaints.

### 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)*.
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- 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 (মুজিবুদ্ধ, ভাষা, সাহিত্য)।