

THE JOURNAL OF THE INSTITUTE OF BANGLADESH STUDIES

Volume IX

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M.S. Qureshi	Centenary of Muhammad Shahidullah
M. Rahman	The Matrkas
A.M. Serajuddin	Condition of the Indigo Ryots
M. Badaruddin	Ijbar in Muslim Marriage
M. Rafiqul Islam	Independence of Bangladesh
M. Ershadul Bari	Martial Law in Bangladesh
M. Kalim	Some Aspects of Sharafnama
Ali Nawaz	On Garo Folklore
Tariq Salful Islam	Rural Power Structure
M.K.U. Molla	Human Rights: Principle and Practice
K.M.A. Aziz	Sex Socialization and Philosophies of Life
Showkat H. Khan	In-Migrants and Locals
Mafizul Islam Patwary	Constitution and Fundamental Rights
M. Saiful Islam	Handloom Weaving Industry
Md. Abdul Wahhab	Rural Political Elite in Bangladesh

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MAHMUD SHAH QURESHI
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Editor's Note

Learned readers of our journal will find some changes from the current issue ; side by side with the best available research articles from our young and senior scholars, we are now publishing short papers on problems and issues (notes and queries), book reviews and abstracts of theses by M. Phil. and Ph. D. Fellows of the Institute of Bangladesh Studies. This had been planned since earlier two numbers of the J. I. B. S. but could not be materialized due to certain unavoidable circumstances.

The year 1985 should be considered as Shahidullah year for the scholars of Bangladesh, because his 100th birth anniversary had been widely celebrated here. In commemoration of the occasion, we published for the first time, in our 1985 issue, a translation of the preface written in French by his supervisor, Professor Jules Block on his doctoral dissertation. But the special article on him could not be accommodated in it and has to be placed as the opening article of the present number of the J. I. B. S. In this modest way, we pay homage to Professor Muhammad Shahidullah, the pioneer of Bangladesh Studies.

We do hope that our journal would continue to be liked by our friends at home and abroad.

M.S.Q.

Selected numbers of our journal will not come out from
the current issue; also by side with the best available
articles from our young and senior members, we are
publishing reports on problems and their solutions and
book reviews and abstracts of papers by M. F. H. and
follows of the Institute of English Studies. This has been
planned since certain two numbers of the J. E. S. will
not be published due to certain unavoidable circumstances.

The year 1954 should be considered a significant year for the
history of English Studies in the 1950s. In 1954 we had
been able to handle here in conjunction of the Institute
we published for the first time in our history a number
of the journal with a special issue by the special number
this year in the historical section. But the special number
on this could not be accomplished in 1954 due to be placed
in the opening article of the present number of the J. E. S.
in the subject of the organization of English Studies
in the Institute of English Studies.

We do hope that our journal would continue to be of an
interest to those who study.

CONTENTS

Editor's Note	iii
<i>Anniversary</i>	
Commemoration of the Centenary of Professor Muhammad Shahidullah (July 10, 1885-July 13, 1969)	Mahmud Shah Qureshi 1
<i>Articles</i>	
The Matrkas	M. Rahman 7
A Comparative Study of the Condition of the Indigo Ryots, Salt and Salt- petre Workers and Opium Growers of Bengal under the Colonial Rule	Alamgir M. Serajuddin 39
Ijbar in Muslim Marriage and the Bangladesh Practice	M. Badaruddin 65
An Enquiry into the Constitutionality of the Unilateral Declaration of Independence of Bangladesh	M. Rafiqul Islam 87
The Martial Law in Bangladesh, 1975-1979: A Study on Martial Law Offences	M. Ershadul Bari 105
Some Aspects of Sharafnama	M. Kalim 115
<i>Notes & Querries</i>	
On Garo Folklore	Ali Nawaz 131
<i>Book Review</i>	
Rural Power Structure	Tariq Saiful Islam 141
Human Rights: Principle and Practice	M.K.U. Molla 143
<i>Abstracts of Theses</i>	
Sex Socialization and Philosophies of Life in Relation to Fertility Behaviour—An Anthropological Approach	K.M.A. Aziz 147

In-Migrants and Locals: A Rural Case Study in Bangladesh	Showkat H. Khan	149
Position of the Constitution and Fundamental Rights During the Martial Law Regime, 1958-62: A Case Study	Mafizul Islam Patwary	151
An Economic Analysis of Handloom Weaving Industry : A Case Study of Two Areas in Pabna District	M. Saiful Islam	153
The Rural Political Elite in Bangladesh: A Study of Leadership Patterns in Six Union Parishads of Rangpur District	Md. Abdul Wahhab	154

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Anniversary

Commemoration of the Centenary of Professor Muhammad Shahidullah (July 10, 1885—July 13, 1969)

Mahmud Shah Qureshi

"... a really great guru Dr. Muhammad Shahidullah... is like
an elder brother to me."

—Sunity Kumar Chatterjee¹

In July 1985, one hundred years had elapsed since the birth of Professor Muhammad Shahidullah, one of the leading Bengali literary scholars of our century. On that occasion, his life and works were commemorated in Bangladesh, as well as in India, in various ways. In Dhaka, seminars were convened to survey the vast field of his research and to evaluate his contribution to the development of a field, which now we can unhesitatingly call as *Bangladesh studies*. And indeed, this retrospection, even after the relatively short span of time that separates us from Shahidullah's fruitful teaching and scholarly activities, revealed his fundamental share in moulding the academic life and orientation of research in Bangladesh and elsewhere on Bengali language, literature or on aspects of South Asian cultural history. Moreover, his tireless efforts and versatility influenced in no small measure the intellectual life of Bangladesh generally and his wise democratic-minded personality left a lasting imprint on the young post-British generation of Bengali intellectuals on both sides of the border.

Philologist, phonetician and cultural historian, Professor Muhammad Shahidullah along with Professor Sunity Kumar Chatterjee emerged in the early thirties as leaders of those who helped to lay the foundations of South Asian studies with particular reference to many unresolved questions regarding the formation of Bangla—its linguistic features and literary development through the ages. It is interesting to note here that in this, both of them had a French guru, Professor Jules Bloch. While Chatterjee wrote his magistral dissertation, *The Origin and the*

¹cf. *Festschrift for Syed Ali Ahsan*, edited by Mohammad Moniruzzaman & Mahmud Shah Qureshi, National Book Centre, Dhaka, 1985; p. 383

Development of Bengali Language (Calcutta, 1926) following Bloch methodology, Shahidullah was his student at the Sorbonne.

Earlier, Shahidullah had an uneven and uneventful upbringing in a West Bengal village. He had been, however, a very diligent student with great aptitude for learning languages. Very unusual for a Muslim student and for a member of an orthodox family, he took up Sanskrit in lieu of Arabic for his school course. But soon he mastered over Muslim tongues like Arabic, Persian and Urdu along with few other modern Indian languages. His student career was not, however, very brilliant—at least as promising as it might have appeared; for, he had problems of health, finance and guidance. In 1910, he graduated with the highest score in the paper on *Veda*. He also married this year.

Suddenly Shahidullah became well-known in the country as polemic started regarding his admission in the University of Calcutta. All this began because an orthodox Brahmin pundit would not teach Sanskrit to a non-Brahmin. The incident brought into surface some communal overtone, too. Even the Brahmins were divided on the issue. The Vice-Chancellor Sir Ashutosh Mukherjee solved the problem by creating a department of Comparative Philology and by convincing Shahidullah to get admitted there. After his master's degree Shahidullah was nominated for a post-graduate scholarship to study Sanskrit in Germany. But he did not obtain permission because of the supposed ill-health determined by a British surgeon. He then studied law, wrote articles on various subjects as part of literary and social activities continued all through his life. For sometime, he taught in a Chittagong high school. This he did under the influence of a great Muslim intellectual, Maulana Maniruzzaman Islamabadi who later on sent him on religious missions to upper India. During his whole life Shahidullah thus got a part-time vocation in preaching Islam to lower cast Hindus and in upholding Islamic ideals to his western-educated or illiterate coreligionists. These religious activities did not, however, pose problem for him in appreciating Hindu-Buddhist tantric and devotional literatures. For sometime, he practised law and remained involved in local politics. Finally, in 1919, he got his real vocation while thanks to Sir Ashutosh, he was appointed a research assistant under the great cultural historian, D.C. Sen. But soon he left for Dhaka to be a lecturer in the newly founded University. Now, he was to work under Hara Prasad Shastri, the celebrated pundit who discovered the *Caryagiti* (hereafter *CG*) supposed to be the oldest Bengali texts. Coming to Dhaka was not an ordinary matter in the life of the scholar or of the nation. Apparently he had no strong foothold in Calcutta—for his job there was of temporary nature and he was going to get Rs. 50·00 more in Dhaka where the job

was also a substantive appointment. In fact, he was happy to take up the challenge to work for building up the new university and shaping the minds of East Bengali youth who were mostly of Muslim and rustic origin. Fortunately, Shahidullah never suffered from the complex of superiority which his fellow West Bengalis would feel since the days of Shri Chaitanya. As a realist and liberal educationist, he knew that there were cultural weak pockets in all over Bengal—East or West. From Dhaka he tried twice to go back to Calcutta but failed. In the thirties, he was a candidate for the chair vacated by D.C. Sen but the job went to a much inferior scholar. Even in 1948, after the creation of Muslim “homeland”, Pakistan, Shahidullah applied for the post of librarian in Asiatic Society of Calcutta. The result was not known but he remained in East Bengal admired and venerated in the position of an ancient sage.

From Dhaka, Shahidullah went to Europe on study leave (1926 Sept.—1928 June) and got admitted into the Sorbonne. Indology and Experimental Phonetics were the main fields he studied there and obtained a *doctorat d' Université* with highest distinction and a *diplome* in these two disciplines respectively. He also attended a summer course in Freiburg University in Germany. Shahidullah's dissertation *Text pour l'étude du Bouddhisme tardif. Les chants mystiques de Kanha et de Saraha* was published by a renowned orientalist publisher and book seller Adrien-Maisonneuve (Paris, 1928). It was quite well received in the scholarly circles of the world; his supervisor Jules Bloch provided a difficult but meaningful preface.² In a letter to the writer of this note Shahidullah mentioned Przuluski and Jean Bacot as his two other teachers. Professor Louis Renou, the director of thesis of the present writer, was his contemporary and used to remember him fondly until his death (1966).

Shahidullah's dissertation was not read by the scholars of his country. The language barrier stood on the way no doubt, but the complexity of the scientific discussion integrally started on the *Carya* and the *Doha* by Shahidullah might have exasperated them, too. However, it appeared gradually that his discoveries on, and reconstruction of these intricate texts are of immense value. Per Kvaerne, the Norwegian scholar who is the latest authority on this subject, estimated Shahidullah's work as “the most significant study of the material provided by Sastri... In utilizing the Tibetan translation found in the Tanjur, of the original texts in order to reconstruct a translatable version, Shahidullah introduced an important methodological principle, which was later applied to *CG* by other scholars”.³

²See, J.I.B.S. Vol. VIII; it may be mentioned here that Professor J.T.O. Connell of Toronto University helped us in translating the text.

³*Anthology of Buddhist Tantric Songs; A Study of Caryagiti*; Oslo: Universitetsforlaget, 1977, p. 10.

Three different and partial versions of this work in English and Bengali, had been the *Buddhist Mystic Songs* he published in 1940 in the *Dacca University Studies*, Vol. IV, No. 11, reprinted in 1960 by the Bengali Literary Society, University of Karachi and revised and enlarged edition published in 1966 by the Bangla Academy, Dhaka. During his long career, Shahidullah wrote many other articles on aspects of *CG* and left a lasting imprint as an outstanding scholar.

Shahidullah's next achievement covers a wide area of studies concerning the growth and advancement of Bengali language and literature. His *Bangla Bhasar Itibritta* (Dhaka, Bangla Academy, 1968) was originally a critique of Sunity Kumar Chatterjee and later additions from class-room lecture-notes. Unfortunately, he did not have capable students like Ferdinand de Saussure who would have compiled and edited these for modern readers. Many of his theories regarding the origin, Munda affinities, foreign influence and other technical questions on Bangla remained unattended; they are still valid for further scientific inquiry. He excelled in the study of dialectology, particularly in editing *Purva Pakistaner Anchalik Bhasar Abhidhan* (Dhaka : Bangla Academy, 3 vols., 1965-1968). He was an unparalleled grammarian who dreamt of a grammar for Bengali as a language independent of Sanskrit.

Shahidullah was a devoted scholar in various branches of humanistic and social sciences; he contributed many articles on folklore, cultural history and Islamology. He was connected with many journals either as principal contributor or even as founder-director.

Admirers of Shahidullah upheld his polyglottism and his support in developing the case of Bengali as one of the state languages of Pakistan and sometimes even at the cost of his scientific career. It is indeed surprising to find that in scholarly quarters there are people who would like to make us believe that the grand man of letters left no *magnum opus* and that he did not do much "fundamental research". But this reveals nothing else but the ignorance of these writers. Nonetheless, one regrets that Shahidullah spent so much time in writing some forty text books for school children, so many years spent in student administration or socio-religious activities ! But the quality and the quantity of his scientific output were astonishing. What was lacking was the proper follow-up studies. Besides, most of his important writings are not even available to the present generation of scholars.

During his long career, Shahidullah taught Bengali in the University of Dhaka. For sometime, he also taught Law and French

teacher. He was President of the Alliance Francaise de Dhaka and was decorated by the governments of France and Pakistan.

In Rajshahi, he became the first Professor of Bengali (1955-1959) and Dean of the Faculty of Arts. He was instrumental in initiating higher academic researches in the region.

Although it had been generally agreed that Shahidullah left behind a remarkable and challenging heritage in all the disciplines he took interest, and particularly in his main field of research which we have now categorically named as Bangladesh studies, we feel that this centenary commemoration in 1985 of his life's endeavours and work could not properly underline their positive values of the past. We, however, hope that it has been disclosed to many how substantially meaningful they could be for the future. One day Shahidullah would surely be remembered in a better way and people would pay homage to him not only in Bangladesh and India, but also in other countries, such as, Pakistan, Nepal, China, Sri Lanka, France and Germany under the auspices of, say, Unesco World Cultural Anniversary or under a SAARC cultural programme.*

3. An
persists forage.

...ing this article, I was inspired by the reading of two articles by Dr. Krasa on Czech Indologists in *Archiv Orientalni* (Prague 4/50, 1982 ; 4/52, and have borrowed much to shape my ideas.

together. He was Professor of the Chinese Language at the Chinese Academy of Sciences and was decorated by the Government of France and Taiwan.

In Taiwan, he became the first Professor of Chinese (1955-1959) and Dean of the Faculty of Arts. He was instrumental in initiating higher academic research in the region.

Although it had been generally agreed that Shen Shoulin had made a remarkable and enlightening heritage in all the disciplines he took in text and particularly in the history of the Chinese which we have now categorically named as Sinitological studies, we feel that this category is somewhat narrow in its scope and work could not properly encompass the positive values of the past. We, however, hope that it has been directed to many how Sinitologically meaningful they could be for the future. One day Sinitological would surely be recognized as a new way and people would pay homage to him not only in Sinitological and Asia, but also in other countries such as, Pakistan, Nepal, China, Sri Lanka, France and Germany under the auspices of, say, United World Cultural University or under a SAARC cultural programme.

* In writing this article, I was inspired by the reading of two articles by Dr. Wilhelmsen, *Classical Chinese Indicators in the Early Colonial Period* (1981, p. 43) and *Classical Chinese Indicators in the Early Colonial Period* (1981, p. 43) and have borrowed much to shape my text.

The Matrkas

M. Rahman

Like the *Deae Matres*, whose worship appears to have been quite popular in Gaul, Britain, Lower Germany, and to a limited extent, even in Rome between the 1st and the middle of the 3rd century A.D.,¹ the Matrkas may be reckoned as mother goddesses in a restricted sense of the term. In the *Mahabharata*, the *Puranas*, early and medieval Indian literature, they appear in the role of minor war goddesses to serve as auxiliaries to a number of important gods and goddesses in the latter's struggles against the *asuras* (demons).² Seven Matrkas thus attended the investiture of Skanda (Karttikeya) as the generalissimo of the gods.³ At the end of the ceremony, a large band of the mothers (*matrs*), of whom 194 names are given by Vyasa, came to join Skanda on the eve of his fight with Tarakasura.⁴ In addition these 194 mothers, we are told, many others of their kind, numbered by thousands, and of diverse forms, arrived to swell the ranks of the celestial army.⁵ The *Mahabharata* describes them in some detail.⁶ These Matrkas appear to be terrible as warriors, having their abodes on trees, in open spaces and at the crossroads. They are also said to reside in the caves, crematoriums, mountain tops and springs. Adorned with various ornaments, the Matrkas are not only different from one another in their dress and forms, but in their speech as well.

¹F.N. Robinson, 'Deae Matres', *Encyclopaedia of Religion and Ethics (ERE)*, edited by J. Hastings, vol. IV, Edinburgh, 1911, p. 406 ff ; *Larousse Encyclopaedia of Mythology (LEM)*, London, 1960, p. 248.

²*Mahabharata*, critically edited by V.S. Sukthankar and others, Poona, 1933-1972, IX. 45; *Markandeya Purana (MP)*, text edited by Rev. K.M. Banerjee, Calcutta, 1862, LXXXVIII; *Varaha Purana (VP)*, edited and translated by P. Tarkaratna, Calcutta, 1906, XXXVII; *Matsya Purana*, edited and translated by P. Tarkaratna, Calcutta, 1909, CCLXI; *Kurma Purana*, edited and translated by P. Tarkaratna, Calcutta, 1904, XXVII; *Skanda Purana (SP)*, edited and translated by P. Tarkaratna, Calcutta, 1911, LXXXII.

³*Mahabharata*, IX. 43.29.

⁴*Ibid*, IX.45.1 ff ; *Vamana Purana*, edited and translated by P. Tarkaratna, Calcutta, 1908, LVIII. 28.

⁵*Mahabharata*, IX.45.29.

⁶*Ibid*, IX. 45.30 ff.

According to the *Varaha Purana*, Siva is assisted in his fight with the demon Andhaka by seven gods through their respective *saktis* (personified female energies or counterparts, consorts), who are named Brahmani (of Brahma), Mahesvari (of Mahesvara), Kaumari (of Kumara), Vaisnavi (of Visnu), Indrani (of Indra), Varahi (of Varahavatara of Visnu) and Camunda or Yami (of Yama).⁷ Collectively these seven *saktis* of the seven gods are called *Sapta-matrka* or the seven mothers.⁸ As stated in the *Kurma Purana*,⁹ the Matrkas go to the *patala* (the neither world) after destruction of Andhaka, but having no means of subsistence turn to cannibalism of which they were cured by Visnu in his Nrsimha (man-lion) incarnation. In another legend recorded in the *Suprabhedagama*, the *Sapta-matrka* are created by Brahma for the destruction of a demon named Nirrta.¹⁰ Similarly, in the *Devi-Mahatmya* section of *Markandeya Purana*,¹¹ we find these *Sapta-matrka* coming out of the bodies of Brahma, Siva, (Mahesvara), Kartikeya (Kumara), Visnu, Varaha, Indra and Nrsimha in the form of their respective *saktis* to assist Candi or Durga at a very critical moment of her combat with the demons Sumbha and Nisumbha. The *Abdhuta Ramayana*, a work ascribed to Valmiki, mentions the creation of thousands of Matrkas, all of terrible appearance and warlike character from her own body by Sita, who assumes the form of Kali in order to destroy the *raksasa* king Ravana.¹²

The Matrkas and their worship may claim, similar to the cult of the Indian Mother Goddess, a great antiquity. It must have come into vogue in the upper strata of the Hindu society following the rise and spread of saktism in India. The *Vayu Purana* which was completed in the Gupta period, if not before,¹³ describes the Matrkas as the wives of *rsis*. They act as self-appointed nurses to the motherless Skanda immediately after his birth.¹⁴ It was through Skanda, that 'the Sapta-matrikas got them-

⁷*VP*, XXVII. 31-32. According to this *Purana*, Yogesvari, who is born out of the mouth of Siva, is also to be reckoned as a Matrka.

⁸J.N. Banerjia, *The Development of Hindu Iconography (DHI)*, 2nd edition, Calcutta, 1956, p. 505.

⁹*Kurma Purana*, XXVII.226-232; *SP (Avantikhande Revakhanda)*, XV; *Matsya Purana*, CLXXIX. 44-86.

¹⁰*The Elements of Hindu Iconography (EHI)*, Vol. I (II), Madras, 1914, pp. 382-83.

¹¹*MP*. LXXXVIII. 11 ff.

¹²*Abdhuta Ramayana*, ascribed to Valmiki, edited and translated by Chandranath Vasu, Calcutta, 1902, p. 150 ff.

¹³V.A. Smith, *Early History of India*, 4th edition, Oxford, 1957, p. 11 ff; P.V. Kane, *History of Dharmasastra (HD)*, Vol. V, Bombay, 1958-60, p. 856.

¹⁴D.R. Patil, 'Sapta Matrkas or Seven Mothers from Besnagar', *Proceedings of the Indian History Congress (PIHC)*, 12th Session, Allahabad, 1950, p. 111.

selves admitted into Saivism . . . and later were transformed from their original character of the wives of saptarsis of astronomy to the new saktis or bibhutis or energies of the seven great gods—as they are represented in the later sculptures from Elephanta and Ellora'.¹⁵ The Matrkas do not figure prominently in the *Grhyasutras*, but as Kane observes, their worship was prevalent certainly in the early centuries of the Christian era throughout India.¹⁶ The custom of Matrka worship in ancient India appears to have been recorded in their writings by the dramatists Bhasa and Sudraka during whose times (C. 1st century B.C.—C. 1st century A.D.) it was both widespread and generally understood.¹⁷ Bhasa in his play *Carudatta*, and Sudraka in his *Mrcchakatika* refer to the worship of Matrkas at the crossroads.¹⁸

The Matrkas also occur in the leading *Puranas*,¹⁹ as well as in the *Gobhila-smrti*, the *Brhatsamhita* of Varahamihira and the *Devi Purana*.²⁰ Their worship seems to have come down from the Kusana to the Gupta period, more or less in an unbroken continuity. This is borne out both by archaeological evidence and the *Kumarasambhova* of Kalidasa. The Matrks, whose number is limited to seven by the commentator Mallinatha,²¹ appear on the eve of Siva's marriage with Parvati.²² Held in regard by this god,²³ they arrive as brilliant as lightning, and with their earrings oscillating because of the movement of their *vahanas* (mounts), they join the wedding procession which starts from the Kailasa for the house of Himalaya.²⁴ That these goddesses commanded the reverence of all strata of the society, including even the royalty during the 7th century A.D., has been attested by Banabhatta in his celebrated *Kadambari*²⁵ and *Hars-*

¹⁵PIHC, p. 112. According to the great Epic (IX. 43), Skanda was nursed by the Krttikas or the Pleiads, Cf. E.W. Hopkins, *Epic Mythology (EM)*, Stressburg, 1915, p. 227.

¹⁶HD, Vol. II (I), Bombay, 1941, p. 217. But Kane is wrong, because the Matrkas have been mentioned in the *Manava Grhyasutra*, See *infra*.

¹⁷D.D. Kosambi, 'At the Crossroads', *Journal of the Royal Asiatic Society of Great Britain and Ireland (JRAS)*, London, 1960, p. 18.

¹⁸JRAS, pp. 17-18.

¹⁹*Supra*. The *Amarakosa* (edited by N.G. Sardesai and D.H. Padhye, Poona, 1940, 1.1.41) also mentions the Matrkas, but gives the name of Camunda only without mentioning the names or description of the others.

²⁰HD, Vol. II(I), p. 217.

²¹*Kumarasambhavam*, edited by Srishchandra Chakravarty, Dacca, 1904, p. 616.

²²*Kumarasambhavam*, VII. 30.

²³*Ibid*, VII. 31.

²⁴*Ibid*, VII. 38.

²⁵*Kadambari*, translated by C.M. Ridding. London, 1896, p. xvi.

acarita.²⁶ In the former work, the Matrkas are associated with the removal of barrenness in women and also with childbirth.²⁷ Abu Raihan Albiruni, a contemporary of Sultan Mahmud of Ghaznah (997-1030 A.D.) and his son Sultan Masud (1030-41 A.D.), not only mentions the *Sapta-matrka*, but their names and iconography as well.²⁸ Kalhana, the 12th century historian of Kashmir,²⁹ frequently refers to these mothers and the temples erected in their honour by the kings of his country.³⁰

In the absence of evidence to the contrary, the antiquity of the Matrkas, as well as the origin of their cult may be traced to the numerous terracotta female figurines unearthed in the prehistoric sites of the Indus Valley. It was from such a background, Kane rightly argues, that the cult of the Matrkas was taken up by the followers of Vedism and later on affiliated to the great goddess Durga.³¹ The Vedas also mention the *Sapta Matarah*³² (seven mothers), who stand for seven rivers,³³ and are said to regulate the preparation of *soma* (a herbal wine, favourite drink of the Vedic gods).³⁴ The daughters of Tastr collectively enjoy the epithet—'mothers of In'ra', whom they cure of insomnia.³⁵ Rudra's title *tryambaka* has been interpreted as that god's having three mothers.³⁶ Should this interpretation be correct, Rudra would be connected, according to some scholars, with the cult of the Matrkas right from the Vedic period.³⁷ The mothers are also mentioned in the *Manava Gryhasutra* in connection with a ritual of the *astaka* festivals.³⁸ In the evening of the last *astaka* a cow is killed by the sacrificer at the crossroads and its meat is distributed to the passers-

²⁶Harsa *Carita*, by Banabhatta, translated by E.B. Cowell and F.W. Thomas, London, 1911, p. 85.

²⁷Kadambari, *op. cit.*, p. 56.

²⁸E.C. Sacchau, *Albiruni's India*, 2 vols, London, 1888, vol. I, pp. 119-20.

²⁹A.B. Keith, *A History of Sanskrit Literature*, Oxford, 1928, p. 158.

³⁰*Rajatarangini*, translated by M.A. Stein, Westminster, 1900, I. 222, 333, 335, 348; III.99; V.55; VIII. 2776.

³¹*HD*, Vol. II(I), p. 218.

³²*Rg. Veda*, edited by F. Max Muller, 4 vols., 2nd edition, London, 1890-92, IX. 102.4.

³³R.T.H. Griffiths, *The Hymns of the Rig Veda*, vol. II, Benares, 1897, p. 370, note 4.

³⁴*HD*, Vol. II(I), p. 218.

³⁵A.B. Keith, *The Religion and Philosophy of the Vedas (RPV)*, 2 vols. Cambridge, Mass., 1925, p. 205.

³⁶*JRAS*, 1960, p. 19.

³⁷*RPV*, p. 149; but Keith does not accept the interpretation as there is no mention of Rudra's three mothers in the literature of the later period. Cf. *EM*, p. 220, note 1.

³⁸*RPV*, p. 428.

by, but while *soma* is offered to the *pitrs* (ancestors) and their wives, the 'mothers' receive only *sura* (ordinary wine) and the scum of boiled rice.³⁹ The 'Mothers' in whose honour the cow is killed, appear here not as Aryan ancestresses, says Kosambi, but in their own right as independent goodesses whom it was necessary to appease, and that this practise was borrowed from the non-Aryans of India is indicated by the rite being performed at the crossroads.⁴⁰

Archaeological evidence also corroborates the antiquity of the Matrkas. Their images appear to have been widely distributed over the Subcontinent from the North West Frontier Province (now in Pakistan)⁴¹ to South India, and from Elephanta in the west to Tipperah in the east. Matrka images of the early period have been noticed in and around the regions of Mathura⁴² and other places in the Uttar Pradesh,⁴³ Madhay Pradesh,⁴⁴ Western India,⁴⁵ Rajasthan.⁴⁶ South India,⁴⁷ Orissa,⁴⁸

³⁹*Ibid.*, p. 429.

⁴⁰*JRAS*, 1960, pp. 19-20. Evidence of Matrka worship at night and presumably at the crossroads outside the village or city, and also of the custom of throwing the offerings meant for them into the space, is also furnished by Banabhatta. See *Harsa Carita*, *op. cit.* p. 221.

⁴¹See *Archaeological Survey of India (ASI), Annual Reports* (Frontier Circle), 1908-09, p. 4.

⁴²V.S. Agrawala, *A Catalogue of Brahmanical Images in Mathura Art*, Lucknow, 1951, p. 59 ff.

⁴³Pramode Chandra, *Stone Sculptures in the Allahabad Museum*, Poona, 1970, pp. 96, 124-25, 140, 146.

⁴⁴R.D. Banerji, 'The Haihayas of Tripuri and Their Monuments', *Memoirs of the Archaeological Survey of India (MASI)*, No. 23, Calcutta, 1931, pp. 16-17, pl. XXIX.a; Alexander Cunningham, *Archaeological Survey of India Reports (ASR)*, vol. IX, Calcutta, 1874, p. 63 ff; *PIHC*, vol. XII, p. 110.

⁴⁵Hirananda Sastri, *A Guide to Elephanta*, Delhi, 1934, p. 50; *Archaeological Survey of Western India (ASWI), Report*, Vol. V, London, 1883, p. 39; J. Fergusson and J. Burgess, *The Cave Temples of India (CTI)*, London, 1880, p. 434, pl. LXXII; R.S. Gupta and B.D. Mahajan, *Ajanta, Ellora and Aurangabad Caves (AEAC)*, Bombay, 1962, pp. 128-29, pl. LXXXV.

⁴⁶*ASI*, 1909-10, p. 93; R.C. Agrawala, 'Goddess Worship in Ancient Rajasthan', *Journal of the Bihar Research Society*, Vol. XLI(I), Patna, 1955, p. 8; 'Some Unpublished Sculptures from South-Western Rajasthan', *Lalit Kala*, No. 6, Bombay, 1959, p. 63 ff; *Marg*, Vol. XII(2), Bombay, March, 1959, p. 15, fig. 5.

⁴⁷H. Cousens, *Chalukyan Architecture of the Kanarese Districts*, *ASI*, New Imperial Series, Vol. XLII, Calcutta, 1926, pl. LXXXII; J. Burgess, *The Ancient Monuments, Temples and Sculptures of India*, Part II, London, 1897, p. 316, pl. 316; H.K. Sastri, *South Indian Images of Gods and Goddesses*, Madras, 1916, pp. 190-96.

⁴⁸R.P. Chanda, 'Explorations in Orissa', *MASI*, No. 44, Calcutta, 1930, pp. 1 ff. pls. I. 1-4, VI. 2, IX. 1-3; M.M. Ganguly, *Orissa and Her Remains*, Calcutta, 1912, pp. 302, 371-72.

Bihar⁴⁹ and Bengal.⁵⁰ The importance and popularity of their worship have further been confirmed by a number of epigraphs⁵¹ dating from the Gupta period and also by the care and skill with which their images appears to have been sculptured in the art of the subcontinent.

Definite information about the number as well as the names and iconography of the Matrkas is not available in the *Brhatsamhita*,⁵² or in the works of Bhasa and Sudraka, or of Kalidasa and Banabhatta, or in any of the epigraphs, in which they are mentioned simply as *Matrs*, *Matrnam* or *Lokamatrnam*.⁵³ In the preamble to the inscriptions of the Calukyas the number of Matrkas appear to be seven, but there is no mention of their names or description.⁵⁴ It is only Utpala, while commenting on the relevant verse in the *Brhatsamhita*⁵⁵ gives the names and forms of eleven Matrkas: Brahmi, Vaisnavi, Rudra, Kaumari, Aindri, Yami, Varuni, Kauveri, Narasimhi, Varahi and Vainayaki. In the *Varaha Purana*, the number of Matrkas is eight,⁵⁶ because it includes Yogesvari, born out of Siva's mouth, in addition to the *saktis* of seven gods. Rao's remark that the Matrkas are seven in number according to the *Puranas* and *Agamas*,⁵⁷ cannot thus be substantiated. Their number as well as their names vary in different contexts.⁵⁸ Usually, they are referred to as *Sapta-matrka* or seven mothers, but are also mentioned in groups of eight, nine, sixteen and even a hundred or more. The *Mahabharata*

⁴⁹Th. Bloch, *Supplementary Catalogue of the Archaeological Section of the Indian Museum*, Calcutta, 1911, pp. 90-92 (Nos. 3831, 3828, 3830, 3919, 3940, 3938, 3944, 4190, 4191, 4189).

⁵⁰Radhagovinda Basak and D.C. Bhattacharyya, *Catalogue of the Archaeological Relics in the Museum of the Varendra Research Society (CVRM)*, Rajshahi, 1919, pp. 16-17; *Annual Report of the Varendra Research Society, (AR-VRS)*, 1925-26, Rajshahi, 1926, p. 7, fig. 1; 1928-29, pp. 19-20, fig. 7; *Journal of the Varendra Research Museum (JVRM)*, Vol. 5, Rajshahi, 1978, pp. 131-32, pl. II. 2.

⁵¹For Epigraphic evidence about the construction of temples in honour of the Matrkas in the Gupta and subsequent periods, see J.F. Fleet, *Corpus Inscriptionum Indicarum (CII)*, vol. III, Calcutta, 1883, pp. 72-74, pl. X; p. 47, pl. VI. B; *Indian Antiquary*, vol. VI, Bombay, 1877, p. 25, 72, 76; vol. VII, p. 163; vol. XIII, 1884, p. 138; *Epigraphia Indica, (EI)*, vol. XIV, 1917-18, p. 166, vol. XVIII, 1925-26, p. 125.

⁵²*Brhatsamhita of Varahamihira*, edited by Sudhakar Dvivedi, Varanasi, 1897, LVII. 56.

⁵³*EI*, Vol. XVII, p. 125, verse 1 on p. 126.

⁵⁴*Indian Antiquary*, vol. VI, pp. 73, 76; *EI*, vol. XVIII, p. 125.

⁵⁵*Brhatsamita, op. cit.*

⁵⁶*VP*, XXVII, 31-32.

⁵⁷*EHI*, vol. I(II), p. 381.

⁵⁸*DHI*, p. 503.

gives the names of 194 of these mothers but also mentions them as numerous.⁵⁹ Names of more than one hundred Matrkas appear in the *Matsya Purana*.⁶⁰ The *Kurma Purana* furnishes one hundred names,⁶¹ and the *Skanda Purana* mentions sixty-eight names in one place and ten elsewhere.⁶² As well as in the *Gobhila-smarti* we come across the names of fourteen Matrs who are : Gauri Padma, Saci, Medha, Savitri, Vijaya, Jaya, Devasena, Svaha, Dhrti, Pusti, Tusti and one's own deity (*Abhista devata*).⁶³ The Matrka panel at Elephanta represents eight goddesses.⁶⁴ At Elura, in Caves XIV and XXII the Matrkas are seven in number, but in Cave XVI, they are eight.⁶⁵ According to Khirasvami, such goddesses as Kala Samkarsini, Vamani Vainayaki, Candika and Mahalaksmi should be added to the list of the Matrkas.⁶⁶ In the *Markandeya Purana*, the number of Matrkas is seven : Brahmi, Mahesvari, Kaumari, Vaisnavi, Varahi, Narasimhi and Aindri.⁶⁷ Camunda, usually reckoned as a Matrka, is, according to this text, no other than Kali,⁶⁸ who is said to have sprung earlier from the wrathful countenance of Durga blackened by wrath.⁶⁹ In the *Devi Kavaca* attached to the *Devi Mahatmya* section of the same text, the Matrkas are eleven in number which includes beside the well-known seven—Camunda, Sivaduti, Laksmi and Isvari.⁷⁰ As stated in the *Vamana Purana*, Durga creates out of the different parts of her own body six Matrkas : Brahmani, Mahesvri, Kaumari, Vaisnavi, Varahi and Narasimhi,⁷¹ but as in the *Markandeya Purana*, Kali in this text appears earlier from the frown of Durga⁷²

⁵⁹*Supra*. Cf. *Adbhuta Ramayana*, pp. 150-52.

⁶⁰*Matsya Purana*, CLXXIX. 9-32.

⁶¹*Kurma Purana*, XXVII. 226-232.

⁶²*SP (Nagarakhanda)*, CLXXXVIII. 68. The *Kasikhanda Uttarakhanda* of this text gives the name of nine Matras : Brahmani, Vaisnavi, Raudri, Varahi, Narasimhi, Kaumari, Aindri, Camunda and Candi (LXXXII. 33) and in the XVI sloka of this chapter appears the name of another Matrka (?)—Vikata. Elsewhere in the same text, it is said that the great goddess (Durga) created out of her own body crores of *saktis* or Matrkas in order to destroy a demon named Durga. See *Kasikhanda Uttarakhanda*, LXXII. 1-4.

⁶³*HD*, vol. II(1), p. 217.

⁶⁴*Supra*.

⁶⁵*Supra*.

⁶⁶*AEAC*, p. 128.

⁶⁷*MP*, LXXXVII.

⁶⁸*MP*, LXXXVI.

⁶⁹*Ibid*.

⁷⁰*Durgakavacam*, Chowkhamba Stotra Series, Varanasi, 1946, *slokas* 8-11.

⁷¹*Vamana Purana*, LVI. 3-9.

⁷²*Ibid*, LV. 53.

and later from the lock of hair of the Devi another being named Candamari, resembling very much the physical aspects of Camunda.⁷³ As Kali and Candamari are emanated from Durga like Brahmani and others, both should be logically counted as Matrkas. Thus, the number of these divinities so far as the *Vamana Purana* is concerned, may be reckoned as eight.

In medieval Orissan sculptural art the Matrkas appear in groups of seven, a fact which led Canda to assume that the artists of Orissa must have derived their knowledge about these goddesses from the *Devi Mahatmya* section of the *Markandeya Purana*.⁷⁴ At one place of his book Albiruni gives the iconography of seven Matrkas, but elsewhere he mentions their number as eight.⁷⁵ In Bhavabhuti's play *Malati-Madhava* Siva as Saktinatha (lord of the *saktis*) is attended by eight *saktis*, who according to the commentator Jagaddhara, are no other than the well-known Matrkas—Brahmi, Mahesvari, Kaumari, Vaisnavi, Varahi, Mahendri (Indrani), Camunda and Candika.⁷⁶ While describing the Matrkas in his book, the Calukya king Somesvara (c. 1126-1138 A. D.)⁷⁷ seems to have followed the *Markandeya Purana* in regard to their names and number. The *Prapancasara Tantra* mentions eight goddesses known as Matrkas (*matarah proktah*).⁷⁸ The list follows the *Markandeya Purana* except that Narasimhi is replaced by Camunda and Mahalaksmi takes the place of the eighth Matrka. In eastern India, examples of *Sapta-matrka* groups seem to be common. There are three slabs in the Indian Museum—Nos. 4189, 4190 and 4191—each containing the images of the seven mothers and a male god, who has been identified as Siva,⁷⁹ The examples come from Bihar and belong to the Pala period. Composite reliefs, depicting the Matrakas flanked by Ganesa and Virabhadra, have been discovered in many parts of India,⁸⁰ but not in Bengal. A black Basalt slab, depicting the *Sapta-matrka* in low relief, but without Siva Ganesa and Virbhadra, is preserved in the Varendra

⁷³*Ibid.*, LV. 63-65.

⁷⁴*MAI*, No. 44, p. 19.

⁷⁵*Albiruni's India*, vol. I, p. 120.

⁷⁶*Malati-Madhava*, with the commentary of Jagaddhara, edited by R.G. Bhandarkar, Bombay, 1905, Act V.

⁷⁷Somesvara, *Manasollasa*, Part 2, edited by G.K. Sringondekar, Baroda, 1939, verses 796-99.

⁷⁸*Prapancasara Tantra* (Tantrik Texts, vol. III), edited by A. Avalon, Calcutta, 1914, VII. 11.

⁷⁹Th. Bloch, *op. cit.*

⁸⁰*Supra.*

Research Museum (fig. 1) at Rajshahi.⁸¹ The Museum has also in its collection a sandstone slab on which are represented nine Matrkas (fig. 2) whose names from the right to left should be read as follows : Brahmani, Raudri, Kaumari, Vaisnavi, Mahisamardini, Varahi, Camunda and Simhavahini.⁸² The example is unique, for in no other Matrka slab do we come across a group which includes the figures of Durga in her forms of Mahisamardini and Simhavahini. The evidence of Matrka worship in Bengal is furnished, apart from the two groups and single images of some of these deities preserved in the Varendra Research Museum, as well as in the other public collections in Bangladesh and Calcutta, by numerous other examples discovered from various parts of the region.⁸³ Mention may also be made here of the image of a lion-faced goddess, evidently that of Narasimhi, which has been noticed among several rock-cut sculptures at Unakoti, an ancient holy place of the Saivas, in the Koilashahar Sub-division of Tipperah state, India.⁸⁴

Like the divine mothers of Europe, who are conceived as triads,⁸⁵ the Matrkas also appear usually in groups, but their number is not rigidly fixed.⁸⁶ The relevant texts and available examples of their representations do not help in determining the number of the Matrkas with any exactitude. The goddesses, as also their male guardians, such as Ganesa and Virabhadra, may either be represented on the same slab to form a group, or separately, as suggested by the colossal images of Varahi, Camunda and Indrani from Orissa,⁸⁷ several Varahi images, one each of Indrani, Kaumari, Vaisnavi and Mehesvari, and a large variety of Camundas from Bangladesh ; a four-armed Brahmani and a Camunda in the Vangiya Sahitya Parishad Museum, Calcutta ;⁸⁸

⁸¹*CVRM*, p. 16 (No. 251).

⁸²*CVRM*, p. 16, (No. 7).

⁸³*DHI*, pp. 506-08.

⁸⁴*ASI*, 1921-22, p. 86.

⁸⁵*ERE*, vol. IV, pp. 408-09 ; *Larousse Ercyclopaedia of Mythology op. cit.*, p. 245 and fig.

⁸⁶"Stone and bronze sculptures are not only unknown", says Banerjea, in which the number of the 'Mothers' are only three, and they are usually Brahmani, Kaumari and Vaisnavi... (now in the King Edward VII Gallery of the British Museum) shows the three goddesses seated between Virabhadra and Ganesa". *DHI*, p. 505. H. Goetz mentions a panel depicting only five Matrkas from Gujarat. See 'Late Gupta Sculptures from Patna-Anhilwada', *Bulletin of the Baroda Museum and Picture Gallery*, vol. VII (1-2), Baroda, May 1949-March 1950, pp. 31-32.

⁸⁷*MASI*, No. 44, p. 2 ; *DHI*, p. 505.

⁸⁸Manomohan Ganguly, *Handbook to the Sculptures in the Museum of the Vangiya Sahitya Parisad*, Calcutta, 1922, pp. 84-85.

and eight-armed Narasimhi image in the Indian Museum,⁸⁹ and images of Mahesvari, Kaumari, Vaisnavi, Brahmani, Varahi, Narasimhi and Camunda form various parts of Orissa.⁹⁰ Matrka images executed on separate slabs may yet be placed side by side on platforms or in *niches*, so as to form groups of seven or eight, as at Elura in Caves XIV, XXII, XVI,⁹¹ or in the Chausat Yogini Temple at Bheraghat. The single Matrka images, mentioned above, point no doubt to their having been set up and worshipped in isolation, though except in the case of Camunda, there is hardly any proof, literary or otherwise, to corroborate such a claim. As we have noticed in the Epics and the *Puranas*, these goddesses are always mentioned collectively (*matarah*) and more often than not, they are represented in groups of seven or eight in plastic art as well. Single Matrka images, other than those of Camunda, are therefore an exception rather than the rule.

As regards the undetermined number of the Matrkas, who are mentioned in groups of seven, eight, nine or sixteen,⁹² Banerjea observes, 'It appears that side by side with the common concept about the stereotyped number of the Mothers or Saktis of seven or eight gods there existed a belief about the Saktis of other gods or their aspects. In subsequent ritual literature of the Hindus, the number of sixteen Matrkas beginning with Gauri are mentioned (*Gauryadisodasa mairka*).⁹³ The popularity and importance of these goddesses all over India has been established doubtless by the profusion of their plastic representations and also by the literary and epigraphic evidence cited above. The commonly accepted seven mothers are : Brahmi or Brahmani, Kaumari, Mahesvari (Raudri?), Vaisnavi, Varahi, Indrani (Aindri, Mahendri) and Camunda.⁹⁴ In the *Markandeya Purana*, however, the last-named Matrka appears to have been replaced by Narasimhi.⁹⁵

Iconography of the Matrkas

It is far from our intention to pad this essay by reproducing the *dhyantas* of the Matrkas from the iconographical texts, the *Puranas* and

⁸⁹*DHI*, pp. 505-07.

⁹⁰*MASI*, No. 44, pp. 3, 14.

⁹¹*AEAC*, p. 129 ; *DHI*, 505.

⁹²Gustav Oppert, *The Original Inhabitants of Bharatvarsa or India*, Westminster & Leipzig, 1893, p. 447.

⁹³*DHI*, p. 504.

⁹⁴*AEAC*, p. 128.

⁹⁵*Ibid.* *EHI*.

other works. We shall therefore examine the essentials of their iconography in the light of the available sources. We shall, moreover confine our examination to the well-known eight Matrkas leaving out the rest, because in spite of being mentioned as *matarah* or Matrkas, the latter do not qualify as do the former for this particular nomenclature. Nor are they, as *saktis* of their respective consorts, associated with any warlike activity of any great god or goddess. They are essentially benign deities of pleasing appearance and venerated by the Hindus because they embody commendable virtues and qualities. They are called Matrkas (little mothers) because all goddesses are addressed as mothers irrespective of their benign or malevolent character. As we have already stated the well-known Matrkas are eight in number and they are : Brahmani, Kauri, Mahesvari, Vaisnavi, Varahi, Indrani, Narasimhi and Camunda. The iconography of these goddesses have been traced to a number of texts including the *Puranas* and may best be studied in Rao's book.⁹⁶ Varahamihira refers to their iconography in only one *sloka* which reads, *matrganah karttayah svanamadevanurupakrtacihnah*⁹⁷ that is, 'the mothers should be carved with the forms and cognizances of the gods whom they are named after'. In connection with their appearance to augment the strength of Durga the *Markandeya Purana* briefly describes them as *Yasya devasya yadrupam yathabhuasnam tattaddeva his tacchakti*,⁹⁸ or the *sakti* of each god is characterized by, (that god's) form and ornaments'. In the context of these two brief references we shall now proceed to examine the iconography of the eight Matrkas and ascertain as well how far the canonical directives have been followed by the artists in carving out their images.

1. Brahmani

As the *sakti* of Brahma, she is also called Brahmi, and like this god is four-faced, fair complexioned and four-armed, having a swan for her *vahana*, and the rosary, *sruk* (around sacrificial spoon), *sruva* (an oval sacrificial spoon) and *kamandala* for her attributes.⁹⁹ According to the *Amsumadbhedagama*,¹⁰⁰ Brahmi has a golden complexion, four-faced, as many arms, and is seated on a red lotus. She has a swan for her

⁹⁶EHI, vol. I(II), App. C, pp. 143-54.

⁹⁷Brhatsamhita, LVII. 56.

⁹⁸MP, LXXXVIII. 13. The *Mahabharata* (IX 45.36-37) also describes the Matrkas as having the forms of important Vedic and Puranic gods, such as, Yama, Soma, Kuvera, Varuna, Indra, Agni, Kumara, Visnu and Varahadeva.

⁹⁹MP, LXXXVII. 14.

¹⁰⁰EHI, vol. I(II), App. C, p. 143.

vahana and a standard marked with that bird. In her right hands she has the *sula* (trident or spear) and *abhaya* (gesture of protection or assurance), and the rosary and *vara* (gesture of boon) in the left. Adorned by a *jatamukuta* and dressed in yellow clothes the goddess is stationed under the *Palasatree* (*Butea frondosa*).

Another authority describes Brahmani as four-faced but six-armed with a swan for her *vahana* adorned with dark-yellow ornaments and dressed in yellow clothes and a deer-skin scarf. She has the *vara*, rosary and *sruva* in her right and the book, *kamandalu* and *abhaya* in her left hands.¹⁰¹ In the *Purvakaranagama*¹⁰² Brahmani appears as four-armed with the *vara*, *abhaya*, rosary and *kamandalu* in her hands. The *Rupamandanam* does not mention the number of her faces.¹⁰³ She should have, according to this work, the *sruva* and the book in the upper and the *kamandalu* and rosary in the lower hands. According to the *Matsya Purana*,¹⁰⁴ Brahmani is identical to Brahma in appearance and she is four-faced and four-armed. Her attributes consist of the rosary and the water-pot. Her vehicle is a swan. The *Agni Purana*.¹⁰⁵ describes her as fair complexioned and four-faced with the rosary *sruva* and the water-pot in her hands and the swan for her *vahana*.

It is not at all surprising that Brahmani's *vahana* as well as some of her attributes, such as, the *vara*, *abhaya*, book and *kamandalu* should be identical to those of *Sarasvati*.¹⁰⁶ The latter is also Brahma's *sakti* and of her epithets is Brahmi,¹⁰⁷ though unlike Brahma she is not four-faced. As the wife of Brahma she is the goddess of learning and the arts,¹⁰⁸ and has therefore the book, rosary, *kamandalu*, *vara* or the *abhaya* among her attributes. She has also the swan for her *vahana*. On the other hand, Brahmani is also a *sakti* of Brahma but as a *Matrka* her role is that of a war-goddess. She is therefore identical in appearance to Brahma, has his *vahana* and in addition to the *kamandalu*, *sruva*

¹⁰¹*Caturvarga Cintamani : Vratakanda*, by Hemadri, edited by Bharat Chandra Siromani, Calcutta, 1878, pp 82-83.

¹⁰²*EHI*, vol. I(II), App. C, p. 146.

¹⁰³*Ibid.*

¹⁰⁴*CCLXI*. 24-25.

¹⁰⁵*Agni Purana (AP)*, edited by P. Tarkaratna, Calcutta, 1907, L. 18.

¹⁰⁶*Visnudharmottara*, translated by Stella Kramrisch, University of Calcutta, 1928, p. 86; *AP*, L. 16; *Vratakanda*, p. 77.

¹⁰⁷*Sabdakalpadruma*, Compiled by Raja Sir Radhakanta Dev, Calcutta, Samvat 1931-32, p. 5335.

¹⁰⁸For *Sarasvati* represented as the *sakti* of Brahma, see Pupul Jayakar, 'Paranagar (Alwar)', *Marg*, vol. XII(2), 1959, p. 61, fig. 2.

and rosary, has also the *trisula*, and in one example the axe for her attributes.

2. Kaumari

As the *sakti* of Kumara (Skanda or Karttikeya) Kaumari is identical to that god in form, cognizances and the mount. In other words, she is six-faced, has the *sula* or *sakti* (a short spear) in her hand and the *kukkuta* or peacock is her *vahana*¹⁰⁹ Kaumari as described by the *Matsya Purana*¹¹⁰ has the form of Kumara and wears red necklace and armlets (*Keyura*). The text does not say anything about the number of her faces or hands, but directs that she will have a peacock for the *vahana* and the *sula*, *sakti* and peacock should be placed in her hands. In her brief description in the *Agni Purana*¹¹¹ the goddess is two-armed, red complexioned and holds the *sakti* in one of her hands. As directed by the *Visnudharmottara*,¹¹² Kaumari should be six-faced and twelve-armed. Her eyes should be shaped like the *Arka* (*Caltropis gigantia*) flower and her complexion red. In her two main hands she will have the *vara* and *abhaya* and in others the *sakti* banner, rod, cup, arrow, bow, bell, lotus, cock and the axe. There is no mention of the six faces of Kaumari in the *Amsumadbhedagama* or the *Devi Purana*. According to the former text,¹¹³ Kaumari is four armed and three-eyed; wears red clothes and various ornaments including a crown (*mukuta*). She holds the *sakti* and *kukkuta* in two hands and in the other to has the *vara* and *abhaya*. She has a peacock banner and resides under the *Udumvara* tree (*ficus glomerata*). The *Devi Purana* depicts,¹¹⁴ Kumari with one face, two-arms and the peacock for her *vahana*. She holds the *sakti* in her hand wears an *upavita* (sacred thread), a garland of red flowers and is accompanied by the *kukkuta*. Kaumari of the *Purvyakaranagama*¹¹⁵ is identical to Kumara, but there is no mention of her *vahana* or the weapons except the *sakti* and *ankusa*. As in the *Amsumadbhedagama*, Kaumari appears in this text also as red complexioned, clad in red garments, adorned with ornaments with the *vara* and *abhaya* in her hands. As stated in the *Rupaman-*

¹⁰⁹MP, LXXXVII. 16.

¹¹⁰CCLXI. 27-28.

¹¹¹VP, L. 19.

¹¹²Vratakhandā, p. 83.

¹¹³EHI, vol. I(II), p. 147.

¹¹⁴Ibid, p. 148.

¹¹⁵Ibid.

danam,¹¹⁶ Kaumari should have the form of Kumara. She should be dressed in red clothes and ride a peacock. Her *ayudhas* (weapons) should consist of the *sula*, *sakti* and *gada* (club). There is no mention of the attributes which are to be placed in her other hands.

3. Mahesvari

In mentioning Mahesvari, the *sakti* Siva (Mahesvara) as Raudri, Utpala, commentator of the *Brhatsamhita* has pointed out that the crescent moon which adorns the head of Siva, should also be placed on her head.¹¹⁷ The *Markandeya Purana*¹¹⁸ describes Mahesvari as having the bull for her *vahana*, the best trident for her weapon and a gigantic snake for her girdle and the crescent moon for her head ornament. According to the *Matsya Purana*¹¹⁹ the goddess is similar to Siva in form, has the crescent moon in her *jatamukta* and is four-armed; she rides a bull and the attributes in hands consist of the *kapala* (skull-cup), *sula*, *khaltvanga* (a staff topped by a human skull) and the *vara*. She is called Samkari in the *Agni Purana*,¹²⁰ which describes her as white complexioned and four-armed. She has the bow and arrow in her right hands and the *kamandalu* and rosary in the corresponding left. The text does not mention her *vahana*. The *Visnudharmottara*¹²¹ directs that the image of Mahesvari should be placad on a bull and it should be white and six-armed. It should have five faces, three eyes and the crescent moon placed on its matted locks. The *vara* rosary and *damaru* (tomtom) should be placed in the right and the *sula*, bell and *abhaya* in the left hands. According to the *Amsumadbhedagama*¹²² Mahesvari is very blood-red in colour, three-eyed and adorned with the *jatamukuta* like Mahesvara himself. The attributes in the right hands of the four-armed goddess are the *sula* and *abhaya*, and in the opposite hands the *vara* and rosary. The iconography of Mahesvari in the *Purvaakarana*¹²³ follows that of the *Visnudharmottara* except that in the former she is four-armed and not six-armed or five-faced.

¹¹⁶*Ibid.*

¹¹⁷*Brhatsamhita*, LVII. 56 (*tika*); cf. *Hayasirsa Pancaratram*, edited by Bhuvan-mohan Sankhyatirtha, Rajshahi, 1952, XXVII. 4-5.

¹¹⁸LXXXVII. 15.

¹¹⁹CCLXI, 25-26.

¹²⁰L. 19.

¹²¹*Vratakhanda*, p. 83.

¹²²*EHI*, vol. I(II), App. c, p. 146.

¹²³*Ibid*, p. 147.

In her short description in the *Rupamandanam*¹²⁴ Mahesvari is four-armed, has the *sula*, *kapala khattvanga* and *vara* in her hands and the bull for her *vahana*.

4. Vaisnavi

Vaisnavi is identical to Visnu in form and attributes. She is four-armed, has the mythical bird Garuda for her *vahana* and holds the *samkha* (conch), *cakra* (discuss), *gada* (mace) and *padma* (lotus), but the *Markandeya Purana* does not appear to have prescribed the last-named object as an attribute of Vaisnavi, but directs instead that the *dhanuh* (bow) and *khadga* (sword) should be placed in her hands.¹²⁵ Thus according to this text, Vaisnavi appears to be six-armed and it is not difficult to guess that the *vara* (arrow) is to be the weapon for her sixth hand. Vaisnavi is described by the *Matsya Purana*¹²⁶ as four-armed and *Garudavahana* (riding the Garuda) with the conch, discuss, mace and *vara* placed in her hands. The conch, discuss, mace and lotus should be the attributes of Vaisnavi, says the *Agni Purana*,¹²⁷ but it is silent about her *vahana*. According to the *Visnudharmottara*,¹²⁸ Vaisnavi is three eyed and six-armed having the *gada*, *padma* and *abhaya* in her right and the *samkha*, *cakra* and *vara mudra* in her opposite hands. In the *Devi Purana*¹²⁹ she appears identical to Visnu-four-armed and holding the *samkha*, *cakra*, *gada* and *padma*. iconography of the goddess has also been prescribed by the *Purvakaranagama*.¹³⁰ In this text as well as in the *Devi Purana*, the *vanamala* (garland of wild flowers), which suspends from the neck of Visnu, has been prescribed as one of the ornaments of Vaisnavi. There is an elaborate description of the image of Vaisnavi in the *Amsumadbhedagama*¹³¹ according to which she is four-armed and her attributes are the *samkha*, *cakra*, *gada* and *padma*. She is dark complexioned with well formed breasts and body. She has a beautiful face and fine eyes. She is adorned with the yellow clothes and ornaments of Visnu and wears a jewelled crown on her head. She has moreover a Garuda banner, rides Garuda and resides under the *Raja vrksa* (king of trees, perhaps the *Ficus Religiosa*).

¹²⁴*Ibid.*

¹²⁵LXXXVII. 17.

¹²⁶CCLXI. 28-29.

¹²⁷L. 20.

¹²⁸EHI, vol. I(II), App. C, p. 149.

¹²⁹*Ibid.*

¹³⁰*Ibid.*

¹³¹*Ibid.*

5. Varahi

Varahi, is the *sakti* of Varaha (boar incarnation of Visnu) and is shaped after the wonderful form of that god (*Yajna varahamatulam rupam ya vibhrati hare/Sakti sapyayayau tatra Varahim vibhrati tantum*).¹³² She has the form of a boar, long hair, holds the *gada* and *cakra* in her hands and rides a buffalo.¹³³ The *Agni Purana* does not give her iconography, but mentions the rod, sword and mace as her weapons or attributes and her *vahana*, which is a buffalo.¹³⁴ In the *Visnudharmottara*¹³⁵ Varahi is very dark in colour, sow-faced, pot-bellied and six-armed. She has the *vara*, *danda* (rod) and *sankha* in her right and the *khataka* (sword), *pasa* (noose) and *abhaya* in her left hands. There is no mention of her *vahana* in this text. According to the *Amsumadbhedagama*,¹³⁶ Varahi is boar-faced with a complexion comparable to the clouds pregnant with storm. The four-armed goddess is adorned with the *karanda-mukuta* and ornaments of coral. In her right hands she holds the plough and *vara*, and in the opposite hands she has the *sakti* in one and *abhaya* in the other. She has an elephant for her *vahana*, an elephant standard and is stationed under the *kalpa* tree. The *Rupamandnam*,¹³⁷ describes Varahi as having the form and face, of a boar and four-armed. She holds the bell and fly-whisk in two hands, and the mace and discuss in others. Her mount is a buffalo and she is the destroyer of all kinds of diseases. In another opinion,¹³⁸ Vatrahi is dark in colour and adorned with yellow clothes and various kinds of ornaments which include tinkling anklets. The ornaments of the boar-faced goddess are identical with those of Yama and has the *sarngadhanuh* (the bow of Visnu), *abhaya*, plough *musala* (a club-like object) and *vara* in her hands. The goddess is six-armed in this text which does not however mention the attribute to be placed in her sixth hands, as well as what should be her *vahana*. Varahi has been called Vaivasvati, that is the wife of *sakti* of Yama in the *Devi-Purana*¹³⁹ according to which she is seated on a turbulent buffalo. She is boar-faced and two-armed with the *danda* in one hand, while from a skull-cup placed in the other hand she should

¹³²MP, LXXXVIII. 18.

¹³³Matsya Purana, CCLXI. 30-31.

¹³⁴L. 20.

¹³⁵Vratakhanda, p. 83.

¹³⁶EHI, vol. I(II), App. C, p. 150.

¹³⁷Ibid, p. 151.

¹³⁸Ibid, pp. 150-51.

¹³⁹Ibid. 151.

be shown as drinking blood. The *Hayasirsa Pancaratram*¹⁴⁰ visualizes Varahi as boar-faced, fat necked and extremely pot-bellied. She is four-armed with a buffalo for her *vahana*, and her weapons consist of *danda*, *samkha*, *cakra* and *gada*.

As both the *Purvakarānagama* and *Devi Purana* differ from the other texts in regard to the iconography, it might appear difficult to locate with reasonable certainty the god whom Varahi represents as his *sakti*. She is boar-faced in many of the *dhyanas*, and the *Markandeya Purana*, *Matsya Purana* and the *Rupamandanam* refer to her boar like form. These, as well as the relevant *sloka* quoted above from the *Markandeya Purana*, no doubt establish Varahi as the *sakti* of Visnu. Her attributes, such as, the *gada*, *cakra*, *samkha*, *dhanuh* and *khadga* also substantiate such a claim. Yet, on the other hand, her adornments and *vahana* being identical to those of Yama as stated in the *Purvakarānagama*, and her mention as Vaivasvati by the *Devi Purana*, as well the reference to her buffalo mount in these two works and in the *Matsya* and *Agni Purana* would suggest that Varahi is the *sakti* of Yama. There is no direction in the *silpa* texts or the *Purauas* for making an image of Yama with a boar face or boar form. Varahi is not therefore to be equated with Yami who is a *sakti* Yama and therefore *dandi Yama mahisago*¹⁴¹ that is, holds the staff or sceptre and is seated on a buffalo like Yama. The *Devi Purana* description of Vaivasvati as sow-faced is indeed confusing, but since both the boar face and boar form are strictly applicable to Visnu in his boar incarnation, Varahi must be regarded as the *sakti* of this god and not of Yama. This is confirmed as much by the presence in the hands of Varahi the *samkha*, *cakra* and *gada* which are the *ayudhas* of Visnu. Simply because her *vahana* (buffalo) is identical to that of Yama, Varahi cannot be identified as the *sakti* of the latter. Both in the *silpa* texts and sculptural art, it is not unusual to find the same animal as the *vahana* of more than one god or goddess, e.g., the *makara* is the *vahana* of Ganga, Kamdeva; and Varuna; the ram of Agni and Sarasvati; the lion of Narasimhi, Durga and even of Varahi, who has also the elephant (*vahana* of Indra and therefore of Indrani) for her *vahana* according to the *Amsumadbhedagama*.

6. Indrani

Also called Aindri and Mahendri, Indrani is the *sakti* of Indra or Mahendra and identical to him in appearance, that is, she is to be

¹⁴⁰XXVII. 7-8.

¹⁴¹*Brhatsamhita*, LVII. 56 (*tika*).

conceived as thousand-eyed with the *vajra* (thunder-bolt) in her hand and the elephant for her *vahana*.¹⁴² Indrani is, according to the *Matsya Purana*,¹⁴³ similar to Indra in form, multi-eyed, of golden complexion and adorned with heavenly ornaments. Her weapons consist of the *vajra*, *sula* and *gada* and her *vahana* is the elephant. She is thousand-eyed, has the *vajra* in her left hand, as stated in the *Agni Purana*, which is however silent about her *vahana*.¹⁴⁴ The *Visnudharmottara*¹⁴⁵ regards Indrani as majestic and placid in appearance, thousand-eyed, six-armed and mounted on the elephant. The *vara*, rosary and *vajra* should be placed in her right and the *padma*, *ratnapatra* (bowl of gems) and *abhaya* in her left hands. Indrani is four-armed, three-eyed and of blood-red complexion, says the *Amsumadbhedagama*.¹⁴⁶ She is adorned with ornaments of various kinds and wears a *kirita* (a crown). She is seated on the elephant, has a banner marked with the figure of this animal and resides in the *kalpa* tree. The *sakti*, *vajra*, *vara* and *abhaya* are her attributes. The *Rupamandana*¹⁴⁷ also describes Indrani as seated on the elephant, four-armed and identical to Indra in appearance and in number of her eyes. The *vajra*, *sula* and *gada* are to be placed in her hands. The *Purvvakaranagama*¹⁴⁸ does not mention Indrani as thousand-eyed. She is according to this work, two-eyed, four-armed and sumptuously adorned and has the *vara*, *abhaya*, *vajra* and *sakti* for her attributes. Her *vahana* is the elephant and her standard is painted with the figure of this animal. Indrani of the *Devi Purana*¹⁴⁹ is multi-eyed, like Indra, and adorned with necklaces and bangles, and holds the *vajra* and *amkusa* (goad) in her hands. Her *vahana* is the elephant.

7. Narasimhi

Narasimhi is a *sakti* of Visnu in his man-lion incarnation. She is identical to Narsimha in appearance and is adorned by the stars flung up by her own manes.¹⁵⁰ Narasimhi has been mentioned by the *Markandeya* and *Vamana Puranas* and the *Manosollasa*, but not by the *Varaha* or *Agni Purana*, or the *Prapancasara Tantra*. Bhavabhuti does not mention

¹⁴²MP, LXXXVII. 20.

¹⁴³CCLXI. 31-32.

¹⁴⁴AP, L. 21.

¹⁴⁵Vratakhandā, p. 83. For the iconography of Indra, see DHI, pp. 523-24.

¹⁴⁶EHI, vol. I(II), App. C, p. 153.

¹⁴⁷Ibid, p. 154.

¹⁴⁸Ibid, p. 153.

¹⁴⁹Ibid.

¹⁵⁰MP, I, XXXVI. 19.

this *Matrka*. In the *Mahabharata* we come across a boar-faced Matrka identical in appearance to Visnu (Varahavatara) but none with the form of Nrsimha. Narasimhi is also absent from the list of Albiruni. Utpala mentions her along with Varahi, Vainayaki and others (*Evamanyasam Narasimhivarahivainayakinamapyuhyam*)¹⁵¹ In the light of Utpala's *tika* Narasimhi appears to be identical to the Nrsimha form of Visnu. The iconography of Narasimhi has not been given by the *Puranas* (except the brief description by *Markandeya Purana*) or the *silpa* texts current in South and North India.

8. Camunda

There is enough scope to doubt that the place of Camunda in the Matrka groups has not been definitely determined. The reason is not far to seek. She has not been mentioned as a Matrka along with others in *Markandeya Purana*. Yet, in spite of this omission, she appears as one of these goddesses in many Puranas and other works. Thus her name Camunda as well as one of her epithets, Carccika occurs in the *Amarakosa*. She is one of the Matrkas as stated in the *Varaha*, *Matsya Skanda* and *Bhavisya Puranas*. The *Durga Kavacam* also mentions her as a Matrka. Similarly, the *Hayasirsa Pancaratram* has included her in the Supta Matrka group. Albiruni too appears to have done the same. The *Matsya Purana* equates her with Yogesvari, who is, according to the *Varaha Purana*, born out of the mouth of Siva. Both Camunda and Yogesvari appear to have been created under the same circumstances and to serve the same purpose. They are also identical in appearance. Again, the characteristics of both the goddesses are noticeable in the demoness Suskarevati, who is created by Visnu to drink up the blood of the demon Andhaka. Thus, Suskarevati and Yogesvari of the *Varaha Purana* are identical. But since Suskarevati and Kali are also one and the same goddess, it should be quite logical to equate the former with Camunda, who is but the subsequent name and form of Kali. Out of the confused and puzzling mass of Puranic accounts we may now conclude that Yogesvari, Suskarevati Camunda are one and the same goddess, and not excluding the last named, all are Matrkas.¹⁵²

Being identical to Yogesvari, Camunda should be according to the *Varaha Purana* fleshless, and three-eyed with a sunken belly and protruding tongue. She has a fearful face and large teeth. Her adornments consist of garlands of human heads and skulls. The *Matsya Purana*¹⁵³

¹⁵¹ *Brhatsamhita*, LVII. 56 (*tika*).

¹⁵² See the author's article, 'Is Camunda a Matrka?', *JVRM*, vol. 2, 1973 pp. 61-65.

¹⁵³ *Matsya Purana*, CCLXI. 33-36.

which equates Camunda with Yogesvari conceives the former as riding an ass, wearing a tiger-skin and holding the bell and skull-cup (*kapala*) in her hands. The *Agni Purana*¹⁵⁴ describes Camunda as fleshless, sunken-bellied, emaciated down to bones and skin, and adorned with ornaments of human bones. She is seated (or standing) on a corpse (*preta*) and three-eyed. Her eyes are sunk deep in their sockets and she wears a tiger-skin. In her four hands she holds the *sula* and *kartari* (hatchet) in the right, and the *kapala* and *pattisa* (a spear with sharp edge) in the left. Camunda has been depicted by the *Vistubharmottara*¹⁵⁵ as seated on a *preta* or carried by a *preta* (*preta-vahana*), of fearful appearance with large fangs. She is red in colour, has a hedious face emaciated body, eyes set deep in their sockets and a sunken belly. She is ten-armed and wears ornaments of snakes. In her right hands she holds *musala*, *kavaca*, arrow, *ankusa* and sword and the *khetaka*, noose, bow, staff and axe in the left. In the *Amsumadbhedagama*¹⁵⁶ Camunda is four-armed, three-eyed and of red complexion. The goddess, whose hair is rising upwards and who is clad in a tiger-skin is adorned with the garland of human heads and a *upavita*. Her left leg is folded on her lotus seat and her right placed on the corpse. She has in her hands the *kapala*, *sula*, *vara*, and *abhaya*. The lotus pedestal of the goddess is placed under the *ficus religiosa*. According to the *Purvakaranagama*.¹⁵⁷ Camunda is to be contemplated as four-armed, open mouthed, having an owl by her side and riding on a corpse. Her banner should contain the figure of a vulture. Adorned with shell carrings, she should have the *sula* and snake in her right and the fire and a pot of meat in her left hands. This work further states that Camunda's complexion is black and that she has a protruding tongue and black teeth. She has long hair, is three-eyed, clad in tiger-skin and wears like Siva the crescent moon on her head. In yet another text,¹⁵⁸ Camunda has been depicted with sharp fangs, fearful in appearance, and four-armed with the corpse for her *vahana*. She wears a tiger-skin and holds the *khattvanga* and *vajra* in her right and the *pasa* and severed human head in her left hands.

Matrka images are of three kinds : seated, standing and dancing. Whether executed in groups or individually, the Matrkas appear mostly seated. Their standing images are rather rare, and in this position

¹⁵⁴AP, L. 21-22.

¹⁵⁵Vratakhanda, p. 86.

¹⁵⁶EHI, vol. I(II). App. C, pp. 151-52.

¹⁵⁷Ibid, p. 152.

¹⁵⁸Brhat Tantrasara, compiled by Krishnananda Vagisha Bhattacharyya, Calcutta, 1321 B.S., p. 314.

they are shown either in the *dvibhanga* or *tribhanga*, but seldom in the *samapadasthanaka*.¹⁵⁹ A number of dancing images of these goddesses have been reported from various parts of the Subcontinent, but none from Bengal.

Many of the extant Matrka images do not conform to the canons of iconography as given by the texts which also differs from one another in regard to their *dhyanas*. In many of the texts the descriptions of these goddesses are either very brief or incomplete. Witness for example, the *Matsya Purana*, which describes Brahmani as four-armed but does not say what attributes should be placed in her second pair of hands. The *Agni Purana* too is silent about the attribute in Brahmani's fourth hand. The book is an attribute of Brahmani according to the *Visnudharmottara* and *Rupamandanam* but we are yet to find an image of this Matrka with this object in one of her hands. As one of the Matrkas, Brahmani is a war goddess, but no text, other than the *Amsumadbhedagama* makes any mention of the weapons which are to be placed in her hands. Again, most of the extant images depict Brahmani with the *sula* in her hand, but in the example preserved in the museum of the Vangiya Sahitya Parishad, Calcutta,¹⁶⁰ this attribute has been replaced by the axe. Similar discrepancies are also noticed in the representations of other Matrkas. A Mahesvari image holding the corpse and the bow in its hands as mentioned by the *Agni Purana* is still undiscovered. There is also no canonical support for the example which is now preserved in the Chittagong University Museum, Bangladesh—with the *sula*, *ghanta*, *damaru* and flower placed in its four hands. Notwithstanding the direction for carving the image of Kaumari with the *kukkuta* or peacock in her hand, only an example of this type has so far been discovered in the Subcontinent.¹⁶¹ Kaumari is six-armed according to a number of texts, yet in more than one representation she appears with a single face, two or four arms. A Kaumari image holding the *gada* as recommended by the *Rupamandanam*, is still unknown.

According to the *Visnudharmottara*, the number of Vaisnavi's hands should be six, but other texts describe her as four-armed. It is only in the Saptamatrka group in the Belur temple¹⁶² and the example in the

¹⁵⁹The Matrka group in the Belur temple is seated in the *baddhapadmasana*. See *EHI*, vol. I(II), pl. CXVIII. 2.

¹⁶⁰*Handbook to Sculptures in the Museum of the Vangiya Sahitya Parishad*, *op. cit.*, pp. 84-85, pl. XIX.

¹⁶¹*Lalit Kala*, No. 6, p. 70, pl. XXII. 17.

¹⁶²*EHI*, vol. I(II), pl. CXVII. 2.

Varendra Research Museum¹⁶³ that Vaisnavi has the *samkha*, *cakra*, *gada* and *padma* for her attributes ; in others these are either the *samkha* and *cakra*, or the *samkha* and *padma*, or the *gada* and *samkha*. In a bronze image in the Varendra Research Museum collection,¹⁶⁴ Vaisnavi, who is seated in the *baddhapadmasana* as in the other example holds the *gada* and *cakra* in her back hands, while the *samkha* has been placed on the palms of the main hands joined together in the *samadhi mudra* (deep meditation).

Only the *Visnudharmattara* recommends the *pasa* and *samkha* as attributes of Varahi. The *gada* is one of her attributes according to the *Matsya* and *Agni Puranas* and *Rupamandanam*, but except her dancing image in the Udaipur Museum,¹⁶⁵ and the example in the Sardar Vallabhbhai Patel Museum at Surat,¹⁶⁶ this object is absent in all other images of the goddess. There is no direction of placing the *kapala* in the hand of Varahi. The *Devi Purana* of course prescribes this object as an attribute of Yami or Vaivasvati, yet it has been noticed in the hand of Varahi in no less than three examples.¹⁶⁷ Again, the fish appears as an attribute in case of one, and the flower in the hand of another of these examples.¹⁶⁸ Like the *kapala*, the fish or the flower does not appear to have been recommended by the *silpa* texts as attributes of Varahi. Similarly, it is not permissible to carve her image, as in the Varendra Research Museum¹⁶⁹ and the Asutosh Museum, Calcutta, with Garuda as her *vahana*.

The *silpa* texts appear to differ from one another in regard to the iconography of Indrani as well. She appears to be two-armed according to the *Agni* and *Devi Puranas*, six-armed in the *Visnudharmottara*, and four-armed in the other texts. Again, the *Amsumadbhedagama* describes Indrani as three-eyed, the *Purvakaranagama* as two-eyed, whereas in

¹⁶³JVRM, vol. 5, 1979, pp. 131-32, pl. II. 2. (Museum No. 3296)

¹⁶⁴AR-VRS, 1928-29, pp. 19-20, fig. 4. (Museum No. 804).

¹⁶⁵Marg, vol. XII(2), 1959, p. 15, fig. 5.

¹⁶⁶A. J. Patel, 'An unpublished Image of Varahi from Gujarat I, *Journal of the Maharaja Sayajirao University of Baroda*, vol. XVI(1), Baroda, April, 1967, pp. 85-87 and plate.

¹⁶⁷Cf. Asutosh Museum No. T. 3586, Varahi from Dvaravasini, Hoogly district; *DHI*, pl. XLIV. 2 ; *MASI*, No. 44, pl. I. 1. The example in the Asutosh Museum has the fish as one of her attributes in lower right hand.

¹⁶⁸The flower appears as an attribute in the lower right hand of Varahi in a four-armed image preserved in the Varendra Research Museum, Rajshahi. See *CVRM*, p. 17, Museum No. 223.

¹⁶⁹CVRM, p. 17, Museum Nos. 65 and 223.

other texts she is multi or thousand eyed. Most of the Indrani images are either two or four-armed ; a six-armed image of this Matrka is still a physical non-entity. The Indrani image from Satna, Madya Pradesh¹⁷⁰ is eight-armed, though such an icon finds no mention or support in the iconographical texts and the *Puranas*. The *gada* is one of the attributes of Indrani as recommended by the *Matsya Purana* and the *Rupaman-danam*, but there is no image of this goddess with this particular weapon in her hand. The pot of gems in one of the hands of the eight-armed image from Satna is doubtless in consonance with the directions given by the *Visnudharmottara* but not the *cakra* which appears in another hand of the goddess in this example.

Narasimhi is one of the Matrkas as appears from the list of these goddesses in the *Markandeya* and *Vamana Puranas*, the *Manasollasa* and Utpala's *tika* of the *Brhatsamhita*, yet her name and iconography are absent from most of the *Puranas* and *silpa* texts. The artists do not also appear to have carved her image as one of the *sapta* or *asta* matrka. There are of course her independent images, though very few in number, but her absence in the extant Matrka groups is indeed very intriguing.

There is also much inconsistency in the iconography of Camunda as given by the *silpa* texts and the *Puranas*. She is contemplated as ten-armed in the *Visnudharmattara*, but the other texts describe her as four-armed. Besides her four-armed images, the *Agni Purana*¹⁷¹ mentions some other forms of Camunda, in which she appears as the eight-armed Rudracarccika, ten-armed Rudracamunda who is also called Mahalkasmi, Siddhacamunda or Siddhayogesvari, and the twelve-armed Rupavidya, but the descriptions are far from explicit. There is no clear mention of the attributes which are to be placed in the hands of Camunda in her different forms. The *Agni Purana* mentions the attributes of the eight hands of the ten-armed Rudracamunda, but is silent as to what should be placed in her remaining two hands. The texts are also silent about the forms in which Camunda is to be depicted as standing or seated.

Of the Camunda images noticed so far, the face and form of the goddess are in consonance with the textual description, but not her other characteristics. The *Agni Purana* directs that only Rudracamunda should be shown as dancing, but among the discovered examples there are many four, eight and twelve-armed images in which the goddess

¹⁷⁰ASI, 1925-26, p. 152, pl. LIX. a.

¹⁷¹AP, L. 21-22, 31-37.

appears in the similar stance on the shoulders of the *preta*.¹⁷² The authorities are not also unanimous about the *vahana* of the goddess. She has the ass for her vehicle or mount in the *Matsya Purana* and the *preta* in other texts, but in more than one example her *vahana* appears to be a *sarameya* (dog).¹⁷³ There is also no mention of her *vahana* when Camunda is to be represented in the form of Ksama and Dantura.¹⁷⁴ All the texts direct that Camunda's wearing apparel should be either a tiger skin or elephant hide, yet she appears in all examples clad in a transparent and designed cloth (*sadi*) with the ends of the elephant hide placed in two of her back hands.

The *vajra* and human head have been recommended by the *Brhat Tantrasara*,¹⁷⁵ as attributes of Camunda, but it is only the latter object which appears in her hand in most of the extant examples. In two examples, the human head has been replaced by the corpse for which there is no sanction in any text. The attributes as well as other characteristics of Camunda do not appear to have followed any particular text. There is also no direction in the *silpa sastras* for placing the ends of the elephant hide in two of the back hands of Camunda whose ornaments are to be made of bones, but who appears adorned with jewels in more than one example, and in others she has live snakes for her adornment.

The Matrka images including those of Camunda may be said to conform on the whole to the iconographical texts, though more often than not, the artists have violated the canonical directives or followed such texts which we are yet to discover. The peculiarities of a few Varahi images and most of the representations of Camunda are no doubt traceable to tantric influence. The artists were moreover compelled in many instances to follow the customs and conventions of their times, which account for, though not canonically permitted, the placing of a child on the lap of the Matrkas.¹⁷⁶ The texts are also silent about dancing Matrka figures of which there are, nevertheless, quite a few examples. It may thus be said that behind the practice of representing

¹⁷²N.K. Bhattasali, *Iconography of the Buddhist and Brahmanical Sculptures in the Dacca Museum*, Dacca, 1929, pp. 211-12, pl. LXXI. b ; *CVRM*, pp. 15-16 (Museum Nos. 33, 96, 148, 158, 255, 489, 561, 1283, 1552, 1585) ; *Birbhuma Vivarana*, edited by Mahimaranjan Tattvabhusana, Hetampur, 1326 B.S., pp. 144-45, figs. 52, 85.

¹⁷³Henry Cousens, *op. cit.*, p. 28, pl. LXXII. 2.

¹⁷⁴Cf. *AP*, L. 37.

¹⁷⁵*Brhat Tantrasara*, *op. cit.*, p. 314.

¹⁷⁶Cf. *CVRM*, p. 16, (Nos. 1487, 489) ; *AR-VRS*, 1936-37 & 1937-38, pp. 27-28, fig. 4.

the Matrkas as dancing, singly or in groups, there was much local or indigenous influence before which the artists had to bow down. Camunda is a *tantrik* divinity with a terrible appearance. Her dancing image placed on the shoulders of a *preta* in the crematorium abounding in goblins and carrion-eating birds and animals is thus not irrelevant ; it is both awe-inspiring and realistic.¹⁷⁷

Some Observations on the Matrkas

The *Mahabharata* describes the Matrkas as beings of diverse forms and speech.¹⁷⁸ Some of them are said to have well-formed, youthful, handsome bodies decorated with ornaments (*sarala madhurascaiva yauvanastha svalamkrta*),¹⁷⁹ while some of them are described as beautiful as the celestial nymphs and sweet-voiced like the Indian nightingale (*rupenapsarasam tulya... parapustapama vakya tatha*).¹⁸⁰ The Krtikas or the Pleiades, who nursed Skands immediately after his birth, were all 'goddesses of beautiful forms' (*devyo divyavapudhara*),¹⁸¹ and the 'mothers' who joined him against Tarakasura, are all described as slayers of foes as well as 'illustrious mothers' (*yasasvininam matnam*) and 'auspicious ones' (*kalyanibhisca*).¹⁸² But there are many of these Matrkas, who appear as so many fiends,¹⁸³ whose fearful appearance strikes terror into the hearts of those who come to face them on the battlefield.¹⁸⁴ Whether handsome or hideous, and in spite of some of the commendable virtues attributed to them by the *Mahabharata*,¹⁸⁵ the Matrkas undeniably appear to be endowed with a fair amount of malevolence. This is quite apparent in the Puranic stories which throw light on their origin. Thus according to the *Varaha Purana*, they not only assist Siva against Andhaka, but also drink up the demon's blood after he is slain.¹⁸⁶ Apart from this gruesome instance, this *Purana* also furnishes additional evidence of their malevolent nature by identifying them with eight bad mental qualities¹⁸⁷ : *kama* (desire), *krodha*

¹⁷⁷*MASI*, No. 44, pls. I. 1-4, VI. 2 ; IX. 1-3. *ASWI*, vol. V, pl. XXXIV. 1-3.

¹⁷⁸*Mahabharata*, IX. 45.31.

¹⁷⁹*Ibid*, IX. 45.30.

¹⁸⁰*Ibid*, IX. 45. 36-37.

¹⁸¹*Ibid*, IX. 43. 13.

¹⁸²*Ibid*, IX. 45.2.

¹⁸³*EM*, p. 228.

¹⁸⁴*Mahabharata*, IX. 45.39.

¹⁸⁵*Ibid*, IX. 45.32, 35.

¹⁸⁶*VP*, XXVII. 39-40.

¹⁸⁷*Ibid*, XXVII. 34-37.

(anger), *lobha* (greed), *mada* (pride), *moha* (illusion), *matsarya* (fault-finding), *paisunya* (calumny) and *asuya* (envy) represented respectively by Yogesvari, Mahesvari, Vaisnavi, Brahmani, Kaumari, Indrani, Yami or Camunda, and Varahi.¹⁸⁸ The *Kurma Purana* presents them in a more lurid light in which they appear as cannibols. By their conduct and character, the Matrkas thus seem to betray characteristics that are peculiar to the *yoginis* and *dakinis* associated with the goddess Durga or Kali is some destructive work.¹⁸⁹ The importance of the cult of the *yoginis* is indicated by the circular temple erected in their honour at Bheraghat, near Jubbalpur in Madhya Pradesh, as also by the rectangular cloister with sixty four cells at Khajuraho.¹⁹⁰ The *Rudra Upanisad* legend about the origin of the *yoginis* recalls those in the *Varaha* and *Matsya Puranas* regarding the Matrkas. Strangely enough, the *yoginis* whom Siva summons according to this *Upanisad* to devour the corpse of Jalandhara are named Brahmi, Mahesvari, Kaumari, Vaisnavi Varahi and Mahendri.¹⁹¹ All of them are depicted as cruel and evil-looking creatures, who dance with joy while drinking up the gore with which the battle field is drenched. The Matrkas as well as the *yoginis* are, therefore, in both appearance and action, totally unlike the *Deae Matres*, who are essentially benign deities as testified by their handsome figures and epithets.¹⁹²

Two reasons may be advanced in explanation of the *saumya* (benign) and *ghora* (malevolent) aspects of the Matrkas. The first is their non-Aryan origin, suggested unquestionably by their ungainly appearance,¹⁹³ their gruesome habits and malevolence, their warlike character,¹⁹⁴ their magical powers,¹⁹⁵ their cannibalism and the strange places they inhabit or frequent.¹⁹⁶ Durga, whose non-Aryan background is no less pronounced, is also known to have her abode in open spots, caves,

¹⁸⁸R.P. Chanda treats this passage (*VP*, XXVII. 34-37) as interpolation. The Matrkas who helped Siva (auspiciousness) against Andhaka (darkness), he maintains, cannot be malevolent or evil creatures (*MASI*, no. 44, p. 18). The weight of evidence, however, invalidates his theory.

¹⁸⁹*ASR*, vol. IX, p. 70.

¹⁹⁰*Ibid.*

¹⁹¹*Ibid.*

¹⁹²*ERE*, vol. 4, pp. 408-09.

¹⁹³*Mahabharata*, IX. 45.34-35.

¹⁹⁴*MASI*, No. 44, p. 15; *EM*, p. 229.

¹⁹⁵*Mahabharata*, IX. 45.32, 40 mention the Matrkas as capable of assuming any form and sojourning at will.

¹⁹⁶*Ibid.*, IX. 45.41.

crematoriums and mountain tops¹⁹⁷ The *Matrkas*, who appear in the great Epic and the *Puranas* are, in our opinion, no other than the numerous village goddesses, whom the Hindu priestly class has pressed into the service of Siva, Skanda and Durga under the guise of the *saktis* of important gods. This indicates on the one hand the process by which the non-Aryan *gramadevatas* are Brahmanised, and on the other, the affiliation of Durga herself through these minor deities to the various important Vedic and Puranic gods. It is also quite clear from the *Markandeya Purana* which describes the *Matrkas* as the emanations or manifestations of Durga.¹⁹⁸ In other words, Durga herself stands simultaneously as the *sakti* of each god. Her relation with the various gods is quite apparant from her origin, which this text ascribes to the combined energies of all the great divinities, Vedic as well as Puranic.¹⁹⁹ The Devi was manifest as the motivating energy behind many Hindu god-concepts like Brahma, Mahesvara (Siva), Visnu etc., and was known collectively as 'the Divine Mothers', the *Saptamatrkas*.²⁰⁰ In all likelihood, Durga was conceived in this way, though in later belief the position seems to have been quite reversed since in the *Markandeya Purana* she is seen absorbing all those forms and manifestations and resuming her unitary character as the Supreme Goddess.²⁰¹

Saktism is no less responsible for the peculiar and strange characteristics of the *Matrkas* and also for the peculiarity of their worship all over the Subcontinent from a very early period. Their association with tantricism is borne out by both literary and epigraphic evidence. It is also confirmed by not a few examples of their representations. In Bhavabhuti's play, the goddess Camunda is an object of *tantrik* worship in which human sacrifice appears to have been an old practice.²⁰² The *tantrik* association of the *Matrkas* is also evident from Bana's *Harsacarita*.²⁰³ In the Gangadhar Inscription of the Gupta period, the *Matrkas* appears as objects of *tantrik* worship. The temple erected in their honour is referred to in this epigraph as 'the terrible

¹⁹⁷*Harivamsa*, edited by Ramachandra Sastri Kinjawadekar, 1st edition, Poona, 1936, II. 3.7.

¹⁹⁸*MP*, XC. 3-5.

¹⁹⁹*MP*, LXXXII.

²⁰⁰*The History and Culture of the Indian People*, vol. III, edited by R.C. Majumdar and A.D. Pusalkar, Bombay, 1954, p. 447.

²⁰¹*Ibid*, pp. 446-47.

²⁰²*Malati-Madhava*, *op. cit.*, p. 199; H.H. Wilson, *Hindu Theatre*, vol. II, 2nd edition, London, 1835, p. 54.

²⁰³*Harsa Carita*, *op. cit.*, p. 85.

abode... (and) filled full of female ghouls, of the divine Mothers, who utter loud and tremendous shouts of joy (and) who stir up the (very) oceans with the mighty wind rising from the magic rites of their religion.²⁰⁴ Dakinis frequently occur in this branch of the Sakta religion.²⁰⁵ Additional evidence of *tantrik* association of the Matrkas is furnished by the *Brhatsamhita*, which directs that their images should be installed only by those who are conversant with the circle of the devine mothers'.²⁰⁶ In commenting on this verse, Utpala says: *matrnam brahmyadinam mandalakramavide ye mandalakramani pujakramani vidanti jananti|tan sthapamana vidu* but the phrase *pujakrama* does not bring out the sense expressed by *mandalakrama* which is connected with *tantrik* rituals.²⁰⁷ In the inscriptions of the Kadamba kings, there is a reference to the 'assemblage of the mothers', (*matrganah*).²⁰⁸ In Kashmir, the Mats were worshipped by the *tantriks*, which is evident from such expression as *matrcakra*, 'the circle of the mothers'.²⁰⁹ Both the *mandala* and *cakra* play an important part in the *tantrik* form of worship.²¹⁰

Literary and archaeological evidence points towards the association of the Matrkas with Siva and his family. The *Mahabharata* and the *Puranas* describe them as the followers or auxiliaries of Siva, Skanda and Durga. In iconographical texts, they are directed to be placed between Virabhadra and Ganesa,²¹¹ both of whom belong to the family of Siva.²¹² In plastic art we have seen the Matrkas depicted in the company of these two divinities and also with Siva. In the *Markandeya Purana* we have noticed these mothers being described as part and parcel of the great goddess Durga, who figures in Indian mythology as the spouse of Siva. 'The Sapta-Matrkas are often carved in relief on a rectangular stone slab...with the image of Virabhadra and Ganesa on either side',²¹³ but as we have seen at Elura, these two gods also present in the Asta-matrka panel as well.²¹⁴ In the

²⁰⁴CII, vol. III, p. 78.

²⁰⁵Jitendra Nath Bandyopadhaya, *Pancopasana*, Calcutta, 1960, pp. 264-65.

²⁰⁶*Brhatsamhita*, LIX. 19.

²⁰⁷*Pancopasana*, *op. cit.*, p. 253.

²⁰⁸*Indian Antiquary*, vol. VI, p. 25 (line 2 of the inscription).

²⁰⁹See *Rajatarangini*, *op. cit.*

²¹⁰See N.N. Vasu, *Archaeological Survey of Mayurbhanja*, vol. I, Calcutta, 1912, p. LIX.

²¹¹*SP*, (*Mahesvarakhanda Kedarakhanda*), III. 33-37.

²¹²W.J. Wilkins, *Hindu Mythology*, 2nd edition, Calcutta, 1882, pp. 270, 323 ff.

²¹³*DHI*, p. 505.

²¹⁴*ASWI*, vol. V, pl. XXXIV. 1, 2, 4.

Elura panels, the mothers are also accompanied, in addition to Virabhadra and Ganesa, by the skeletal figures of Kala and Kali,²¹⁵ a further proof of their *tantrik* association. According to the *Rupama-ndanam* Virabhadra should be placed in front of the Matrkas, who should be placed in the middle with Ganesa at the end,²¹⁶ but this direction does not appear to have been strictly followed as testified by the examples in which both Virabhadra and Ganesa are absent,²¹⁷ or only one of them is present. Sometimes, in place of both Siva appears as the guardian of the Matrkas.²¹⁸

The presence of Siva, Virabhadra and Ganesa in the Matrka slabs or panels is a further indication of the non-Aryan origin of these goddesses, for each of these gods come from the indigenous background.²¹⁹ The *tantrik* association of the Matrkas indicated by the literary, epigraphic and plastic evidence suggest as much, because tantricism is non-Vedic as well as pre-Aryan.²²⁰

Though represented as war goddesses, and in spite of their *tantrik* association, the Matrkas, with the notable exception of Camunda, appear in Indian sculptural art as handsome women with well-shaped and well formed bodies. In fact, this particular feature does to a large extent counteract the otherwise terrifying effect produced by the deadly weapon placed in their hands, as also by the boar-face of Varahi, the lion-face of Narasimhi, and the four and six faces of Brahmani and Kaumari respectively. 'The goggle-eyed lion-face of the goddess and the face of the lion mount opened wide as it were for a mighty roar endow the composition with a grotesque character', comments Banerjea in describing the Narasimhi image from Satna, but the grotesqueness he observes, has been 'partially relieved by the modelling of the main image'.²²¹ Introduced as they are into the Brahmanical Hinduism from their non-Aryan background as war goddesses, the Matrkas had of necessity to be represented in the beginning as of terrible nature, armed with deadly weapons and capable of performing deeds of prodigious valour in the battlefield—attributes that are far from being compliments to their sex. As in the case of the malevolent village deities, their worshippers have also sought

²¹⁵ *AEAC*, p. 129, pl. LXXV.

²¹⁶ *Matsya Purana*, CCLXI. 38-39.

²¹⁷ *Supra*.

²¹⁸ *Supra*.

²¹⁹ Gurudas Bhattacharyya, *Bangla Kavye Siva*, Calcutta, 1961, pp. 14-18, 46.

²²⁰ N.N. Vasu, *op. cit.*, p. LII; E.A. Payne, *The Suktas*, Calcutta, 1933, p. 61 ff.

²²¹ *DHI*, p. 508, pl. XLIV. 2.

to propitiate these goddesses with the euphemistic title of *Matr*, that is, mother. A further attempt to cover up their malevolence seems to be indicated, even in the *Mahabharata* by reference to their asceticism and handsomeness, and later in the iconographical texts as well as in plastic art by depicting them with youthful bodies, beautiful faces (except Varahi, Narasimhi and Camunda of course), profusion of jewellery, including tall impressive crowns on their heads. All of them are usually shown as seated in the *ardhaparyanka*, which is a position of ease as well as grace,²²² with one of the hands raised in the gesture of protection (*abhaya mudra*). The custom of carving their image after beautiful women seems to be quite old for in commenting on the relevant verse in the *Brhatsamhita* Utpala suggests *kintu tasam stanasobha madhyaksamata nitambavaipulyam karya yena prakarena srirupasya sobha jayata iti* that is, 'but their (of the Matrka) breasts, slender waists and massive hips should be so made as to give maximum play to their feminine charms.'²²³ Their carefully modelled bodies, breasts of remarkable size,²²⁴ and wide, rounded hips are as much suggestive of voluptuousness as of ripe motherhood. It is chiefly on account of the latter characteristic with which the Matrkas, contrary to iconographical canons, appear to have been invested at a later period that we find so many of their representations in which each of them, except Camunda, has been depicted with a child on her lap,²²⁵ or by her side.²²⁶ The Matrkas carved by the Indian artists appear in the opinion of R.P. Chanda, as real mothers.²²⁷ The custom of representing these erstwhile companions-at-war as mothers fondling a child,²²⁸ can possibly be ascribed to popular belief in which Durga is not only Ganesa-janani²²⁹ and Skanda-mata,²³⁰ but the mother of all gods and living beings. Such manner of representation also accounts for, if not justifies the title of *Matrs* and *Matrka* awarded to these goddesses, who are other-

²²²*Ibid*, p. 272.

²²³*Brhatsamhita*, LVII. 56 (*tika*).

²²⁴*ASR*, vol. IX, p. 63.

²²⁵Cf. *EHI*, vol. I(II), App. C, pp. 143-54.

²²⁶H.H. Lake, 'Besnagar' *Journal of the Bombay Branch of the Royal Asiatic Society*, vol. XXIII, Bombay, 1909, p. 140.

²²⁷*MASI*, No. 44, p. 17.

²²⁸About the Matrkas, R.P. Chanda observes, 'The Indian artists do not represent them as actually engaged in war, but as real mothers each seated at ease on her proper vehicle with a child on her lap supported by the left lower hand; while holding weapons of war in her two upper hand'. *MASI*, No. 44, p. 17.

²²⁹W. J. Wilkins, *op. cit.*, p. 320.

²³⁰*Mahabharata*, VI. 23.11.

wise depicted in the Epic and the *Puranas* as *saktis* of different gods and also as so many fiends, who take part in sanguinary battles against demons whose blood they lap up with great delight.²³¹ Nor does this practice of representing a goddess with a child on her lap remain confined to the Matrkas or Durga. It appears to have been extended to a number of female deities, including such cruel types as Manasa,²³² and Sitala,²³³ and also to others whose sculptural representations are termed 'Mother-and-Child Images'²³⁴ because their proper identification has not been possible with the help of the iconographical texts.

²³¹*Matsya Purana*, CI,XXIX. 9, 33.

²³²P.K. Maity, *The Early History of the Cult of the Goddess Manasa*, Calcutta, 1966, pp. 334, 336-37, pls. 4, 5, 7, 9; *JVRM*, vol. 5, pl. III. 1.

²³³E.O. Martin, *The Gods of India*, London & Toronto, 1914, p. 354.

²³⁴N.K. Bhattasali, *op. cit.*, p. 134, pls. LIII. b, LIV. a, b.

was depicted in the Epic and the Virgins as a series of different gods and
 also as so many heads who take part in contemporary battles against
 demons whose blood they lap up with great delight.¹⁰ Nor does the
 practice of representing a goddess with a child on her lap remain confined
 to the Matriks of Durga. It appears to have been extended to a number
 of female deities, including such great types as Manasa¹¹ and Shakti¹²
 and also to others whose original representations are female. Mother-
 and Child Images¹³ because their proper identification has not been
 possible with the help of the iconographical texts.

¹⁰ See the *Journal of the Asiatic Society*, vol. 1, p. 100.
¹¹ *Journal of the Asiatic Society*, vol. 1, p. 100.
¹² *Journal of the Asiatic Society*, vol. 1, p. 100.
¹³ *Journal of the Asiatic Society*, vol. 1, p. 100.

A Comparative Study of the Condition of the Indigo Ryots, Salt and Salt-petre Workers and Opium Growers of Bengal under the Colonial Rule

Alamgir M. Serajuddin

Towards the end of the 18th and in the 19th century three groups of unwelcome guests frequented rural Bengal and disturbed its peace and tranquility—they were the indigo planters, salt agents and opium agents, all Europeans. Their arena of activity was converted into pockets of oppression by them and their native underlings, While the oppressive conduct and exploits of the indigo planters have provided themes for Bengali drama, poetry and popular tales, those of the salt and opium agents are little known. This paper proposes to investigate the nature of control and constraints the primary producers of the three commodities were subjected to and the strains and stresses they generated. As the indigo episode has been well-researched and the condition of the indigo ryot is too well-known to demand further investigation, the main focus of the paper will be on the other professional groups and the indigo ryot will be mainly referred to for a comparative study.

One feature common to the three commodities and also to salt-petre was the monopoly mode of their production and marketing ; salt, opium and salt-petre being government monopolies and indigo being the local monopoly of the European capitalists. Salt, opium and indigo were important to the rulers as productive sources of revenue or as convenient means of transfer of resources to Great Britain. The traditional revenue from land and *sair* was not enough to run the administration of the country and also to support a big army and expensive wars. So the Company decided to raise a big revenue from salt by taking the exclusive rights of both making and vending salt into their own hands in 1780¹. Under this arrangement the salt-makers received advances from the Salt Agents at the beginning of each season and bound themselves to deliver their

¹*Bengal Revenue Consultations*, 19 September 1780.

salt to them at an agreed price. The salt so delivered was sold at auction to the highest bidders who retailed it throughout the country. The Company's net annual profit from the monopoly may be taken on an average at Rs. 150,00,000² and until the 1830s it was the second most important head of the Company's revenue ranking only after revenue from land and forming about 10 per cent of the total revenue receipts.

The success of the salt monopoly provided the basis for the state monopoly of the manufacture and marketing of salt-petre in 1793 and of opium in 1797. Regulations were issued in 1797 and 1799 prohibiting cultivation of opium except under licence from opium Agents and its import into Calcutta except on behalf of government³. Money was advanced to the opium growers by the Agents for the supply of raw opium which was converted into manufactured opium in the Company's factories, sold by public auction at Calcutta and exported to China⁴, Malaya and the East Indies. In the 18th century the East India Company spent each year huge sums in silver to buy Chinese tea and silk. With the establishment of the monopoly, the proceeds of opium exports to China financed the purchase of the entire quantity of Chinese tea and silk for the European market⁵. The Chinese trade was a major channel of remittances from India to London. Opium was also the third highest source of revenue to government until the 1830s when it pushed salt to the third place. From Rs. 37,20,248 in 1800 the opium revenue rose to Rs. 110,35,626 in 1815, Rs. 152,62,092 in 1830 and Rs. 287,94,546 in 1845⁶. Thereafter the leap was spectacular. In 1870 it had risen to £ 67,33,215 and the following year to £ 76,57,213 and this was one-sixth of the total revenues of India⁷. Sir David Barbour, Financial Member of Council, told the Royal Commission on Opium that it would be impossible to carry on the administration of India without the opium revenue⁸.

Salt-petre, an essential ingredient for gunpowder manufacture in those days, was also a monopoly industry of the East India Company.

²"Bengal As It Is", *The Calcutta Review*, Vol. III, January-June, 1845, p. 197.

³*Royal Commission on Opium*, Vol. VII, Part II, London, 1895, p. 12.

⁴The average export to China for 10 years from 1821 to 1830 was 80 per cent of the total opium export from Calcutta. See J. Y. Wong, "Monopoly in India and Equal Opportunities in China, 1830-33 : An Examination of a Paradox", *South Asia*, New Series, Vol. V, No. 2, December 1982, p. 88.

⁵*The Opium War*, Peking, Foreign Language Press, 1976, pp. 9-10.

⁶Wong, *op. cit.*, p. 82.

⁷Ram Gopal, *British Rule in India*, Bombay, 1963, p. 96.

⁸*Collection of Papers relating to the Report of the Royal Commission on Opium*, Calcutta, 1896, p. 9.

It was, however, an article of the Company's investment trade and not a regular source of revenue like salt and opium and its trade was a small but fluctuating one, demand for it rising with the outbreak of hostilities in Europe and falling at their cessation. With the abolition of the Company's monopoly of East India trade by the Charter Act of 1813, the exclusive right of the Company to manufacture and trade in the article was abandoned in 1814⁹.

Indigo was another convenient mode of transfer of funds and profits of the Company, its servants and the private traders and investors. Its importance as a means of remittance can be gauged from the fact that the export trade in indigo was valued at two and a half to three crores of rupees in 1829¹⁰. In 1842 indigo accounted for 46 per cent of the value of goods exported from Calcutta¹¹. The modus operandi of indigo cultivation was not dissimilar to salt and opium except that the monopoly here was a local one of European private capital and not of the state. Here again, what is little known is the fact that, so far as the interest of the primary producers was concerned, it made little difference whether an article was a state monopoly or a private one ; for, as we will notice shortly, they were equally exploited by both.

The foregoing account would show that the revenue resources of salt and opium were exploited to the full by means of state monopoly of their manufacture and trade and the primary object of the Company's revenue policy was thus achieved, though whether in the long run government was wise to raise maximum revenue from salt, a primary necessary of life and from opium, trafficking in which was immoral, is less certain. But maximisation of revenue from salt and opium and of profit from indigo could not be obtained without sacrificing the just and reasonable interests of the primary producers and it is to them that we will now direct our attention.

II

The successful introduction of a major cash crop in a predominantly agrarian economy would normally be hailed as a great boon by the peasantry and the country. But the introduction of indigo proved less than auspicious in Bengal ; it was considered a curse by the peasantry.

⁹H.R. Ghosal, *Economic Transition in the Bengal Presidency (1793-1833)*, Calcutta, 2nd. ed., 1966, p. 137.

¹⁰Chittabrata Palit, *Tensions in Bengal Rural Society*, Calcutta, 1975, p. 97.

¹¹B. B. Kling, *The Blue Mutiny*, Calcutta, 1977, p. 21.

"The root of the whole question", wrote J. P. Grant, the second Lieutenant-Governor of Bengal "is the struggle to make raiyats grow indigo plant, without paying them the price of it"¹². How much did the ryot gain or lose from cultivation of indigo? How did it compare with other crops? The ryot received an average of 2 rupees and 8 annas for the production of a bigha of land. Three sample estimates of the cost of growing indigo in a bigha of land, supplied respectively by R. P. Sage, a planter of Nadia and Jessore, R. T. Larmour, general manager for the Bengal Indigo Company and a ryot of Nischintipur concern in Nadia to the Indigo Commission were 3 rupees, 2 rupees and 3 annas and 3 rupees and 13 annas and 4 pies¹³. These figures, which do not include the various bribes paid to the factory servants, will easily explain the proverbial unpopularity of the crop. In 1860 Ashley Eden, then Joint-Magistrate of Barasat and later Lieutenant-Governor of Bengal, estimated the ryot's loss for a bigha of land at 1 rupee and 14 annas¹⁴. Ram Sankar Sen, Special Deputy Collector who was deputed to conduct agricultural enquiries in Jessore in 1873 calculated the price of the produce of a bigha of land at 6 shillings and the cost of cultivation at 8 shillings and 5½ pence (i.e., rent 2s. 8½d., ploughing 2s. 6d., price of seed 6d., weeding 1s. 6d. and cutting 1s. 3d.)¹⁵. While indigo was a dead loss, jute, sugar, silk, safflower, tobacco and foodgrains were all profitable to the ryot¹⁶. Let us compare rice with indigo. As early as the first decade of the 19th century the land which produced only one rupee worth of indigo, yielded two rupees and twelve annas worth of summer rice in Purnia¹⁷. In the fifties the price of all agricultural produce had doubled but "the price paid or nominally paid for indigo plant has not been raised by a single anna."¹⁸ In Jessore an average good field of one bigha yielded six bundles of plants which at the rate of six annas a bundle fetched the ryot 2 rupees and 4 annas in a good season but the same field brought the ryot a profit

¹²"Minute by the Lieutenant-Governor of Bengal on the Report of the Indigo Commission" (hereafter *Grant's Minute*) published as an Appendix in C.E. Buckland, *Bengal Under the Lieutenant-Governors*, Vol. I, 2nd. ed., Delhi, 1976, p. 271.

¹³See Kling, *op. cit.*, pp. 35-36.

¹⁴Benoy Chowdhury, *Growth of Commercial Agriculture in Bengal (1757-1900)* Vol. I, Calcutta, 1964, p. 131.

¹⁵W. W. Hunter, *A Statistical Account of Bengal* (hereafter *Account*), Vol. II, London, 1877, Indian reprint 1973, p. 253.

¹⁶Palit, *op. cit.*, pp. 125, 140.

¹⁷Ghosal, *op. cit.*, p. 80.

¹⁸*Grant's Minute*, p. 245.

of 16 to 20 rupees if he sowed paddy instead of indigo.¹⁹ According to the calculations of the second Lieutenant-Governor of Bengal, the ryot lost at least 7 rupees per bigha of land when he cultivated indigo in place of any other crop.²⁰

The salt-makers were worse off than the indigo-growers. No other occupation appears to have been so ill-paid as salt manufacture. In 1795 a salt-worker received Rs. 5 to 7 for seven month's hard labour in the Sundarbans but a wood-cutter comfortably earned Rs. 4 per month in the same neighbourhood²¹. In 1811 a salt-worker of the 24-Parganas earned as little as 5 annas and 6 pies a month but an ordinary labourer earned Rs. 3²². Let us assume that a salt-worker had a family of 4 and he was the only wage-earner and that 22 rupees and 10 annas—this was the figure given by Francis Buchanan for a village in Dinajpur²³—was required for the living expenses of the family. These earnings would certainly fall far below the subsistence level.

Indigo cultivation was, of course, unprofitable but the indigo ryot sowed rice and other crops in addition to indigo. Except the head malangies who were also cultivators the salt-labourers had no other resources to fall back upon. As cultivation of indigo yielded to the people more than they earned by salt-manufacture, the Company's officials forbade the employment of salt-labourers in the indigo factories erected in the neighbourhood of the salt-manufacturing grounds²⁴. Towards the end of the 18th and the beginning of 19th century, extension of agriculture, especially sugar-cane and indigo cultivation, and the urban employment opportunities created a big demand for labour leading to higher wages²⁵. But the rise in wages of labour and prices of foodgrains passed the unfortunate salt-makers by. In 1793 the average pay of the salt-workers of parganas Bullea and Balinda in Nadia was only 5 annas and 4 pies a month²⁶; 18 years later it was still 5 annas and 6 pies. It was not at all surprising that the salt Agent of the 24-Parganas found it extremely

¹⁹L.S.S. O'Malley, ed., *Bengal District Gazetteers, Jessore*, Calcutta, 1912, p. 104.

²⁰*Grant's Minute*, p. 249.

²¹*Bengal Revenue Consultations (Salt, Opium)*, 15 May 1795.

²²*Ibid.*, 27 September 1811.

²³R. M. Martin, *The History, Antiquities, Topography, and Statistics of Eastern India*, Vol. II, London, 1838, pp. 27-28 of Appendix.

²⁴*Bengal Revenue Consultations*, 7, 16, 21 April 1790.

²⁵*Bengal Revenue Consultations (Salt, Opium)*, 27 September 1811.

²⁶Rajeswari Prasad, *Some Aspects of British Revenue Policy in India, 1773-1833*, New Delhi, 1970, p. 83.

difficult to recruit labourers for the salt-works²⁷. The Company's policy of procuring salt as cheaply as possible without considering the rising cost of living and the higher wages for other employments can best be studied by reference to the price paid to the manufacturers at the beginning and towards the end of the monopoly. In 1789 the price paid to them for a hundred maunds of salt was Rs. 27/8 to 45 in Chittagong and Rs. 50 to 55 in Tamlook and Hijli²⁸; in 1853 it was Rs. 43/12 in Chittagong, Rs. 37/8 to 40/10 in Tamlook and Rs. 31/4 to 36/4 in Hijli²⁹. These figures show that the prices were in general reduced.

The condition of the salt-petre manufacturers was not much better. The article was manufactured by a very poor and hardy race, called *Nuniyas* on a system of advances made to them by middlemen, called *paikers*, on behalf of government or the big business houses. The *Nuniyas* rented suitable pieces of seliferous soil from the zamindars who always exacted a high rent³⁰. For one hundred maunds of salt-petre the *paikers* received one rupee and fourteen annas from the Company and paid the *Nuniyas* one rupee and six annas³¹. In 1813 the price payable to the *paikers* was reduced to one rupee and seven annas and that to the *Nuniyas* to fourteen annas³². The prayer of the *Nuniyas* for better remuneration and direct dealing with the Company without the intervention of the middlemen went unheeded.

Hunter gives the following estimate of the profit and expenses of a filter in Tirhut³³. The average daily production of a filter employing two men—one to gather the earth and the other to attend to manufacture—was three seers of salt-petre and half a seer of salt and, as the *Nuniyas* could work for six months only, the total production of the season was 13 maunds and 26 seers of salt-petre and 2 maunds and 11 seers of salt. At the rate of 2 rupees and 12 annas and 2 rupees per maund, the prices of salt-petre and salt were Rs. 37/8 and Rs. 4/9 respectively. After deducting Rs. 4 as rent for land from the total income of the filter, there remained Rs. 38 to be divided between the two men as wages for six

²⁷Bengal Revenue Consultations (Salt, Opium), 27 September 1811.

²⁸Bengal Board of Revenue (Misc.) Proceedings, 23 January 1789.

²⁹Appendix to the Report of the Commissioner appointed to inquire into and report upon the Manufacture and Sale of and Tax upon, Salt in British India (hereafter Appendix to Salt Report), Calcutta, 1856, pp. 442, 469, 475.

³⁰Hunter, Account, Vol. XIII, p. 127.

³¹Ghosal, *op. cit.*, p. 138.

³²*Ibid.*

³³Hunter, Account, Vol. XIII, p. 128.

months' work. During the rains they worked as day labourers. In the 1870s when Hunter made this calculation, the average monthly wages of a day labourer in Tirhut ranged from 2 rupees and 13 annas to 5 rupees and 10 annas,³⁴ so that the *Nuniyas* was often worse off than a day labourer.

The Government raised one-sixth of the total revenues of India from opium and yet denied a fair price for the crop to the growers. In Rangpur the cost of cultivation of a bigha of poppy land was Rs. 5 in 1811 and the average production of $2\frac{1}{2}$ seers of opium at the rate of one rupee and eight annas a seer, fetched the ryot only Rs. $3\frac{1}{12}$ ³⁵. In 1818 the Deputy Opium Agent of Bihar estimated the annual average produce of a bigha of land in Saran at 5 seers and 11 chattaks which at Rs. 2 per seer would yield Rs. $11\frac{1}{7}$ to the ryot. But the cost of growing it was Rs. $12\frac{2}{3}$ (rent Rs. $7\frac{1}{7}$, cost of ploughs Re 1/0, for squares and sowing as. 8, weeding and watering Rs. $1\frac{1}{12}$ and extraction of drug Rs. $1\frac{1}{8}$)³⁶. Mr. Fleming calculated the expenses for a bigha in the vicinity of Patna at Rs. $16\frac{1}{10}$ and the value of the produce at Rs. $18\frac{1}{14}$ and in Tirhut at Rs. $7\frac{1}{12}$ and Rs. $6\frac{1}{6}$ respectively³⁷. Since the assumption of the monopoly by the Company the wages of labour and the rents of lands had increased considerably but not the opium prices and so great was the dissatisfaction of the ryots that by 1822 poppy cultivation in Tirhut decreased by one-third³⁸. Wheat, tobacco, potato and sugarcane were far more profitable than opium. A bigha of potato land yielded a profit of Rs. 50 to the ryots of Bhagalpore in 1820³⁹. The Benares Opium Agent calculated the return from a bigha of poppy at Rs. 11, from tobacco at Rs. 40 and from sugarcane at Rs. $44\frac{1}{13}$ in 1821⁴⁰.

In the seventies of the 19th century when the price of opium had already been more than doubled its cultivation was still found to be unremunerative. The following statement⁴¹ supplied by the Sub-Deputy Agent of Opium at Mongyr and giving a comparative picture of the production of opium, wheat, sugarcane and potato per bigha of land will show that opium was the least profitable of the four crops :

³⁴*Ibid.*, p. 107.

³⁵Benoy Chowdhury, *op. cit.*, p. 130.

³⁶*Ibid.*

³⁷*Ibid.*, pp. 30-31.

³⁸Rajeswari Prasad, *op. cit.*, p. 158.

³⁹Benoy Chowdhury, *op. cit.*, p. 32.

⁴⁰*Ibid.*

⁴¹Hunter, *Account*, Vol. XV, pp. 100-101.

Crop	Volume of production			Value		Production cost		Profit	
	Mds.	Srs.	Chs.	£.	s. d.	£.	s. d.	£.	s. d.
Opium	0-4-11½			2-19-5¾		2-1-2		0-18-4	
Wheat	10-0-0			1-14-0		0-15-0		0-19-0	
Sugarcane	30-0-0			7-12-0		5-18-3		1-13-9	
Potato	100-0-0			10-0-0		5-14-3		4-6-6	

Two decades later, in his evidence before the Royal Commission on Opium Rev. Prem Chand showed the cost of each bigha of opium, wheat, sugarcane and potato land of Gaya at Rs. 36, Rs. 9/8, Rs. 50 to 60 and Rs. 80 to 100 respectively and the income at Rs. 26, Rs. 32 to 40, Rs. 150 to 200 and Rs. 250 to 300⁴². He attributed opium cultivation as a cause of poverty, high prices of food-grains and famine. According to him, if food-grains were sown in the one hundred thousand bighas of rich land which was under poppy cultivation, they would yield one million and sixty thousand to two million maunds of food-grains⁴³.

How high was the degree of exploitation can be judged from a comparison of the price paid to the producers and the wholesale price at which it was sold. Production of indigo in one bigha of land fetched the ryot only two rupees and eight annas but the planter 12 rupees⁴⁴. From 1801 to 1818 the auction price of a chest of opium containing 133 lbs. was on an average Rs. 2000 but the producer's share was not more than a rupee per pound⁴⁵. In 1822 the grower was paid two rupees and eight annas for a seer of opium which was auctioned off by Government for Rs. 53 or more⁴⁶. For one hundred maunds of salt the manufacturers were paid Rs. 43/12 in Chittagong, Rs. 37/8 to 40/10 in Tamlook and Rs. 31/4 to 34/6 in Hijli in 1853 and the wholesale price at which it was sold by the Government to the merchants was Rs. 301 to 318⁴⁷.

⁴²Royal Commission on Opium, Vol. III, Calcutta, 1894, pp. 26-27.

⁴³Ibid.

⁴⁴Kling, *op. cit.*, p. 34.

⁴⁵Royal Commission On Opium, Vol. VII, Part II, p. 12.

⁴⁶Rajeswari Prasad, *op. cit.*, p. 164.

⁴⁷Appendix to Salt Report, p. 442, 459, 469, 474 and 482.

Paradoxical though it is, salt, opium and indigo which yielded so much profit to the government and the planters did not yield a bare living to the thousands who toiled to produce them. While the opium ryot was deprived of subsistence, the European agents drew, in addition to their fat salary, a huge commission on the net revenues of opium sold at the public sales in Calcutta. In the year 1804/5 the Bihar Opium Agent drew a commission of Rs. 87,808⁴⁸. The salary of the highest paid salt Agent was Rs. 42,000 and that of the lowest paid was Rs. 30,000 a year⁴⁹.

Provision of indigo, salt, opium and salt-petre was based on the system of advances. The system, meant to provide working capital to the primary producer to enable him to buy the tools of the trade and the seeds and meet the incidental charges of production, did, in fact, operate to rob him of his freedom to grow whatever he liked and to sell the products to whom he pleased and ensured the delivery of a fixed quantity of the commodity at a very low price to the investor and the perpetual enslavement of the producer. Not infrequently, the manufacturers failed to deliver the agreed quantity of goods to the capitalist with the result that they were obliged to enter into fresh contracts for the ensuing season to make good the deficiencies of the outgoing one and as the Indigo Commission put it, "It matters little whether the ryot took his original advances with reluctance or cheerfulness, the result in either case is the same; he is never afterwards a freeman"⁵⁰. Under these circumstances one would be tempted to ask how much of the advances did the indigo ryots retain for their use? Judge Sconce held that the indigo ryot did not retain more than a half or a third of the advances ostensibly paid to them⁵¹. "I do not know to what extent the advance consists partly of cash and partly of unliquidated balances of past years." But he did know one case where the ryot received half a rupee in cash and six rupees and a half were adjusted against old balances, for the cultivation of 3 bighas and a half of indigo lands⁵².

⁴⁸Ghosal, *op. cit.*, p. 125, fn. 32.

⁴⁹"Bengal As It Is", *The Calcutta Review*, Vol. III, January-June 1845, p. 197.

⁵⁰Quoted in Latifa Akanda, "System of Cultivation of Indigo in Bengal (1813-1862)", *The Dacca University Studies*, Vol. XXXV, Part A, December 1981, p. 29.

⁵¹*Selections from the Records of the Government of Bengal, No. XXXIII, Part I, Papers relating to Indigo Cultivation in Bengal* (hereafter *Selections from Records*), Calcutta, 1860, pp. 51-52; M.A. Khan, *History of the Fara'idi Movement in Bengal (1818-1906)*, Karachi, 1965, p. cxii.

⁵²*Ibid.*

The advance system was administered through the agency of the ubiquitous native *gomastahs* and no advances ever got through their fingers intact. As late as 1854 we find the Superintendent of the Jelasore Salt Chowkeys reporting to the Controller of Government Salt Chowkeys that the salt manufacturers were then forced to pay out of their advances 10 rupees and 4 annas to the *aurang darogah*, 3 rupees to the *zillahdar*, 3 rupees to the *aduldar*, 4 rupees to the *chappadar* and the *koyal*, 3 rupees to the *chaprassies*, 1 rupee and 8 annas to the retail chowkry establishment and 4 annas to the police, making a total of 25 rupees per salt-work⁵³. In his own words, "these may truly be styled exactions. Should the molunghees decline paying these demands of the aurang darogahs and their subordinates they would very soon repent their temerity; for these officers have so many ways and means of constantly harassing and dikhing [?] them, that in the end they are but too glad to give in to their views⁵⁴.

The indigo ryots got an advance of Rs. 2 per bigha and paid from it a rake-off to the various grades of factory servants⁵⁵. According to one observer, the full amount of the advance was appropriated by the factory servants⁵⁶. It was contrary to the interest of the planters and sometimes they tried to stop the practice by issuing advances to the ryots directly. So great was the terror of these servants that the ryots secretly made over a part of the advances to them to ward off their wrath⁵⁷. Besides a fee to the factory servants to refrain from impounding his cattle the ryot had also to pay six pence to the book-keeper and the clerk at the time of the annual settlement of accounts and about a shilling when the plant was brought to the vats⁵⁸.

The opium ryot paid nearly 4 annas a maund of opium to the village *mahtos* who entered into the contract and received the advances on their behalf⁵⁹. Out of every 70 rupees paid for their opium, the factory servants exacted 9 rupees as *salami* for themselves⁶⁰. When the peons of the Opium Department visited the villages they managed to discover something wrong with the fields, e. g., cattle trespassing on them or some

⁵³ *Appendix to Salt Report*, pp. 689-90.

⁵⁴ *Ibid.*

⁵⁵ M.A. Khan, *op. cit.*, p. cxiii.

⁵⁶ *Selections from Records*, p. 3.

⁵⁷ Ghosal, *op. cit.*, p. 92, fn. 116.

⁵⁸ Hunter, *Account*, Vol. II, p. 253.

⁵⁹ Rajeswari Prasad, *op. cit.*, p. 159.

⁶⁰ Ghosal, *op. cit.*, p. 125, fn. 30.

other crop being mixed with poppy, and had to be paid for suppressing the offences⁶¹.

One common source of extortion was the unfair weighing of the articles by the factory servants. The indigo plant was measured by placing an iron chain six feet in length round its girth. The measurer pulled the chain so tightly that a bundle and a half⁶², and sometimes two bundles⁶³, were compressed within the chain in place of a standard bundle. It was customary for *sirf* or extra-weight to be delivered to the buyer by the salt-makers⁶⁴. In theory, a compensation for the accidents to which salt was exposed after delivery, e.g., wastage ; in practice, it was a convenient means of the *gomastahs* of the Salt Department to exploit the manufacturers. The *sirf* was 25 per cent, sometimes as high as 50 per cent, of the quantity of salt contracted for⁶⁵. The opium of the ryot was not only unfairly weighed⁶⁶ but a deduction of about 5 seers a maund was also made from it to account for *sooktee* or quantity expected to dry up and *garda* or dirt⁶⁷.

Again, each of the three articles had its own peculiarities. Cultivation of poppy was more costly and labourious than the other crops. Poppy was cultivated in the best sort of lands for which peasants had to pay a very high rent, nearly 50 per cent of the total cost of cultivation. Indigo diminished the fertility of the soil⁶⁸. The best quality indigo was sown in April and harvested in July and August. This conflicted with the ryot's schedule to sow rice at the same time. One redeeming feature of poppy cultivation was that if the crop was destroyed by hail-storm, drought, flood or other factors beyond the control of the cultivator, the advances were remitted⁶⁹ but if these factors operated to destroy or reduce indigo and salt production, the loss fell on the ryot and the salt manufacturer. Certain hazards were peculiar to the salt industry. Salt-making, particularly the boiling, was a physically exacting process—the workers had

⁶¹Rajeswari Prasad, *op. cit.*, p. 159.

⁶²Latifa Akanda, *op. cit.*, p. 30.

⁶³*Selections from Records*, p. 3.

⁶⁴*Bengal Revenue Consultations*, 24 October 1780.

⁶⁵See the letter of the Collector of Chittagong, dated 27 June 1774 in *Bengal Revenue Consultations*, 19 July 1774.

⁶⁶For instance see Ghosal, *op. cit.*, p. 125, fn. 30.

⁶⁷Rajeswari Prasad, *op. cit.*, p. 159.

⁶⁸M. Kabir, "Nil Bidroher Oitihāsik Bhumika", (in Bengali), *Samaj Nirikhsan*, Vol. I, November 1978, p. 29.

⁶⁹Hunter, *Account*, Vol. XI, p. 290.

to work without interruption from dawn till 9 p.m. and required to be fed four times a day⁷⁰. Salt manufacture was carried on in inhospitable and uninhabited parts of the country, in the pestilential marshes, destitute of fresh water, unhealthy from the surrounding jungles and frequented by wild animals. Worse than physical hardships and risks of disease was the attack of wild animals. In 1789 out of a total of 8168 men employed in the Roymangal Agency 476 lost their lives—309 from tigers, 3 from alligators, 152 from disease, 1 from falling from a tree and 11 from drowning⁷¹. R.D. Mangles, a senior civil servant, while visiting the Sundarbans in the twenties of the 19th century, actually saw a salt-manufacturer and a fisherman being attacked and devoured by tigers⁷².

III

Given the unfair and uncompetitive prices for the articles and the manifold extortions of the indigenous middlemen, no one in his senses would agree to produce salt, indigo or opium. What, then, kept these producers tied to their unrewarding profession? The answer must be sought in the operation of the advance system and the use of force to support the system.

The salt-workers were coerced to work for the Salt Department in various ways. The most common device adopted by the *gomastahs* of the Department was to tempt a needy ryot to take advances for salt⁷³. Then, by cheating and squeezing him in various ways he was made to fall short of his stipulated deliveries. Thus he got into debt and life-long slavery⁷⁴. Advance money was often thrown into the door of the house of an unwilling ryot and then the headman of the village was informed of the name of the ryot so pressed and made answerable for his appearance in the salt-fields⁷⁵. In the Roymangal Division a man once employed for a season, by force or persuasion was held liable to be seized and sent to the works by force in future and this obligation was binding also on

⁷⁰Appendix to Salt Report, p. 478.

⁷¹Bengal Board of Revenue (Misc.) Proceedings, 12 November 1789.

⁷²R.D. Mangles, *A Brief Vindication of the Honourable East India Company's Government of Bengal*, London, 1830 (India Office Library Tracts, Vol. 472), pp. 19-20.

⁷³J. Crawford, *An Inquiry into Some of the Principal Monopolies of the East India Company* (IOL Tracts, Vol. 179), London, 1830, p. 10.

⁷⁴*Ibid.*

⁷⁵R. Saha, "Salt Workers of Nadia (1785-1795)", *Bengal Past and Present*, Vol. LXXXIII, January-June 1964, p. 26.

his descendants⁷⁶. By another assumed custom, if a labourer absconded from the works, one of his relatives became at once liable to be seized to work in his place. Even the absconder's security, master or neighbour in whose house he might have been seen, might similarly be held liable⁷⁷. Of course, the *gomastahs* would take it upon themselves to include the whole body of the labouring population under the scope of the assumed custom. It was, however, open to anyone who could afford it, to purchase his exemption. Ryots were also seized to act as smiths for the salt works and made to pay *piadgaon* or fees of the *piada* who seized them. Beveridge regretted : "It is so iniquitous first to drag a man away from his home and then to make him pay for the outrage which has been committed on him⁷⁸."

Nothing will depict better the operation of the advance system and the sad story of the poor *malangi*, burdened with the salt advances and debt, than the following account given by George Plowden, then Salt Agent of Bhulwa and Chittagong and later to become famous as the author of the voluminous *Salt Report* of 1856, to his superiors at Calcutta in 1821⁷⁹ : "A man enters...into a contract desirous probably of acting fairly and of making a legal profit by his labour... but his expenses continue to increase whilst the rate of his contract still remains the same ; then comes an unfavourable season, the molungee falls into balance, and has no resource but to borrow from some one who charges the exorbitant interest. . . from thence onward he becomes a slave in everything but the name. . . he no longer renews his engagements with Government in the hope of gaining merely a fair profit by them, but that he may receive the advances,, and appropriate a large portion of what he receives to the payment of the interest of his debt ; as to the principal, the profit of his labour, if any exists is so trifling as to leave him very little hope of ever being able to disincumber himself from that . . . death alone can release him from this state of intolerable servitude. . . Such is the wonderful state of bondage to which many of these unhappy men are reduced that death itself. . . does not always relieve the molunghy. . . for a custom prevails especially in Duckin Shahabazpore and Hatteah Saugardy under which the family, not only males but females bind themselves to work out the debt of their principal and they are obliged, should the creditor so will it, to adopt the trade to the deceased

⁷⁶Bengal Revenue Consultations, 15 February 1788.

⁷⁷Ibid.

⁷⁸H. Beveridge, *The District of Bakaraganj, Its History and Statistics*, London, 1876, p. 319.

⁷⁹See his letter of 30 June 1821 in *Separate Consultations*, 14 September 1821.

... and as the creditor takes especial care that they shall have little chance of throwing off his yoke by paying the debt, the original debtor transmits his bondage to his son, who in like manner delivers it to his son and so on till the family becomes extinct. ... It would be thought upon a cursory view that this system bad as it is would at least insure one result, namely a regular success of persons no matter how obtained, to conduct the business of the manufacture. The reverse however is the case. Oppression with its concomitants, overlabour and want, wear out families, or, what is the same thing, prevents their increase and in the end the creditor finds himself without anyone to whom he can look for repayment, whilst the Agency has suffered the loss of a family of molungees, a loss which cannot be replaced at the the present rate of remuneration offered to that class of people. What individual in his senses will undertake similar engagements with such an example before his eyes?"

If this was the lot of the salt-manufacturers, that of the indigo ryots was hardly better. The modus operandi and the extent of exploitation were remarkably identical in both the cases. It was a British Magistrate who observed : "Not a chest of indigo reaches England without being strained with human blood" and it was a British Lieutenant-Governor of Bengal who corroborated its truth⁸⁰. Riot and affray, arson, malicious damage, demolition of houses, impounding cattle, destruction of standing crops, perjury, forgery, kidnapping, false imprisonment, assaults, unlawful wounding, inflicting grievous bodily harm, manslaughter, and even homicide are some of the criminal offences⁸¹ which the planters and their agents committed in the course of furtherance of their indigo interests. We will confine ourselves here to an account injury to life, liberty and property of the indigo ryots, given by the *Samachar Chandrika*, a vernacular newspaper of Calcutta⁸². It goes : "In the months of Choitra and Byshak, the planter makes advances for carts, labourers and boats. . . . When the rains come in, the saheb and his dewan go and bring by force or artifice the ploughs and bullocks of the ryots of the farm, whether they have received advances or not : and having made them work all day, they put the ploughs and bullocks in custody at night at the factory, until all the sowing is completed. For a slight offence, a heavy punishment is inflicted. Thus, where one rupee advance is given,

⁸⁰See *Grant's Minute*, pp. 238-271.

⁸¹For detailed accounts of these offences see *Grant's Minute* and *Selections from Records*.

⁸²For the English version of the account which is quoted here, see *Appendix to the Report of the Select Committee of the House of Commons, 1836: Supply of Salt for British India*, pp. 33-34.

five rupees are exacted when accounts are settled ; the profit of those who did not receive advances, is that they get back their ploughs and bullocks, but to make good the exactions (or fines) the ploughs and bullocks are appropriated to the factory. His honour himself goes to have the ryotee land sown. . . . Turning up the fruitful land which the ryots have planted with grain, he sows it with indigo. . . . If any bullock or man of that village, or any other, go by the path at the borders of the indigo fields, the cowherds, like cow-destroyers, seize them and carry them off to the factory." The most familiar method of compelling an unwilling ryot to cultivate indigo was by forcing him to affix his name to a blank, stamped paper and filling it up subsequently with unfair and false accounts of outstanding balances against him. Here is the vivid picture of the procedure of recovery of these outstanding balances : "As soon as he (the indigo factor) has reached the factory, the little dewanjee of the factory. . . makes his appearance, and salutes the gentleman. The gentleman exclaims, "Well, who are you ?" The dewan, rather disconcerted, explains who he is. The planter then demands the accounts of debts and balances. The dewan . . . reads only the list of outstanding balances ; so much money is due from such a mundel. Before the planter has time to speak, he prepares to recover the sum : shall I send a peon to seize the debtor ? The planter replies, send him quickly. He dispatches a great big brijubasee, awful as the messenger of death, to recover this debt. If he cannot find the mundel, he seizes his cows, his wife, his brass pots, and whatever he can lay his hands on, and brings them to the factory. If he finds him, he drags the poor emaciated peasant, with an occasional push, to the factory. . . . The trembling debtor, totally ignorant of the debt, of course, denies it on being questioned. The lord, flying into a rage . . . swears at him . . . and inflicts corporal punishment . . . and orders him to be locked up in one of the store-rooms . . . Thus he passes two or three days without food, and receives a whipping every evening . . . The family of the poor fellow, overwhelmed at the distress, falls at the feet of the dewan . . . He throws dust in their eyes by deceitful words, and says, the original debt was 20 rupees, interest for 10 years at the rate of half an anna the rupee, amounts to nearly 40 rupees more. If any one inquires how the debt was contracted, the dewan replies, during the time of such a gentleman, 10 rupees were advanced for ploughs and so forth . . . The poor ryot, reduced to despair, sells his house, his lands, and all that he has, to pay the debt."

Much has been said about the miracle of European skill, enterprise and capital in indigo manufacture. As we have noticed above, in practice European skill; enterprise and capital had all effectively combined to produce what has been stigmatised by Professor N.K. Sinha as 'indigo-

slavery' in Bengal⁸³. It was hardly surprising that indigo cultivation dwindled sharply when official support for forced cultivation was withdrawn.

Coercion and violence were not the only peculiarities of salt and indigo manufacturers only. As the *Nunias* were forced to accept advances for salt-petre on account of the Company, Regulation VIII of 1812 was issued, forbidding application of force on them⁸⁴. But the practice could not be stopped.

Opium cultivation was frequently admitted by the officers of the Department to have been kept up by coercion. Under the contract system provision of opium which preceded government monopoly ryots had often been compelled to plant poppy in place of food crops. "It is stated that once during a famine in Bengal, when shortage of food was terrible, several of the poorer farmers were compelled to plough up the fields they had sown with gram, in order to plant them with poppies, for the benefit of the engrossers of opium⁸⁵." In 1777 green corn over a vast area in Gaya was suddenly cut down to make room for poppy cultivation⁸⁶. The Government monopoly brought no relief to the ryots. We have the following eye-witness report of John Freeman⁸⁷: "Great persecution is employed by the swarms of the peons to compel the ryot to take advances, and to devote a portion of his land to opium ... I have possessed extensive properties in the opium-districts; and I have seen ryots through tyranny, and to save themselves from persecution, compelled to sow opium in land belonging to me, even in the very compound of my house, which I have given to them for other purposes."

Benoy Chowdhury has analysed the different forms of compulsion applied for opium cultivation and what follows here is largely based on his findings. Once a ryot had grown opium on a plot of land, he lost his right to grow other crops on it⁸⁸. He must either continue to grow poppy or relinquish the land altogether. He preferred poppy cultivation under compulsion to the prospect of losing the land and becoming a landless labourer. Benoy Chowdhury effectively argues that during the government monopoly a greater systematisation of compulsion took place—it now

⁸³N. K. Sinha, *The Economic History of Bengal, 1793-1848*, Vol. III, Calcutta, 1970, p. 22.

⁸⁴Ghosal, *op. cit.*, p. 138.

⁸⁵See Ram Gopal, *op. cit.*, p. 93.

⁸⁶Benoy Chowdhury, *op. cit.*, p. 50.

⁸⁷Quoted in Ram Gopal, *op. cit.*, pp. 98-99.

⁸⁸Benoy Chowdhury, *op. cit.*, pp. 50-51.

worked through more highly developed institutions. The ryots did not individually enter into agreement with the Government; it was the *mahtoo* who as a village headman engaged to get a specified quantity of land cultivated for poppy, received the advances and distributed them among the ryots and settled their accounts with the Government. Thus, the native *gomastah* of the European Agent had now the assistance of a powerful class of middlemen who were much closer to the peasants than the *gomastah* and had a vested interest in the cultivation of opium. "Without the intervention or indeed persuasion of these people it would be next to impossible to get the ryots to cultivate the poppy on account of Government", confessed an Opium Agent⁸⁹. No less important an instrument of compulsion was the system of advances. The poor ryots needed to raise loans to pay rents and other costs of husbandry. The interest-free advances were used by the Opium Department as a trap to ensure regular supply of labour and land for opium cultivation. In 1832 the idea of opium cultivation without advances was discussed and discarded as absurd. It was pointed out that, if the advances were discontinued, the Government would lose its hold over the ryots to money-lenders, indigo-planters and petty traders and not even one-half of the opium lands would be cultivated.⁹⁰

The Government officers did not hesitate to apply direct pressure where indirect methods of coercion failed to sustain or extend cultivation. In 1830 the Collector of Shahabad candidly confessed to have compelled peasants to grow more opium than they had engaged to⁹¹. In the same year the inhabitants of Ramgar, "notwithstanding their being carpenters in tribe", were forced to accept opium advances by the officers of the Department. The Deputy Opium Agent of Fatehpur wrote to the Board in 1832, "I cannot take upon myself to explain what specific acts of coercion has been employed in this Agency to make the ryots cultivate, but I confess I have reason to believe that in very many instances, it required the authority and influence of the native officers to secure the required quantum of cultivation in each *pergunnah*⁹²". Rasik Lal Ghosh who investigated into opium cultivation in Bihar on behalf of the Indian Association in 1849 explained the nature of coercion to the Royal Commission On Opium in these words: "The tenants are often compelled to accept the first advance for growing the poppy; and in case of their refusal, they are threatened with criminal prosecution

⁸⁹*Ibid.*, p. 55.

⁹⁰*Ibid.*, p. 58.

⁹¹*Ibid.*, p. 60.

⁹²*Ibid.*, p. 61.

and imprisonment ; and besides, their legitimate dues on account of the poppy grown in the preceding years are withheld from payment unless they consent to cultivate the poppy⁹³. A special enquiry conducted by A. Forbes, Commissioner of the Patna Division in 1894 revealed that the Sub-Deputy Agent and the tehsildars, acting on the instruction of Mr. Skrine, Collector of Shahabad, had forced advances on the ryots of Sasaram for 223 bighas of land which had never been cultivated before⁹⁴.

IV

Thanks to the proximity of some of the indigo plantations to Calcutta, the interest of the Christian missionaries and the native press in the lot of the indigo ryots, the vivid dramatisation of their story by Dinabandhu Mitra in his immortal classic *Nil Darpana*, the sympathy of the senior Government servants for the indigo ryots and the indigo disturbances of 1859-60, the indigo episode has received enough publicity. Consequently, the issues involved and the role of the principal parties have been thoroughly explored by scholars and it is unnecessary to repeat their findings here. The salt workers had worked in more inhuman conditions and been subjected to worse exploitations and yet they found no annalist to record their misfortunes. It is not possible to give a full account of the conflict and tension generated by the forced manufacture of salt in the vast coastal regions of Bengal within the narrow compass of this paper. What will be attempted here is to give some idea of this by reference to the attitude of government officers and the zamindars to this disadvantaged group of people.

True, there was no James Long, Harish Chandra Mukherjee or P.K. Tagore to highlight and lament their miseries or a Dinabandhu (literally, a friend of the poor) Mitra to dramatise their hard lot, but there was one class of government officers—the judges of the salt districts—who refused to look upon the Indians as born only to be a means of profit to the Company. They considered it their moral responsibility to protect the salt workers from the tyranny of the authoritarian Salt Department and found themselves often involved in conflict with the Salt Agent. This is best illustrated by the many conflicts between Tilman Henckell, Judge and Magistrate of Jessore and Ewart, Salt Agent of the Roymangal Agency over the treatment of the salt makers in the early years of the Company's

⁹³Royal Commission On Opium, Vol. III, p. 34.

⁹⁴See his letter No. 116R, dated 12 March 1894, in *Royal Commission on Opium*, Vol. V, London, 1894, pp. 354-56.

salt monopoly⁹⁵. To give one example. In 1785 Ewart sent his agent to a village to seize the first persons he came across for salt manufacture. When the villagers attempted to rescue the persons seized, four of them were shot dead by the agent. The judge issued a warrant for the arrest of the culprit but Ewart would not let it be executed⁹⁶. This flagrant obstruction of the course of justice went unpunished. To prevent a clash of authority between the two Departments the Government found it necessary to issue some rules in 1785⁹⁷. Yet, after this we find Ewart personally proceeding to seize the ryots and killing one and wounding others who resisted him⁹⁸ and Henckell loudly protesting against his wanton conduct. The judge's opposition was not in vain. While a grateful people named a place after him as Henckell-Nagar, all the elements of reform advocated by him were incorporated in the Salt Regulation of 1788 and Regulation X of 1819, declaring salt labour voluntary and legally securing the manufacturers from ill-treatment⁹⁹. That the Regulations were often violated by the salt officers is a different story.

Conflict between the two Departments continued long after the reforms of Cornwallis. In 1793 the Salt Agent wrote to Judge Burrowes to arrest a number of absconding salt workers and send them to the works. The judge refused to arrest them on the ground that the Agent's people had taken recourse to 'the most illegal and oppressive stratagems' to force advance on them¹⁰⁰. In 1826 the Jessore Salt Agent accused the Magistrate of obstructing salt manufacture by his refusal to arrest workers charged with desertion. He replied that unless the Agent would swear in court to the truth of his allegations he would not act¹⁰¹. In the same year the Magistrate of Bakarganj wrote to the Salt Board that the salt officers had been found guilty of "atrocities and oppressions of every description" against the salt workers¹⁰².

Like the judges the zamindars also found themselves in conflict with the Salt Department. On the establishment of the monopoly the zamindars become entitled to a fixed allowance for the salt lands taken from

⁹⁵See J. Westland, *A Report on the District of Jessore: Its Antiquities, Its History, and Its Commerce*, 2nd ed., Calcutta, 1874, pp. 65-73.

⁹⁶*Ibid.*, p. 67.

⁹⁷*Ibid.*, pp. 68-69.

⁹⁸*Ibid.*, p. 67.

⁹⁹*The Bengal Regulations, 1793-1834*, 5th ed., 1862, pp. 934-36.

¹⁰⁰Westland, *op. cit.*, p. 133.

¹⁰¹*Separate Consultations*, 9 March 1826.

¹⁰²See his letter of 12 June 1826 in Beveridge, *op. cit.*, p. 320.

them, irrespective of the use made of them by the Salt Department. But they lost not only the right of manufacturing salt or letting the lands but also that of bringing the waste under cultivation. Since the Salt Department got the wood for fuel from the waste, they objected to its reclamation and they were shielded by a resolution of Government that it was "the duty of the officers who have the assignments of the jungle lands for purposes of cultivation to consider the interest of the Salt Department in the first instance, and to consult with its officers as to the best way of extending cultivation without interfering with those interests"¹⁰³.

The zamindars needed the services of the ryots for cultivation of their holdings and the Salt Department needed them for salt manufacture. While the ryots were enticed or forcibly taken away by the Agent's people, the zamindars retaliated by harassing the salt workers at the height of the boiling season with claims, genuine or pretended, for the rents of their lands and thus impeding the manufacture of salt¹⁰⁴. Now, if the volume of salt production affected the commission of the Agent, that of revenue collection affected the interest of the Collector. Naturally, the Collector supported the zamindars lest they had an excuse for defaulting in the payment of revenue. The Government stepped in to stop the conflict by declaring the salt workers to be immune from judicial process during the salt season—a measure resented by the zamindars as weakening their authority over their ryots and by the Collectors as subordinating the interest of land revenue to that of salt revenue. But the zamindars had other ways of creating trouble. They could still prevent the salt workers from taking advances or incite them to desert the salt works and give the deserters shelter. Where the Agent found it difficult to counter the zamindars, they sought and usually received from Government the power and authority of a Collector of land revenue over the tract in question in order to have sufficient control over both the zamindars and their ryots¹⁰⁵.

The opposition of the zamindars to salt monopoly is understandable. They had been deprived of profits of their salt lands, the privilege of extending cultivation by reclamation of jungles in the sea-coast, and effective control over a section of their ryots. As if these were not enough, impossible obligations were imposed on them by a succession

¹⁰³*Seperate Consultations*, 2 February 1830.

¹⁰⁴H.R.C. Wright, "Reforms in the Bengal Salt Monopoly, 1786-95", *Studies in Romanticism*, Vol. 1, No. 3, Spring 1962, p. 134.

¹⁰⁵*Seperate Consultations*, 7 December 1821.

of salt laws, of preventing clandestine manufacture of salt on their estates by the ryots. The salt laws were unusually severe. It would have been difficult to convince a zamindar of Chittagong in Calcutta that it was not most unjust to fine him Rs. 500 because one of his ryots had boiled a few seers of salt for his family's consumption, and yet, this is what Section 27 of Act XXIX of 1838 actually provided for the offence.¹⁰⁶ The British Indian Association, consisting predominantly of zamindars, complained of the injustice and cruelty of the salt laws¹⁰⁷ but the Government defended them as being necessary for the protection of salt revenue¹⁰⁸. The zamindars protested loudly whenever their interest were jeopardized. In the case of indigo the stake was very high—it was their very existence which was being threatened by the settlement of Europeans in the interior, by their acquisition of landed interests and cultivation of indigo and exercise of despotic authority over the ryots. Hence they proceeded to engineer the indigo uprisings to oust their European rivals from the countryside¹⁰⁹. But salt monopoly did not curb their power and influence to the extent the indigo cultivation by the Europeans did. Their limited objective of preventing encroachment on their zamindari rights by the Agents was achieved by means of occasional incitement to ryots to desert the salt works and extending temporary shelter to the deserters.

The salt workers, some three lakhs and a half in number,¹¹⁰ were a discontented class. If their discontent found no expression in organised violence that was because the government officers were the perpetrators of the injustices and inequities. In the face of massive documentation of these injustices by their senior servants it was not possible for the Government to plead ignorance but at no stage did they attempt to curb the corrupt practices of their agents. The dispersal of the salt-work throughout the inhospitable and inaccessible sea-coast of Bengal and Orissa and the total government involvement in the manufacturing process

¹⁰⁶Appendix to Salt Report, App. S, No. 1.

¹⁰⁷Ibid.

¹⁰⁸Ibid., App. S, No. 2.

¹⁰⁹Palit, *op. cit.*, pp. 141, 199. For different views on the nature of the indigo uprising see M.M. Islam, "Nil-Bidroher Itihas Prasanga" (in Bengali), *Dacca Visva Vidyalyaya Patrika*, Vol. XV, June 1982, pp. 167-190.

¹¹⁰Crawford's estimate of their number at 1,25,000 is too conservative. (See Crawford, *op. cit.*, p. 9). Taking the average annual production of Bengal salt at 50,00,000 maunds and per head production at 15 maunds—this has been worked out on the basis of data supplied by the Salt Agents in 1789 (See *Bengal Board of Revenue Misc. Proceedings*, 17 September and 22 October 1789)—the number of salt workers would not be less than 3,33,000.

of salt prevented the widespread publicity and politicisation of the issue. The cause of the salt workers failed to draw the sympathy and support of any pressure group. The criticism of the missionaries was directed to the bad quality of monopoly salt and its harmful effects on the consumer's health¹¹¹. The vernacular press loudly denounced the exorbitant price of salt in the market but hardly took notice of the meagre remuneration of the workers and the exactions of the native agents. In such a situation the debate was to remain subdued and confined to the official circle. Philanthropists like Rickards¹¹² and free traders like Crawford¹¹³ did draw the attention of the British public to the inequity and horrors of production by forced labour but they were countered by effective official propaganda of the Salt Department¹¹⁴.

The opium population, estimated at five or six hundred thousand families,¹¹⁵ were scattered about the length and breadth of Bihar and some parts of Bengal. Their discontent found occasional expressions in combinations for enhancement of price. In 1817 one Umaree Koerie started an agitation for enhancement of opium price by persuading the ryots not to deliver their opium to government warehouses for weighing¹¹⁶. Very soon the agitation developed into a general movement for boycott of advances. As in the case of salt workers, and for more or less the same reasons, there was not violent outburst of the injured feelings of the opium ryots. But the Chinese fought a war, though an unsuccessful one, to resist the import of Bengal opium into their country. While the Bengal Government felt justified to gain from a sinful and morally indefensible trade, it was left to John Bright to voice the moral indignation of the British conscience. "A more dreadful traffic or one more hideous in its results", he declared, "never existed, except perhaps the transportation of Africans from their own country to the Continent of America¹¹⁷."

¹¹¹"Religious Aspect of the Charter Question", *Calcutta Review*, Vol. XIX, January-June 1853, pp. 136-39.

¹¹²R. Rickards, *India or Facts submitted to illustrate the Character and Condition of the Native Inhabitants, with suggestions for reforming the Present System of Government*, Vol. I, London, 1829 and 1832, pp. 641-47.

¹¹³Crawford, *op. cit.*, pp. 8-10.

¹¹⁴See H.M. Parker's "Note on the alleged Sufferings and Coerced Labour of Molunghees", dated 15 Sept. 1832 in *Selections of Papers from the Records of The Board of Customs, Salt and Opium, relating to Bengal Salt Revenue*, Calcutta, 1833.

¹¹⁵*Royal Commission on Opium*, Vol. III, p. 130.

¹¹⁶Benoy Chowdhury, *op. cit.*, p. 27.

¹¹⁷Quoted in Rajeswari Prasad, *op. cit.*, p. 177.

It is not difficult to comprehend the aversion of the landholders to the Government monopoly of opium cultivation. Sharing of authority and interest with the Government was bound to be resented by them. But the conflict between opium and indigo and the tension that this gave rise to demands more than a passing notice. Both the planters and the Opium Department needed land for expansion of cultivation. The planters found it difficult to rent lands for indigo amicably and forced advances on the unwilling ryots. As land was being constantly withdrawn from opium cultivation in this way, the Opium Agent appealed to the Opium Board to enact suitable legislation ensuring the peasant's freedom of choice of crop¹¹⁸. But the Board felt that special legislative protection for opium was objectionable and unwise. The planters, on the other hand, urged the Government to take away magisterial powers from the collectors functioning also as Deputy Opium Agents. In 1835 Messrs Nowell and Co. complained that the peasants, tempted by the opium advances and the support and connivance of the Collectors gave up cultivation of indigo for which they had accepted advance¹¹⁹. There are other instances of the clash of the two rival interests until the ignominious exit of the planters in the 1860s.

V

“ ‘A fair day's wage for a fair day's labour' is the only way of establishing satisfactory relations between employers and employed, and we wish you to act on this principle”—so wrote an enlightened indigo firm to its managers in Bihar in the wake of the indigo disturbances of Bengal¹²⁰. Had the Government and the planters of Bengal acted on this principle, much of the discontent, unhappiness, misery and poverty and the resulting tension in the Bengal rural society could have been avoided. The policy of the government and the planters was maximisation of profits—every other consideration was secondary to this—and this was obtained by offering uneconomic and uncompetitive prices to the primary producers and coercing them to produce the commodities at these prices and not, for instance, by a reduction of the huge establishment, transportation and other charges incidental to the careless and extravagant management of the monopolistic concerns.

Enough contemporary evidence is available to show that payment of a fair and reasonable price to the producers had invariably led to increased production and reduced adulteration and smuggling. For

¹¹⁸Benoy Chowdhury, *op. cit.* p. 63.

¹¹⁹*Ibid.* p. 64.

¹²⁰Quoted in Kling, *op. cit.*, p. 193.

example, when, in 1812-13, a wet season unsuitable for salt-making coincided with a short-fall in Madras supplies, and the Government offered an extra Rupee per maund for all salt surplus to the fixed quota which was produced, enough was readily produced to make good all deficiencies and leave nearly 26 lakhs of maunds surplus in store¹²¹. Similarly, a rise of the price payable to the opium growers in the 1820s was followed by an extension of cultivation, increase of production and decrease of smuggling¹²². After the indigo disturbances some planters paid the ryots twice the old rate for indigo plant and still found indigo cultivation profitable¹²³. One planter tempted his ryots to cultivate indigo by offering low rents for the lands¹²⁴.

Payment of low prices had some sad results. As the gulf between the price paid to the producers and that at which it was sold in the market was very great, there was a natural temptation for adulteration, smuggling and cheating, resulting in the moral degeneration of those professional communities, loss of the finer qualities of their character and corruption of the society at large. One experienced Salt Comptroller told his employers that if the makers were allowed a subsistence they would give up the practices of smuggling, fraught with the dangers of detection and heavy punishment¹²⁵. Not all the salt-makers, weavers, opium and indigo ryots were invariably honest, innocent and hard-working. Adulteration of ashes, earth and dirt with salt, and water and other liquids with opium juice was not always meant to compensate for loss caused by unremunerative prices. Some opium growers received the advances with a view to smuggling a certain portion of the produce¹²⁶. Some weavers received advances from the English to deliver the goods to the French¹²⁷. But it cannot be doubted that temptation to take recourse to corrupt practices was much greater where the maker was denied a reasonable remuneration for his labour to live on.

Poor remuneration was not the only grievance of the salt-makers, saltpetre workers and the opium and indigo ryots. The influence of the omnipotent gomastah on their lives and the production of these articles was

¹²¹*Bengal Revenue Consultations* (Salt, Opium), 29 October 1813 ; *Letters Received from Beugal* (Separate Department), 5 February 1814.

¹²²Rajeswari Prasad, *op. cit.*, p. 160.

¹²³Kling, *op. cit.* p. 193.

¹²⁴*Ibid.*

¹²⁵*Bengal Board of Revenue Proceedings*, 23 February 1787.

¹²⁶Ghosal, *op. cit.*, p. 114.

¹²⁷S. Islam, ed., *Bangladesh District Records, Chittagong*, Vol. I, 1760-1787, University of Dacca, pp. 350-51.

pernicious. These unfortunate people groaned under their heavy exactions and industry and agriculture declined. In a work which has not received the attention it deserves, Dr. M. Huq examined the factors that led to the decay of trade, industry and agriculture of Bengal in the 18th century and found that the *gomastahs* and banians who conducted the 'investment' trade of the Company and the private trade of their servants, and collected the land revenue and sair duties were the persons largely responsible for it¹²⁸. Our findings show that the same class of people were also instruments of terror and injustice in rural Bengal during the 19th century. The responsibility for much of the miseries that befell the rural people of Bengal during British rule must be shared by these people.

¹²⁸M. Huq, *The East India Company's Land Policy and Commerce in Bengal, 1698-1784*, Dacca, 1964, pp. 262-63.

Ijbar In Muslim Marriage and the Bangladesh Practice

M. Badaruddin

1. Muslim Marriage and Ijbar

Marriage is a social institution developed from the beginning of an organised life in the society. The desire of enjoyment and the procreative urge of two individuals of opposite sex make them form a union in a socially recognised manner. This union is marriage. Usually, recognition is given to such union when it is effected through certain formalities approved by other members of the community to which the parties belong. These formalities of marriage are generally the products of customs and practices tinged with the religious beliefs of the people of that particular community. Thus it has become a sacrament to some, while to others it remains as a contract. Certain rites and rituals are also observed in the celebration of a marriage, but their absence may not so affect its validity as the absence of formalities do. Muslim marriage also reflects this concept; it is an institution for the solace of life; it is 'one of the prime or original necessities of man'. It is a union effected either by the parties themselves or by their fathers or guardians. It is a contract between two individuals and not a sacrament although certain religious ceremonies are attached to its solemnisation. The fundamental elements of contract must also be present in the formation of this contract; otherwise its validity will be affected.

Islamic law sets some requirements which must be fulfilled by the parties for effecting a valid marriage. Generally, the validity depends on two principal requirements, namely, the proper conclusion of the marriage contract and the absence of any impediments to marriage between the parties. *Ijbar* comes under the first requirement, i. e., the proper conclusion of the marriage contract. Under traditional *sharia* law a marriage is validly concluded simply by the mutual agreement, oral or written, of the parties—the bride and the bridegroom or their respective representatives. Where it is concluded by the bride and bridegroom themselves they must be sane and have attained majority. Under *sharia*

law legal majority comes with physical puberty. Girls below the age of nine and boys below the age of twelve cannot attain this puberty ; while both boys and girls are irrebutably presumed to have attained it and thus legal majority with the completion of the fifteenth year of age.¹ *Sharia* law does not therefore allow persons who have not attained puberty to contract their marriage ; they are to do it through their representatives who will supplement their legal incapacity. Like Roman *impubes* the Muslim minors are unable to enter into a contract of marriage. *Sharia* vests this power of matrimonial constraint in a marriage guardian, who may validly contract his ward in marriage at his discretion and regardless of the ward's wishes in the matter. This power of matrimonial constraint is termed *ijbar*.

2. Purpose

Guardianship of marriage as an institution appears to be dying in modern society. Influences of Western culture and education have greatly contributed to its present disregard and disuse. Muslim boys and girls are contracting their own marriages without requiring the mediation of their marriage guardians. Again, modern reforms of Islamic law in the various Muslim countries of the world have also *restricted* in many ways the powers of guardians in concluding the marriage of their wards. *Ijbar* seems to have lost its rigour and become a matter of academic interest only. In this paper an attempt will be made to trace the origin of the doctrine of *ijbar* as it obtains in *sharia* law, the impacts of modern reform on it, and its utility in the Muslim society of Bangladesh.

3. Meaning of *ijbar*

The term '*ijbar*' is taken from the terms *al-wilayat al-ijbariyyah* (compulsory guardianship) and *al-wali al-mujbir* (compulsory guardian). Literally, *wali* means an adjutant, helper, friend, relative, caretaker or protector and *mujbir* means a person who helps someone to be back on his feet and who forces or compels one to do something. Technically, *al-wilayat al-ijbariyyah* has been defined as 'enforcing one's will on the other whether he agrees or disagrees.'² This traditional definition has been further refined to mean 'a legal authority that gives a guardian an absolute power to dictate marriage on his ward without his or her permission or consent.'³

¹Neil B.E. Baillie, *A Digest of Moohummadan Law* (Lahore, 4th edn., 1965), 4 f.n. 5.

²Mustafa Zarqa, *Al-Madkhal al-Fiqhial al'-Anim* Vol. II (Damascus, 1968), 818

³M.I. Sarhan, *Al-Ahwal al-Shakhsiyyah* (Iskanzamiyyah, 1953), 125

It is difficult to translate the term *ijbar* in European languages. French scholars translate it as 'constraint matrimoniale'⁴, while English scholars translate it as 'matrimonial constraint'.⁵ *Al-wilaya* (guardianship) should be distinguished from *al-wakala* (legal representation) which is similar to agency.⁶ The term *ijbar* has been used in this context. Contrary to *wilaya*, *wakala* is about persons of restricted capacity. They cannot express or exercise their will; hence they do not even have the capacity to appoint their legal representative. Unlike *wakala*, *wilaya* is compulsive, absolute and irrevocable. Again, in Islamic law guardianship is treated as an institution created by the *act of the law* in contradistinction to 'legal representation' which is created as an *act in the law*. In this sense also it has an element of compulsion and is created as a technical necessity and not as a policy. A similar distinction may be drawn in Islamic law between *al-milkiyyah al-ijbariyyah* (compulsory ownership) acquired by inheritance and *al-milkiyyah al-ikatiyariyyah* (voluntary ownership) created by contract. The former is obtained by the *act of the law*, while the latter is created by an *act in the law*. Considered in this light guardianship is a duty imposed by law. In practice, however, this interpretation has become obscure and guardianship is now more a right than a duty. *Ijbar* is thus understood as a power of the guardian which is final and irrevocable. But the element of compulsion should not be stressed too far to allow a father to marry his daughter to a blind man against her will. That will be an antithesis of the whole concept.

4. *Ijbar* and guardianship

In Islamic law the type of guardianship as is associated with *ijbar* is generally the guardianship of marriage especially of daughters, and the right of this guardianship is mainly that of the father to marry them without their consent. It also includes 'adl (constraint) to withhold his consent. The precise extent of the powers of guardians of marriage varies from school to school. In Hanafi law the power of *ijbar* vests in 'proper' persons qualified to act under the rules of priority in marriage guardianship. The right belongs first to *asubat*⁷ or male agnate relatives in the order of inheritance—the father precedes the

⁴G. H. Bousquet, *Aperçu de la loi Musulmane selon la rite de l'Imam Malik* (Paris, 1958), 17 as quoted by M.K. Masud in 'Formal Sources of Islamic Law' in (1976) 15 *Islamic Studies*, 187-194

⁵N.J. Coulson, *Succession in the Muslim Family* (Cambridge, 1971), 11

⁶H. Abdul Ati, *The Family Structure in Islam* (Washington, 1977), 70-72 (the writer has made an useful discussion of this topic)

⁷Baillie, *op. cit.*, 45

paternal grandfather, who is followed in turn by the agnatic brothers, nephews, uncles and cousins, failing them to females and non-agnate relatives within the prohibited degrees. In default of maternal kindred it devolves upon the *mowla-ul-mowlaat*⁸ then the ruler who is represented by the judge and ultimately the person appointed by him. Under the law of other sunni schools only certain 'close' guardians possess the power of *ijbar*⁹—in Maliki law the father or his appointed executor, in Shafii law the father or paternal grandfather, and in Hanbali law the father alone. In Hanafi law the power is absolute when exercised by the father or paternal grandfather; in all other cases the ward may repudiate the marriage on attaining puberty. But in Maliki, Shafii and Hanbali law the power is absolute, inasmuch as the ward has no right to repudiate the marriage on attaining puberty. While in Hanafi school the power is exercised over minor wards only, in other school it may be exercised over an adult woman who has not been married before, at least as long as she is of child bearing age. Shia law recognises an absolute power of *ijbar* only in favour of the father and paternal grandfather and only over minor wards.

In Hanafi and Shia law an adult woman has the legal capacity to contract her own marriage. But according to other schools her marriage guardian must conclude the contract on her behalf; and any marriage contracted without his intervention, in person or through his agent, is a complete nullity. In Hanafi and Hanbali law minority alone is the ground for *ijbar*, but in Shafii and Maliki law minority and virginity are required as grounds for *ijbar*. Under Maliki law a married woman remains under the *ijbar* of her father until the first year of her marriage expires and she stays with her husband. According to this law *ijbar* terminates when after due deliberations the father declares his daughter mature enough to take care of her own interest. In Hanafi and Shia law *ijbar* terminates when the ward attains puberty. Maliki and Shafii law do not normally allow the power of *ijbar* to be exercised in the case of male ward, the reason being that adult male wards themselves possess the required capacity and minor male wards themselves are not in immediate need of marriage. Since in Maliki, Shafii and Hanbali law relatives or guardians other than the father and paternal grandfather do not have the power of *ijbar*, under the law of these schools a minor orphan girl cannot be married by guardians other than *al-wali al-mujbir*; she must wait until she is of marriageable age.

⁸*Ibid*, 46

⁹Coulson, *op. cit.*, 12

5. Guardian's consent

Maliki, Shafii and Hanbali schools consider the consent of guardian essential for the validity of marriage. A marriage contracted without a marriage guardian's consent is void. They however maintain that a guardian can unilaterally form his opinion in giving his consent. He is not bound to seek the ward's consent unless the ward is an adult male or if female, a divorcee or widow. As stated earlier, in Hanafi law the consent of the guardian is not required if the ward is sane and adult; his consent is necessary only in the case of a minor or insane ward.¹⁰ Zahirī school considers the consent of guardian is essential for female ward, whether she is adult or minor, virgin, divorcee or widow.¹¹ The different schools allow certain exceptions to their general rules. Thus, in Maliki law the guardian's consent is waived if a ward is a female of low social status; she can be married without any marriage guardian.¹² Hanafi law allows the marriage guardian to intervene even in the case of an adult ward, if the marriage is not advantageous to the ward.¹³

5:1 The Quran on guardian's consent

Jurists who consider guardian's consent essential for the validity of a marriage cite the following verses from the Quran :

- (i) 'Marry those among you who are single, or the virtuous ones among your slaves, male or female...' (24:32)
- (ii) 'Do not marry unbelieving women until they believe. A slave woman who believes is better than an unbelieving woman, even though she allures you. Nor marry (your girls) to unbelievers until they believe. A man slave who believes is better than an unbeliever, even though he allures you.' (2:221)
- (iii) 'O believers ! When there come to you believing women refugees, examine them. ...If you ascertain that they are believers, then send them not back to the unbelievers. They are not lawful (wives) for the unbelievers, nor are the unbelievers lawful (husbands) for them. But pay the unbelievers what they have spent (on their dower). And there will be no blame on you if you marry them on payment of their dower to them.' (60:10)

¹⁰D.F. Mulla, *Principles of Mahomedan Law* (Tripathi, Bombay, 18th edn. 1977), 294-95

¹¹Ibn Hazm, *Al-Muhadda* (Bayrut, n. d.), 457

¹²Yahuda b. Sa'd al-Nijiri al-Zakzaki, *Fath al-Jawad fi Sharh al-Irshad* (Bayrut, n.d.), 159 ; see also Ibn Hazm, *op. cit.*, 455

¹³Shamsuddin al-Sarakhsi, *Al-Mabsut* Vol. V (Cairo, 1324 A.H.), 10

- (iv) 'If any of you have not the means wherewith to wed free believing women, they may wed believing girls from among those whom your right hand posses. ...Wed them with the leave of their owners, and give them their dowers, according to what is reasonable...' (4:25)
- (v) 'And if you divorce them before consummation, but after the fixation of a dower for them, then pay half of the dower, unless they agree to forgo it or he in whose hands is the marriage tie agree to forgo.' (2:237)
- (vi) 'And when you have divorced women, and they fulfil the term of their (iddat), do not prevent them from marrying their (former) husbands, if they mutually agree on equitable terms. ...' (2:232)

5:2 Verses of the Quran and the jurists

The words and phrases used in the above verses are the basis of arguments of the jurists. The imperative mood used in the first three verses is directed to men and not to women ; the fourth verse prescribes permission of women's relatives ; the fifth verse speaks about forgoing dower ; and the sixth verse implies the right of prevention of the women's relatives. Ibn Hazm¹⁴ cites the first two, Shafii¹⁵ the fourth, Ibn Arabi¹⁶ the fifth and the sixth verse is cited by all in arguing that the injunction to contract marriage is addressed to the guardians and not to women. The arguments put forward by the jurists are not convincing. Ibn Hazm's thesis that the masculine form of imperative mood used in the first two verses excludes women is very weak. In the Quran quite frequently such forms are used to indicate both male and female. Further, if the verses are addressed to males, they are not certainly addressed to guardians. The fourth verse refers to slave girls and enjoins men to seek permission of their owners before marrying them. Analogy between a slave and a free woman is unwarranted at this point. The fifth and sixth verses are relatively more relevant. In reference to the fifth verse Ibn Arabi notes that the jurists are divided on the meaning of the phrase 'marriage tie' ; to some it refers to husband, to others it alludes to guardian. Ibn Arabi prefers the second view. He argues that after divorce husband holds no marriage tie and hence the verse could not be addressed to him.¹⁷ This argument may be easily challenged in view of the context of the verse. The verse is dealing with dower and

¹⁴Ibn Hazm, *op. cit.*, 451

¹⁵Shafii, *Al-Ummu* Vol. V (Cairo, n. d.), 11

¹⁶Ibn al-Arabi, *Ahkam al-Quran* Vol. I (Cairo, 1967), 219

¹⁷*Ibid*, *loc. cit.*

not marriage. The guardian has no right to remit dower. The context requires that it should refer to husband. The question of remission of dower arises in two situations ; firstly, when the dower was not paid at all and the wife is willing to forgo it ; secondly, when it was paid in full and the husband is willing to forgo half of it.¹⁸ Further the term 'marriage tie' implies the power to tie and untie both. Such powers belong to spouses and not guardians. The sixth verse is more commonly cited but the reasoning in this case is also very weak. The argument that the Quran forbids guardians to prevent women from marrying admits by implication of the right of prevention of the guardians is also weak, particularly when the end-part of the same verse attributes the act of marrying to the women and implies their independent capacity to contract marriage. Interestingly enough, the Hanafi jurists who do not think that the consent of the guardian is implied in any of these verses, cite them where the act of marrying is attributed to women to prove that they can validly contract their marriage without their guardians' consent.¹⁹ In addition to the above six verses they refer to the following two verses where guardians' consent is not implied to be required to the marriage of women :

- (i) 'And if a husband divorces his wife (irrevocably), he cannot, after that, re-marry her until after she has married another husband and he has divorced her.' (2:230)
- (ii) 'If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days. When they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner...' (2:234)

The Hanafi jurists think that in these verses the act of marrying is attributed to women independently. Guardian are not indicated ; they do not thus come into the picture and their consent is not required.

5:3 Traditions on guardian's consent

Besides the above Quranic verses the jurists in their arguments on this point cite the following traditions of the Prophet :

- (i) 'Any woman who is married or marries herself without the permission of her gurdian, her marriage is void, void, void. If the marriage consummated, the woman is entitled to dower because the

¹⁸Al-Adawi, *Commentary on Khalil's Mukhtasar* Vol. III (Cairo, 1316 A. H.), 11

¹⁹Sarakhai, *op. cit.*, 11

man took her as lawful. If they are in dispute, the ruler is guardian for those who have no guardian.' (Reported by Aisha)²⁰

(ii) 'No marriage without a guardian.' (Reported by Ibn Abbas)²¹

(iii) 'A single (al-ayyim) who had been previously married is entitled regarding herself more than her guardian. The virgin's consent regarding herself must be sought, her silence is her consent. (Reported by Ibn Abbas)²²

5.4 Traditions and the jurists

The proponents of the requirement of guardian's consent often quote the first tradition. But this tradition has been technically criticised by others. One of the transmitters of this tradition, Zuhri, denied the reporting of this tradition to Ibn Jurayi, the next transmitter. Ibn Hazm dismissed this criticism suggesting the possibility of forgetfulness on the part of Zuhri. This suggestion is not acceptable as it renders Zuhri's authority as a transmitter and collector of traditions doubtful. The tradition may further be criticised on the ground that Aisha, the narrator of this tradition, herself is known to have contracted the marriage of her niece, Hafsa, without the permission of her brother, who was Hafsa's father and guardian.²³ Technical objection has also been raised against the second tradition. The chain of its transmission to the Prophet is not complete, and hence it may be considered as a saying of one of the companions of the Prophet.²⁴ Again, this tradition has not been reported in the most authentic collections of traditions. Ibn al-Jawzi, the well known critic of traditions observes that though this tradition has been reported by other transmitters, all reports are technically defective. Al-Muwatta reports a similar tradition but attributes it to Umar and not to the Prophet.²⁵ In addition to these technical objections the Hanafi jurists regard it contradictory to the Prophet's own practice.²⁶

The second tradition is not free from any criticism. Ibn Hazm argues that the tradition 'no marriage without a guardian' has been reported

²⁰Tirmidhi Vol. I, 141; *Abu Daud* Vol. I, 284; *Mishkat*, 270

²¹*Ibn Majja*, 136; see also Jamaluddin Zayla'i, *Nasb al-Ra'ya* (Cairo, 1938), 188; Zurqani, *Commentary on Malik's Al-Muwatta* Vol. IV (Cairo, 1962), 6

²²*Muslim* Vol. I, 455; *Tirmidhi* Vol. I, 143; *Abu Daud* Vol. I, 286; Malik, *Al-Muwatta* (Cairo, 1962), 189

²³Zayla'i, *op. cit.*, 185

²⁴*Ibid*, 188

²⁵Malik, *op. cit.*, 8

²⁶Sarakhsi, *op. cit.*, 11

with varying words by other transmitters ; but it is authentic enough to repeal any other contradicting tradition. He observes that the requirement of guardian is in fact a rule added by law to the natural principle which allows a woman to marry whomever she wants ; and since the requirement is prescribed by divine law it cannot be omitted.²⁷ Ibn Hazm's argument has not been accepted by other jurists. Probably, it was the individual understanding of the texts of the Quran and the traditions which has produced different interpretations. Schacht,²⁸ however, finds that in pre-Islamic Arabia marriage without a guardian was the norm. He thinks that the doctrine 'no marriage without a guardian' was a saying of the Prophet and the requirement of marriage guardian was introduced sometime during the second century of Islam.

Ibn Rushd observes that the cause of this divergence of opinion is that there is no verse of the Quran or the *sunna* of the Prophet which clearly stipulates guardianship as a condition for the marriage contract. On the contrary, the verses and the *sunna* cited by the proponents of guardianship and their opponents are equally ambiguous. He further observes that the authenticity of the cited tradition is debatable and the rational justifications given by both sides are not satisfactory.²⁹ According to him cases of guardianship of marriage were frequently referred to the Prophet and had he considered guardian's consent such an essential condition as its lack could invalidate a marriage, he would have spelt out explicitly and in detail the qualifications and importance of the consent of guardians. Ibn Rushd suggests that a guardian is not legally essential for the marriage contract, but he is required for a general supervision of the marriage.³⁰ Making a comparative study of the opinions of the four schools of Islamic law on this point al-Jaziri³¹ comes to the conclusion that the views of jurists for and against the requirement of guardians are the products of social customs. Mahmasani³² finds similarity between the concept of family in pre-Islamic Arabia and that of the Roman family in pre-Republican period. The head of a pre-Islamic Arab family had the same powers as those of a Roman *paterfamilias*. He could sell, pawn or even kill his children; and none

²⁷Ibn Hazm, *op. cit.*, 457

²⁸J. Schacht, *Origin of Muhammadan Jurisprudence* (Oxford, 1950), 183

²⁹Ibn Rushd, *Bidayat al-Mujtahid Tr.* by M. K. Masud (Lahore, 1983), 2

³⁰*Ibid*, 38

³¹A.R. al-Jaziri, *Kitab al-Fiqh 'ala al-Madhabib al-Arbabh* Vol. IV (Bayrut, 1969), 49

³²S. al-Mahmasani, *Al-Awdaa al-Tashriyya fi al-Duwal al-'Arabiyyah* (Bayrut, 1957), 51-52

of the members of his family, male or female, could do anything without his knowledge. The idea behind this concentration of powers was to protect the honour and prestige of the family and the tribe. Since marriage was considered more a social bond between families than an agreement between two individuals, it could never be contracted without the consent of the head of the family. Guardian's consent was therefore a condition precedent to a marriage in pre-Islamic society ; in that society a woman's marriage without a guardian was considered fornication and a girl who contracted her own marriage was called a prostitution.³³ This practice continued among the Arabs even after the advent of Islam ; and the Prophet gave recognition to it. Thus Malik dismisses the requirement of guardian in the case of a woman of lower social status or where honour is not of vital consideration. But in the case of women of higher social status it can never be omitted.

A study of the pre-Islamic literature reveals that Schacht is away from the truth. *Al-Maydani* and *Bulugh al-Arab*, the authorities on Arabic literature³⁴, confirm the prevalence of the practice of guardianship in customary Arab marriage. Al-'Iqad al-Farid quotes Qays b. Zuhayr, a pre-Islamic poet, addressing the guardians³⁵ :

'Do not deny women their equals that would lead them to trials and sufferings. If you do not find equals for them the graves are the best husbands'.

Ayni in his commentary on *Bukhari* records Aisha's description of customary marriage in those days as follows³⁶ :

'One man proposes the marriage of her daughter or ward to another man, he fixes a dower for her and he marries her.'

Guardianship was there in the pre-Islamic Arab society and marriages were contracted by the guardians who used to feel it as their duty to find 'equals' for their wards. This practice continued among the Muslim Arabs. It is evident from the *Muwatta* that in Medina during the Prophet's time the practice of guardianship was quite normal.³⁷

The third tradition also creates a difference of opinion among the jurists. The term '*ayyim*' used in this tradition literally means a woman

³³S. Waliullah, *Hajjat Allah al-Baligah* Vol. III (Cairo, n. d.) 690

³⁴As quoted by Mahmasani, *op. cit.*, 54

³⁵As quoted by Ibn 'Abd Rabbih, *Al-'Iqd al-Farid* Vol. VI (Cairo, 1968), 85

³⁶Ayni, *Commentary on Bukhari* Vol. XX, 121 ; see also Mahmasani, *op. cit.*, 53

³⁷Malik, *Al-Muwatta*, 8

having no husband, whether a virgin or not, or whether previously married or not. The tradition provides that divorced women or widows who are termed '*thayyib*' can contract their own marriage independently of their guardians; for the Quran says of divorced wives: 'Do not prevent them from marrying their husbands, if they mutually agree on equal term.' (2:232); and of the widows it says: 'If they leave, there is no blame on you for what they do with themselves, provided it is reasonable.' (2:240) From these two verses of the Quran inference can be drawn that when the '*thayyib*' herself is satisfied, there must be no interference from the guardian. The Hanafi jurists rely on this tradition to argue that the tradition exempts the divorcees and widows from the requirement of guardians. Ibn Humam³⁸ and Zurqani³⁹ argue that the term '*ayyim*' in this tradition applies to all the unmarried male or female, virgin or divorcee or widow. Maliki and Shafii jurists, on the other hand, argue that the tradition is in fact meant to explain the difference between virgin and previously married women because it speaks about the different modes of their consent. They further argue that the tradition does not declare the divorcee and widow completely independent of guardians; rather it says that they have more right than the guardians. In Shafii's words 'the guardian has partner's interest in the commodity about which the woman is concluding the contract'. Hence a woman cannot conclude it without the consent of guardian.⁴⁰ Nawawi explains that the statement 'she has more right than the guardian' actually prescribes that both share this right; and since the woman's share is larger than the guardian, she cannot be forced into marriage.⁴¹ 'Iyad, a Maliki jurist, observes that the term 'having more right' means that while the guardian has the right to contract marriage, the woman has more rights in other matters.⁴² Above all these interpretations the tradition appears to have made a difference between a married woman experienced in marital life and a virgin or unmarried woman not so experienced at all; the former may herself contract her marriage to which the guardian will only give consent, while the latter must not be forced to give consent to a marriage contracted by the guardian; in the former case the woman will contract the marriage, while in the latter the guardian will do it.

³⁸Ibn Humam, *Fath al-Qadir* Vol. II. 393, as cited in Zayla'i, *op. cit.*, 182

³⁹Zurqani, *op. cit.*, 6

⁴⁰Shafii, *op. cit.*, 15

⁴¹Al-Nawawi, *Commentary on Bukhari's Sahih* (Cairo, 1323 A.H.), 147

⁴²Zurqani, *op. cit.*, 6

6. Minor's marriage and *ijbar*

Since Muslim marriage is a contract, persons who are of sound mind and have attained puberty may enter into a contract of marriage. Their guardians may also contract their marriage, but in that case their free consent is essential for the validity of the marriage. If the marriage is brought about without their consent or if their consent is obtained by force, the marriage will be void. On the other hand, persons who have not attained puberty, i.e., who are minors are not competent to enter into a contract of marriage. They may be contracted in marriage by their guardians.⁴³ The consent which is necessary for the validity of their marriage will be given by the guardians.⁴⁴

Once the validity of the marriage of a minor is established the jurists proceed to prove *ijbar*. They argue that since a minor has no capacity to contract, his or her consent is immaterial. This gives unlimited powers to guardians. Jurists propose various restrictions on a guardian's powers, lest they will be a source of constant oppression. Thus the Hanafi jurists allow the option of puberty to girls if they were married with *ijbar* by guardians other than their fathers or paternal grandfathers.⁴⁵ Other jurists, however, allow *ijbar* only in extreme causes arguing that a minor is not in immediate need of marriage and can wait until marriageable age.⁴⁶ Commenting on this controversy among the jurists Ibn Rushd observes that the origin of this difference is the social concept and function of marriage. Those who consider it a public and social interest recommend that the guardian is under an obligation to marry his ward as soon as possible; while those who view it as a means of personal enjoyment between two individuals recommend the guardian to wait until their wards attain the capacity to enjoy.⁴⁷

7. Virgin's marriage and *ijbar*

Some schools of Islamic law give special importance to virgin Muslim women and prescribe protection for their interests; while others treat them at par with other ordinary women. Some want that the power of *ijbar* should not be exercised by guardians in the marriage of adult females,

⁴³C. Hamilton, *The Hedaya* Vol. I (London, 1791), 97 ; S.G. Grady, *Hamilton's Hedaya* (Lahore, 2nd edn., 1957), 35

⁴⁴Hamilton, *op. cit.*, 100 ; Grady, *op. cit.*, 36

⁴⁵Mulla, *op. cit.*, 298; Mahomed *Shariff v. Khuda Baksh* AIR 1936 Lah. 683; *Nizamuddin v. Huseni* AIR 1960 MP 212

⁴⁶Nawawi, *loc. cit.* ; Shafii, *op. cit.*, 16

⁴⁷Ibn Rushd, *op. cit.*, 4

while others think it should be so exercised. In Shia law a 'discreet female, *rashida*, one who is adult, can contract her own marriage without any guardian.⁴⁸ However, the jurists of different schools cite the following traditions in this regard:

- (i) 'The virgin's permission regarding herself must be sought, her silence is her permission.'⁴⁹
- (ii) 'The orphan must not be married without her permission; she must be consulted regarding herself.'⁵⁰
- (iii) '*Thayyib* is entitled to her right more than her guardian.'⁵¹

The Hanafi and Hanbali jurists do not allow the marriage of an adult virgin to be contracted without her consent. They justify this view with reference to the above first and second traditions. According to them although virgin includes both minor and adult females, they exclude the minor females as they have restricted capacity and their consent is legally immaterial. But Maliki and Shafii jurists state that a guardian has *ijbar* on a '*thayyib*', i.e., a divorcee or widow. They argue on the basis of the third tradition that this tradition explicitly states that a '*thayyib*' has more rights than her guardian, and that the other categories do not have the same status. They further state that the traditions about the other categories speak about permission but not in connection with guardians. It means the guardians are asked to consult them, but they do not have any priority over the guardians. In other words the requirement of permission is only recommendatory and not mandatory. This difference of opinion appears to have been heavily influenced by the values attached to social needs and practice. The traditions which explicitly enjoins to seek the consent of adult females, virgin or non-virgin, and not to marry them without this consent or against their wishes has been supported by the practice of Medina.

Malik supports *ijbar* over virgins on the basis of the practice in Medina often citing the precedents of Qasim b. Muhammad, Salim b. Abdullah and Sulayman b. Yaser of Medina who married their virgin daughters without consulting them.⁵² Zurqani explains the tradition as

⁴⁸Muhammad Ali, *The Religion of Islam* (Orientallia, 1950), 631

⁴⁹*Muslim* Vol. I, 455 ; *Tirmidhi* Vol. I, 143 ; *Mishkat*, 270 ; *Abu Daud* Vol. I, 286 ; *Al-Muwatta*, 189

⁵⁰Malik, *Al-Mudawwa* Vol. II (Cairo, n.d.), 162; Ibn Rushd, *op. cit.*, 7

⁵¹*Mishkat*, 270 ; C. Matthews (tr), *Mishkatul-Masabih* Vol. II (London, 1809), 85 ; *Zayia'i, op. cit.*, 192-93

⁵²Malik, *Al-Muwatta*, 8

enjoining consultation only with a virgin whose father is dead.⁵³ In Medina this practice appears to have been very common and continued to influence the decisions of judges and Caliphs, such as Umar I and II.⁵⁴ The practice however varied in other areas. In Macca and Basra the marriages are reported to have been contracted after the permission of women. There are also a number of cases in which women complained against their guardians to the Prophet that they had been married against their wishes, and the Prophet annulled all these marriages. In explaining the case of Ma'qal b. Yaser where Ma'qal prevented his sister from marrying a man of her choice the scholars observe that in reference to this case the Quranic verse forbidding guardians to intervene in such cases was revealed.⁵⁵ The proponents of *ijbar* maintain that in all such cases the marriages were annulled and the *ijbar* of the guardian was not allowed because either the spouse selected by guardians was not socially compatible or the woman was not a virgin or the guardian was someone other than the father ; to prove *ijbar* as a common practice in Islam they cite as precedents the marriage of the Prophet's two daughters to Uthman which were contracted without his daughters' consent.

Mahmassani observes that although according to pre-Islamic Arab customs guardians could normally force their wards to marry their own choice, among some tribes it was customary to consult women at the occasions of their betrothal.⁵⁶ He adds that since the pre-Islamic Arabia was having a social structure similar to ancient Rome and since in pre-Islamic Arab society family heads are believed to have exercised a power similar to Roman *patriapotestas*, the doctrine of *ijbar* may be supposed to owe its origin more to the local customs than to the Quran and the *sunna*. The customary aspect of *ijbar* is also evident from the manner of consent declaration. The pre-Islamic practice of considering silence as the declaration of consent and its continuance in the Muslim Arab society indicates the presence of guardian's *ijbar*.

The Hanafi jurists astutely avoid this complication by establishing the rule that silence is valid only when the guardian is a close relative and is fully aware of her inclinations. The Maliki jurists insist that before an enquiry about consent is made the woman must be informed that her

⁵³Zurqani, *op. cit.*, 9

⁵⁴See Malik *Al-Muwatta* and *Al-Mudawwama'* in these authorities the matter has been discussed in detail.

⁵⁵Al-Jaziri, *op. cit.*, 47 ; *Bukhari* Vol. II, 770 ; Zayla'i, *op. cit.*, 187

⁵⁶Mahmassani, *op. cit.*, 52-54

silence would be taken as her consent.⁵⁷ Jurists argue that before assuming social responsibilities the young attach more importance to their individual likes and dislikes than to the materialistic aspects of their life ; while their parents and guardians possessing more knowledge and experience in social matters are fully sympathetic to the wishes of their children and wards. They are in a better position to look after the interests of their wards. They should therefore have power of *ijbar* on their wards, more specially the fathers.

8. Modern reforms and Bangladesh Practice

Some of the aspects of traditional *sharia* law has been changed in some Muslim countries. *Ijbar* appears to have been greatly affected by these reforms. Minority of the contracting parties in marriage and virginity of adult women give guardians scope to exercise *ijbar* ; but the reforms regarding the registration of marriage have limited the extent of the application of *ijbar*. Registration of marriage has now become a necessary legal formality in most of the Muslim countries.⁵⁸ The usual requirement of registration being the attainment of marriageable age by the contracting parties, fathers or guardians cannot lawfully contract the marriage of their children or wards when they are minors and in most countries marriageable age has been fixed by statutes. In India registration of marriage is still voluntary, but in Pakistan and Bangladesh the provisions of the Muslim Family Laws Ordinance, 1961, require that every marriage must be registered, otherwise the celebrant of the marriage and the parties thereto will be liable to imprisonment and fine. Although registration has been made compulsory in Pakistan and Bangladesh, yet marriages which have not been registered cannot be declared invalid or void ; in other words marriages which are being contracted against the provisions of the Ordinance are also valid.

Thus, statutorily, *ijbar* has not been abolished in Bangladesh; only its application has been limited to a great extent. The solemnisation of child marriages has been restrained by the Child Marriage Restraint (Amendment) Ordinance, 1984. The provisions of this Act state that if any man above twenty-one years of age contracts a marriage with a woman below eighteen, or if any person performs, conducts or directs a marriage between a man below twenty-one and a woman below eighteen, or if any person promotes the marriage between such persons or permits it to be solemnised or negligently fails to prevent it from

⁵⁷S. Al-Mahmassani, *Al-Nazriyyet al-Amma li'il Mujibat Wa'al 'Uqud fi al-Islamiyyah* (Bayrut, 1972), 316

⁵⁸Coulson, *op. cit.*, 12-13

being solemnised shall be punished with imprisonment or fine. The Dissolution of Muslim Marriages Act, 1939, provides that if any woman below sixteen is contracted in marriage by her father or other guardian, she may repudiate it before she is eighteen and before the consummation of the marriage. The Muslim Family Laws Ordinance, 1961, which confirms the above two Acts requires that all marriages must be registered and if it is not done, the person violating it will be liable to imprisonment or fine. The contracting parties or the celebrant of a marriage in contravention of the provisions of the Acts may be punished with imprisonment or fine, but the validity of the marriage is not affected for this contravention. In brief, under the Acts a man below twenty-one and a woman below eighteen cannot be contracted in marriage ; if a woman below sixteen is married, she may repudiate the marriage before attaining eighteen and before consummation ; and every marriage must be registered.

In actual practice, things are different in Bangladesh. Very few people know about the provisions of law. In rural area the traditional *sharia* law is practised in an abused form. The *maulavis* who are mostly the *imams* of local mosques generally solemnise the marriages know very little the legal aspects of marriage. In 1981 this writer asked 12 *imams* of the mosques of a Union Council in a rural area, first, whether they have heard about the Child Marriage Restraint Act of 1929, the Dissolution of Muslim Marriages Act of 1939 and the Muslim Family Laws Ordinance of 1961, and secondly, whether they knew the verses of the Quran and traditions of the Prophet relevant to divorce. It is very sad that out of the 12 *imams* only one who is also the Marriage Registrar of that Union Council heard about the Muslim Family Laws Ordinance as a law giving share to orphaned grandchildren and requiring registration of marriage and the rest had no idea about these Acts. Seven *imams* told that *sura al-Nisa* contained the law of divorce and three of these seven could mention two or three traditions relating to divorce ; and all the rest *imams* could not answer anything. In the same year this writer also interrogated another 12 *imams* of the mosques of an urban area and asked them the same two questions. But it is encouraging that all the *imams* have heard about the Muslim Family Laws Ordinance although most of them know it as a law which has given share to orphaned grandchildren and which requires marriages to be registered. Six of them have some idea about the Dissolution of Muslim Marriages Act, but none of them have any knowledge about the child Marriages Restraint Act. The town *imams* are more knowledgeable persons about the verses of the Quran and the traditions of the Prophet regarding divorce than their rural counterparts. But there is a peculiar unanimity among

the town and rural *imams* in one point that none of them likes the legislative interference in Muslim family matters. Consequently, there is a greater propensity among the *imams* to follow the *sharia* law as they understand it and not to care for the statutory laws. They attach more importance to the religious than to the legal aspect of marriage. Since people are weak at heart in respect of religious matters, the *imams* are trusted and followed in the society. The rules of *sharia* as enunciated by these *imams* are more respected by the people than the principles of law as interpreted by courts of law. In the solemnisation of marriages the *imams* ask for the consent of guardians of all females, whether minor or adult, virgin or divorcee or widow. In this way the rule of *ijbar* is still obtaining in Bangladesh and the guardians are exercising it in contracting the marriage of their wards.

In a study conducted by the present writer in 1981 over the marriages of 45 couples married in that year in a rural Union Council it was found that in 31 of them boys and girls were married for the first time, in 8 men had their second or third marriage and women their first, and in the rest 6 both men and women were married second or third time. Out of these 31 first marriages in 24 both the spouses were below the statutory marriageable age, five women of whom were even below twelve, and in 7 men were above eighteen and women were below sixteen but attained puberty. Again, out of these 31 marriages 27 were contracted by fathers, 2 by paternal grandfathers, one by brother and another by mother. In 3 out of the 8 marriages which women experienced their first and men their second or third marriage women were above sixteen and in 5 below sixteen but above puberty. All these marriages were contracted by guardians. In the 6 marriages in which both men and women were married second or third time, the spouses were all above the marriageable age; and all these marriages were contracted by guardians excepting 2 which were contracted by the spouses themselves with the help of their neighbours. In all these rural marriages consent was sought from the girls, no matter whether they willingly gave it or not. In rural area consent declaration is considered a mere formality; the rural people do not make any difference between minor and adult girls in this respect; they seek consent from minor as well as from adult girls. As soon as a girl whether minor or adult sits in her wedding gown surrounded by her friends and relatives on the wedding day she is believed to have given consent. Few of the rural people have any knowledge that absence of consent or forcibly obtained consent may affect the validity of the marriage, or that an adult girl does not require any guardian for marriage, or that if a girl is minor and her marriage is contracted by her guardian, she may repudiate the marriage by the

exercise of option of puberty, There is a conviction in rural area that women cannot contract their marriage, specially first marriage and even second or subsequent marriage where they have not become mothers of some children.

In rural area marriages are rarely registered unless the people of the bride press for registration. Usually, the bridegroom and his people believe that registration involves them in obligations towards the bride which they purposely try to avoid. When the present writer asked a professional match-maker whether all the marriages negotiated by him were registered and whether he knew that unless a marriage was registered the parties as well as the celebrant would be punished under statutory law, he replied that he had heard that under the Muslim law all marriages would be registered but none of the 379 marriages negotiated by him was registered at the time of celebration and he had no knowledge that any of them was afterwards registered. When he was reminded that he could be punished for this non-registration if a case was brought against him, he took it very lightly and told that he was serving the cause of religion and he would be rewarded for his services hereafter. Indeed, this concept is predominant among the rural people in Bangladesh, although non-registration is a crime under statutory law and they are committing it everyday. Only 17 of the above 45 marriages were registered. Some of the guardians also consider registration a botheration, and some could not do it for their inability to pay the registration fees. It is interesting to note that in the absence of births and deaths registers in rural area unscrupulous guardians take the opportunity to register a false age of their wards in the marriage registers, if they desire to register at all, and marry their girls before they actually attain marriageable age. In rural marriages social and customary requirements are more keenly observed than legal requirements; form is more important to them than the substance. In a similar study conducted over the marriages of another 45 couples married in the same year in an urban area it was found that in 39 the couples were married for the first time, in 4 girls experienced their first marriage but boys their second, third or even further marriage, and in the rest 2 both the husbands and wives were married second, third or further marriage. Out of the 39 marriages in 5 the couples were below the statutory marriageable age but attained puberty, in 2 the girls were minors but attained puberty and boys were above eighteen, and in 32 the couples attained marriageable age. In all the 39 cases marriages were contracted by guardians. Out of the 4 marriages where girls had their first marriage and boys their second or further marriage in one the girl was below marriageable age but attained puberty and in others the girls were above sixteen, in these 4

marriages the boys were all above eighteen. In the rest 2 cases the couples were above marriageable age and they experienced their second or further marriage. Out of these 45 marriages 23 were initiated by the couples and solemnised with the approval of their guardians ; 19 were contracted by guardians and the rest were contracted by the couples with the assistance of their friends.

In urban marriages consent was sought from girls. The urban people are more conscious about legal validity of marriages and the rights and obligations of women. But like the rural people they also do not make any difference between the consent of a minor and that of an adult girl. To them also consent declaration is a formality which must be performed in all marriages. That its absence may invalidate a marriage in certain circumstances is not fully known to them. Many of the urban girls do not know that they can exercise option of puberty and repudiate undesired child marriage. The rural conviction that a woman cannot herself contract her marriage without the intervention of her guardian also persists in urban area. But on many occasions it was found that minor urban girls contract clandestine marriages with boys of their choice by mistating their age, and their guardians try to dissolve that marriage through courts. Marriages are generally registered in urban areas. Urban parents as well as girls are more keen for the registration of marriage. They believe that rights of girls are more secured once the marriage is registered.

It appears from these two studies that girls of rural area are shy, docile and uninitiative. They do not think that they can select their husbands or that they have any role to play in the selection of their mates. They entirely depend on their guardians in this respect even though some of them remain unmarried long after the attainment of puberty or marriageable age. They know little about the importance of their consent to marriage, or their right to repudiate marriage by the exercise of the option of puberty. Usually, they are fatalist; they accept what is decided by their guardians. That a marriage contracted by guardians can be repudiated is beyond their imagination. In practice, therefore, guardians power of *ijbar* is fully exercised in rural area. But girls in urban area are dashing, assertive and full of initiative. In the selection of mates they take initiative mostly under the indirect encouragement from their mothers or other relatives ; and the marriage is finally effected by guardians. Most of the urban girls are conscious about their matrimonial rights. Unlike rural girls they are optimist about marital life, accept its challenges and are less hesitant to repudiate a marriage that proves unhappy. Urban guardians cannot therefore exercise *ijbar* as widely as their counterparts do in rural area.

It is now evident that the provisions of the Child Marriage Restraint Act, the Dissolution of Muslim Marriages Act and the Muslim Family Laws Ordinance are not properly followed in Bangladesh. Minors are still contracted in marriage by their guardians, minor women are still ignorant about their right to repudiate undersired marriages and marriages are not all registered especially in the villages of Bangladesh. *Ijbar* is being exercised almost with the same force as it used to have been before the enactment of these Acts. As a result of this failure to follow the provisions of the Acts divorces are increasing alarmingly among the rural people and women are denied of their rightful claims against their husbands. On the other hand, this non-compliance with the statutory provisions has given guardians scope to exercise their power of *ijbar*. The rule of *ijbar* is controlling marriages in Bangladesh as if from grave. The Acts might have announced the death of *ijbar*, but its spirit is haunting the houses of girls' guardians in Bangladesh. The rule is still serving an useful purpose in the society. The Hanafi or Shia law may not require a guardian to contract the marriage of an adult female in Bangladesh, but practice demands his mediation in marriage and the application of *ijbar* as in other sunni schools.

9. Conclusion

Ijbar is a salutary rule, if it is understood as a duty and not as a right of guardians. If it is used for the welfare of wards, it will serve useful purposes. Enjoyment of life is the substance, and conclusion of contract is the formality in a marriage. So the mates are to be selected by persons who will enjoy life, while contracts are to be concluded by persons who have experience of life. Girls may select their mates, but guardians should conclude the contract of marriage. Whatever may be the age of girls if they are allowed to contract their marriage, they may be swayed by their emotion and inexperience and may contract a marriage which will not be a happy one. Again, if the guardians alone are allowed to contract the marriage and exercise the power of *ijbar*, they may sometimes be tyrannical to their wards. Modesty of women may not allow them to appear before public, but their desires and despairs are to be respected. Nothing should be thrust upon them which will put them in agonies. Women are inherently affectionate and have general weakness for men, so in any dealings with men there may be possibility of their being deceived. Neither the wards alone nor the guardians alone should contract the marriage; it should be effected by combined efforts of both. Either the wards select their mates and guardians conclude the contract with their materialistic experience about social interactions, or the guardians select mates for their wards and

conclude the contract for marriage taking free consent of the wards. It is believed that if *ijbar* is retained and exercised in a varied form, it may serve the society most. The number of matrimonial litigations may be minimised, and many unnoticed and unsung deaths may be avoided.

We have seen that the Hanafi and Shia law allow guardians to exercise *ijbar* only when the parties are minor or legally incapable to give consent and not when they are adult and of sound mind; while the other schools of sunni law allow guardians to exercise *ijbar* even in the case of adult females. The writer suggests that the Maliki rule of *ijbar* should be followed in Bangladesh; and no marriage should be contracted without a guardian's consent. Guardians will be made liable if the wards are married before they attain marriageable age and if the marriage is not registered. The validity of all marriages will be affected if they are not contracted by the exercise of the guardians' power of *ijbar*. If any person other than guardians or wards themselves contract a marriage without any permission of the court, such persons or wards will be liable to imprisonment or fine and the marriage will be considered invalid.

Guardians should, however, exercise *ijbar* judiciously and prudently, and not lightly or for any money consideration. If marriages contracted by guardians prove disadvantageous to the wards or if the intended spouses are not of equal status or if the dower is not proper, the wards or their relatives may apply to the courts for intervention; and if the guardian fails to satisfy the court, his guardianship will be terminated; and the court will appoint another guardian. If the guardian abuses his power or unnecessarily and unlawfully withholds his consent the ward may approach the court after investigation will appoint another guardian if it deems fit. If *ijbar* is exercised in this manner, a large number of wanton marriages may be avoided.

It is seen earlier that the doctrine of *ijbar* has originated more from the customs than from any other source. So there is nothing sacrosanct in it that it cannot be extended or changed. Since its origin lies in social customs and social needs, it may now be extended to cover the marriages of adult females. If the *ijbar* is so exercised, society will reap the benefits long aimed at by the legislature through its Acts. It may be mentioned that the registration of births is an essential requirement for the registration of marriage. The Chairman of the Union Councils should be asked to register all the births and deaths occurring within its jurisdiction strictly according to the Births and Deaths Registration Act, 1873, and no judicial relief will be given to a marriage which has not been registered. The family courts established under the recent Family Courts Ordinance, 1985, must take cognizance of the cases to be arising in connection with the exercise of the power of *ijbar* and help the rule to continue.

conclude the contract for marriage, being the consent of the wards. It is believed that your consent and executed in a valid form, it may serve the society most. The number of matrimonial litigation may be avoided.

We have seen that the Hindu and Sikh law allow guardians to exercise their duty when the parties are minor or legally incompetent to give consent and not when they are adult and of sound mind; while in the case of adult females. The writer suggests that the Mahli rule of law should be followed in Bangladesh; and no marriage should be contracted without a guardian's consent. Guardians will be made liable in the wards are married before they attain majority. The validity of all marriages will be affected if they are not sanctioned by the consent of the guardian's power of ward. If any person other than guardian or wards themselves contract a marriage without any permission of the court, such persons or wards will be liable to imprisonment of one and the marriage will be considered invalid.

Guardians should, however, exercise their judicially and prudently and not lightly or for any money consideration. In marriage contracted by guardians have disallowed to the wards or if the intended spouse is not of equal status with the ward, it is not proper. The wards or their relatives may apply to the court for intervention; and if the guardian fails to satisfy the court his guardianship will be terminated; and the court will appoint another guardian. If the guardian abuses his power or unnecessarily and unreasonably withhold his consent the ward may approach the court and investigation will be made and such guardian if it deems fit. If your is exercised in this manner, a large number of wretched marriages may be avoided.

It is seen earlier that the doctrine of your law originated more from the customs than from any other source, so there is nothing surprising in it that it cannot be extended or changed, since its origin lies in social customs and social roots. It may now be extended to cover the marriages of adult females. If the law is so exercised, society will reap the benefit long aimed at by the legislature through its Act. It may be mentioned that the registration of birth is an essential requirement for the registration of marriage. The Chairman of the Law Commission should be asked to register all the births and deaths occurring within jurisdiction strictly according to the Birth and Death Registration Act, 1901, and no judicial trial will be given to marriages which are not properly registered. The family courts established under the recent Family Courts Ordinance, 1985, might take cognizance of the cases to be arising in connection with the exercise of the power of your and help the law to continue.

An Enquiry into the Constitutionality of the Unilateral Declaration of Independence of Bangladesh

M. Rafiqul Islam

In the 1970 general election, the Awami League—the main proponent of autonomy for East Pakistan—won a massive electoral mandate on the basis of the Six-Point Programme. The task was to formulate a new constitution for Pakistan. The People's Party of Bhutto emerged as the second largest party in the election. Both Bhutto and Yahya, the then President of Pakistan, were not prepared to accept a constitution in accordance with the six points. Yahya postponed the opening session of the National Assembly indefinitely, thus preventing the Awami League from framing a constitution for the consideration of the Assembly. Following this failure of constitutionalism and subsequent military operations in East Pakistan, the Awami League proclaimed the unilateral declaration of independence (UDI) of Bangladesh.¹ From the view point of constitutional law of Pakistan, the UDI of Bangladesh constituted a secessionist revolution. However, an enquiry into the constitutionality of the UDI of Bangladesh involves a wide range of affairs. Among them the following questions seem to be apposite and deserve consideration.

1. What was the legal basis of the military regime headed by General Yahya Khan and his Legal Framework Order of 1970?
2. What was the legal basis of various actions taken against the Yahya regime in East Pakistan in March 1971 by the Awami League?
3. Did the Awami League, being legally constituted and democratically elected, have the right to declare the independence of East Pakistan when change through constitutional methods was not possible?

¹Bangladesh as a sovereign and independent people's republic was so proclaimed by Mujib immediately before he was arrested by the Pakistan army on 26 March 1971. In the formal proclamation of independence of Bangladesh on 10 April 1971, the Bangladesh provisional government reaffirmed Mujib's declaration of independence. See, (1972) 11 *Int'l. Leg. Mat.* 119; *Bangladesh Documents*, External Affairs Ministry New Delhi, 1971, vol. 1, pp. 280-82; U Thant, *View From the UN*, New York; Doubleday & Co., 1978, pp. 420-21.

This article argues the following points of law: (a) that the Yahya regime enjoyed no constitutional status whatsoever ; (b) that various actions taken against the administration of Yahya in East Pakistan in March 1971 by the Awami League were politically, if not constitutionally, justified ; and (c) that the UDI of Bangladesh cannot be held unconstitutional if due attention is paid to the prevailing circumstances.

A. The Legal Basis of the Yahya Regime

Following the collapse of his regime, President Ayub handed over the power to Yahya, the then Commander-in-Chief of the army, through his letter of 24 March 1969 to Yahya.² In the letter, Ayub recorded his profound regret for coming to the conclusion that 'all civil administration and constitutional authority in the country has become ineffective'. He expressed that he found no other alternative in view of the prevailing unhappy state of events but 'to step aside and leave it to the defence forces of Pakistan ... to take over full control of the affairs of the country'. Ayub requested Yahya to execute his 'legal and constitutional responsibility to defend the country not only against external aggression but also to save it from internal disorder and chaos'. He finally pledged that 'the nation expects you (Yahya) to discharge this responsibility to preserve the security and integrity of the country and to restore normal social, economic and administrative life'. The Yahya regime virtually derived its authority from this letter. An evaluation of the terms of this letter according to the constitutional law of Pakistan is therefore of paramount importance in ascertaining the constitutionality of the regime.

The 1962 constitution of Pakistan that Ayub himself gave to the nation was in force at the time of the transfer of power. Ayub did not abrogate it at that time. Under Article 12 of the constitution, Ayub could resign his office to the speaker of the National Assembly. On the resignation of Ayub, the speaker was entitled to become the Acting President. An election had to be held within a period of ninety days to fill the vacancy (Art. 16). This provision however was not followed presumably because the speaker was from East Pakistan. Article 30 empowered Ayub to proclaim emergency and martial law in the event of failure of the civil administration to control internal disorder and to appoint Yahya as the Chief Martial Law Administrator. Ayub was authorised neither to transfer the Presidency of Pakistan nor the powers and functions of that office

²On 26 March 1969, almost all Newspapers of Pakistan published this letter. See, H. Feldman, *The End and the Beginning: Pakistan 1969-71*, London: O.U.P., 1975, p. 13.

to Yahya. It is clear that if he purported by this letter to appoint Yahya as his successor he then did so unconstitutionally.

In view of the terms of the letter, it is difficult to assert that Ayub appointed Yahya as a successor. He merely called upon Yahya to perform his legal and constitutional duty to restore law and order in the country. The nationwide broadcast of 25 March 1969 that Yahya himself made on his assumption of power reiterated the same responsibility to be performed. Yahya requested his countrymen 'to appreciate the delicate situation and assist your brother in the defence force in every conceivable manner to maintain law and order'³. If this was the duty to be discharged, then the only authority Yahya possessed was to restore law and order and nothing more. There was nothing in Ayub's letter or in Yahya's broadcast to show that Ayub appointed Yahya as his successor-in-office. Both documents reveal that the assigned and assumed duty was to save the country from internal disorder and chaos.

Notwithstanding these terms and conditions, Yahya immediately repealed the 1962 constitution, dissolved the National and Provincial Assemblies, promulgated martial law and became the Chief Martial Law Administrator. He declared that all persons holding office as the President, members of the President's Council of Ministers, Provincial Ministers and Governors should cease to hold office with immediate effect. By this proclamation, the office of the President had ceased to exist. By another declaration on 31 March 1969, Yahya appointed himself as the President with retrospective effect from 25 March 1969 with absolute power under martial law. On 4 April 1969, he introduced the Provisional Constitutional Order which eventually brought back the 1962 constitution in a modified form with his complete overriding powers.⁴

Being the Commander-in-Chief of the army, Yahya had no power to abolish the constitution. It has been contended in *Asma Jilani v. the Government of Punjab and another*⁵ that the proclamation of martial law by its own intrinsic force gave Yahya the right to abrogate the constitution.⁶ However, the Supreme Court of Pakistan examined the nature

³See, *Dawn*, Karachi, 27 March 1969.

⁴The Presidential Order no. 3 of 1969. It was stated that the country was to be governed as nearly as possible in accordance with the 1962 constitution.

⁵PLD 1972, S. C. 139. In this case the military rule sought to be imposed upon Pakistan by Yahya and his subsequent acts were held entirely illegal by the Supreme Court of Pakistan. See, T.K. Iyer 'Constitutional Law in Pakistan: Kelsen in the Court' (1973) 21 *Am. J. Comp. L.* 761-62.

⁶The Attorney-General of Pakistan claimed so. See, *Ibid.* 185 (PLD).

and scope of martial law⁷ and came to the conclusion that (i) the proclamation of martial law does not by itself involve the abrogation of the constitution ; and (ii) the promulgation of martial law by Yahya did not necessarily confer upon him the power to revoke the constitution, which he was bound by his oath to defend.⁸

This promulgation of martial law was unnecessary and of doubtful validity. Yahya did not have the authority to so promulgate merely by virtue of his position as the Commander-in-Chief of the army. The Supreme Court of Pakistan in the above mentioned case found no legal system which gives the Commander-in-Chief of the army the right to proclaim martial law.⁹ So is the position in the legal system of Pakistan. The first martial law in Pakistan was declared on 7 October 1958 by Iskander Mirza, the then constitutional President of Pakistan. He appointed Ayub as the Chief Martial Law Administrator. Only then did Ayub move into action. On the face of this precedent, it is really difficult to appreciate under what authority Yahya could proclaim martial law. It should have come from the civil authorities. But neither Ayub nor any constitutional civil authority declared martial law before or during the transfer of power. Had that been done, Yahya only then could have moved into action.

It is true that the martial law regime of Ayub in 1958 was held legal by the Supreme Court of Pakistan.¹⁰ The revolutionary nature of the seizure of power by Ayub was recognised as valid on the basis of the Kelsenian 'doctrine of effectiveness'.¹¹ The martial law regime of Yahya

⁷See, *Ibid*, 185-90.

⁸See, *Ibid*, 190.

⁹*Ibid*.

¹⁰*State v. Dosso*, PLD 1958, S.C. 533 ; also Iyer, *op. cit.* 760-61.

¹¹The efficacy of the total legal order is a condition, not the reason for the validity of its constituent norms They are valid, however, only on the condition that the total order is efficacious ; they cease to be valid, not only when they are annulled in a constitutional way, but also when the total order ceases to be efficacious..... The principle of legitimacy is restricted by the principle of effectiveness.

H. Kelsen, *General Theory of Law and State*, translated by A.W. Wedberg, New York : Russel & Russel, 1961, p. 119 ; also, M. Marasinghe 'The Legality of National Liberation Movements' (July 1978) *Malayan L.J.* viii et seq. ; J. Wildeman 'The Philosophical Background of Effectiveness' (1977) 24 *Neth. I.L. Rev.* 335 ; for a scrutiny of the doctrine, see T.C. Hopton, Grundnorm and Constitution : The Legitimacy of Politics' (1978) 24 *McGill L.J.* 72. Apart from *State v. Dosso*, the High Court of Uganda also relied on the Kelsenian doctrine in determining the legality of the Obote regime under the 1966 constitution, *Uganda v. Commissioner of Prisons, Ex Parte Matovu*, [1966] E.A. 514. For the complex and controversial application of the doctrine, see *Madzimbamuto v. Lardner-Burke* following the 1965 Rho-

was also effective. As such, he probably believed in the constitutional legitimacy of his own Presidency and martial law regime. But the source wherefrom Ayub derived his authority was somewhat different from that of Yahya. Ayub effected a military coup d'état. Unlike Ayub, the assumption of power by Yahya was not a revolution or military *Coup d'état*. Yahya did not take over power by force as Ayub did. Nor did he oust the constitutional President Ayub as Ayub deposed Mirza and assumed the power. Out of his own free will and accord Ayub abdicated and called upon Yahya to restore law and order.

At the time of the transfer of power, all machinery under the 1962 constitution remained in existence. This machinery could have been successfully employed to resolve the constitutional crisis that had generated from the resignation of Ayub. For instance, the Speaker of the National Assembly should have been allowed to become the Acting President until fresh elections were held to fill the Presidency. The National and Provincial Assemblies could have taken steps to resolve the political disputes. But by abrogating the constitution and dissolving the assemblies, Yahya interrupted their normal functioning. He prevented this machinery from coming into effect and playing its constitutional role. He usurped all functions of the government and the legislature and started issuing all kinds of martial law regulations, Presidential orders and ordinances.

Let it be conceded with all fairness in favour of Yahya that those measures were justified on the basis of necessity. For if the degree of internal disorder is such that the civil administration is unable to function, the necessity of employing the army to restore law and order may not be gainsaid. Indeed, there are instances where various measures and actions adopted by an incumbent government in a constitutional impasse have been judicially declared as valid on the basis of 'necessity'. Under the 'doctrine of necessity' the new government of a country may deviate from the constitution under which the previous government had functioned, but each departure must be justified as a matter of necessity. To be justified, the 'evil' avoided by such a departure must outweigh the 'evil' perpetrated upon the population by such a departure. It is for courts to decide whether a particular departure is justified on the basis of necessity.¹² Such a formulation of the 'doctrine of necessity' is found in

desian UDI. The decision of the Rhodesian Court of Appeal appears as *Baron v. Ayre*, (1968) 2 S.A.L. Rep. 284; and the Rhodesian High Court decision is reported in Rhodesian government notice no. GD/CIV/23/66, Salisbury, 1966. For the Privy Council's decision on appeal, see [1969] 1 A.C. 645.

¹²See, Iyer, *op.cit.* 765; Marasinghe, *op. cit.* xiii

the decision of the Cyprus Court of Appeal in *A.G. v. Mustafa Ibrahim and others*.¹³ The Cyprus Court of Appeal invoked 'state necessity' in upholding the 1964 Administration of Justice (Miscellaneous Provisions) Law passed by the Cyprus House of Representatives in an atmosphere of armed uprising and mutual enmity between the Greek and the Turkish population of Cyprus. The constitutional history of Pakistan itself provides such an example. In *Reference by His Excellency the Governor General, No. 1 of 1955*,¹⁴ the Federal Court of Pakistan upheld some of the actions of the Governor General, such as the formation of the Second Constituent Assembly, on the basis of 'public necessity' in a constitutional crisis created by the unlawful dissolution of the First Constituent Assembly.

Inherent in the 'doctrine of necessity' is the corollary that as soon as the necessity is over, the justification of those measures evaporates and the civil administration must be restored to perform its normal function. In *Lakanmi and Ola v. A.G., Western State and others*,¹⁵ the Nigerian Supreme Court found no necessity to justify the Federal Military Government's departure from the constitutional provisions. The Court declared the 1968 Forfeiture of Assets etc. (Validation) Decree No. 45 of the government as ultra vires and invalid on the ground that the Decree went beyond the demands of necessity of the occasion. After the imposition of martial law on 25 March 1969 in Pakistan, the overall situation there became completely normal. Order was soon restored. The military found no occasion to fire a single shot. Full confidence was established by the disseminated intention of Yahya to transfer power as soon as possible to the elected representatives of the people. The civil administration and all courts resumed their duty. The situation became so normal that the 1962 constitution was reintroduced. Nevertheless, martial law was not withdrawn. Yahya continued to legislate by orders, martial law regulations and ordinances. Hence, even if the imposition of martial law was considered a necessity in the beginning, its prolongation after the restoration of normalcy was unnecessary.

Ayub mentioned in his letter that Yahya, being the Commander in-Chief of the army, had a 'legal and constitutional responsibility to save the country from internal disorder and chaos'. The 1962 constitution contained no such provision. Even if such responsibility existed at all, Yahya

¹³1964 Cyp. L. REP. 195.

¹⁴PLD, 1955, F.C. 435 ; I. Jennings, *Constitutional Problems in Pakistan*, Camb. U. Press, 1957, pp. 306-7.

¹⁵Unreported case, SC. 58/1969, Judgement was delivered on 24 April 1970 ; (1970)4 *Annual Survey of Af. L.* 28-29 ; also, (1971) 20 *Int'l. Comp. L. Q.* 117.

himself disposed of that duty by abrogating the constitution. Ayub further stated that the nation expected Yahya to assume that responsibility. Nothing in the 1962 constitution permitted Ayub to think so. There was also nothing to presume that the prevailing situation led him to reckon so. The nation had never been consulted. Everything had been planned in the palace behind the closed doors. On the contrary, there was strong and ample evidence to suggest that the nation desperately wanted an end to military rule. After Ayub's ten years of authoritarian rule, people were wearied and disgusted with the prevalence and wranglings of the military oriented dictatorship. At the time of the transfer of power, there was great resentment against another military oligarchy and lively agitation in favour of democracy. In view of these facts, a strong case may be made out for supposing that the nation did not desire Yahya to assume responsibility of maintaining law and order of the country.

The enquiry into the constitutional legal basis of the Yahya regime permits the following conclusions. First, the terms of Ayub's letter through which he handed over power to Yahya was entirely unconstitutional. Secondly, the proclamations by which Yahya grabbed power and installed himself as the President and the Chief Martial Law Administrator were without any legal foundation whatsoever. And finally, the Provisional Constitutional Order of 1969 was an unconstitutional document. Yahya was not competent to enact such a constitution validly. It was ordained and sanctioned by an incompetent authority. In consequence, the order lacked an important attribute of legitimacy which in effect made the order invalid.

The Legal Framework Order of 1970 (LFO)

The LFO of 1970 was a document of immense significance from the viewpoint of the constitutional history of Pakistan during this period. It was intended to provide guidelines for the National Assembly in its task of framing a new constitution. In his broadcast to the nation on 28 November 1969, Yahya proposed to provide a scheme 'in the nature of a provisional legal framework' for 'holding elections of the National Assembly.'¹⁶ It was proclaimed on 31 March 1970 by the President 'in pursuance of the proclamation of the 25th day of March, 1969, and in exercise of all powers enabling him in that behalf.'¹⁷ As seen before, this very proclamation of Yahya itself was illegal. The power that Yahya derived from that proclamation to enact the LFO was unconstitutional. Being formulated and declared by an incompetent authority, the LFO lacked the property of a valid act.

¹⁶*Dawn*, Karachi, 29 Nov. 1969 ; also, *Bangladesh Documents*, *op. cit.* 41.

¹⁷The Preamble of the LFO, see *Bangladesh Documents*, *op. cit.*, 49.

The LFO nonetheless merits a brief consideration. For it would give an insight into Yahya's scheme for the transfer of power to the people's representatives. As things worked out, the LFO went far beyond being provisional.¹⁸ It sought to retain the supremacy of martial law. Simultaneously, it provided for a National Assembly to frame a constitution by the elected representatives of the people. The harmonious co-existence of dual and parallel powers was difficult. The principle of dictatorship and of democracy could not effectively be blended in practice. Chances of conflicts were maximum. The most sensitive issue of provincial autonomy was left vague and open. The LFO spelled out fundamental principles of the constitution envisaging a federal government with a strong centre (Art. 20). This was indeed a striking contradiction to demands for maximum provincial autonomy as enunciated in the Six-Point Programme of East Pakistan. Yahya made no attempt to reconcile these two conflicting bases of the future constitution. Despite the prescription for a strong centre in the LFO, the election in East Pakistan was allowed to be fought on the decisive issue of full provincial autonomy. Thus the LFO attempted in vain to satisfy both groups—those who demanded maximum provincial autonomy and those who wanted a united federal Pakistan with a strong centre. By thus designing the LFO, there was incurred a risk of conflict arising from the expectations of the electorates.

The overriding powers of the President in the affairs of the National Assembly undoubtedly curtailed the sovereignty of the Assembly. The interpretation of provisions of the LFO was beyond the scope of the National Assembly or any court of law. The President retained that right exclusively (Art. 27). The National Assembly must complete its task of framing the constitution within a period of 120 days (Art. 24). The President reserved the right to authenticate any constitutional bill that the National Assembly might agree upon. If authentication was denied, the Assembly would stand dissolved (Art. 25). It was not necessary for the President to assign any reason for a refusal to validate. In this respect, it was not appreciated that 'it would not have been possible for an individual, no matter how great his power, to reject without democratic sanction the decision of the National Assembly'.¹⁹

Two different reasons may be attributed for these provisions. First, Yahya and his advisers might have thought that the complexion of the

¹⁸It had a preamble, 27 articles, fundamental and directive principles and three schedules. It dealt with the composition of the National and Provincial Assemblies, the holding of elections, qualifications and disqualifications for membership, Speaker and Deputy Speaker and other peripheral matters.

¹⁹Z.A. Bhutto, *The Great Tragedy*, Karachi, 1971, p. 57.

National Assembly would be one of small conflicting parties. No one party would emerge to dominate the Assembly and dictate its policy. Consequently, the Assembly would not be able to draft a constitution bill within the stipulated period due to the conflict of interests. This would in turn enable Yahya to continue his military regime. And secondly, this time limit might have been set to expedite the enactment of a new constitution. In view of the past experience of constitution making in Pakistan, such a limit was warranted and desirable. It may be recalled here that the 1956 constitution of Pakistan took two constituent assemblies to frame it over a period of nine years (from 1947 to 1956).

However, whatever might have been the reason for these provisions, the National Assembly would not be a sovereign body in the presence of those provisions. The most vital omission in this respect was that the LFO did not spell out what would happen in the event of a failure to draft a constitution bill within the specified time or of the refusal to validate the bill by the President even if the bill was agreed upon in the Assembly within the given time. Would there be a fresh election? Or would Yahya prepare his own draft? No one knew. The LFO was totally silent on this issue.

These salient provisions and omissions of the LFO provoked much protest and agitation in Pakistan, especially in East Pakistan. Perhaps it has rightly been remarked that

It (the LFO) was an ill-conceived, ill-thought-out, rickety affair. One of its main blemishes was the suspicion, which its terms created, that the National Assembly was not intended to succeed in its task. The prospects of a happy outcome were small and the promise of fierce controversy ample.²⁰

The Six-Point Programme

The Six-Point Programme provided for a federation with full provincial autonomy. The federal government was given jurisdiction only over two matters—defence and foreign affairs. But foreign trade and aid were excluded from foreign affairs. All other subjects including currency and taxation were to be within the provincial control. The centre was denied the right of taxation. Federal units were accorded the right to establish separate trade and commercial relations with foreign states. They were entitled to keep and maintain separate accounts of their foreign exchange earnings. By incorporating all these provisions the Six-Point Programme appears to

²⁰Feldman, *op. cit.* p. 75.

have gone beyond the scheme of a federation in its true sense. Although feasible, one could hardly find a federation with only two powers. Moreover, a power without financial authority is meaningless.²¹ Such a central government, divested of any real power, would have become completely helpless. To that effect, the Six-Point Programme appears to envisage more a confederation than a federation.

The formulation of the six points along the lines referred to was not without any reason. The alienation of the Bengalees from the political power of Pakistan started immediately after the partition in 1947. This trend was exacerbated during the Ayub regime when the Bengalees were desperately searching for a new formula to express their desire to share political power both at the centre and provincial level. The six points were designed with that end in view. As a result, it caught the imagination of the Bengalees firmly regardless of its likely outcome. In the political scene of the Bengalee, the Six-Point Programme was not a new innovation. Similar demands for provincial autonomy were made in the past.²² The only new inclusion in the six points was the currency. There was also a jurisdictional difference. All earlier demands called upon the central government to do more for East Pakistan. The six points asked the centre to let East Pakistan do more for itself. This was probably because of the overall demand for full provincial autonomy.

Ayub branded the six points as 'secessionist' or 'disruptionist'²³. No such accusations were made by Yahya. The five fundamental principles of the LFO were regarded as the minimum requirements for a united Pakistan. In spite of this, Yahya allowed the Six-Point Programme to gain ground. His governor in East Pakistan openly advocated the acceptance of the six points.²⁴ It is difficult to understand how and why Yahya was convinced that the new constitution would be formulated on the basis of his principles contained in the LFO and the six points of the Awami League without realising that the two were diametrically opposite. In his election policy speech Mujib, the leader of the Awami League, unequivocally declar-

²¹K.C. Wheare, *Federal Government*, London : Oxon., 4th ed. 1963, pp. 94-95.

²²The 21-Point Programme on the basis of which the United Front fought and won the provincial election in East Pakistan in March 1954 was almost similar to the six points. For the 21 points, see I.N. Tewary, *War of Independence in Bangladesh: A Documentary Study*, Varanasi: Navachetna Prakashan, 1971, p. 31. On 2 April 1957, the East Pakistan Assembly demanded full provincial autonomy, leaving only defence, foreign affairs and currency in the hands of the centre, see, *Dawn*, Karachi, 4 April 1957.

²³The *Pakistan Observer*, Dacca, 15, 19 and 20 March 1966.

²⁴Bhutto, *op. cit.* 60.

ed that his party would fight the elections on the basis of the six points. Yahya never challenged or objected to this. Mujib was permitted to propagate the six points through state-owned radio and television centres. Probably, Yahya might have surmised that the acceptance of the six points was the only means of preserving the rapidly eroding image of Pakistan as one nation. Otherwise it is hard to conceive why a military dictator with all powers in his hands permitted Mujib to do so. In fact, it has been reported that even after the elections, Yahya was prepared to accept the six-point plan without reservation. He asked his adviser to prepare a formula on the relationship between the centre and the provinces. A plan for a confederal solution along the lines of the six points was prepared. It was thought to be the only way to preserve the unity of Pakistan. Yahya agreed to accept the plan in principle.²⁵

B. The Non-Cooperation Movement and the Parallel Government of the Awami League in East Pakistan

The 1970 elections were held within the framework of the LFO. After the election on 14 January 1971, Yahya announced that Mujib would be the future Prime Minister of Pakistan.²⁶ On 13 February 1971, he declared the date of the first session of the National Assembly to be held on 3 March 1971. Bhutto was not happy. He indicated that he would 'not play the role of a loyal opposition leader'.²⁷ He argued that the victory of the Awami League was confined in East Pakistan and his was in West Pakistan. Therefore 'two majority parties' must be recognised in the Assembly and 'two Prime Ministers might be necessary'.²⁸ On 15 February 1971, he announced that he would boycott the Assembly.²⁹ He put forward his proposal for a separate Prime Minister for each of the two wings. This demand warrants a brief elaboration.

²⁵G.W. Choudhury, *The Last Days of United Pakistan*, London: Hurst, 1974, p. 141.

²⁶He made a statement to that effect at the Dacca airport while leaving for Karachi after talks with Mujib. He also said that he inherited a bad economy and he was going to hand it over to Mujib. *Dawn*, Karachi, 15 Jan. 1971; *The Pakistan Observer*, 15 Jan. 1971.

²⁷'People's Party will not sit in opposition'—Bhutto's statement in Lahore on 20 Dec. 1970, *The Pakistan Times*, Lahore, 21 Dec. 1970.

²⁸G.W. Choudhury *The Last Days of United Pakistan: A Personal Account* (1973) 49 *Int'l. Aff.* 236-37; R. Sobhan 'Negotiating for Bangladesh: A Participant's View' (1971) 4 *South Asian Rev.* 322-23; David Dunbar 'Pakistan: The Failure of Political Negotiations' (1972) 12 *Asian Surv.* 451.

²⁹*Dawn*, Karachi, 16 Feb. 1971; also, Bangladesh Documents, *op. cit.* 155.

It was certainly a novelty in the history of parliamentary democracy that there could be more than one majority party in the Assembly. Even if it is conceded, it was not possible in the National Assembly of Pakistan that had emerged after the 1970 elections where the Awami League had an absolute majority over all the rest put together. Again, there cannot be two Prime Ministers for one country. The most likely outcome of Bhutto's proposal for two Prime Ministers from two different political parties based on diametrically opposite political ideologies could easily be appreciated. It appeared to be a veiled attempt at a confederation. In the event of disagreement, which was inevitable, the two Prime Ministers could have followed their individual course. Hence the proposal contained the genesis of a constitutional secession. It clearly undermined the integrity of Pakistan. Moreover, it was erroneous to say that Bhutto's party represented West Pakistan. There was no West Pakistan as such. Earlier West Pakistan had already dissolved into four separate provinces before the elections. Of these provinces Bhutto and his party had no standing either in Baluchistan or in the North West Frontier Province. He had a majority only in Sind and Punjab. So Bhutto and his party could not represent the entire Western Region of Pakistan. Conversely, Mujib, in addition to being the leader of the majority party in the National Assembly, could claim to speak on behalf of the whole Eastern wing. For there he own almost all seats of both National and Provincial Assemblies.

Notwithstanding this position, Bhutto demanded the postponement of the opening session of the National Assembly. Otherwise he warned that he would launch a general strike from one end of Pakistan to the other.³⁰ Yahya complied with Bhutto's demand by postponing the opening session indefinitely on 1 March 1971 without any consultation with the leader of the majority party. This engendered an explosive situation. Had it not been postponed, Mujib might have been able to produce an agreed constitution with the help of West Pakistani deputies who did not belong to Bhutto's party and had already arrived in Dhaka for the inaugural session of the National Assembly.

Political talks in the post-election period between the three political actors—Yahya, Mujib and Bhutto—reveal that both Yahya and Bhutto were not prepared to accept a constitution based on the six points. It was quite apparent from various statements of Yahya and Bhutto that the Constituent Assembly would not be allowed to meet unless Mujib agreed to whittle down his six points. Perhaps they surmised that if

³⁰He threatened 'a revolution from the Khyber to Karachi'. Bhutto's statement at Press Conference in Peshawar on 15 Feb. 1971, *Ibid.*

the Constituent Assembly had met, a constitution based on six-point plan would have been adopted by an absolute majority in the Assembly. In that event Yahya would have faced with the prospect of refusing the constitution. It would have been very difficult for him to reject that constitutional bill possessing the sanction of an absolute majority. The only option to avoid such a situation and to retain some degree of political legitimacy of the regime at that time was to prevent the Assembly from meeting. As disclosed by Yahya, the Assembly was postponed on the following grounds : (a) Pakistan faced its gravest political crisis; (b) the political confrontation between Mujib and Bhutto and their failure to arrive at a consensus on the main provisions of the future constitution ; (c) the general situation of tension created by India had further complicated the whole position ; and (d) the unwillingness of Bhutto to participate in the Assembly.³¹ It has been reported that there was an understanding between Yahya and Bhutto. Bhutto became the most influential adviser of Yahya. Bhutto prepared various statements of Yahya at that time, including the decision to postpone the inaugural session of the National Assembly.³² This trend developed following a meeting between Bhutto and Yahya and prominent members of the regime in Bhutto's home town of Larkana.³³

The announcement of the postponement of the National Assembly session sparked off spontaneous fierce demonstrations in East Pakistan. Mujib responded by calling a general strike in the form of a non-cooperation movement throughout East Pakistan. The non-cooperation was total. It completely paralysed the administration of Yahya in East Pakistan. All governmental activities were organised and conducted according to the directives of Mujib.³⁴ Mujib was firmly in the administrative saddle. He virtually constituted a parallel provisional government. It effectively functioned from 1 March until the Pakistan army interference on 25 March 1971. This government and its various activities were clearly illegal according to the existing martial law regulations.

As observed earlier, neither the Yahya regime nor his promulgation of martial law had any constitutionality. This unconstitutionality of the regime in turn generated a constitutional vacuum. Unlike Yahya's access

³¹*Morning News*, Karachi and Dacca, 2 March 1971 ; also *Bangladesh Documents*, *op. cit.* 188-89.

³²G.W. Choudhury, 'A Personal Account,' *Intl Affairs*, p. 238.

³³G.W. Choudhury, *The Last Days of United Pakistan*, pp. 152-56.

³⁴For a list of these directives, see, *White Paper on the Crisis in East Pakistan*, Islamabad : Ministry of Information and National Affairs, Government of Pakistan, August 1971, pp. 37-46 ; also, *Bangladesh Documents*, *op. cit.* 207 and 226.

to power, Mujib and his party commanded an overwhelming popular support expressed through a fair and free election. Following a massive electoral victory, Mujib and his party had a stronger claim over anyone else in constituting a provisional government in that constitutional vacuum. The parallel government of Mujib during the non-cooperation movement in East Pakistan governed the province effectively. It enjoyed the habitual obedience of the bulk of the population. The writ of Yahya ceased to run in East Pakistan. All organs of the East Pakistan provincial government including judiciary, the civil service and the East Pakistan units of the armed forces accepted the authority and directions of Mujib and his parallel government.³⁵

If the legality of the parallel government of Mujib is measured in terms of the Kelsenian principle of effectiveness,³⁶ it could reasonably claim to be regarded as a validly constituted government at least in East Pakistan. For there it captured virtually all seats of both National and Provincial Assemblies and was also in the control of the administration. In fact, there are precedents even in the history of the constitutional law of Pakistan where revolutionary access to power has been recognised in view of the effectiveness of the new regime. It has been held by the Supreme Court of Pakistan in *State v. Dosso* :

...(If the revolution is victorious in the sense that the persons assuming power under the change can successfully require the inhabitants of the country to conform to the new regime, then the revolution itself becomes a law creating fact because thereafter its own legality is judged not by reference to the annulled constitution but by reference to its own success...³⁷

If the legality of the parallel government of Mujib is judged by reference to its own success, its validity is difficult to deny. Even from the constitutionality viewpoint Mujib and his party, following the electoral victory, clearly had an upperhand over anybody else to form an interim government for Pakistan in the constitutional vacuum that had resulted from the illegality of the Yahya regime.

In a democratic system where the minority will prevail over the majority what other options than calling a general strike were left to the

³⁵All courts in East Pakistan were closed. The Chief Justice of East Pakistan refused to administer the oath of the newly appointed military governor of East Pakistan. For an account of the success, see, *The Events in East Pakistan, 1971*, Geneva : The Secretariat of the International Commission of Jurists, 1971, pp. 15 et seq.

³⁶Above note 11.

³⁷Above note 10, PLD, p. 539.

leader of the majority. In fact, this was the very action which Bhutto, being the minority party leader, had threatened in West Pakistan if the opening session of the National Assembly were allowed to proceed without the participation of his party.³⁸ Yahya complied with that demand. As the leader of the minority party and the illegal military regime jointly purported to impose their preferred position upon the majority, the leader of the majority party could reasonably launch a non-cooperation movement in an attempt to demonstrate the majority peoples' rejection and resistance to the concerted efforts of the military regime. It is therefore submitted that the non-cooperation movement of Mujib and various acts of his parallel government following the postponement of the National Assembly session were politically, if not legally, justified in the face of the prevailing circumstances. All these actions indeed purported to register popular animosity towards the action of the military regime.

C. The Unilateral Declaration of Independence of Bangladesh

It was quite apparent that the centre would have been very weak had there been any constitution on the basis of the six points. It cannot however be asserted for certainty whether or not that would have been a threat to the territorial integrity and political independence of Pakistan. In the political history of Pakistan a very strong centre has consistently been perceived as a minimum condition for the unity of Pakistan. Viewed in this perspective, Yahya's attitude of not permitting Mujib to formulate a constitution according to the six points could easily be appreciated. Probably he did not intend to deviate from his predecessors. A strong centre also appeared to him as the best and only viable alternative of maintaining a united Pakistan. Moreover, his regime was internationally recognised as the government of Pakistan. This position in effect led him to believe in the legality of his regime and all other acts, including the LFO. He perhaps felt that he was duty bound by the terms of the LFO not to allow any constitution that would undermine the fundamental directives contained in the LFO. Furthermore, such confidence on the part of a military general was expected in the presence of recognition of the martial law regime of Ayub by the Supreme Court of Pakistan in 1958. With all fairness to the attitude of Yahya, it is submitted that the events that had rapidly been developed following the election ought to have been reckoned with. The overall situation went to a point of no return. The only effective means of sustaining the unity of Pakistan at that point of time was to enact a new constitution and to transfer the power to the elected representatives of the people. The gravity of the situation was not realistically appreciated

³⁸Above note 30 and its accompanying texts.

by Yahya and his advisers. Instead, the regime insisted on drafting a constitution along the line it preferred.

Let us concede once again, that a constitution based on the six points would have grievously weakened the centre. Yet, the six points recognised the unity of Pakistan. If the maintenance of the territorial integrity and political independence of Pakistan was the only end in view Yahya's efforts, then a six points oriented constitution was the only viable means in view of the situation. The 1970 election result itself furnished evidence that the overwhelming majority of the people desired a united Pakistan with full provincial autonomy and a weak centre. What mandate had authorised Yahya to deny the verdict of the people and impose a constitution with a strong centre? The election was held on the basis of the democratic principle of an adult franchise. It is difficult to accept why the expressed will of the majority people would not be entitled to prevail. The illegal military regime and the minority party leader were not prepared to accept a constitution on the basis of the expressed will of the majority people. In a democratic process where the minority forcibly attempted to impose their preferred constitution upon the majority against the latter's will, what other remedy except separation was left open to the majority?

The Awami League won the election on the basis of the six points. It advocated full provincial autonomy within the framework of a united Pakistan. There was no mention of the independence of East Pakistan in the election campaign. Notwithstanding the mandate for provincial autonomy, the Awami League proclaimed the UDI of the territory and the people it represented. But it did not do so following its electoral victory. The Awami League declared independence only after the failure of the transfer of power to the representatives of the people through constitutional procedures. In the pre-election period, Mujib declared that 'Pakistan has come to stay and there is no force that can destroy it'.³⁹ In the post-election period, the mood in East Pakistan was one of confidence, of coming into power which the Bengalees consistently sought and fought for ever since the emergence of Pakistan. With the absolute majority in the National Assembly, the Awami League was expected to come to power. Mujib had every prospect of becoming the Prime Minister of Pakistan. He would naturally prefer to govern an entire Pakistan rather than only East Pakistan. There was also ambitious people in East Pakistan, who, with Mujib as the Prime Minister of united Pakistan, could expect to reap many benefits by rising quickly in the administration, industry and commerce. Had Mujib made the UDI of Bangladesh a factor

³⁹*Dawn*, Karachi, 8 June 1970; also, Bangladesh Documents, *op. cit.* 82.

in his political policy, he could have proclaimed it immediately after the election victory when it was much easier. Because the Pakistan army strength in East Pakistan at that time was much less in comparison with its strength at the time when the UDI was actually proclaimed. Only following the postponement of the National Assembly session, Mujib for the first time came under tremendous pressure both from other parties and from radicals of his own party to declare independence.⁴⁰ These pressure groups were resisted by Mujib. During the rule of his parallel government in East Pakistan Mujib proposed to address a public meeting in Dhaka on 7 March 1971. Many thought that he would declare the independence of East Pakistan at that meeting. There again he rejected the option of the UDI and opted for a continued non-cooperation movement.⁴¹

Mujib proclaimed the UDI of Bangladesh only after the army crack-down in Dhaka. This military action frustrated all attempts to transfer power to the elected representatives of the people. The Yahya regime purported to impose forcibly a different form of constitution upon the country contrary to the expressed will of the people. Mujib's declaration enjoyed the support of the overwhelming majority population of East Pakistan.⁴² This was evidently manifested by the spontaneous popular response to the resistance movement. In fact, the ruthless atrocities of Pakistan army over the innocent people of East Pakistan turned the direction of a popular autonomy movement into a popular resistance movement for independence. It may therefore be said that the proclamation of the UDI of Bangladesh by the leader of the majority party in response to a self-appointed and illegal military regime's use of force to impose its will cannot be held unjustified both politically and constitutionally.

⁴⁰After Yahya's announcement of the postponement of the National Assembly session, the pro-Moscow faction of the National Awami Party was the first group to call for a declaration of independence. The Bhasani faction also did the same, as did other parties. The radicals of Mujib's party and the Student League did not want to fall behind the popular mood, which enthusiastically supported the other parties' call for independence of Bangladesh. R. Jahan, *Pakistan: Failure in National Integration*, New York: Columbia U. Press, 1972, p. 194.

⁴¹Bangladesh Documents, *op. cit.*, 224; also for details, see, *Dawn*, Karachi, 8 March 1971.

⁴²'There was no doubt that the overwhelming majority of the people of East Pakistan were for complete independence.' See, above note 1, U Thant, p. 422; Kamal Hossain 'Banglabandhu and Bangladesh' in A.G. Choudhury ed., *Sheikh Mujib: A Commemorative Anthology*, London: Radical Asia Books, 1977, p. 15.

The Martial Law in Bangladesh, 1975-1979 : A Study on Martial Law Offences

M. Ershadul Bari

I. Introduction

The object of this paper is to examine certain offences created by the 1975 Martial Law administration of Bangladesh under various Martial Law Regulations during the Martial Law period (1975-1979).

In the early hours of 15 August 1975, President Sheikh Mujibur Rahman and several members of his family were killed in a coup masterminded by a group of army officers, who were in the main majors, captains and lieutenants. Immediately thereafter, for the first time in the history of independent Bangladesh, Martial Law was declared throughout the country.

It is pertinent to mention here that Martial Law is an emergency measure and is the great law of social defence. In constitutional Law, Martial Law finds its justification in the common law doctrine of necessity for its promulgation and continuance, all measures taken in exercise of the power of Martial Law must be justified by requirements of necessity alone, the necessity to restore law and order. Thus it can be declared in times of grave emergency, when society is disordered by civil war, insurrection or invasion by a foreign enemy, for the speedy restoration of peace and tranquillity, public order and safety in which the civil authority may function and flourish. The declaration of Martial Law would in cases of foreign invasion, mainly serve the purpose of enabling the forces of the country to be better utilized for its defence and in cases of rebellion or other serious internal disorder, would enable the government to arrest persons resisting its authority, summarily try and promptly punish them when the ordinary course of justice is, for its slow and regulated pace, utterly inadequate in an emergency when every moment is critical.

But Martial Law was proclaimed in Bangladesh at a time when the country was peaceful and there was no question of suppressing riot,

rebellion or insurrection. It seems that Martial Law was declared to forestall any possible resistance which might arise consequent upon the assassination of Sheikh Mujib and the seizure of power by the army. Martial Law was promulgated at a time when the country had already been in a state of Emergency imposed on 28 December 1974 but the emergency powers evidently seemed to the authorities to be inadequate to deal with the situation. Since Martial Law was proclaimed as a precautionary measure to meet any public opposition and a possible threat to the newly-established regime, the proclamation of Martial Law on 15 August 1975 did not satisfy the common Law doctrine of necessity under which the imposition of Martial Law could be justified out of the necessity to suppress riot, rebellion or insurrection and to restore law and order. Thus the promulgation of Martial Law on 15 August 1975 in Bangladesh in peace-time cannot be justified. Evidently, the tradition established by the British Government in India¹ in respect of the declaration of Martial Law, for the purpose of preserving, safeguarding or restoring law and order, was not also followed.

The declaration of Martial Law in Bangladesh in 1975 was an extra-legal act inconsistent with the 1972 Constitution of Bangladesh. The 1972 Constitution, which was allowed to remain in force during the period of Martial Law, does not envisage the imposition of Martial Law. Throughout the text of the Constitution, no reference whatsoever has been made to Martial Law. Although the term 'Martial Law' had duly occurred in Article 196 of the 1956 Constitution and Article 223-A of the 1962 Constitution of Pakistan, the Articles which enacted provisions for passing an Act of Indemnity in relation to acts done in connection with Martial Law administration and thus recognised the possibility of the imposition of Martial Law under the doctrine of necessity for the purpose of 'maintenance or restoration of order in any area in Pakistan,' it has significantly been omitted from corresponding Article 46 of the 1972 Constitution of Bangladesh that empowered Parliament to pass an Act of Indemnity in respect of any act done in connection with the national liberation struggle or the maintenance or restoration of order in any area in Bangladesh. This omission of the words 'Martial Law' from Article 46 of the 1972 Constitution has thus eliminated the possibility of a constitutional imposition of Martial Law and as the Constitution is the supreme law, it surely also excludes invocation of the common law doctrine of necessity as a basis for Martial Law even for

¹The British Government in India declared Martial Law in the five districts of the province of the Punjab in 1919, in Malabar in 1921, in Sholapur in 1930, in Peshawar in 1930 and in Sind in 1942.

the purpose of restoring law and order. Thus it can be strongly argued that the declaration of Martial Law in Bangladesh in 1975 was illegal.

II. Martial Law Offences

The Martial Law offences created during the Martial Law period were : the possession of illegal arms,² corruption and criminal misconduct³, the possession of illegally acquired property⁴, the seduction of members of the defence services with a view to subverting or destroying the defence services⁵, non-payment of taxes⁶, criticising the imposition, operation or continuance of Martial Law⁷, creating fear among the public⁸, involvement in prejudicial acts⁹, enhancement of certain rents¹⁰, smuggling¹¹, mischief by fire of explosive substances to jute, etc.¹², extortion¹³, kidnapping or abducting a person under the age of fifteen¹⁴, misappropriation of relief goods, etc.¹⁵, waging war and insurrection¹⁶, hoarding, profiteering and dealing in the black market¹⁷.

²Regulation 10 of the Martial Law Regulations, 1975 (Regulations No. I of 1975)

³Regulation 11, *ibid.*

⁴Regulation 12, *ibid.*

⁵Regulation 13. It was added to Regulation No. I of 1975 by the Martial Law (Fourth Amendment) Regulation, 1975, (Regulation No. V of 1975)

⁶Regulation 14, which was added to Regulations No. I of 1975 by the Martial Law (Fifth Amendment) Regulations, 1975, (Regulations No. VI of 1975)

⁷Regulation 15

⁸Regulation 16

⁹Regulation 17

Regulations 15, 16 & 17 were added to Regulations No. I of 1975 by the Martial Law (Seventh Amendment) Regulation, 1976 (Regulation No. I of 1976)

¹⁰Regulation 18, which was added to Regulations No. I of 1975 by the Martial Law (Eighth Amendment) Regulations, 1976 (Regulation No. II of 1976)

¹¹Regulation 19, which was added to Regulations No. I of 1975 by the Martial Law (Ninth Amendment) Regulations, 1976 (Regulations No. III of 1976)

¹²Regulation 21. It was added to Regulations No. I of 1975 by the Martial Law (Thirteenth Amendment) Regulations, 1976 (Regulations No. VIII of 1976)

¹³Regulation 22, which was added to Regulation No. I of 1975 by the Martial Law (Fourteenth Amendment Regulations, 1976 Regulations No. X of 1976)

¹⁴Regulation 23. It was added to Regulations No. I of 1975 by the Martial Law (Fifteenth Amendment) Regulations, 1976, (Regulations No. XV of 1976)

¹⁵Regulation 24, which was added to Regulations No. I of 1975 by the Martial Law (Sixteenth Amendment) Regulations, 1976, (Regulations No. XIX of 1976)

¹⁶Regulation 25. It was added to Regulations No. I of 1975 by the Martial Law (Twenty Second Amendment) Regulations, 1976, (Regulations No. XXXI of 1976)

¹⁷Regulation 26, which was added to Regulations No. I of 1975 by the Martial Law Regulations No. IX of 1977

It is interesting to note here that all the offences created by regulations were, with very few exceptions (e.g., criticising the imposition, operation and continuance of Martial Law ; enhancement of certain rents) already offences under the ordinary law of the country. The Martial Law Regulations, in general, only prescribed more severe punishments than the general law for a similar offence. They prescribed penalties ranging from death or life imprisonment to rigorous imprisonment and confiscation of properties. The regulation which provided punishment with imprisonment for less than five years was Regulation 14. Regulation 14 made the offence of non-payment of taxes punishable with imprisonment for a term which might extend to one year, or with fine or with both.

However, the creation of offences like corruption and criminal misconduct, the possession of illegally acquired property, smuggling, profiteering and dealing in the black market etc., under the Martial Law Regulations gives the impression that Martial Law had been promulgated to combat anti-social activities. The prescription of more severe punishments for such offences under the Martial Law Regulations, apparently with a view to curbing their commission, has no justification as punishments are not the end of Martial Law, but only a means. It seems that the 1975 Martial Law administration of Bangladesh followed the 1958 and 1969 Martial Law regimes of Pakistan when it provided for severe punishment by creating offences under the Martial Law Regulations which had already been offences under the ordinary law.

However, the severe punishments can have some justification only for those offences the creation of which was necessary for the restoration of law and order and the establishment of civil authority. Under the common law doctrine, all acts which would tend to hinder, delay or obstruct the work of military forces in restoring law and order can be made offences under Martial Law Regulations. As in the Parliament Debate on Martial Law in Demerara, Sir James Mackintosh said :

“When the laws are silenced by the noise of arms, the rulers of the armed force must punish as equitably as they can, those crimes which threaten their own safety and that of society”.¹⁸

(i) **The Possession of Illegal Arms**

Whereas under Section 19(f) of the Arms Act (XI of 1878) unlicensed possession of firearms, or ammunition, was punishable “with imprison-

¹⁸Hansard, T.C., The Parliamentary Debates, New Series, London, Vol. XI, March-June 1824, p. 1046

ment for a term which may extend to three years or with fine, or with both", Regulation 10(1) made the unlicensed "possession of any firearm, ammunition or explosive" punishable with "death, or with transportation for life, or with rigorous imprisonment for a term which may extend to fourteen years". Under the Regulation, the person concerned could "also be liable to fine or to suffer confiscation of the whole or any part of his property".

Thus the punishment provided by the Regulation was much more severe than that of the Arms Act. It is noteworthy that when Martial Law was promulgated in Pakistan in 1969 to restore law and order, Regulation 12, issued by the 1969 Martial Law regime, like that of Regulation 12 of the 1958 Martial Law regime, provided a maximum punishment of fourteen years rigorous imprisonment for "actual or constructive possession of any firearm, ammunition, explosive or sword without a *bona fide* licence". But the Martial Law government of Bangladesh not only made the offence of possession of illegal arms punishable with rigorous imprisonment which could extend to fourteen years but provided death sentences for the possession of illegal arms. At the same time, it went so far as to provide that a person accused of such an offence so punished could also simultaneously be liable to a fine or to suffer confiscation of the whole or any part of his property.

It seems that the Martial Law regime was actuated to provide for severe punishment because the arms acquired by guerrillas during the Liberation War were still possessed by many of them and were used to commit political murders and other anti-social activities. The repeated calls by the previous government had met with inadequate response, and it seems that the Martial Law authorities thought that the prescription of more severe punishment would prompt a more positive response from the guerrillas.

It is interesting to note that Regulation 10 (2) embodied a very unusual provision to the effect that :

"Where any firearm, ammunition or explosive is found in any place (place 'includes any house, building, premises, vehicle or vessel') and no person claims it to be his own, the owner or occupier of the place shall, unless he proves to the satisfaction of the Court that he was not aware of the existence of such firearm, ammunition or explosive in such place, be deemed to be a person in possession of such firearm, ammunition or explosive without licence."

Never before in the history of Martial Law administration in the India subcontinent had such a provision been made. By virtue of this Regulation, an innocent person could be implicated for possession of illegal arms for which he was not, in fact, responsible. For example, a person bearing a grudge against another could plant firearms, ammunition or explosive in the place owned by the latter and thus subject him to the punishment provided by Regulation 10 (1). This could result in grave injustice and victimisation.

(ii) *Smuggling*

With regard to the punishment of the offence of smuggling, in general, Section 156 (8) of the Customs Act, 1969 (IV of 1969) provided that :

“If any goods be smuggled into or out of Bangladesh, such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods ; and upon conviction by a Magistrate he shall further be liable to imprisonment for a term not exceeding six years and to a fine not exceeding ten times the value of such goods, and if the Magistrate in his discretion so orders, also to whipping”.

Section 25B of the Special Power Act, 1974, as amended in July 1974 by the Special Powers (Amendment) Act, 1974, and the Emergency Power Rules, 1975, made the offence of smuggling “punishable with death, or with transportation for life, or with rigorous imprisonment for a term which may extend to fourteen years” and also with fine.

Yet Regulation 19 (1) made not only smuggling but also conspiracy for smuggling punishable, without prejudice to any confiscation or penalty to which the goods or the person concerned could be liable under any law for the time being in force, with “death, or with transportation for life, or with rigorous imprisonment for a term which may extend to fourteen years”. The person concerned could also be liable to fine or to suffer confiscation of the whole or any part of his property.

Thus the Regulation went much further than the Special Powers Act and the Emergency Powers Rules in the punishment for the offence of smuggling by providing for the “confiscation of the whole or any part” of the property of the person accused of such an offence. This punishment was not resorted to either by the 1958 or 1969 Martial Law regimes of Pakistan, both of which provided only death as the maximum punishment for “smuggling of all kinds”.¹⁹

¹⁹Martial Law Regulation 27 of 1958 and Martial Law Regulation 23 of 1969.

However, Martial Law Regulation 19(2) contained a very unusual provision, never enacted by any Martial Law administration of the sub-continent, to the effect that :

“Where any goods are seized in the reasonable belief that they have been smuggled into Bangladesh in contravention of any prohibition or restriction imposed by or under any law for the time being in force, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods are seized”.

Thus this provision was virtually a reproduction of that of Rule 18 (2)²⁰ of the Emergency Powers Rules, 1975 of Bangladesh. However, this stipulation contravened Section 101 of Evidence Act, 1972:

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that burden of proof lies on that person”.

Thus under this Section, the accused persons are innocent until proven guilty. It was the prosecution and not the accused which had to prove the offence in respect of any goods seized in the reasonable belief that they were smuggled goods. In this respect, the observations of Justice Muhammad Munir in *Shaker Hussain v. the State*²¹ (of Pakistan) are of direct relevance:

“Subject to certain exceptions the most important of which is to be found in Section 105 of the Evidence Act, the admitted and otherwise firmly established principle being that, before the prosecution can ask for conviction of a criminal offence, it is its duty to prove each ingredient of the offence beyond a reasonable doubt”.²²

²⁰Rule 18 (2) of the Emergency Powers Rules, 1975, provided that “Where any goods are seized in the reasonable belief that they have been smuggled into Bangladesh in contravention of the prohibitions or restrictions aforesaid (i.e., for the time being in force under the provisions of or by virtue of Sections 15 and 16 of the Customs Act, 1969), the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods are seized.”

²¹PLD 1956 SC 417

²²*Ibid.* p. 418

Justice Stone held the same view in the case of the *Paper Sales Ltd. v. Chokhani Bros.*,²³ when he observed:

“The law presumes against an illegality, and the burden of proving that an illegality has taken place rests on the party who so asserts”.²⁴

It is noteworthy, however, that it was only in respect of the offence of smuggling that the existing law relating to burden of proof was changed by the Martial Law regime.

(iii) Hoarding, Profiteering and Dealing in the Black Market

Under Section 25 of the Special Powers Act, 1974, as amended by the Special Powers (Amendment) Act, 1974 (No. LIX of 1974), “the offence of hoarding or dealing in the black market” was punishable “with death, or with transportation for life, or with rigorous imprisonment for a term which may extend to fourteen years” and also with fine.

On the other hand, Regulation 26 made the offences of hoarding, profiteering and dealing in the black market “punishable with rigorous imprisonment for a term which may extend to five years”, and also with “whipping not exceeding ten stripes”, and the person concerned would further be liable to fine. Moreover, a court convicting of such an offence “shall order the forfeiture to Government of anything in respect of which the offence was committed”.

Thus the 1975 Martial Law administration of Bangladesh provided less severe punishment for the offences of hoarding and dealing in the black market than that of the civilian government of 1974. It is to be noted that this is the only instance in which the punishment provided by the Martial Law administration was less severe than that provided by the civilian regime.

(iv) Corruption and Criminal Misconduct

Under Section 5(2) of the Prevention of Corruption Act, 1947, the offence of misconduct was punishable with “imprisonment for a term which may extend to seven years, or with fine, or with both”.

Nevertheless, Regulation 11 prescribed more severe punishment for corruption and misconduct committed either before or after 20 August 1975. These offences were made punishable with death, transportation for

²³AIR 1946 Bombay 429

²⁴*Ibid.*, p. 434

life, imprisonment for a maximum period of fourteen years and fine or confiscation of the whole or any part of property of the person concerned.

It is noticeable that Regulation 11 applied not only to current offences but it was also retrospective in its effect. Thus it was an *ex post facto*²⁵ Regulation as it changed the punishment, inflicted a greater punishment than the Prevention of Corruptive Act annexed to the offence when committed and imposed new punishments such as death, transportation for life and confiscation of property. With regard to the offences committed before 20 August 1975, Regulation 11 violated the provisions of Article 35(1) of the 1972 Constitution of Bangladesh. As Article 35(1) of the Constitution provided that "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence". This Regulation not only violated the provisions of Article 35(1) of the 1972 Constitution, it also contravened the stipulation of the International Agreement in respect of punishment, as Article 7(1) of the European Convention on Human Rights provided that no one could be "imposed" or subjected to "a heavier penalty . . . than the one that was applicable at the time the criminal offence was committed". Article 15(1) of the International Covenant on Civil and Political Rights, 1966, echoed exactly the same stipulations.

(v) **Enhancement of Certain Rent**

It is interesting to note that, in 1976, Chief Martial Law Administrator A.M. Sayem issued Regulation 18, which prohibited the enhancement of certain rent. This Regulation forbade the increase in rent of

²⁵The nature of an *ex post facto* law has been explained in the *Corpus Juris Secundum* thus: "An *ex post facto* law is one which makes criminal and punished an act which was done before the passage of the law and which was innocent when done, aggravates a crime or makes it greater than it was when committed, changes the punishment and inflicts a greater punishment than was prescribed when the crime was committed, or alters the legal rules of evidence and receives less or different testimony than was required to convict at the time the offence was committed. Further, an *ex post facto* law may be one which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a right for something which, when done, was lawful, deprives persons accused of crime of some lawful protection or defence previously available to them, such as the protection of a former conviction or acquittal, or of a proclamation of amnesty, or generally, in relation to the offence or its consequences, alters the situation of an accused to his material disadvantage." *Corpus Juris Secundum*, Vol. XVII, Constitutional Law, Article 435, pp. 140-141.

any premises which was under one thousand *taka* per month on 1 December 1975. The breach of the Regulation was made "punishable with imprisonment for a term which may extend to five years". It is noteworthy that never before in the history of Martial Law administration in the subcontinent had such a Regulation been issued.

III. Conclusion

The foregoing discussion reveals that like the 1958 and 1969 Martial Law administrations of Pakistan, the 1975 Martial Law administration of Bangladesh created a large number of offences under Martial Law Regulations. Most of these offences had already been offences under the ordinary law and were mainly related to anti-social activities. The Martial Law government, in general, only provided more severe punishments for these offences although punishments are not the end of Martial Law but only a means. Thus the Martial Law administration of Bangladesh went far beyond the object of Martial Law for which Martial Law Regulations are issued under the common law. It failed to realise that under this law, the creation of offences by the Martial Law Regulations is limited to the necessity for the restoration of law and order.

Some Aspects of Sharafnama

M. Kalim

The art of Lexicography is not an easy task. One has to maintain patience for years together. For compilation of dictionary it is necessary to possess wide knowledge, full grasp over language, long experience and mature brain; otherwise the compiler can not justify his position. Among the Persian dictionaries compiled in the Indo-Pak-Bangladesh sub-continent, *Farhang Name* of Fakhr al-Din Mabararak Ghaznavi, compiled during the reign of Ala al-Din Khalji (695-715 A.H./1296-1316 A.D.) can be treated as the first of its kind. This is generally known as *Farhang-i Qawwas*.¹ The second dictionary of this sub-continent known as *Dastur al-Efazil*² was compiled in 743 A.H./1342-43 A.D. by Maulana Rafi better known as Hajib Khairat. Similarly *Adat-al Fuzala* of Qazi Badr al-Din Muhammad³ (compiled in 822 A.H./1419 A.D.) Mulla Rashid's *Zafan Guya*³ (compiled in 737-A.H./1336-37 A.D.) and Maulana

¹Shahr Yar Naqavi : *Farhang Nawisi-i Farsi Dar Hind-o-Pakistan* (Persian Lexicon writing in Indo-Pakistan), Published by Tehran University Press, 1341 Shamsi, p. 55. He has wrongly mentioned *Farhang-i Qawwas* as *Farhang-i Qawwasi*. Prof. Nazir Ahmad of Muslim University, Aligarh, has edited it and 'Bungah-i Tarjama wa Nashr-i Kitab', Theran, has published it in 1974 A.D.

²Mahmud Sherani : *Panjab Men Urdu* (Urdu in Panjab), third edition, Lahore, 1963 A.D., p. 285. The year of compilation of *Dastur al-Efazil* was mentioned as 771A.H. which appears to have been a printing mistake. It was edited by Prof. Nazir Ahmad of Muslim University, Aligarh, and published by 'Bunyad-i Farhang' (Cultural Foundation), Tehran in 1975 A.D.

³Prof. Nazir Ahmad writes that the photo copy of incomplete manuscript of *Zafan Gunya*, preserved in the Library of Tashqand University was published with a preface and a list of words by a Russian Scholar, S. A. Bayefsky in 1974. The learned Professor about the author of *Sharafnama*, observes that Ibrahim Qawwam Faruqi was a resident of Jaunpur, a town in Uttar Pradesh of India as it has been indicated in the following couplet of *Sharafnama*.

Az Qudumat Hast Haqqa Dar
Hame Iqlim-i Hind
Shahr-i Junapur-i Ma, Manind-i
Lu Lu Dar Adan.

(Truely speaking from his (Ibrahim's) presence the town of Jaunpur, from among the towns of India, is just like a pearl in the sea of Aden)

He, further, adds that Ibrahim Qawwam Faruqi visited the Shrine of Hazrat Makhdum Sharaf al-Din Ahmad bin Shaikh Yahya Maneri (in whom he had religious and spiritual faith) in Bihar Sharif. After that he went to Bengal, compiled his book,

Fazl al-Din Muhammad's *Bahr al-Efazil* (compiled in 837 A.H/1433-34 A.D.) are among those dictionaries which were compiled before *Sharafnama*.

The examples of development and progress of Urdu and Persian Language and Literature in northern India are found scattered on pages of history. It is however, interesting to note that far from the centre of northern India, Persian dictionaries were compiled in the remote places such as Bengal⁴ and the Deccan. *Sharafnama* was compiled by Ibrahim Qawwam Faruqi in Bangal whereas *Burhan-i-Qate* was compiled by Mirza Muhammad Hussain Tabrizi in the Deccan. *Sharafnama* or *Farhang-i Ibrahimi* is considered as an important lexicon which was compiled in Bengal in the 9th century Hijra/15th century A.D.. It is not out of place to mention here that among the Persian Lexicons which were compiled from the 9th century Hijra and played a vital role in the progress of Persian lexicography, the importance of *Sharafnama* can not be gainsaid. This dictionary is still in the form of manuscript. Apart from Madrasa-i Aliya, Dhaka (Bangladesh) its different copies are available outside the country, such as Libraries of Madrasa-i sipah salar Tehran (Iran), the British Museum, the India Office, Bodleian (U.K) Khuda Bakhsh Oriental Public Library of Bankipur (Patna), and Maulana Azad Library, Muslim University Aligarh, India.

When Bengal became independent of the Central Govt. of Delhi and Haji Shams ul-Din Ilyas established an independent sultanate under the name of Ilyas Shahi Dynasty (1342-1494 A.D./742-899 A.H.) *Sharafnama* was compiled during the rule of a king of the same dynasty known as Abul Muzaffar Rukn al-Din Barbak Shah (864-879/1459-1475). There is every possibility that the compiler of the said lexicon might have been associated with the court of the said king. To justify the statement a few verses of a qasida in praise of Sultan Barbak Shah may be quoted here from the book:

Bul Muzaffar Barbak Shah, Shah-i Alam, Bad-o-Hast
 Dar Nagin-i OU Hamishe, Mamlikat Jam, Bad-o-Hast
 Daiman Wird-i Zaban (Ham), Fath Hast-o Ham Zafar
 Bul Muzaffar Barbak Shah, Shah-i Alam Bad-o-Hast.

(Abul Muzaffar Barbak Shah is the Emperor of the world as the kingdom of Jamshed is always under his supremacy:

My tongue is always vaxing in praise for his victory and glory.
 Abul Muzaffer Barbak Shah is the Emperor of the world.)

Sharafnama there and dedicated it to the present ruler of Bengal, Barbak Shah who reigned there from 862-879 A.H. (*Ghalib Nama*, January, 1986, pp. 182 & 187), also see *Panjab Mein Urdu* by Mahmud Sherarni, second edition, 1974, p. 194.

⁴Agha-i Ahmad Ali : Ispahani : *Muayyid-i Burhan* was also compiled in Bengal, Calcutta.

Aya Bedade Bar-i Sail-i, Ferewan Asp
Payadgan Ra Bakhshide, Sad Hazaran Asp
Abul Muzaffar-i Wala Jahan Lutf ke Hast
Kamine Bakhshish-i Amat Bagah Ihsan Asp.

(To the needy he offers countless horses and to the soldiers he does the same.

Abul Muzaffar the exalted is the symbol of the world of generosity. Even his meanest gift is the offer of horses.)

Regarding the year of compilation of the book, the scholars are of different opinion. According to the view expressed by Late Professor Mahmud Sherani,⁵ *Sharafnama* was compiled between the years 864 and 879 A.H./1460-74/75 A.D. whereas in the opinion of the cataloguer⁶ of the India office (London) it was compiled between 862 and 879 Hijra/1458-74/75 A.D. But the cataloguer of the British Museum, Mr. Charles Rieu,⁷ holds the view that the book under discussion was compiled in the year 870 A.H./1465-66 A.D. A renowned Pakistani orientalist Late S.M. Ikram writes in his book entitled *Thaqafat-i-Pakistan*⁸ that it was compiled in 864/1459. Dr. Sharyar Naqavi⁹ says that *Sharafnama* was compiled in the year 877 A.H/1472-73. But according to the result of life-long research of Professor Nazir Ahmed¹⁰ (of Aligarh Muslim University), an authentic and famous scholar of Persian, *Sharafnama* is the compilation of some time after the year 867 Hijra/1462-63.

Again about the place of residence of the author of *Sharafnama* the scholars held conflicting views. According to Professor Mahmud Sherani¹¹ and S.M. Ikram,¹² the author of *Sharafnama* belonged to Bengal whereas Dr. Shahryar Naqavi¹³ believes that the said author was an inhabitant of the village of 'Maner' in Bihar state of India.

⁵Mahmud Sherani : *op. cit.*, p. 293.

⁶*Catalogue of Persian MSS.* in the India Office Library, London, SL.No. 3052.

⁷*Catalogue of Persian MSS.* in the British Museum, London, Vol. II, SL. No. 7678, p. 492.

⁸S.M. Ikram : *Thaqafat-i Pakistan* (Pakistani Culture), published by Pakistan Publications, Karachi, undated, p. 202.

⁹Shahr Yar Naqavi : *op. cit.*, p. 62.

¹⁰Prof. Nazir Ahmad : 'Qate' Burhan' in 'Ghalib Nama' (Quarterly Journal), Ghalib Institute, Delhi, July, 1981, p. 6

¹¹Mahmud Sherani : *op. cit.*, p. 293.

¹²S.M. Ikram : *op. cit.*,

¹³Shahr Yar Naqavi : *op. cit.*

In the opinion of the cataloguer of the British Museum¹⁴ the author's place of residence is a town of Bihar. Other scholars think that the author came from Jaunpur (U.P.). In view of the fact that the book was dedicated to a renowned sufi of Bihar, some scholars have concluded that the author actually had been a resident of Bihar. Of course, there is a possibility that because of the association of the author with the said sufi, he might have stayed for some time in Bihar. This is so as in the munajat included at the end of *Sharafnama* the author expressed his cherished desire that after the death he should be buried by the side of the grave of his spiritual guide. As the author remained for quite a long time in Bengal, according to some writers he was a Bengali.

The real name of the author of *Sharafnama* was Ibrahim and his father's name was Qawwam. He belonged to the sect of Faruqi so he is known as Ibrahim Qawwam Faruqi. The brother of grand father of the author¹⁵ Mulla Rashid was not only a learned theologian but also an expert in the art of lexicography. He was an author of the famous Persian lexicon named *Zafan Guya*. Therefore it may be concluded that the family of the author was a cradle of art and learning and that he inherited from his fore-father the art of lexicography.

Now the question arises whether the lexicon under discussion was compiled in or outside Bengal. Let us cite some examples with reasonable arguments. It would not be out of place to quote here the observation of Dr. A.B.M. Habibullah :

"Faruqi claims Jaunpur as his native town. Barbak Shah mentioned in some of the eulogistic verses, therefore, need not necessarily be the Sultan of Bengal, for Jaunpur also at this time had a Barbak Shah, the younger son of Bahlol Lodi, appointed as vassal ruler After Husain Sharqi was driven out and whom Sikandar Lodi finally removed a few years after his accession" (*J.A.S.P.* Vol. V, 1960, p. 21).

Sukhomoy Mukhupadhya does not agree with Dr. Habibullah. He has refuted his views in his book, *Two hundred years of Bengal History* (pp. 537-39) with sufficient documentary evidence as discussed below:

1. Ibrahim Qawwam Faruqi has mentioned Barbak Shah as Abul Muzaffar Barbak Shah. It appears from the coin and inscription of Rukn al-Din Barbak Shah that his full name was inscribed as Rukn al-Din wal-Dunya Abul Muzaffar Barbak Shah. Kunniyat of Barbak

¹⁴*Catalogue of Persian MSS. in the British Museum, London, Vol. II, op. cit.*

¹⁵Mahmud Sherani : *op. cit.*, p. 285.

Shah, the Sultan of Bengal was Abul Muzaffar, but the king of Jaunpur, Barbak Shah, had no such kunniyat.

2. In this connection 'Coins of Muhammadan states of India in the British Museum' by Stanley Lane-pule may be referred to for further evidence. On the coin of the king of Jaunpur, only Barbak Shah is found. The word 'Abul Muzaffar' is not mentioned there. Barbak Shah of Jaunpur was son of Sultan Bahlol Lodi who appointed him (Barbak Shah) as his Governor. Now it is justified to say that Barbak Shah of Jaunpur was not a king. Ibrahim Qawwam Faruqi has mentioned in his verses that Sultan Rukn al-Din was emperor of the world (Shah-i-Alam) and he was such a large hearted king that he offered thousands of horses to his people as gift. This generosity can only be attributed to Sultan Rukn al-Din Barbak Shah of Bengal and not to the Governor of Jaunpur who was not at all the the king of the world.

3. So long Bahlol Lodi was alive, his son Barbak Shah could not be in the true sense of the term, called king of the world (Shah-i-Alam). After the death of his father (Bahlol Lodi) his elder brother, Sikandar Lodi became the king of Jaunpur and Barbak Shah was appointed under him as the Governor. As Barbak Shah failed to suppress the revolt of the Zamindars, he was removed from his post and finally imprisoned. Now it is evident that Ibrahim Qawaam Faruqi can not praise such a person as the king of the world who was not actually the king but the Governor.

4. Had *Farhang-i Ibrahimy* been compiled in Jaunpur, Jalal al-Din's name would not have been mentioned in it. This Jalal al-Din has been identified as the brother of Rukn al-Din Barbak Shah. He ascended the throne of Bengal in the name of Sultan Jalal al-Din Fath Shah. The inclusion of the name of Jalal al-Din in the verses of the dictionary is a definite proof that the book was compiled in Bengal and not in Jaunpur.

5. Barbak Shah, the king of Bengal was the patron and lover of art and literature. But Barbak Shah of Jaunpur did neither show any interest to nor was he ever associated with the promotion of learning and development of literature. Thus the claim that *Farhang-i Ibrahimy* was compiled during the period of Sultan Rukn al-Din Barbak Shah, the king of Bengal, is established.

Sharafnama is known by different names. According to some scholars, its name is *Sharafnama-i-Manyari* whereas others mention it as *Sharafnama-i-Ibrahimy*. In the opinion of other writers the book is called *Farhang-i-Ibrahimy* or *Farhangnama-i-Shaikh Ibrahim*. In fact, there are five

names of the same book. The first two names relate to the author's spiritual guide and his birth place. The third name is associated with the author as well as his said spiritual guide. The fourth and fifth names are mainly concerned with the author. The name of spiritual guide of the author is Makhdum al-Mulk Shaikh Sharaf al-Din Ahmad bin Shaikh Yahya Manyari. The grand father of Shaikh Sharaf al-Din, Imam Muhammad Taj Faqih¹⁶ migrated from the holy city of Al-Quds to the village of Maner Sharif of the Province of Bihar for preaching Islam. He defeated the Raja of Maner in a battle and conquered it. He established there his two eldest sons as his representatives and returned to Al-Quds along with his youngest son.

Shaikh Mukhdum al-Mulk was born in Maner in 661 Hijra and expired in 782 Hijra in Bihar Sharif in the present district of Nalanda (Bihar state). Once the village of Maner was a centre of the great sufis. Even to-day graves and the shrines of the predecessors and the successors of Mukhdum al-Mulk are found there. A biography of the poets of Maner compiled by Shah Murad Allah bears the testimony to the fact that this village was not only a cradle of mysticism but also of poetry and literature. It is situated between Patna and Arrah, adjacent to the high ways.

The book begins with the following verses :

Banam-i Khudawand-i Hasti Beh Hast

Sar Aghaz-i Har Nama-i Ra Ke Hast.

(I begin the book with the name of God Almighty because every writing must begin with His name)

The author, further, states about the name of the book and eulogises his spiritual guide in the verses as mentioned below :

Sarapa Ke Mamlu Ze Durre Drist—Sharafnama-i Ahmad-i Manyarist
Mughis-i Jahan, Sarwar-i Manyarst—Ke Khak-i Dar-i Rauza Ash

Ambarast.

¹⁶Moin al-Din Dardai : *Tarikh-i Silsila-i Firdausiya* (History of Firdausai order), published by Taj Press, Gaya (Bihar), 1962, p. 139. According to Mr. Dardai the native place of Taj Faqih was known as 'Quds-i Khalil' in Baitul Maqdas. This is not correct as there was no such place in Baitul Maqdas at that time. Of course 'Hebron' is known as 'Khalil al-Rahman' as well as 'Al-Khalil' which is a small town at a distance of about 17 kilometers from Baitul Maqdas (vide *Al-Haram Al-Ibrahim Al-Khalil—A brief guide*).

Kasi Ku Majawir Dar An Rauze Ast—Beayn-i Yaqin Arsh Ra Dide
Ast.
Kunun Rauza Ash, Kaba-i Sani Ast—Ke Baran Baru, Faiz-i Rahmani
Ast.
Kafil-i Nijat Ast, Khak-i Darash—Khusha Ani Kasi, Kas Bowad Bar
Sarash.
Makatib-i ou Kan-i Iman Shamar,
Bowad Munkir-i ou, Ze Kafir Batar.
Tasanif-i ou Ra Hame Arshyan,
Begirand Azbar, Paye Hirz-i Jan.
Har An Kas Ke Darad Tawalla Badu,
Na Ranjad Gahi Haq Ta'ala Azu.
Khudaya Bahaqqe Jamal- i Bashar,
Birahim Ra Az Saganash Shamar.

Translation

Sharafnama of Shaikh Sharaf al-Din of Manyar is full of Persian pearls from beginning to end.

(The spiritual guide of Manyar is sustainer of the world. The dust of the threshold of his tomb is the collorium of our eyes.

The person who is the servant of his tomb is certainly in communion with the celestial sphere.

His tomb is next to the Holy Ka'ba as the divine blessings are always following on it like rain.

The dust of his threshold is the source of salvation of human beings. Happy is that man who is under his shadow.

His writings are counted as the mine of faith. The person who disbelieves him is no better than an infidel.

All the heavenly beings memorise his works by heart for their salvation, one who places his implicit faith in him (the spiritual guide) God is never displeased with him.

O God ! through blessings of his spiritual guide, Ibrahim (the writer) may be looked upon as humble as a dog.)

An important point is to be mentioned here that the name of the village where Mukhdum al-Mulk was born is pronounced by the common people as well as the elite class of Bihar as Maner. It is difficult to conclude whether for the sake of keeping the metre of poetry in order or providing the proper rhyme in the verses the author has used the

name of the said village as 'Manyer'. There is possibility that due to frequent use and convenience of pronunciation the word 'Maner' might have changed its original form to 'Maner'. But in the historical chronogram related to the conquest of village 'Maner' by Islam and mentioned in the family documents of the descendants of Makhdum al-Mulk, the word has been used as 'Manyer' as it is evident from the following verses :

Yaft Chun Bar Raja-i Manyar Zafar,
Dad Imam Az Din Jahan-i Ra Nawi.
Hast Manqul Az Buzurgan-i Salaf,
Sal-i An Din-i Muhammad Shud Qawi.¹⁷

(When Hazrat Imam Muhammad Taj Faqih conquered Manyar from the hand of the local Raja, the light of Islam dispelled the darkness which had enveloped it.

It is recorded by the elder people that since that time the religion of Islam (Muhammad) took firm roots there).

As it has been stated above, *Sharafnama* is a Persian Lexicon. In the beginning of the book, preface, *nat* and *hamd* are written in the form of verse. Before explaining the meaning of the words, the author has discussed about the Persian alphabets and simple letters. In the beginning of each chapter there is a *qasida* relating to it. While explaining the meaning of the words the author has quoted Persian verses from different Iranian poets such as Firdausi Tusi and Hafiz Shirazi. He also composed some verses of his own. Some words of Tarkish origin are also found at the end of each section. The author, while explaining the significance of Persian words has also given their Hindi (Urdu) synonyms on various occasions. It should be born in mind that this is not the first example of the use of Urdu words. Even in the early Persian lexicons such as *Farhang-i-Qawwas*¹⁸ and *Adat al-Fuzala*¹⁹ Hindi words have been used. Moreover, at the end of another Persian dictionary namely *Bahr al-Fazail*²⁰ certain problems of Urdu Language have been discussed. Therefore, it is worth mentioning that the existence of the use of these Hindi words traceable before the Mughal period i.e. since the reign of Ala al-Din Khalji

¹⁷Dr. Muzaffar Iqbal : *Bihar Men Urdu Nathr Ka Irtiqa* (Development of Urdu Prose in Bihar) published by Kitab Khana-i Tirpoliya, Patna, 1980, A.D. p.7. Instead of Muhammad, Muhammadi was composed in this verse which appears to have been a mistake by the calligraphist.

¹⁸Mahmud Sherani : *op. cit.*, p. 284.

¹⁹*Ibid.* p. 292

²⁰Nazir Ahmad (ed) : 'Ghalib Nama', *op. cit.*, p. 5.

(died 715/1316 may prove very helpful in understanding the early development of Urdu Language. The name of Urdu Language as given by the historians earlier was, Hindi or Hindavi. This is also mentioned in the aforesaid Persian lexicons. Agha-i Muhammad Ali Shirazi, the famous compiler of *Farhang-i Nizam* in his learned discourse of its volume-V regarding the Persian lexicons compiled in India, has attached special importance to *Sharafnama*. Not only this, the author of *Sharafnama* himself is also proud of his literary achievements as he observes in the following verses :

Jaza Bamani-ye Darad Murad-i Ibrahim
Kasi Ke Hast Muhaqqiq Wara Fasih Lughat.

(The efforts of Ibrahim has been duly rewarded because one who is a researcher, this lexicon proves to him useful.)

Details of the verses included in *Sharafnama* are as follows :

a) Nine long qasidas, b) some portions of two qasidas, c) eight ghazals and certain portions thereof, d) two qatas, e) one rubai, f) four hundred & forty matlas or couplets. Technical words of Astronomy, similes, metaphors, idioms, proverbs, rhetoric and prosody are also found in these verses. Use of uncommon words and rare rhymes have made the verses unnatural. Neither have they any charm nor any flow. Moreover, they can not impress the readers. The fact should also be kept in mind that the book under discussion is not important from poetical point of view. On the contrary, this is regarded as an authentic book of lexicon which consists of not only common but also rare words. It is difficult to assess the position of the author as a poet with a limited number of verses contained in the book, as no other verse composed by the said author is available. One qasida and a few couplets of a ghazal, however, are quoted below from this book to make the readers acquainted with his art of composition and poetical ingenuity.

Verses from a Qasida

Aftab-i Khawari Sar Narad Az Rauzan Borun,
Ta Jawaz-i Amr-i Tu Nabowad wara Har Subhdam (?)
Ta Zanad Sikke Banamat Bar Darast-i Mehr-i Charkh,
Kure Misazad Ze Ghar-i Khawari waz Subhdam.
Gar Na Dast-i Qahr-i Tu, Naye Glushan Beshfarad,
Qay Kunad Dar Har Dami, Bahr-i Che Sham-o-Subhdam.
Kay Muqabil Mishawi, Pish-i Rukhat Har Aftab,
Gar Nadadi Aftab-i Sade, Dil Ra Subhdam.
Az Khijalat Dam Frubastish Dar Naye Gulu,
Gar Zadi Az Mihr-i Taban, Pish-i Ruyat Subhdam.

Asman Ra Mihr Guyad, Bashadash Ruyat Murad,
 Kay Basuyash An Yakad An Mihr Hamchu Subhdam.
 Ambarin Sazad, Bazikr-i Khame-i Tu Shad Kam,
 Mushkbu Darad Banam-i Sadda-i Tu Subhdam.

(The sun feels shy to peep from the horizon, lest it may lose lustre before thy glorious face. The sun is no match of your face. If the sun catches a glimpse of thy glorious appearance, it fades with shame. When the pen writes something about thee then comes out of it the fragrance of ambergris; and if thy name comes on the tongue of the pen in the morning, the perfume of musk rises from it.)

Agar Mutaliaye Husn-i Khud Kuni yara,
 Wa Garna Farq Kuni Az Human Alif yara.
 Kuja Rawam, Che kunam, Hich Rah Namidanam,
 Mara Ke Nist Bahijr-i Tu Chara-o-yara,
 Chera Kabab Na Sazi Ze Bahr-i Nuql-i-Dilam,
 Chu Ba Sharab Tura Hast Raghbaty yara

(My friend if you are able to see your goodness, you will differentiate the different uses of Alif (the first alphabet). I know not where to go, what to do and which path to take, when separated from you I feel totally lost and confused. My friend! my heart seared with love may be used as kabab while drinking wine.)

It is to be noted that Late Dr. Shahryar Naqavi's doctoral thesis entitled *Persian Lexicography in Indo-Pak sub-continent* bears certain inaccurate statements. These relate to the compilation of *Sharafnama* and the spiritual guide of its author which are far from the truth. The summary of wrong interpretations made in his statement are given below:

1. Makhdum al-Mulk Sharaf al-Din Ahmad, the spiritual guide of the author has been mentioned by two different terms, viz; Shaikh²¹ and Saiyid.²²

2. (a) Travel of Shaikh Sharaf al-Din Ahmad from village Maner to Delhi, (b) his acceptance of spiritual following (becoming Murid) at the pious hand of Shaikh Najib al-Din Firdausi at Delhi and (c) his death in Bihar Sharif in the year 782 A.H./1380 A.D., have been wrongly attributed to Ibrahim Qawwam Faruqi.

3. *Ma'dan al-Ma'ani*, collection of discourses of Makhdum al-Mulk, was mentioned as *Ma'dan al-Ma'ani*.

Regarding numbers 2 and 3 above Dr. Naqavi has referred to the catalogue of the Persian Manuscripts, Vol. II (p. 492 and Sl. 7678)

²¹Shahr Yar Naqavi : *op. cit.*

²²*Ibid.*

compiled by Charles Rieu of the British Museum. But when I compared the writing of Dr. Naqavi with that of Rieu it was revealed that wherever the name of Makhdum al-Mulk was mentioned by Rieu, Dr. Naqavi has, through oversight, written the name of his spiritual follower, Ibrahim Qawwam Faruqi instead. The texts of both the scholars are quoted below for comparative study. Dr. Naqavi writes:

“Rieu Dar Fehrist-i Kitab Khane-i Moza-i Bartania Jild-i Dowum Zimn-i Kitab Shumare 7678 Dar Safhe-i 492 Minawisad Ke Ibrahim Qawwam Faruqi Az Qarye-i Maner Ba Dehli Musa firat Kard, Amma Nizam al-Din Auliya (Mutawaffa 725 A. H.) Ra An Ja Nayaft Wa Murid-i Shaikh Najib al-Din Firdausi Shud. Ou Awakhir-i Umrash Ra Dar Bihar Guzranide Wa Dar Haman Ja Basal-i 782 Hijri Faut Karde Ast. Rieu Izafe Minumayad Ke Nameha-i Ibrahim Qawwam Faruqi Wa Sukhan-raniha-i Way Ke Banam-i ‘Ma’dan-ul Ma’ni’ Tadwin Gardide Ast Dara-i Arzish-i Adabi Wa Akhlaqi Mibashad.”²³

(In the catalogue of the British Museum, Vol. II, in connection with the book bearing No. 7678, Rieu writes that Ibrahim Qawwam Faruqi travelled from the village Manyer to Delhi. But he could not find Nizami al-Din Auliya (died 725 A.H.) there and became the murid (spiritual follower) of Shaikh Najib al-Din Firdausi. He passed the last period of his life in Bihar and died at the same place in the year 782 A.H. Rieu, further, adds that letters and discourses of Ibrahim Qawwam Faruqi which were compiled under the title of *Ma’dan al-Ma’ni* has literary and moral importance.)

Charles Rieu states:²⁴

Sharf Uddin Ahmad B. Yahya Munyari, so called after his native place, Munyar, a village in Bihar went to Delhi in quest of Nizam Uddin Auliya but finding him dead (Nizam died A.H. 725) became Murid of Shaikh Najib Uddin Firdausi who gave him investiture of the Chishti order.²⁵ He spent the later part of his life in the city of

²³*Ibid.* p. 63

²⁴*Catalogue of Persian MSS. in the British Museum, London, op. cit.*

²⁵Abdul Haqq Muhaddith Dehlavi : *Akhbar al-Akhyar Fi Asrar al-Abrar*, Delhi, 1913 A.D. Abdul Haqq is also of the opinion that when Makhdum Bihari reached Delhi, Nizam al-Din Auliya had already expired. But Jahangir Ashraf Simnani differs and correctly observes that Makhdum Bihari met Nizam al-Din Auliya at Delhi as the latter was alive at that time.

Bihar (Thornton's Bihar), where he died in A.H. 782/1380 A.D. and his tomb became the resort of the devout. His letters (stewart's catalogue p. 42) are much admired, and his discourses collected under the title of *Ma'dan al-Ma'ani*.

If the statement of Dr. Naqavi is accepted as true, it is impossible to believe that Ibrahim Qawwam Faruqi expired in the year 782 A.H./1380 A.D. and thereafter he compiled *Sharafnama* in the 877 A.H./1375 A.D.

Similarly the cataloguer of the India Office Library (London) has committed a mistake regarding authorship of *Farhang-i Ibrahimi*. It appears that at the time of binding, certain portion of the preface of *Tohfat al-Sa'adat* written by Mahmud Ibn-i Shaikh Diya Thanasari, was mixed up with *Farhang-i Ibrahimi*. On this basis, the learned cataloguer has attributed the authorship of the book to both Ibrahim Qawwam Faruqi and Mahmud Ibn-i Shaikh Diya Thanasari.

According to the said cataloguer the year of compilation of *Sharafnama* is between (862 and 879/1458 and 1475), where as *Tohfat al-Sa'adat* was completed in 916/1510. It is, therefore, quite evident that the said cataloguer has not paid proper attention while discharging his duties. At the end of the book he observes:

Farhang Nama-i Shaikh Ibrahim Rahmat (?) ullah
Ta'ala Wa Qazi Mahmud Thanasari Sallamahullah Ta'ala²⁶

(The dictionary of Shaikh Ibrahim may divine blessing rest upon him and also on Qazi Mahmud of Thanesar.)

One important aspect of *Sharafnama* is worth mentioning that it contains the names of the famous and learned personalities of the Muslim Bengal from among the contemporaries of the author. Moreover it may be mentioned that in the 9th century Hijra (15th century A.D.) during the rule of the Independent Sultans' of Bengal, Persian was the official language, and the poets & writers of this language had been famous for their contributions to their respective fields. It is regrettable that their prose and poetical works are not available now and as such their literary position can not be determined. Certain references from among them, however, have been quoted in *Sharafnama* from *Farhang-i Amir Shihab al-Din Kirmani* compiled by Iftikhar al-Hukama Amir Shihab al-Din Hakim Kirmani as well as from *Habl al-Matin* of Shaikh Wahidi. Ibrahim Qawwam Faruqi has mentioned

²⁶Catalogue of Persian MSS. in the India Office Library, London, op. cit.

the name of Shaikh Wahidi with a great respect in his book and it appears, as if the Shaikh had already expired. The third personality of that period was Amir Zain al-Din Herati who was poet Laureate of Bengal. The author of *Sharafnama* had long association with the Amir so much so that he mentioned about the literary gatherings of the Amir. The fourth person whose reference is made to in *Sharafnama* is Mansur Shirazi.²⁷ He migrated from Shiraz and settled in Bengal. He was, no doubt a great poet whose verses have been quoted in *Sharafnama*. The author of *Sharafnama* has also composed four qasidas admiring Mansur Shirazi. Malik Yusuf Ibn-i Hamid, a local poet of Bengal, is the fifth person whose verses are available in *Sharafnama*. While identifying Malik Yusuf Ibn-i Hamid, the scholars are of the opinion that he might have probably been the father of a local respectable and well to-do person whose actual name was Malik Muhammad Ibn-i Yusuf. Besides these five personalities, the names of three more poets viz; Syed Jalal, Syed Muhammad Rukn and Syed Hasan have been mentioned in *Sharafnama*.

Certain verses of the above poets mentioned in *Sharafnama* are quoted here.

(i) *Shaikh Wahidi* :

Pesar i Mard Tuhi Kise Mabada Ziba,
 Garche Az Daulat-i ou Kise Kunad Pur Baba.
 In Zanak-i Zisht Ra Tark Kun Ay Wahidi,
 Kin Zanak-i Biwafa Gashte Basi Shaubarak.
 Aqd Do Khwahar Chasan, Aql Tasawwur Kunad,
 Talib-i An Khwahari, Bugzar Azin Khwaharak.
 Malik-i Zalik Mabin, Marak-i ou Bin Ke Ast,
 Malik-i Ifrit Ra, Marak-i ou Bar Sarak.
 Shanglak -o- Shokhak Bud, Shahidigar Dil Ruba,
 Qahbakak-i Ashwa Pur, Khubak-i Simin Barak.

(A person who is befooled and turned a pauper loses his face; because others have filled their pockets from his wealth.

O Wahidi; thou must divorce this ugly woman; this unfaithful whore has had numerous husbands.

If the beloved has blandishment and seduction, there is nothing to be surprised at; the attraction of her flesh allures men.)

²⁷Mahmud Sherani : *op. cit.*, p. 294. According to Sherani his name was Muhammad Shirazi.

(2) *Mansur Shirazi :*

Chu Chashm-i Abr Shud Abi wa Rui Gulnari,
 Dar Abgun Qadah Afgan Sharab Gulnari.
 Ba Daur Gul, Mai Gulgun Bayar Ay Saqi,
 Ke Haif Bashad Garmi Ba Daur-i Gulnari.
 Basukht Lale Sifat, Sad Hazar Dil An Dam,
 Ke Kard Saqi-ye Ma, Chehre Ra Chu Gulnari.

Chu Rust Ba Saman-i Subh, Azin Zamurrad Shakh,
 Bokhurd Sumbul-i Shab Ra, Ghazal-i Zarrin Shakh.
 Dar Amad Az Dar-i Man, Dilruba-i Sumbul Mu,
 Shegufte Bar Saman-i Arizash Chu Gul Bar Shakh
 Fitad Dar Sarash, Az Bade-i Shabine Khumar,
 Ba Azm-i Aysh, Sobuhi Nihade Bar Kaf-i Shakh.
 Zade Ba Sumbul-i Partab Shane, Waz Gham Ra,
 Chu Shane Sina-i Sahibdilan Shude Sad Shakh.

(Clouds have covered the sky, it is time to indulge in drinking wine.

O Saqi; bring a cup of red-rose wine, the spring season has come in all its glory. If wine is not taken now, it is a matter of shame.

When the face of Saqi glows like a red flower, hundreds of loving hearts are seared like the tulip flower,

From my door come in my beloved, with hairs spread all over her face and her youthful cheeks blooming like a fresh flower on the branch.

Her head was dizzy with wine drunk at night and to remove the after effect of the wine, every branch of tree is holding a cup of morning wine.

The pangs of separation disheveled her hair in a manner as the hearts of the sufis are shredded like the comb.)

(3) *Malik Yusuf Ibn-i Hamid :*

Dir Shud Dir Ke Az Khak-i Dar-i Tu Durist,
 Duri Az Khak-i Darat, Baise-i Ranjurist.
 Bar-i Isa Nafas-o-Ranj-i Tanam Ra Lazim,
 Jam-i Mai Bar Kaf-o-Mara Alam-i Makhmurist.

(The separation from dust of thy threshold is the cause of my heart's anguish.

The remedy of life's sorrow lies in the cup of wine, it is essential to drink and get drunk.)

Sharafnama is such an important work that both in Iran & India researches were taken up on it. In Iran a female research scholar, Mina Hakimiya, started her work for the Degree of Doctorate in the Persian Academy known as Farhangistan. Her supervisor Dr. Sadiq Keya, a renowned Professor of Linguistics, was Director of the said Academy. After the Islamic revolution Dr. Keya is no more associated with this Persian Academy and thus there is no information about the progress of Mina Hakimiya's research. Of course, Dr. Syed Tariq Hasan,²⁸ a lecturer in the Department of Persian of the Muslim University, Aligarh, has prepared a critical text of the *Sharafnama* under the supervision of a famous scholar of the sub-continent, Dr. Nazir Ahmad (Retd. Professor of Persian of the same University) and that he was awarded the degree of Ph. D. by the Muslim University, Aligarh. It is expected that after the publication of this research work there will, surely, be a commendable addition to our knowledge of the Persian lexicography.

²⁸Nazir Ahmad (ed) : 'Ghalib Nama', *op. cit.*, p. 6.

On Garo Folklore

Ali Nawaz

The non-literate Garo society abounds in folklore which retains their indigenous culture, customary laws, their traditional practices and belief-system. It is also their unwritten history, verbal document of their ethnic identity and guiding force of their day-to-day life and social activities.

Only available evidence about the origin of the Garo is their lore according to which the Garo were a nomadic tribe who emigrated from the Chinghai lake-area of ancient China through Tibet. The Garo lore describes that originally they had written religious scripture which they lost on their emigration. Some aspects of the Garo folklore are similar to those of the ancient Chinese and Bangladeshi folklore which bear an anthropological testimony to the Garo to have been the autochthons of China who, after their settlement on the northeast frontier of Bangladesh, exerted some impact on the local folk-culture. We also come to know from the Garo folklore that a section of the Garos spread over the plain land around the Garo hills believing that hills and dales were the abode of harmful ghosts and evil spirits. This was probably the back history of the plainlander Garo in Bangladesh. That the Garo once had written language, might not be a mere conjecture. More than half a century back, a zemindar of Mymensingh discovered some writings on palm leaves in a cave of the Garo hills while he was on games there. The author saw the photo-copy of the same published in a local Bengali periodical named 'Sourabha' but the photo-copy was very indistinct and unintelligible. Probably, no expert bothered to interpret the passage of the original pages now untraceable, which might have been a detached portion of a Garo book. Because of their strenuous and struggle some wild life and detachment for centuries from their ancestry, the written form of their language might have been lost. So, verbal lore and tales became the vehicle of their literary and cultural movement. The poetical excellence and musical qualities of the Garo poems and songs, the pictorial and rhetorical expression of their tales and ballads indicate that the Garo language has a brilliant heritage¹. This article deals mainly with the tales and fables of the Garo society.

¹Garo tongue belongs to Indo-Chinese language group.

Hills and dales, forests and jungles, streams and torrents, springs and swamps, beasts and birds are the common features of the Garo environment ; hence these are the background of their tales and ballads.

The Garo attribute living personality to Nature and inanimate objects. So, trees, caves, rivers, tigers, crocodiles, tortoise, fishes, monkeys, birds, pythons etc. are personified, and they play vital roles in the Garo tales. Love between a man and a bird, intrigue of a fish with a woman, marriage of a monkey or a python with a girl, are the subject-matter in some tales and fables.

'Jhum chash', a type of horticultural cultivation on the slopes of the hills covered with dense forests is the principal means of living of the Garo. A male member of a family stays overnight on a high bamboo 'machan' built on the Jhum field to guard the crops against wild animals and evil spirits. It is believed that evil spirits lift the grain from the fields and stores if they are not appeased by rituals. There are many thrilling fables in Garo language narrating the terrific experiences of the night-guards of the Jhum fields, which, in most cases, are linked with ghosts and spirits. One story is being narrated below in a skeleton form as a specimen :

A servant of a well-to-do Garo farmer, while guarding the Jhum lands in a pitchdark night, observed an unfamiliar strange creature standing erect in front of his machan with two fiery eyes on the chest. Its head was like a nest of squirrel. This hideous being challenged the tiny servant to a duel. The terrified servant said in a choked and trembling voice: "I beg your pardon to-night. I suffer from serious headache. I accept your challenge for tomorrow."

"O.K., you must fight tomorrow, don't lie."

The servant could not have a wink of sleep for the rest of the night. Soon at dawn, he left for home. At night-fall he entreated his master to guard the Jhum land in his place on the plea of illness, without disclosing the last night incident. The poor master went to guard the Jhum land accordingly. At midnight that very horrible creature appeared and said:

"Come on, fight with me as you promised last night."

"I never promised", said the man. "Probably, my servant did. I shall send him tomorrow, O.K.?"

"No!", said the horrible creature, "you instantly come down to face me. Otherwise, I'll crush your head."

The poor fellow had to come down.

“How to fight, butting each other head on, or dashing each other by buttock from behind” ?

The man preferred the latter for obvious reason.

“O. K., who will dash first” ?

“You”, said the man.

Thereafter, the strange creature was rushing backward from a distance to dash the person who was supposed to stand erect with his back towards the horrible creature. But the cunning man instead of doing that held firmly his sharp sword pointed towards the back of the creature. As it was violently approaching with its back towards him, the man was moving backward as fast as possible towards home.

Before he reached home the horrible creature dashed his pointed sword which penetrated instantly into its belly through the anus. As the creature was pushing more and more, the man was gradually moving backward towards home and the sword was entering deeper and deeper.

No sooner the man reached his own vicinity than both of them simultaneously fell dead. The giant died of the serious injury and the man died of severe burn due to heat discharged from the body of the giant. This is the climax of the story.”

The Garo believe that the tiger, sometimes, moves at daytime transforming itself into a human being with a view to locating the dwelling places of the domestic animals and lifting them at night. This type of fables is very often found in Garo language. Dual personality is attributed to other animals too. A fable narrates :

A lonely young man had a pet dove. The dove, while its master was out, transformed itself into a beautiful damsel and used to accomplish the house-work every day. After that, again she became dove in the cage. It was a mystery to the young man. One day the young man, to his utter surprise, observed from hiding that the dove had come out of the cage as an attractive young girl. The man suddenly exposing himself caught hold of the girl by the hand. The dove-girl narrated a very sad and painful story to the effect that her mother used to beat her mercilessly every day on the false accusation of her wicked grand mother. To escape from this inhuman torture and tribulation, she had transformed herself into a dove and began to coo in the forest wailing her misfortune.

The bird was caught in such a condition.

The climax of the fable is that the young man and the girl were married and led a very happy conjugal life.

The Garo have a story about the existence of a large lake on the top of the Garo hills. The story proceeds as follows :

A couple with a couple of babies lived beside a hilly stream. One day, while the young beautiful wife was bathing in the river with her babies on the bank, a strange creature—half man and half fish kidnapped her to the Hades. The fish expressed its deep love for the woman and asked her to be its life-partner. The woman, finding no way of escape, agreed on the condition that, at least, she should be allowed to give suck to her baby while hungry. She was permitted.

The two babies had been eagerly and impatiently waiting for their mother, However, after a long time, the mother came guarded by the fish and gave suck to the younger one and asked the elder to carry the baby to the spot every day while he would be hungry. She also told that she had been in the grip of an aquatic creature with no hope of coming back.

From that time onward, the babies went to the spot every day and cried 'Ma, Ma' echoing in the hills and dales, and the poor mother, guarded by the fish, got out of water to feed her dear baby and dipped again into water.

One day, the former husband of the woman, suddenly fell upon the fish with his sword from ambush. The fish instantly fled into water. The man came home with his darling wife and babies and began to live happily in a new residence on the top of a hill far away from the stream-let.

But the fish searched out the lady by playing on a flute in an enchanting melody.

The love-lorn fish loudly cried from distance, "My sweet heart, I can't forget my pleasant moments with you. In the long run, I've traced your whereabouts. We'll again meet very soon."

In no time, an enormous erosion took place on the top of the hill felling down the mounts and trees and demolishing the wooden hut of the woman, and there appeared a large lake.

There are few tales in Garo language about the origin of some natural objects. Under this motif, some of the fables are summarized below:

1. The origin of the earth, rivers, hills and life

Nastu Napanta, a woman, created the earth, rather land, out of a handful of sand taken from the fathomless bottom of the sea when nothing did exist save water. But the land remained moist, muddy and marshy for many a year. Then Misi Saljong with his associates created hills and rivers to make it dry, solid and fit for life. Then, life began on earth.

2. The origin of death, fire, stars and nebula

In the early days of life on earth, there was eternal life and no death.

One day Gairifa caught an iguana and ate it without knowing that it was the grand mother of Abeth Range in transformed shape. In order to retaliate, Range attacked Gairifa with Gangrene, Scab, Taenia, Eczema, Itch and ophthalmia² which caused his death. Thus death also began on earth.

Then the problem was how to cremate the corpse as no fire was there. A crocodile was deputed to fetch fire from the Hades. The crocodile was returning with a flambeau but sparks were falling down causing burn on its back. The burn-spot still exists on the back of the crocodile. However, the crocodile failed in its mission. Then a representative from the earth was sent to request the 'fireman' of the Hades to come himself to the earth, but the fire-man, instead, advised him to go back and produce fire by friction between two pieces of 'Jhakmaki' stone. It was done accordingly, and fire was produced in the earth.

At the time of cremation of the said corpse a robust buffalo was brought for sacrifice for the salvation of the departed soul. But the buffalo violently ran away across a marshy land. The shallow water of its path became muddy and turbid which was afterwards witnessed across the sky as nebula.

Those who performed the cremation turned into stars in the sky. A cock which was fastened with the corpse to guide the soul to the next world formed a constellation. The stars sometimes used to visit the earth in the form of shooting stars.

The above story also testifies the belief of rebirth and totemism of the Garo. There are more tales and fables regarding rebirth and totemism in Garo language.

²These are personified.

3. The origin of the solar eclipse

The sun is one of the greatest 'manas' of the Garo tribe. One day, Salgra, the Sun-god became an honourable guest of one Akhang Gittel and fell in love with his lovely wife over head and ears. But the woman took to her heels being unable to stand the warm embrace of the Sun-god. The indignant husband having no other means to get rid of the Sun-god, at last, lulled the Sun-god to sleep by magic which caused the solar eclipse.

There are many love-tales in Garo tongue. Ordinarily, the central theme of the love-lore is that a man falls in love with a married woman over head and ears but the love is one sided. The young man expresses his deep love by playing on bamboo flute and *vangyina*, an indigenous musical instrument of the tribe. The fascinating melody of the sensuous music allures the mind even of a passive lady and finally captivates her.

This is what actually love means in the true sense in the Garo society. The topographical environment and way of life of the Garo have given rise to free relations between the Garo bachelors. But the intrigue of a person other than the husband, with a married lady creates a sensation in the society. Probably that is the reason why forbidden love has become the subject-matter of the Garo love-lore. For instance, a story is narrated below in abridged form which runs as follows :

A young couple was proceeding to a distant place with a child on the mother's arms. Half way, they came across an unknown fellow traveller with a bunch of ripe bananas on his shoulder. The stranger was offering bananas to the baby between whiles.

Coming at a hilly village, the unknown young man stood on the way of the couple and complained to the local chief that the man had eloped with his wife. The couple put up a serious objection to it. At this, the chief got confused. Ultimately, it was thought that the child would be the deciding factor. He asked the lady to release the child from her arms. But the innocent baby, being released, ran to the person bearing bananas instead of going to his father. So, the chief gave his verdict in favour of the plaintiff.

The Garo are very much fond of pork, wine, games, wild flowers and fruits, wild dance and music. They believe in transmigration of souls, ghosts and spirits, charms and talisman, magic and sorcery. So, these are very frequently found across the Garo tales and fables.

An example of the belief of the Garo in animism as depicted in a fable is cited below, The story goes as follows :

A young couple lived in a cottage beside their Jhum land in the forest. Once, the man remained absent from home for a few days on business, and the wife was alone in the cottage. The while, a hairy hand used to appear beside her bed every night and ask the lady to scratch it. The poor lady had to do so.

She narrated the matter on arrival of her husband. The indignant man, on hearing this, ambushed under the cot in the night with a sharp sword in his hand. At dead of night, the hairy hand made its appearance as usual. The brave husband instantly dealt a decisive blow and cut the hand into two pieces. Next morning they found, to their utter surprise, a wild creeper named Maribibu lying cut off beside the cot.

It may be mentioned here that 'Maribibu' creeper is believed to have possessed supernatural powers.

The Garo tales and fables include man, animal and inanimate objects as characters and the Hades, Heaven and the Earth as the spots of occurrence of the stories. The monkeys have been depicted as the most notorious and mischievous creatures in the Garo fables. For instance, the summary of a story is given below:

A tortoise and a monkey planned to entrap fishes. But the cunning monkey selected all the suitable spots to set its traps. The poor tortoise could set only one at a shallow place. But next morning, no fish was found in the traps of the monkey, while a fat pig was, somehow, entrapped in the trap of the tortoise. The complacent tortoise was trying to kill the pig to bring it out. The pig was shrieking.

"Who is shrieking?" asked the monkey.

The tortoise intended to keep the matter secret.

"Nothing, rather I am doing so", said the tortoise.

But the secret was soon out. The monkey observed that it had been quite an arduous task for the tortoise to carry the pig home. The wicked creature proposed with an ulterior motive, "Why don't you slaughter and cook it here in the bamboo pipes which will be easy to carry?"

The tortoise took it to be a good suggestion and did accordingly with the help of the monkey. Then again, the monkey proposed that they should rest for a short while on the branch of a tree with the cooked meat. The tortoise regretted its inability to climb the tree.

"Don't worry. I shall lift you there," said the mischievous monkey.

The exhausted tortoise agreed. The monkey lifted first the meat ; then, ate alone all the meat to its heart's content leaving the tortoise below. The poor tortoise was mortified. With a firm determination of taking revenge, the tortoise lay in ambush in a place where the monkey was expected to come to drink water.

Soon the thirsty monkey went there for the purpose. The agrieved tortoise promptly and firmly siezed the testis of the monkey with the teeth and never released the bite till it died.

The Garo tales and fables, on the whole, are woven in the framework of the matriarchal social structure. The dominant role of the women-folk in the family, husband's staying in the wifes household, staying of the youths of the village at night in a common night-shelter named 'Nak pantha' situated in an isolated place are the common features in the Garo tales and fables. One story, for example, is narrated below :

The river Brahmaputra gave his son, Singra in marriage to Simera, the daughter of the mountain, Tura. Singra went to live in Simera's mountain house but soon died of hunger as the young wife did not, rather could not cook the meals of his choice. It resulted in a serious quarrel between the turbulent river and the majestic mountain. The mighty river was foaming with rage and swelled higher and higher until the mountain was about to drown. Being appeased by the mountain the Sun and wind dried up the flood in seven days and saved the mountain.

The moral of the story is : A newly married Garo girl should take special care for the food of the husband who is a newcomer to the wife's family.

In conclusion, a word may be added that the Garo tales are not well knit and compact in respect of composition. Each story has some side stories with isolated incidents having a very weak link with the main story.

The present paper is based on twenty three Garo tales and fables recently collected from the Garo area and many more are yet to be collected. These should be done with no loss of time. When compiled we would have a wider idea about the fascinating characteristics of the Garo tales and fables as well as of the Garo society.

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Rural Power Structure*

The book deals with rural power structure through a study of local level leaders in Bangladesh. Since it is widely believed that the existing rural power structure in Bangladesh is not conducive to progressive reforms, a careful study of this aspect on the basis of factual data appears pertinent and topical.

The prime objective of the book is to provide both a theoretical framework of rural power structure and an empirical analysis of socio-economic-political characteristics of local leaders (of Union Parishads). It is essentially a study of the elite-mass confrontation and the resulting dominance of the powerful class.

In chapter one, the author provides a very able and highly readable survey of the literature on rural power structure and relates the insights to the situation existing in Bangladesh. His discussion of the link between the rural landed gentry and the rulers at the national level is particularly illuminating. Anyone interested in a summarised but substantive survey of the analytical works on rural power structure will find this chapter immensely useful.

Chapter two deals with the evolution of the rural administrative system. This chapter contains most of the information on the topic but the analysis of the information is rather sketchily written.

Empirical data on the Union Parishad leaders is contained in chapter three. The author uses these facts to analyse their bearing on local power structure. Some of the important observations he makes are (a) engulfing of the local level socio-cultural-educational organisations by the Union Parishad leaders, (b) use of 'Salish' to exploit the poor peasants and (c) the inherited nature of the leadership. Despite these poignant observations, the lack of any integrated statistical analysis of the valuable information has somewhat blunted the bite of the conclusions.

In chapter four, the linkages of the U.P. leaders are examined. It is found that they are well placed locally and have good links with urban

*Rahman, Atiar, *Rural Power Structure*, Bangladesh Book International, Dhaka, 1981, p. 63 : Reviewed by Tariq Saiful Islam.

areas, support national political parties of their choice and maintain convenient relations with local officials. The leaders often use their position and links through local factionalism and litigations.

The beliefs and values of local leaders are dealt with in chapter five. The author observes that most of the local leaders have feudal values, use religion and superstition to exploit the poor and have faith in 'peers'. It is also found that most people think that local leaders misappropriate funds though there is not any direct proof of this.

The concluding remarks are given in chapter six. The author observes that "there exists a strong coalition of urban and rural rich/elites which actually holds political power....The rural favoured groups from the power base of the modern state and through their leadership at the 'centre' tries to maintain the facade of participatory polity" (p. 52). These observations are of immense significance and continued relevance.

The author should be congratulated for writing on a topic of great practical value. The only grievance one has is that the book is rather short and its analysis sometimes sketchy. Given the author's wide background in the study of rural power structure, we will expect a bigger and more substantive work on this topic from him in future.

Human Rights : Principles and Practice*

This is the first-ever attempt by a Bangladesh scholar to edit a volume on human rights. The volume contains five articles read by five Rajshahi University teachers at a seminar held on 10 December 1976 under the auspices of the WUS Local Committee to celebrate the Universal Human Rights Day.

In a 15-page prefatory note, the editor Professor Hoque has attempted to trace the intellectual origin of the concept of human rights and to show their eventual recognition in constitutions of many nations of the world. He has hinted at the difficulties—national and otherwise—involved in the fuller application of human rights. The post-Second World War situation however stressed the need of the world-wide realisation of human rights as a pre-requisite for making the world a safer place to live in—a place without any war threat. The UNO evidently put much emphasis on the successful implementation of human rights in the post-war world. Toward the end of his note, Professor Hoque has enumerated a number of suggestions for teaching human rights—suggestions which are highly useful though not entirely original. In fact, one would expect Professor Hoque to mention the qualitative dimension of the problems found in the realisation of human rights in the context of South Asian nations. This would have made his submission more meaningful and useful to a wider section of academics and readers in general. While introducing the papers, Professor Hoque has given merely an abstractor's digest of the proceedings of the conference. In an editorial note like this, the editor should have mentioned the significance, merit and limitations, if any, of the papers. However, Professor Hoque, an expert in his field of studies has done an admirable work, a work first of its kind in Bangladesh.

Professor Z.I. Chowdhury in his paper, "Universal Declaration of Human Rights and its Impact on National Constitutions" has gone back into the age of Cicero to find the existence of human rights in the form of natural laws. Choudhury argued very convincingly that not until the late eighteenth century human rights were given a legal status

*Abunasar Shamsul Hoque (ed.) ; *Human Rights : Principles and Practice* (Rajshahi) Rajshahi University Press, 1984), p. 122, Price Tk. 30 : Reviewed by M. K. U. Molla

in the constitutional documents. It was in the American Bill of Rights and the French declaration of Rights of Man that these rights "were proclaimed, recognised and granted in specific and unambiguous terms" (p. 17). These rights obviously originated from the doctrine of a social contract that sovereignty belonged only to the people and could not be alienated, and that government could exercise only the powers that the people delegated to it.

The second part of Choudhury's paper deals with the adoption of human rights by the UNO in the 1940s and their impact particularly on nations that became independent after the World War II. While making a survey of the influence of human rights on nations, Choudhury mentions about India, Pakistan, and Bangladesh among others. The framers of the Indian Constitution 1949 provided for the human rights in the Part III of their constitution, The Pakistan Constitution of 1956 also contained a chapter on fundamental human rights. The Bangladesh Constitution of 1972 incorporated human rights in Part II and Part III.

In the concluding part of his essay Choudhury has brought into focus "the educative value" of human rights. Thus he advocates their incorporation in national constitutions. Choudhury did not explain why human rights, despite their clear place in national Constitutional documents, could not be effectively implemented in South Asian regions. Notwithstanding this minor lapse, the paper, on the whole, is a solid price of addition to the sum total of literature on human rights.

Abul Fazl Huq's paper "International Protection of Human Rights" is devoted to the growth of world concern for human rights. This concern matured gradually and found outlets through various international organisations, the UNO obviously being the most influential. Huq has divided his article into several subsections : (1) UN Charter and Human Rights ; (2) Universal Declaration of Human Rights ; (3) International Covenants on Human Rights, and (4) Political Action for Protection of Rights. Presumably he did this for the convenience of discussion. Much of the facts presented are not unknown to readers; his credit lies mainly in the fact that he has marshalled these facts in a coherent manner, explaining them in their proper perspective. Huq concluded emphasizing very boldly that "mere writing of legal languages' is not enough... There must be 'drawing together of minds' at the international level... Unless the people are conscious of and prepared to protect, their rights to legal machinery can be fully effective" (p. 35).

Mrs Habiba Zaman in her paper entitled "UN Human Rights and the Position of Women in Bangladesh" has tried to highlight the rights

and status granted to women by different world documents—the UN Charter, the Universal Declaration of Human Rights, the Convention on the Political Rights of Women and the Draft Declaration on Elimination of Discrimination Against Women. Her paper has two parts : in the first part she has narrated the position of women in general ; the second part discusses the present day status of women in Bangladesh. In doing so, she has argued very convincingly that in spite of the incorporation of equal rights provisions in the celebrated world documents, women are being discriminated in all countries—developing and underdeveloped. She asserted forcefully that whether in Africa, America, Asia or Europe the prejudices that hamper the path of progress for women are almost identical (p. 44). She promptly identifies the prejudice that goes in the making of discrimination : “women’s traditional role of child rearing and the biological fact of child bearing have often been used to justify discrimination against women” (p. 43).

Although the right of equality and human rights were clearly given a distinct position in the Constitution of Bangladesh, the sex equality is, in her opinion, a far cry in Bangladesh. In support of her views, she states that “In our country girls from the very childhood are regarded as liability of the family” (p. 46). She believes that government “needs to be more determined to liberate this vast working force (women)” (p. 47).

In his paper “Universal Declaration of Human Rights and the Labour of Bangladesh,” M. Sadeque has discussed a number of important points very methodically :

- (a) the labour problem in the context of human rights ;
- (b) workers’ rights within the framework of the Universal Declaration and the European Convention of Human Rights,
- (c) the role of ILO and
- (d) the labour legislations in Pakistan and Bangladesh.

The laws passed by the different world organisations to protect and safeguard the labour rights are theoretically ideal ones. Practically, Sadeque upholds, they are useless as there is no machinery to implement them.

While dealing with labour legislations in Bangladesh, Sadeque briefly narrated the background history of labour laws in Pakistan where during the first twelve years “nothing was done to formulate a labour policy that would give protection to the rights of labourers” (p. 56). In Bangladesh, there are about eleven lakhs of workers working in about eight hundred factories and other establishments. They live in a miserable state despite the existence of laws safeguarding their rights.

The article is fully based on documents. Sadeque deserves our congratulations on writing such a good paper.

Professor Abunasar Shamsul Hoque's paper "International Enforcement Human Rights : The Case of the European Convention for the Protection of Human Rights and Fundamental Freedoms" is interesting. The paper is based on the outcome of thorough researches. He has attempted to show that the concept of human rights is as old as the human society. It has undergone several stages of transformation before it takes the present position in the world documents.

Professor Hoque has concentrated his attention on two themes : the Universal Declaration and the European Convention, Haque has analysed the different categories of rights mentioned in the Universal Declaration. In concluding this section, Hoque makes no secret of the fact that the progress of the march of human rights is indeed very slim and slender. "Even today", Hoque speaks despairingly, "the basic rights of individuals are flagrantly violated ; minorities are being discriminated on grounds of race, colour, sex, nationality etc. in many countries of the world. Still a large number of peoples could not attain the right of self-determination. Apartheid still exists (p. 73).

Hoque is inclined to believe that the international protection of human rights has made some progress in Europe and as such he has chosen to devote a considerable part of his paper to the European Convention. The Convention came into being in 1950. He has effectually brought in sharp light the differences that exist between the Universal Declaration and the European Convention. Unlike the Universal Declaration, the European Convention "provides machinery that goes far toward ensuring the effective international protection of essential political, economic and social rights" (p. 77). Therefore the Convention has made what Hoque has termed as "tremendous progress". The Convention's influence was visible in that a number of British colonies after their independence has incorporated in their constitutions the provisions of the Convention. Hoque concludes : "The European Convention has shown though in a limited scale that international enforcement of human rights is possible and desirable".

In respect of information, documentation and analysis, Hoque's paper stands the best in the book.

Sex Socialization and Philosophies of Life in Relation to Fertility Behaviour : An Anthro- pological Approach*

K.M.A. Aziz

This study investigates empirically how the sex socializing experiences during infancy through adolescence and adulthood, influence the nature and extent of an individual's sexual behaviour during the reproductive life. The analysis is based mainly on data obtained from personal observations, natural conversations, informal discussions, and topical life history recorded through in-depth open-ended interviews. The respondents were 32 males and 33 females, once married Muslims, drawn from 5 agricultural villages of Matlab *thana* in Bangladesh.

Erikson's theoretical framework of 8 psychosexual life stages of man was utilized as an analytical tool. These mostly corresponded with the perceptions of the study people. Sex education, a continuing process, was desired at different times. The mechanism of seeking it varied at different life stages. Cross-cultural comparisons of life stage perceptions were made.

It was observed that conceptions of behaviour and emotions were transmitted to individuals through sex socialization beginning in infancy. Men were expected to be aggressive, dominating and the sole provider in a family. Sexual purity in a female was an essential virtue and men were expected to protect and control the womenfolk.

A wife was expected to be patient and obedient. Not only did the husband dominate, but most of his relatives, particularly his parents, wielded varying degrees of authority over the wife. The women's confinement within the homestead prevented involvement in major economic contributions to the family. The rules of conduct based on sexual identity, manifested themselves among the people of the study area in their religious beliefs

and learning attitudes. The strength of these beliefs, attitudes and roles are manifest by confining women to the homestead even when this meant economic hardship.

Even in matters of procreation the husbands dominated, so women had to bear as many children as the husband desired.

This study suggests a need for improving the social and economic status of women as a fundamental requirement for a successful fertility control programme. A sex education programme is essential for correcting misconceptions about sexual identity and fertility behaviour, most of which are identified by this study. Sex education could be undertaken at the neighbourhood and *para* level by male and female volunteer trainers in exchange for moral incentives under the patronage of Association for Family Life Education.

In-Migrants and Locals : A Rural Case Study In Bangladesh*

Showkat H. Khan

The thesis analyzes the behaviour of the in-migrants and the locals comparatively in the context of a holistic view of two villages of Rajshahi district, Bangladesh. The behaviour has been analysed from the perspective of a theoretical framework of the peasant way of life which I have designated as the "trap of tradition" after Oscar Handlin. Handlin describes the peasant way of life as characterized by "..... a personal bond with the land ; attachment to an integrated village or local community ; central importance of the family ; marriage a provision of economic welfare ; patri-local residence and descent in the male line ; a strain between the attachment to the land and the local world and the necessity to raise money crop ; and so on" (1951:7). Some of the concepts of anthropology, sociology, social psychology and economics have been used. For data collection emphasis has been given on anthropological methods of observation and interview.

The in-migrants, with the exception of two refugee households from Burdwan and Murshidabad (India), came to settle in Sundarpur and Sampara (pseudonyms), the villages under study, from rural areas of five other districts of Bangladesh. Being attracted by the comparatively low price of land they started settling in the villages from 1936 onwards. They now comprise 52% of the households of the villages.

It was expected that when the in-migrants broke away from the "trap of tradition" of their ancestral homes and settled in Sundarpur and Sampara, they would appear to have been loosened from their cultural matrix and perhaps taken on some qualities of individualism, less family particularism, secularism, etc., Karl Manheim has considered these resulting from "uprooting [migration], viewed positively," to be "emancipation [from traditionalism]" (1951:63). Such people might prove themselves successful innovators and entrepreneurs as migrant studies, such as, Nair (1962) and Epstain (1970), proved them to be.

As soon as the in-migrants settled in the villages the locals designated them outsiders (*bideshi*) and distinguished them according to their

*M. Phil. Diss., IBS/R.U., 1977

districts of origin, such as, *Pabnaiya* (people from Pabna district), *Noakhaillya* (people from Noakhali district), etc. The locals claimed themselves heirs of the resources of the villages and appeared critical about the entry of the in-migrants into the resource structure. This, in turn, made the in-migrants economically depressed.

The in-migrants adopted new occupations and developed entrepreneurial qualities of risk-taking, hard work, and frugality. But, they could not have become successful entrepreneurs for the main reason that, their aims, being innovative and enterprising, were not to become entrepreneurs but to get entry into the resource structure (land) of the villages, with the aid provided by entrepreneurial activities.

The "*pramanik* family" holds higher social status while the holder of the office of *pramanik* is all powerful in making political decisions in the villages. Since most of the in-migrants do not inherit the title (*poddi*) *pramanik* nor do hold the office *pramanik*, they appeared socially and politically depressed in the villages.

The in-migrants, who brought with them a strong tradition of religiosity and *parda* (seclusion) maintenance for their women, resorted to those, to appear superior to the locals, when all else (social, economic and political aspects of life) failed. They united under the banner of their respective districts, partly to compensate for their "identity loss" and partly to get emotional support, help and co-operation of their district-men.

The in-migrants, thus, in spite of breaking away from the "trap of tradition" of their ancestor homes, could not escape from it in their new home in Sundarpur and Sampara. They could neither acquire qualities of individualism, less family particularism, secularism, etc., nor become successful entrepreneurs.

It follows that if the in-migrants could move to such an area where land is not of prime importance, where socio-economic status is not measured in terms of land ownership, where a migrant is not treated as an outsider and, above all, where innovative and entrepreneurial activities are not discouraged, they could acquire the above qualities. Or, in other words, perhaps the desired qualities can be achieved only by rural-urban rather than rural-rural migration, or by creation of rural urbanization having values enabling people to break from the grip of traditional peasant values.

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Position of the Constitution and Fundamental Rights During the Martial Law Regime, 1958-1962 : A Case Study*

A.B.M. Mafizul Islam Patwary

In this thesis an attempt has been made, mainly, to examine and assess the position of the Constitution of 1956 and the fundamental rights incorporated in that Constitution in view of the Presidential Proclamation of the 7th October, 1958, and the Presidential Laws (Continuance in Force) Order, issued on the 10th October, 1958. Questions relating to their status and position were raised in contentious cases before the Supreme Court and High Courts of Pakistan involving them in a legal dilemma. The relevant cases have, therefore, been discussed and analysed.

Though the work is concerned, mainly, with the period between the 7th October, 1958, and the 8th June, 1962, during which period Martial Law prevailed in the country, it was necessary that constitutional and socio-economic and political conditions of Pakistan before the Proclamation of the 7th October, 1958, should be discussed. This was necessary not only as description of the background over the topic and period, but also because prior to this, Pakistan had another constitutional crisis in October, 1954, when Ghulam Mohammad, the then Governor-General of Pakistan, dissolved the first Constituent Assembly. On that occasion also the superior courts of Pakistan had to tackle the situation, amounting virtually to a constitutional vacuum. In order to provide a link between the Martial Law period and the period preceding it the important constitutional cases and political and constitutional developments have been discussed in some length.

The main object of this thesis is introduced in Chapter I, followed by Chapter II which contains a brief survey of attempts for promulgating a constitution and fundamental rights preceding the Proclamation of Martial Law.

In Chapter III, the working of the Constitution of 1956 since its inauguration, its position in the light of the Presidential Proclamation and

*M. Phil Diss., IBS/R.U., 1980.

the Presidential Laws (Continuance in Force) Order, the legitimacy of the regime as pronounced by the Supreme Court of Pakistan and justifiability of Martial Law in Pakistan in accordance with the traditions maintained in the Commonwealth are discussed and analysed.

Chapter IV has dealt with the organisation and jurisdiction of the Military Courts as established by the Martial Law Authority, and the attempt of the regime to turn itself into a constitutional Government through the system of the Basic Democracies and the Constitution of 1962.

In Chapter V, the position of the fundamental rights contained in the Constitution of 1956 and the writ jurisdiction of the superior courts contained in the Constitution and recognised by the Laws (Continuance in Force) Order, 1958, is focussed in some length. In this Chapter we can see the liberal attitude of the courts which tried to avoid confrontation with the Martial Law Authority but at the same time attempted to enforce fundamental rights on the plea of basic rights recognised by every civilised legal system, and the principle of natural justice.

Chapter VI has drawn a reflection on the position of the Constitution of 1956 which was restored in structure and outline only, the role of judiciary which by legitimising the regime became a part of the Government, and the fundamental rights which were enforced in indirect way ; and has made an attempt to analyse the real nature of the Martial Law regime.

An Economic Analysis of Handloom Weaving Industry : A Case Study of Two Areas in Pabna District*

M. Saiful Islam

This thesis is an analysis of the productivity and employment of handloom industry in two areas, one is more developed and the other is less developed, of Pabna district. The undertaking of this study stems primarily from the lack of attention devoted to this field. Although there is a growing realisation that effective research is a pre-requisite for increasing productivity and employment opportunities of handloom industry, empirical studies on the industry are virtually absent.

The data of this study was obtained from our field work operated on a representative sample of entrepreneurs and karigars (piece-rated workers).

It has been observed with respect to productivity that the large firms are more efficient than other firms. No such conclusive evidence could, however, be derived when employment was considered. On the other hand, all sizes of firms in more developed area are more efficient in the use of available resources than those of the less developed area.

The analysis contained in this study has important policy implications. For increasing overall productivity the large firms should have better facilities relative to the other firms. From the distributional point of view, this suggestion is undoubtedly unhealthy—the possibility is that the small firms will continuously be dominated/exploited by the large firms. A time may come when the small firms may become completely loomless. Their numbers may go on increasing as the number of landless labourers is increasing in the farm society. Therefore, along with the overall increase in the productivity of handloom industry, as suggested in this study, the measures relating to the efficient distribution of yarn, rationalisation of the duty and tax structure on the imported yarn and accessories, and the introduction of institutional credit should be given due weight by the government.

*M. Phil Diss., IBS/R.U.. 1980

The Rural Political Elite in Bangladesh : A Study of Leadership Pattern in Six Union Parishads of Rangpur District*

Muhammad Abdul Wahhab

This is micro-level political study. The study is based on empirical investigation concerning the election and leadership of six union parishads in Rangpur District of Bangladesh. Union Parishad is the lowest tier of local self-government in the rural areas of Bangladesh. It is the rural decision-making body and the centre of rural politics. Hence in the context of the present study any person either elected or nominated to any of the union parishads constituted in 1973 and 1977 has been considered to be a member of the rural political elite.

Textually, the whole study has been organised into seven chapters. The first chapter deals with the importance of political elite in general and Bangladesh rural political elite in particular. It also includes methodology of the study and a brief evolutionary history of Union Parishad. Chapter two gives a short description of the society where from the proposed elite came. Chapter three analyses the nature of Union Parishad election and points out a sharp distinction between rural Election and national election. National election is dominated by political parties, but the rural election is based on the groupings relating to the questions of religion, faction, neighbourhood, local versus non-local and the issues like these.

Chapter four deals with the social background of elite under observation and reveals that all are rich people. The poorer sections of the society comprising the landless and small farmers (i.e., the persons whose annual income is less than Tk. 4000/- and who have land upto 2.00 acres or have no land at all) continue to be outside the Union Parishads, although they form vast majority constituting 75 percent total

*M. Phil Diss., IBS/R.U., 1980

households in Bangladesh. Thus the hold of a few rich persons on the mechanism of rural power structure clearly indicates that the class consciousness among the rural people did not emerge. If it emerged, the vast majority poor people would certainly have been able to elect representatives from their own class. And the question of religion or issues like this, could no longer play an important role during election.

Under conditions of transition, a mixture of traditional and modern forces is obvious. It is expected that the forces of modernization and social change would finally be dominant over the traditional forces of society. In this connection education plays an important role. Looking at the extent of literacy, the members of elite community are a literate group. Though they are traditional group sentiment of masses in order to get power, most of them seemed to be induced towards the forces of modernization and also they are aware of both local and national issues. Of course they are more interested in local issues than that of national ones (Chapter 5).

It is to be noted that the national politics is practised by westernised lawyers, intellectuals and other modern occupation holders. The rural politics, on the contrary, is dominated by rural rich farmers. This, however, does not mean, as Chapter six reveals that rural politics is isolated from national politics. Most members of the elite under study have affiliation to one or other political party. But the interesting point is that their party-affiliation is greatly changed with the change of party in power, because they are closely connected with the ruling party. The seventh Chapter of the study is the last one which contains a summary of the findings and concluding remarks.

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