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KEY ISSUES AND CHALLENGES

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Note for Contributors

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Human Rights of the Senior Citizens in Bangladesh: Issues and Challenges

Dr. Nahid Ferdousi*

Abstract

In recent times, population aging is not just a future issue anymore. It has become a real social challenge all over the world. Countries like Bangladesh, India, Singapore, China, Pakistan, and Vietnam are now at a point where they must focus on the safety and dignity of older people. Globally, senior citizens often face human rights violations, abuse, and discrimination. Because the number of elderly people is growing so fast, their rights have become a major global worry. Older adults are quite weak mentally and physically, so we cannot treat them like middle-aged people. We need specific laws to protect them from the everyday exploitation they face. Physically and mentally, old age is a lot like childhood. That is why they need the same level of care, patience, and love. From prisons to regular homes, older citizens should get special support because they worked hard and contributed to their countries for many years. In Bangladesh, our society naturally expects families and communities to take care of the elderly. But in real life, their rights are barely protected. We do not have a strong or complete legal framework for them. Because of this, it is very hard to secure their basic needs, give them specialized healthcare, or provide proper social safety nets. Many older people lose their independence and face terrible abuse, neglect, and financial pressure from their own children and family members. This breaks down our traditional family values and leaves millions of old people living a miserable life. Looking at this bad situation, this paper shows why we urgently need a special legal system to save senior citizens from crimes and neglect. It also explains the strong justifications behind creating laws to stop discrimination against our elderly population.

Keywords: *Human Rights, Senior Citizens, Laws, Trends, Vulnerability*

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1. Introduction

As the seventh-most populous country globally, Bangladesh has one of the largest elderly populations among developing nations. Approximately, Bangladesh has around 15 million individuals aged 60 or older. As per the Population and Housing Census Report 2022, around 9.28 percent (more than 2.5 crores) of the overall population comprises the elderly (aged sixty years or older).[1] Bangladesh is transitioning to an intermediate stage of aging, posing challenges to its economic and social frameworks. The growing population of seniors, along with the disintegration of joint family structures and a reduction in cultural traditions, may result in a greater need for housing, healthcare, and rehabilitation services.[2] Most importantly, meeting the basic needs as well as the human rights of the elder generation remains unmet in many cases.[3] The consequences of such emerging challenges might put the government in a fix towards ensuring minimum financial aid, health facilities, and social support programs for the future elderly.[4]

Moreover, the rapid growth of the senior population aged sixty and above may lead to a crisis stemming from insufficient readiness and attention toward elderly care, medical treatment, and financial assistance resources.[5] During specific phases of life, people need significant care and support, which can become a round-the-clock obligation. Most of the families, despite their willingness, fail to

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1 *Population and Housing Census Report, 2022* (Preliminary Report), Ministry of Planning, Dhaka, Bangladesh.

2 M. Nazrul Islam and Dilip C. Nath, "A Future Journey to the Elderly Support in Bangladesh", *Journal of Anthropology*, Volume 2012, Wiley.

3 Sheikh Iraj, "Old age homes: Remove the stigma", *The Independent*, 9 November 2019.

4 Md. Humayun Kabir, "Local Level Policy Development to Deal with the Consequences of Population Aging in Bangladesh", United Nations, New York (1994): 33-74.

5 Mohammad Al-Masum Molla, "Ageing population: Are we ready to ensure proper care?", *The Daily Star,* August 20, 2022. Available at: https://www.thedailystar.net/news/bangladesh/news/ageing-population-are-we-ready-ensure-their-proper-care-3098671 (Accessed on June 12, 2023)

provide such care due to demanding work schedules.[6] Several Asian countries have begun integrating the human rights of older individuals into their national legal frameworks. However, there seems to be a lack of substantial interest in Asia for creating a new binding agreement, along with the related monitoring, reporting, and compliance requirements according to international standards.[7]

The issue of older persons' human rights remains marginal in national plans and policies, exacerbating their situation in Bangladesh.[8] Laws for elder protection, social security programs, financial support initiatives, along with the facilities for old homes and rehabilitation centers, have not been established. In governmental initiatives and policies that negatively impact the situation of older individuals in Bangladesh, the issue of their human rights remains largely overlooked.[9]

While the government enacted pivotal legislation and policies in 2013 to advance the rights of senior citizens, the majority of these directives have yet to be fully operationalized by the relevant authorities due to bureaucratic impediments and an incomplete legal infrastructure.[10] In 2013, the government formulated the National Policy on Older Persons. Despite the formulation of the National Policy on Older Persons in 2013, a comprehensive legal and regulatory framework essential for its effective execution remains outstanding nearly a

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6 Md. Zillur Rahman, "The Life of Older People", *Arafat's Publication*, Dhaka (2012): 124.

7 Christie M. Gardiner, "The Human Rights of Older Peoples in Asia" in Fernand de Varennes and Christie M. Gardiner (eds), *Routledge Handbook of Human Rights in Asia* (Routledge Taylor & Francis, 1st ed. (2018): 290–305.

8 Md. Zahid Hossain, A.K.M. Mahmudul Haque, and S. M. Akram Ullah. "Human Rights Violation of the Elderly People in Bangladesh: Do They Enjoy Basic Needs?" *International Journal of Aging Research*, (2020): 3:73. Available at: file:///C:/Users/User/Downloads/IJOAR-2020-10-2505.pdf

9 M S Siddiqui, "Legal & social protection of senior citizens", *The Financial Express*, 25 January 2013

10 Nahid Ferdousi, "Rights and Challenges of Older People in Bangladesh", *The Daily Star*, 27 October 2020. Available at: https://www.thedailystar.net/law-our-rights/news/rights-and-challenges-older-people-bangladesh-1984633 (Accessed on 11 July 2023)

decade later.[11] The absence of a robust social security system, lack of employment opportunities, and insufficient financial aid are major challenges for the elderly. Consequently, most elderly individuals lack economic security and access to services that could ensure a peaceful life.[12]

The Department of Social Services (DSS)[13]under the Ministry of Social Affairs is tasked with implementing the social security program for older individuals. In 1998, the government initiated the Old Age Allowance (OAA) program to support elderly people requiring assistance. The OAA scheme is pivotal in providing coverage to the vulnerable elderly in Bangladesh's rural areas. The primary objectives were to ensure social security, socioeconomic development, and adequate care for senior individuals within the family and community.[14] Males over 65 and females over 62 receive BD TK 650 monthly,[15] but just a small percentage of the elderly population, mainly in rural regions, take advantage of this program. Elderly individuals face significant challenges in their later years, having to manage their expenses in such circumstances.[16]

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11 "Senior citizens demand implementation of National Policy on Older Persons", *New Age*, 1 October 2022. Available at: https://www.newagebd.net/article/182513/senior-citizens-demand-implementation-of-national-policy-on-older-persons (Accessed on 11 October 2022).

12 Md. Zillur Rahman, "The Life of Older People", *Arafat's Publication*, Dhaka (2012): 123.

13 Department of Social Services, Government of Bangladesh, "Old Age Allowance". Available at: http://www.dss.gov.bd/site/page/7314930b-3f4b_4f90-9605-886c36ff423a/Old-Age-Allowance (Accessed on July 18, 2023)

14 Md. Anisar Uddin, "Social Safety Nets in Bangladesh: An Analysis of Impact of Old Age Allowance Program", *Unpublished Dissertation, Institute of Governance Studies (IGS), BRAC University,* Dhaka, Bangladesh, (2013): 18-19. Available at: https://core.ac.uk/download/pdf/61804718.pdf

15 Old Age Allowance. Department of Social Services (DSS), Govt. of the People's Republic of Bangladesh.https://dss.gov.bd/site/page/7314930b-3f4b-4f90-9605-886c36ff423a/Old-Age-Allowance (Accessed on 17 December 2025)

16 Sazzadul Alam, "Elderly people in Bangladesh: Vulnerabilities, Laws and Policies", *Report of BRAC*, 30 November (2015):12, 43. DOI: 10.13140/RG.2.2.30336.66568

With the increasing percentage of senior citizens in Bangladesh, the absence of unified initiatives to safeguard their rights, dignity, and access to social services is anticipated to become a significant issue for the government. At this phase of life, they necessitate additional care and assistance from both their families and governmental bodies. According to the Universal Declaration of Human Rights, the elderly have the same rights as every other person. This research aims to examine the country's legal frameworks for protecting the human rights of older adults and the measures taken to ensure their welfare.

2. Research Methodology

The study primarily adopted a qualitative approach, focusing largely on the existing legal frameworks and regulations concerning the rights of older adults and the challenges they face. To collect the requisite information, secondary sources were utilized. These included a variety of reading materials, academic journals, scholarly articles, online resources, significant legal cases, international treaties, governmental statistical data, media reports, and other relevant sources. A descriptive methodology has been used in this study.

3. Literature Review

The study by Md. Zahid Hossain *et al.*[17] emphasizes the importance of the human rights of older adults, as acknowledged by the Universal Declaration of Human Rights and enshrined in the Bangladesh's Constitution. The researchers endeavored to pinpoint the obstacles hindering the effective exercise of these rights by senior citizens and to explore the underlying reasons for these impediments. Their findings illuminate the political, administrative, and financial hurdles confronting the human rights of the elderly. The authors propose that enhancing ethical standards and awareness, formulating and enforcing appropriate legislation, establishing care facilities for the elderly, and engaging in robust social movements against corruption are crucial measures to safeguard the human rights of older individuals.

[17] Md. Zahid Hossain, S. M. Akram Ullah, and A. K. M. Mahmudul Haque, "Human Rights of the Senior Citizens in Bangladesh: Political, Administrative and Economic Challenges, *Advances in Research,* 21(12), (2020): 31-40. Available at: https://journalair.com/index.php/AIR/article/view/788/1575

Christie M. Gardiner[18] explored the aspects of safety, security, health, well-being, and the involvement of the elderly in Asia, alongside examining their public and private lives and the causes of elder abuse. The author advocated for the integration of essential human rights documents related to older adults into national legislation. Given the urgent need for policy responses due to the aging population, numerous countries in the Asian region have already actively addressed this issue at domestic, regional, and sub-regional levels, focusing on areas such as social security, health, employment, and housing. According to the author, the absence of a well-defined international legal framework to guide these policies could lead to foreseeable challenges, including inconsistent monitoring and evaluation of compliance, which would further affect data collection and, consequently, policy formulation.

Mohammad Mainuddin Mollah[19] showed that the majority of the older populations in slums are illiterate; a very low number have completed primary education. As a result, poverty makes the lives of the elderly miserable, especially in slum areas. It is often observed that older individuals from middle- to upper-class backgrounds devote much of their time to religious activities. Unfortunately, the elderly women in slum areas never retire from their work. Severe poverty has compelled many of these seniors to migrate to Dhaka in search of a secure and stable livelihood, predominantly originating from impoverished families. Thus, poverty has been and remains a persistent challenge for them.

While describing the life patterns of the elderly, Tamima Sultana[20] emphasized the respect and honor accorded to seniors in modern culture. She also elucidated the intricate elderly care system in

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[18] Christie M. Gardiner, "The Human Rights of Older Peoples in Asia" in Fernand de Varennes and Christie M. Gardiner (eds), *Routledge Handbook of Human Rights in Asia* (Routledge Taylor & Francis, 1st ed. (2018): 290–305.

[19] Mohammad Mainuddin Mollah, "The livelihood Pattern of Older Persons in Slum Areas: A Study on Dhaka City", *Bangladesh Journal of Geriatrics*, Vol 40, no 1 (2014): 30-46.

[20] Tamima Sultana, "Expectations, Realities and Coping Strategies of Elderly Women in a Village of Bangladesh", *SSRN (Social Science Research Network)*, (2011). Available at: https://ssrn.com/abstract=1967283 or http://dx.doi.org/10.2139/ssrn.1967283

Bangladesh, asserting that older individuals should reside with their children, as families are the primary environment for their care. However, she noted that the integration of the elderly within a family or household may not be as seamless as it appears. Her research indicates that women in rural Bangladesh face considerable discrimination concerning poverty, vulnerability, healthcare access, and other domains.

Md. Zillur Rahman[21] scrutinized the overall status of older individuals within Bangladesh's evolving social framework. Through case studies conducted in family settings and elderly homes, he depicted a realistic portrayal of the lives of seniors. He highlighted that approximately 40% of the elderly population lives below the national poverty line. Recent studies indicate that malnutrition poses a severe threat to 62% of older adults in rural Bangladesh, with 50% suffering from chronic energy deficiency.

Furthermore, M. Redwanur Rahman evaluated the state's role in the healthcare system and the rights of the elderly, highlighting the substantial evidence linking human rights, health, and development. Similarly, Sazzadul Alam's report[22] identified factors contributing to the isolation of older individuals from their families, resulting in them living alone and confronting their challenges. The author analyzed the causes behind the breakdown of family structures and the absence of protective laws for the elderly, which are the primary, issues facing senior citizens.

Md. Abdullah Al Mamun[23] examined the vulnerability and hardships of Bangladesh's elderly population concerning healthcare, economic security, and social protections. The author adopted an analytical and conceptual approach to the socio-economic status of the elderly in Bangladesh, considering the global context. The focus extended to national policies and legal frameworks aimed at safeguarding and promoting the rights, socio-economic development, and welfare of

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21 Md. Zillur Rahman, "The Life of Older People", *Arafat's Publication*, Dhaka (2012).

22 Sazzadul Alam, "Elderly people in Bangladesh: Vulnerabilities, Laws and Policies", *Report of BRAC*, 30 November (2015):12, 43. DOI: 10.13140/RG.2.2.30336.66568

23 Md. Abdullah Al Mamun, "The Legal Aspects of Social Safety of Senior Citizens in Bangladesh", *European Journal of Economics, Law and Politics*, March 2021, edition Vol.8, No.1 2518-3761.

older individuals through legal and moral protection from family, society, and the state. However, the review indicates that most research advocates for the human rights of the elderly. This study underscores the necessity for domestic laws to recognize the elderly's right to enjoy human rights in accordance with the UN Conventions.

Similarly, Sharmin Islam et al.[24] titled 'Old Home and Caring Elderly Population: Need or Dilemma' explored the situation of parental care in Western and Asian cultures. Their findings showed that elderly individuals from both Western countries and Asia prefer to remain in their homes with their children and grandchildren. They argued that this serves as a means to convey their real-life experiences to their grandchildren, which is crucial for the emotional, humane, and psychological growth of the future generation of the world. They claimed it is clearly beneficial and necessary that ideally the elderly and senior citizens remain with their extended families, where they can experience peace and tranquility while connecting with their younger generations. They firmly believe that family will contribute to enhancing the future generation by fostering a vibrant exchange of experiences in a relaxed and amiable manner.

Likewise, authors could not overlook the necessity of 'old homes' but rather favored old homes in restricted circumstances. They described how certain families cannot care for their parents, and at times, all the children of an elderly couple may reside overseas; in these instances, such elderly individuals require professional care in established 'old homes.' However, the authors advocated for government-owned old homes rather than privately-owned ones. They proposed that these historic houses should ideally be founded and preserved by the government, as the regulations of the private sector are geared toward profit.

Md. Ripul Kabir et al.[25] conducted a study named 'Socioeconomic Status of Elderly People at Household Level: A Sociological Study on

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[24] Sharmin Islam , Aminur Rahman , Abu Kholdun Al-Mahmood , Abdullah Al-Mamun , and Md. Fahmid Uddin Khondoker, "Old Home and Caring Elderly Population: Need or Dilemma", *Bangladesh Journal of Medical Science*, Vol. 18 No. 3 July 2019.

[25] Md. Ripul Kabir, Shammy Islam, and Dipika Chandra, "Socioeconomic Status of Elderly People at Household Level: A Sociological Study on Rangpur City Corporation", *Khulna University Studies,* Volume 17(1 & 2), (2020): 67-76.

Rangpur City Corporation', which emphasized the socio-demographic and economic characteristics of the elderly and examined the care responsibilities of their family members. The authors highlighted that older adults in contemporary societies are primarily isolated at home or are looked after in a senior care facility. They demonstrated the connections between various family members and the elderly regarding the care of an older person's end-of-life. Fawzia Farzana[26] in her study 'Aging in Place' in Bangladesh: Challenges and Possibilities, aimed to identify the issues encountered by the increasing population of older adults aging in place, along with the reasons prompting them to opt for institutional housing and assess the feasibility of 'aging in place'.

However, the foregoing review shows that most of the works support alternative care in old homes. But the reliability of some of the works is inadequate for overcoming the problem of older people. From this study, it was understood that elderly people who came from the nuclear family need old-age home care services.

4. Human Rights Issues and Vulnerabilities of Senior Citizens

4.1 Family and Social Service Issues

Bangladesh boasts a rich legacy of preserving cultural heritage and familial traditions. Predominantly, the populace resides in rural locales, engaging in agriculture, thereby perpetuating ancestral customs. However, the transition from agriculture to industrialization has significantly altered lifestyles, cultural norms, and family dynamics. With rising literacy rates, individuals are increasingly migrating to urban centers to secure their livelihoods. This demographic shift profoundly impacts family structures, diminishing the prominence of the joint family system. Elderly family members, once central to societal and familial roles, are gradually losing their significance.

[26] Fawzia Farzana and Tanmoy Malaker "Aging in Place' in Bangladesh: Challenges and Possibilities, *International Journal of Multidisciplinary Research*, Vol. 4, No. 2, (2019). Available at: https://www.scientiamoralitas.com/index.php/sm/article/view/41

The relaxation of familial bonds is evident, with extended families evolving into joint families, and eventually into nuclear units. Consequently, societal pressures and career ambitions compel younger family members to live apart from their elders. Numerous factors contribute to the erosion of joint family traditions and longstanding social customs. Family traditions are inadequately preserved due to socio-economic factors such as industrialization, rapid urbanization, heightened aspirations among youth, and the growing participation of women in the workforce. Many adult children prioritize career advancement, personal comfort, and well-being, often neglecting or living separately from their parents.

Frequently, young individuals opt for independent living, leaving little room for their elders. In the absence of legal protections, many elderly across the nation are deprived of maintenance rights and fall victim to familial neglect.[27] Often, older parents are not aware of the rights under the Parents Maintenance Act 2013. Consequently, a substantial number of seniors reside in old age homes, often without their consent. Some urban elders voluntarily choose these homes, seeking better care and services than their families can provide.[28] Many elderly people in Bangladesh find themselves isolated from their relatives, leading to a significant portion living alone and confronting socio-economic, health, and emotional challenges.[29] Older men and women frequently face violations of their basic rights within family, community, and institutional contexts. Limited access to justice and legal equality further exacerbate these issues.

4.2 Psychological, Health and Financial Issues

In Bangladesh, older individuals encounter significant human rights challenges, including inadequate access to suitable aged care and healthcare services, as well as various forms of abuse—financial,

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[27] Atiqur Rahman, "Human rights situation of older persons in Bangladesh", *Bangladesh Journal of Geriatrics*, Vol. 47 (2012): 91.

[28] Mohammad Abdul Hannan Pradhan, Sadika Akthar, Md. Gias Uddin Khan, and Mohammad Rafiqul Islam, "Demographic Transition and Home Care for the Elderly in Bangladesh: An Urban Rural Comparison", *Advances in Economics and Business,* 5(6), (2017): 334.

[29] Syeda S. Jesmin & Stanley R. Ingman, "Social Supports For Older Adults In Bangladesh", *The Journal of Aging in Emerging Economies, (2011):* 69-79.

physical, and psychological. They also face issues such as homelessness, substandard living conditions, and reliance on social security benefits, which limit their participation in community and public life.

Among the numerous threats they face, restricted access to healthcare, employment, property and inheritance rights, information and education, housing, transportation, fair resource distribution, and necessities are particularly pressing. Due to age-related, diverse mental and physical limitations, elderly individuals, including senior citizens, endure significant discrimination. Older men and women continue to confront challenges, experiencing neglect and isolation in various aspects of their lives. The lack of societal awareness regarding active aging contributes to the denial of their human rights, including equal participation in socio-economic spheres.

Several developed nations have prioritized the development of comprehensive international guidelines to safeguard the well-being, dignity, advancement, and recognition of the fundamental human rights of older individuals. Numerous countries in Asia have begun focusing on creating social programs and welfare frameworks for the elderly that align with UN standards. With rising life expectancy due to enhanced medical care and an increasing elderly population, many countries worldwide are facing substantial challenges in providing adequate social and welfare support for this growing demographic.[30]

Similar to other nations, this issue is becoming increasingly problematic for developing countries like Bangladesh. Bangladesh lags behind many Asian countries in ensuring adequate protection and basic social services for its elderly population. High poverty and illiteracy rates in developing nations like Bangladesh hinder families from providing proper medical care, safety, and well-being for their elderly members. Governmental and societal efforts to address these gaps are crucial, yet they are hampered by limited resources,

[30] Human Rights Watch Submission to the United Nations Independent Expert on the enjoyment of all human rights by older persons", *Human Rights Watch*. October 2022. Available at: https://www.hrw.org/news/2022/11/08/human-rights-watch-submission-united-nations-independent-expert-enjoyment-all-human (Accessed on 19 January 2025).

initiatives, and policies. The absence of protective mechanisms in countries like Bangladesh results in millions of elderly individuals living in dire conditions both within and outside their families. As senior citizens and integral members of the nation, they possess the potential to offer invaluable guidance and mentorship for the next generation. With their extensive life experience, they can make significant contributions to the society.

4.3 Elder Care Issues

In Bangladesh, elder care facilities operated by the government are overseen by the Ministry of Social Welfare, whereas private elder care initiatives are registered and regulated under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance from 1961,[31] revised in 2007. This regulation, together with the 1962 Voluntary Social Welfare Agencies (Registration and Control) Rules, requires the registration and oversight of voluntary social welfare organizations throughout the country.[32] Both private and public elder care facilities in Bangladesh frequently do not comply with essential regulations and guidelines to deliver sufficient services and healthcare to their residents. Wealthier seniors seek facilities with modern amenities, but due to a shortage of government-run homes, many private ones have emerged to offer elder care services. However, there are no provisions for middle and lower-income households, who find it difficult to cope with the expensive prices of private housing. Furthermore, the quantity of private elder care facilities remains untracked and unregulated by government institutions. The current challenge is to ensure that elder care facilities are accessible to all seniors, regardless of their financial status.[33]

The lack of an appropriate monitoring system greatly affects the characteristics and quality of services in older homes.

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[31] The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961(no.46). Bangladesh government adapted this ordinance by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

[32] The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961. Available at: www.minlaw.gov.bd

[33] "The state must take better care of elderly citizens", *The Daily Star*, 20 August 2022. Available at: https://www.thedailystar.net/opinion/editorial/news/the-state-must-take-better-care-elderly-citizens-3099226

5. International Standards for the Protection of Older People

Following the United Nations Principles for Older Persons, adopted by General Assembly resolution 46/91 on December 16, 1991, an increasing number of individuals are reaching advanced ages in better health than in the past. Countries should develop possibilities for older people who are willing and capable and can actively participate in ongoing social and familial activities. Given the significant diversity in the circumstances of the older generation, nations ought to develop opportunities for capable and willing seniors who can actively engage in societal and familial activities. On the other hand, families in both developed and developing countries face a significant burden in providing enough support and medical treatment for fragile elderly people.[34]

The Secretary-General of the General Assembly of Human Rights states that older individuals in any country may encounter four human rights challenges due to a lack of specific measures and appropriate services. The four challenges include discrimination, poverty, violence, and both physical and verbal abuse. Until recently, only a limited number of nations focused adequately on the rights of older people. The proportion of individuals aged sixty and older is rising at an impressive rate. Individuals aged sixty and above are increasingly becoming more common. By the decade's conclusion, the 740 million elderly populations could expand significantly to nearly one billion individuals (UN study A/66/173, 2010).[35]

The 1948 UN Declaration on Human Rights asserts that the recognition of the inherent dignity and equal rights of all individuals is the basis for freedom, justice, and peace globally.[36] According to the UN Declaration, 'Every nation has ethical and legal responsibilities towards

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34 United Nations Principles for Older Persons, Adopted by General Assembly resolution 46/91 of 16 December 1991, <https://www.ohchr.org/en/professionalinterest/pages/olderpersons.aspx>

35 Human rights of older persons, Summary of the Report of the Secretary-General to the General Assembly, the report (A/66/173) is submitted pursuant to the General Assembly resolution 65/182 of December 2010. United Nations Human Rights Office of the High Commissioner. https://www.ohchr.org/en/issues/olderpersons/pages/olderpersonsindex.aspx

36 *The Universal Declaration of Human Rights, 1948.*

the elderly, asserting that "all humans are born free and equal in dignity and rights.' In the same vein, article 25 states that 'Everyone has the right to uphold a living standard sufficient for health and well-being, encompassing food, medical care, clothing, housing, essential social services, and security to safeguard against circumstances beyond their control such as unemployment, illness, disability, widowhood, aging, or other forms of financial hardship.' Therefore, these rights, freedoms, and equality do not change with the age of the person.

The Vienna International Plan of Action on Aging from 1982 is the initial global document on aging established by the First World Assembly on Aging. The primary goal of the plan was to improve governments' ability to offer adequate assistance and care for the elderly. The strategy focused on the growth potential and dependency requirements of elderly individuals in particular regions, encompassing human rights and the empowerment of women. The plan was created, detailing principles for elder protection and offering suggestions in areas like family, social welfare, health, and income security. Ultimately, the initiative established global human rights standards for elderly individuals worldwide.[37]

The United Nations established October 1st as the International Day of Older Persons and, in 2002, adopted the Madrid International Plan of Action on Ageing (MIPAA). These measures led to a variety of government programs that significantly benefited society. While most of these initiatives were commendable, widely accepted, politically sound, and genuinely aimed at aiding the elderly, many still require adjustments to address noticeable shortcomings. For instance, laws mandating families to care for their elderly members proved challenging to oversee and enforce, ultimately undermining the policy's effectiveness.

The Madrid International Plan of Action on Ageing (MIPAA), along with other social welfare efforts, inspires developing countries like Bangladesh to maximize support for their older populations. Consequently, numerous social initiatives and welfare programs, such as pensions for retired public servants, allowances for widows, and

[37] The Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, July 2012.

shelters for the abandoned, were considered for Bangladesh's elderly. In 1997, the Bangladeshi government launched its first financial support program for seniors, known as the old age allowance program, providing approximately one hundred taka per person monthly. Over time, these initiatives were expanded, increasing the monthly financial assistance to six hundred and fifty taka (BDT 650) per person, with the primary objective of supporting elderly individuals within their family environments. Undoubtedly, these actions by Bangladeshi policymakers were timely, reflecting a necessary commitment to addressing the socio-economic vulnerabilities of the aging population.

Thereafter, a 2009 Convention on the Rights of Older Persons was acknowledged by the Division of Social Policy and Development under the United Nations Department of Economic and Social Affairs (UNDESA).[38] There have been wide-ranging discussions and debates advocating for new human rights instruments and covenants for the protection of the rights of older people globally. The need for legally binding international standards to safeguard the equality, dignity, and human rights of older people is further highlighted by international discussions surrounding the proposed convention, which will be the next significant human rights treaty adopted by the United Nations.[39] Similarly, different national committees on aging worked at the regional level.

Consequently, numerous nations have begun to reevaluate and reassess the various opportunities, support systems, and aid available for senior citizens. The increasing population of older individuals globally has highlighted the inadequacies in many countries' protective measures, as well as the shortcomings in their existing policies and programs that could tackle the issues encountered by the elderly demographic.

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[38] The Report of the Expert Group Meeting, Rights of Older Persons, UN: Bonn. The UN Expert Group, 2009.https://www.un.org/esa/socdev/documents/ageing/reportofegm.pdf

[39] Wikipedia: Convention on the Rights of Older Persons (Accessed on 20 December 2025) https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_Older_Persons#cite_note-ohchr.org-1

The United Nations Human Rights Office states that, at present, two-thirds of the global elderly population lives in low- and middle-income nations. This figure is projected to rise to eighty percent by 2050. Therefore, it is crucial for countries like Bangladesh to become more proactive in investigating all potential solutions to the issues faced by the elderly and to focus more on safeguarding the rights of senior citizens.

6. National Legal Framework of Older People

6.1 The Constitutional Provisions

Article 15 of the Bangladesh's Constitution stated the "Provision of Basic Necessities" for the citizens. It defined the social security of the elderly as the "supply of essential needs for life, such as food, clothing, housing, education, and health care; the entitlement to adequate rest, recreation, and leisure; and the entitlement to social security, which means public assistance in situations of unmerited need caused by unemployment, illness, or disability, or experienced by widows, orphans, or during old age, or in other situations specified in the 15 (a) (c) and (d) provisions respectively."[40] According to the constitution, senior citizens are entitled to receive social security, which is the duty of the State. In addition to these, the Constitution guarantees the equal rights and opportunities of all citizens, specifically older individuals, as highlighted in clauses 17, 19, and 20.[41] Furthermore, the basic rights of individuals have been assured under articles 27 to 44,[42] which were largely influenced by the Universal Declaration of Human Rights (UDHR), 1948.

In fact, older individuals are not granted protection directly through state policy provisions; instead, they are entitled to fundamental rights according to the constitution, although all these rights can be enforced against the State. However, the higher court of Bangladesh has not emphasized anything on the rights of elderly people for its guarantee or comments on the government's initiatives as per the directive principles.

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40 *The Constitution of the People's Republic of Bangladesh, 1972*, Part II, Article15.

41 *Ibid*., Part II State Policy.

42 *Ibid*., Part III Fundamental Rights.

6.2 The National Policy on Older Persons, 2013

The National Policy on Older Persons of Bangladesh was established in 2013. This policy signifies the country's first structure regarding the progress and well-being of older adults, in accordance with the guidelines of the Madrid International Plan of Action on Ageing (MIPAA).[43] Its main objective is to guarantee a dignified, healthy, and safe social life for the elderly, free from any deficiencies. The policy encompasses significant considerations for age-friendly healthcare, housing, communication, and special attention during disasters.[44] It is fundamentally grounded in principles of secure aging, combating age discrimination, and empowering the elderly. The policy is committed to safeguarding the lives and properties of older individuals against neglect, discrimination, and oppression within families and communities. Additionally, it outlines crucial guiding principles for legal assistance and guarantees property rights for both elderly men and women.

The policy mandates a wide array of social amenities for the elderly as a state obligation, to be delivered through both governmental and non-governmental efforts. It stipulates the establishment of geriatric departments in every medical college and district hospital.[45] Moreover, the policy includes ID cards, health cards, and designated seating in public transit for senior citizens. The creation of old-age homes is planned, with government initiatives to engage the private sector in this endeavor.[46]

Elderly institutional care is designed to be centered on families, providing advantages for the community, government, and private sector. The policy additionally supports non-institutional services provided by voluntary organizations to strengthen the resilience of elderly individuals and their families. A protective clause ensures that the elderly receive priority in rescue, relief, and rehabilitation during disasters or emergencies. It emphasizes the significance of

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43 *The National Policy on Older Persons, 2013.*

44 *Ibid*., policy 2.

45 *Ibid*., policy 12.

46 Sumaiya Sabrin Eva, "Rights of elderly in Bangladesh", *Daily Observer*, 13 October 2014.

intergenerational solidarity and communication to foster an inclusive society for all ages.[47] Despite these progressive strategies being documented, bureaucratic hurdles have hindered their implementation. It is imperative to execute the policy's programs to provide essential services for all elderly demographics. Unfortunately, many seniors remain unaware of the policy.

Unfortunately, this policy has not been executed across the country because of insufficient legal structure and considerable ministry initiatives. Additionally, a large segment of the senior population and pertinent authorities are still uninformed about these policies. The government must address other social issues affecting the elderly, such as public transportation access, residential facilities, dedicated healthcare services, and recreational opportunities, especially for those at the grassroots level. In spite of various administrative efforts, none of these initiatives resulted in specific legislation ensuring the maintenance rights of parents. Consequently, the enactment of the Maintenance of Parents Act in the same year marked a significant milestone in securing the rights of senior citizens by legally mandating eligible children to provide for their parents.

6.3 The Parents Maintenance Act, 2013

The Maintenance of Parents Act, 2013 stands as the inaugural and among the modern statutes in the nation aimed at guaranteeing economic assistance from children. This legislation safeguards the rights to food, clothing, shelter, health, and social connections, serving as the principal legal framework for the country's senior citizens.

Referred to as the Parents Maintenance Act, 2013, it begins by elucidating the legal definitions of 'maintenance,' 'parents,' and 'children'.[48] Within the law, maintenance encompasses provisions such as food, clothing, healthcare, medical services, accommodation, residence, and companionship provided by the child in question.[49] Additionally, the law mandates the maintenance of grandparents by their grandchildren from both paternal and maternal lines.[50] In the

47 *The National Policy on Older Persons, 2013*, policy 7.
48 *The Parents Maintenance Act 2013*, section 2.
49 *Ibid*., section 2(b).
50 *Ibid*., section 4.

absence of the parents, grandparents from both sides are entitled to receive maintenance from capable offspring, and any breach or neglect of this mandate constitutes an offense under the Act of 2013.

Under this statute, each child bears the responsibility to allocate a reasonable portion of their regular income for adequate maintenance if the parents reside separately from them.[51] Traditionally, sons have been tasked with providing sustenance and shelter to their parents and caring for other elderly family members in the country. This law, however, assigns equal responsibility[52] to both male and female children for their parents' upkeep. In families with multiple children, the law stipulates equal obligations among them.[53] Moreover, the law requires children to maintain communication with their parents to the best of their ability if living apart.[54] While many children live separately due to life's demands, they must fulfill their duties towards their parents. The law forbids placing parents in institutional care or accommodation services, such as old age homes, without their consent.[55] It also mandates that children ensure their parents' basic needs are met.

Furthermore, the law outlines provisions regarding crime, punishment, and the justice system. Children failing to provide maintenance may incur a fine of up to Tk. 100,000 (One lakh Taka, BD) and face imprisonment for up to three months.[56] The law specifies that offenses related to non-maintenance are cognizable, bailable, and compoundable. If there is any refusal to cooperate from the son's spouse, the daughter's spouse, the children, or other relatives in offering support, they also face the same financial penalties and imprisonment.[57] While the law establishes a legal right for parents to receive maintenance from their children and holds children

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51 *Ibid*., section 3(7)
52 *Ibid*., section 3(1) .
53 *Ibid*., section 3(2).
54 *Ibid*., section 3(6).
55 *Ibid*., section 3(4).
56 *Ibid*., section 5(1).
57 *Ibid*., section 5(2).

accountable for their parents' care, it does have certain limitations and lacks necessary regulations. Consequently, the government has drafted the Welfare of Older Foundation Rules, which awaits finalization. The primary objective of this proposed law is to guarantee essential services such as nutrition, apparel, communication, and healthcare for the growing elderly population. Although the draft has been forwarded to the relevant ministry, it has yet to affect the lives of older individuals. Given the current needs of the elderly, this draft law must be enacted to implement national policy and offer social services that enhance the quality of life for seniors.[58]

7. Comparative Analysis with Asian Legal Protection

Since Bangladesh gained independence in 1971, it has lacked specific legislation dedicated to safeguarding the peace and dignity of its senior citizens. According to the 2018 World Health Organization data, the life expectancy for people in Bangladesh averages 72 years. This suggests a significant rise in the elderly population throughout the nation. Consequently, there are a growing number of individuals who are unable to care for themselves. Bangladesh has over fourteen million citizens aged over sixty, indicating that a substantial segment of the population is elderly. Many of these seniors live below the poverty line, prompting the government to implement various initiatives to provide social security for these vulnerable individuals. Common government programs include old age allowances, support for widows, abandoned and destitute women, and retirement pension benefits. However, these initiatives lacked legal backing. To address this, the government established the National Policy on Older Persons to legally protect the rights of the elderly. In response to the Madrid International Plan of Action on Aging, 2002, the Maintenance of Parents Act was introduced in 2013. This act is crucial for safeguarding the rights and well-being of the elderly in Bangladesh. However, in addressing this critical issue through legislation, many neighboring countries have surpassed Bangladesh. For instance, India enacted the Maintenance and Welfare of Parents and Senior Citizens Act in 2007, well before Bangladesh's Maintenance of Parents Act in 2013.

[58] Deepak Acharjee, "Govt dragging feet on 1.50cr senior citizens' benefit", *The Daily Independent*, 30 September, 2017.

In contrast to India and Nepal, Bangladesh lacks a social security system aimed at safeguarding the rights and well-being of senior citizens. In comparison, India has built a robust legal and social services system to safeguard its elderly citizens from different types of neglect. The Maintenance and Welfare of Parents and Senior Citizens Act 2007 in India,[59] ensures social welfare and institutional support for seniors, imposing penalties for violations of their rights.

Similarly, Nepal's Senior Citizens Act of 2006 secures the social security of its elderly population.[60] In 2010, Vietnam, a neighboring country, introduced the Law on the Elderly[61], which guarantees the rights and responsibilities of older individuals, including employment rights before the age of 60. This law also seeks to eliminate age-based discrimination in employment, as stipulated in Article 9(1) of the Vietnam Constitution. Under this Act, it is deemed illegal for any organization or company to mandate the retirement of older employees before they reach 60, ensuring equal treatment for all employees regardless of age.

Additionally, Pakistan enacted the Maintenance and Welfare of Old Parents and Senior Citizens Act in 2019. Sri Lanka passed the Protection of the Rights of Elders Act in 2000, which established a National Council for Elders to promote and protect the welfare and rights of older individuals.[62] Similarly, China's Elderly Rights Law[63] mandates that adult children must care for and visit their aging parents regularly, meeting their financial and emotional needs, or face fines or imprisonment.

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59 *Maintenance and Welfare of Parents and Senior Citizens Act 2007* (Act 56 of 2007).

60 M S Siddiqui, "Legal & social protection of senior citizens", *The Financial Express*, 25 January 2013

61 Law on the Elderly in Vietnam. "*THE NATIONAL ASSEMBLY- No: 39/2009/QH12".* Available at: https://www.partners-popdev.org/ageing/docs/Vietnam_Law_on_the_elderly.pdf

62 Protection of the Rights of Elders Act, (No 9 of 2000). *Gazzette of the Democratic Socialist Republic of Sri Lanka.* Available at: https://stateminsamurdhi.gov.lk/web/images/content_image/pdf/legislation/profeld.pdf

63 Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly, Revised in 2013.

Vietnam's 2009 Law on the Elderly also focuses on protecting the rights of older individuals. Developed nations have similarly implemented various laws, regulations, and programs to ensure the rights and welfare of their senior citizens. Consequently, countries worldwide have long been committed to providing proper care and support for their elderly populations.[64]

Table 1: Regional Comparison of Laws Protecting Older Adults in Asia

Country	Title of Law	Year of enactment	Main Rules & Legal Focus
China	Elderly Rights Law	2012	Forces grown children by law to look after and visit their aging parents; covers both money issues and mental support.
Bangladesh	Maintenance of Parents Act / National Policy on Older Persons	2013	Makes sure old parents get food, clothes, housing, and medical help; orders care for grandparents; stops sending them to old homes against their wish.
India	Maintenance and Welfare of Parents and Senior Citizens Act	2007	Created a practical system for social welfare and community help; gives official punishments and fines if anyone breaks the rules.
Nepal	Senior Citizens Act	2006	Written purely to give social security, monthly allowance, and safety to the country's aging population.
Vietnam	Law on the Elderly	2010	Saves jobs for older workers and stops companies from forcing people to retire before turning sixty; works to end age discrimination.

[64] "Ageing in the 21st Century", *Population ageing, Help Age International.* Available at: https://ageingasia.org/population-ageing/ (Accessed on 19 April 2025)

Country	Title of Law	Year of enactment	Main Rules & Legal Focus
Sri Lanka	Protection of the Rights of Elders Act	2000	Formed a special National Council for Elders to actively handle, check, and protect the basic rights of senior citizens.
Pakistan	Maintenance and Welfare of Old Parents and Senior Citizens Act	2019	Focuses heavily on making sure old parents get proper shelter, money for living, and safety from abuse.

8. Suggestions and Conclusion

The study clearly shows that older people in Bangladesh and across Asia are struggling with several connected problems at once. They often suffer from emotional neglect, have to depend on others for money, feel completely cut off from society, and find it really hard to get proper medical treatment.

The above assessment shows that Bangladesh has a scarcity of legislatively mandated interests, privileges, and protections for its elderly population. As a result, the government encounters numerous challenges in addressing the issues faced by this substantial demographic. The elderly often lack direct access to social care and justice within their families and communities, as required. Therefore, the government must formulate a comprehensive array of measures to safeguard the elderly, aligning with human rights frameworks. As a responsible authority, the Department of Social Services (DSS) should reconsider various strategies to ensure the human rights and well-being of older people. The Parents Maintenance Act 2013 requires implementation along with rules. A work plan must be created and executed in accordance with the National Policy on Older Persons, 2013 to offer the services specified by the policy. Some actions should be taken to ensure the care of seniors across the country and to make their lives easier and hassle-free. The government should formulate a significant number of instruments for the protection of older people in line with human rights frameworks.

To fix these issues, Bangladesh and neighboring Asian nations need to stop just making promises on paper and actually start working at the root level. Governments must pass strict elder protection laws and make sure people actually follow them. Local government bodies should also take responsibility for eldercare. At the same time, we need strong partnerships between NGOs and local religious institutions to support them. It is also important to make sure that older people can easily access legal help and digital services without confusion. We can protect the dignity, health, and freedom of our senior citizens in South Asia only if we use these practical, community-based approaches that respect their basic rights.

An Appraisal of Restructuring the Anti-Corruption Commission in Bangladesh

Dr. Md. Abdur Rahim Mia *

Abstract

Corruption is one of the most significant obstacles to Bangladesh's socio-economic development. Combating corruption is an essential ingredient in the development of the rule of law. In order to eradicate corruption and corrupt elements from the government and society, the Anti-Corruption Commission (ACC) was established in 2004. In spite of the ACC's efforts, corruption is still an enormous problem in Bangladesh and is becoming worse every day. The efficiency of the ACC of Bangladesh is hampered by serious structural issues, such as political meddling, a lack of actual operational independence, and a small investigative capacity. Legislative changes, like the 2013 rule needing government approval to examine public personnel, weaken its authority even if it is formally autonomous. ACC is used in Bangladesh as a weapon of government to cripple the opposition voice and critics of the government. The ACC is frequently subjected to pressure from the ruling government, hindering its ability to investigate high-level corruption. The appointment process and the ability of the government to influence the commission leadership impact its neutrality. The ACC lacks the expertise and human resources necessary to handle complicated, contemporary matters like money laundering. Without greater political will, the ACC will find it challenging to fight systemic bribery, extortion, and nepotism because corruption is frequently ingrained in the public sector. To achieve genuine good governance, the ACC needs enhanced independence from political interference, improved investigative capacity, and the authority to prosecute cases without bureaucratic hurdles. Anti-corruption laws raise many questions rather than solutions. The primary obstacles to an independent and successful ACC are institutional, political, and financial issues that are diminishing due to a lack of political commitment. Standing on the edge of collapsing economy it is the pick hour to restructure the ACC as an effective and independent institution. Therefore, this research is intended to examines the existing laws and suggest for restructuring

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the ACC bringing available changes and authority. This article critically appraises the necessity, scope, and implications of restructuring the ACC, focusing on recent reform proposals, institutional weaknesses, and prospects for improvement.

Keywords: *Anti-Corruption Commission, Political Influence, Independent Institution, Good Governance, Commissioners, Investigation, Prosecution*

1. Introduction

In order to ensure a more successful effort against corruption, the Anti-Corruption Commission Act (ACCA), 2004 established the ACC of Bangladesh in place of the Bureau of Anti-Corruption. Corruption is still pervasive in Bangladesh's political and administrative structures despite its mandate. The ACC has frequently come under fire for its lack of independence, susceptibility to political interference, and inability to successfully prosecute high-profile cases. Due to a number of enduring issues, including political influence, structural problems, a lack of funding, a shortage of professionally qualified professionals, a lack of internal accountability and an external supervisory unit, and a lack of integrity, transparency, and independence, the restructuring of the ACC has become a major topic in discussions about governance reform.[1]When other institutions, like the judiciary, the law enforcement agency, the prosecution system, and the media, maintain the highest standards of efficacy, professionalism, and integrity, the ACC may perform at its best. It is necessary to find out the co-ordination gap between them. The jurisdiction of the ACC is very narrow and it does not cover all aspects of corruption. The provisions of the Government Service Act and the Anti-Corruption Commission (Amendment) Act, 2013 has made it essential for the Commission to get permission from the government before looking into or accusing any politicians or bureaucrats. It effects negatively on ACC action. Due to absence of victim and witness protection mechanism, many people are unwilling to claim to the ACC. The ACC is viewed as a mechanism used by the government to suppress critics and opposition members, and it is criticized for being under the influence of the ruling party. Due to political meddling, the ACC was not given the funding and staff it

[1] Manzoor Hasan, and others, *Institutions of Accountability Anti-Corruption Commissio*n', Background Paper, Institute of Governance Studies, Dhaka, 2007

required when it was first established.[2] ACC's freedom and impartiality have been questioned in relation to the dimension of 'independence and status' due to its actions and use of power. Therefore, it seems that the ACC has no individual identity, nor sole authority to work alone without the interference of government in power. In addition, the government appoints like-minded people as Chairman and Commissioners, interfering with the release of leaders of the ruling party and maintaining the charges against opposition leaders. These political interferences have resulted in a stagnating performance from the ACC. Therefore, it is clear that under current structure, ACC is not able to curb corruption. This article is intended to review the existing laws and role of the ACC inviting available changes and authority for restructuring the ACC that can act against every corrupt element including the party in power and government. It provides policy suggestions to strengthen regulatory frameworks and boost institutional accountability. The findings show that long-term political will and structural adjustments are necessary to fight corruption and achieve long-term gains in governance. The nature of this article is both analytical and empirical. This article has reviewed both primary and secondary sources. Primary data includes face to face interview, government policies, statutory laws and judicial decisions. Secondary data includes various reports of non-governmental organizations as well as papers, newspapers, journals and articles.

2. Corruption in Bangladesh

Bangladesh is placed 13th among the world's most corrupt countries in the Corruption Perceptions Index (CPI) 2025, according to a study published by Berlin-based Transparency International (TI).[3] Among 182 countries assessed, Bangladesh scored 24 out of 100, placing it 150th in the global ranking. TI claims that because the country ranked 14th among the most corrupt nations last year, it is 'losing control of corruption'.[4]Bangladesh continues to be the fourth-worst performer in

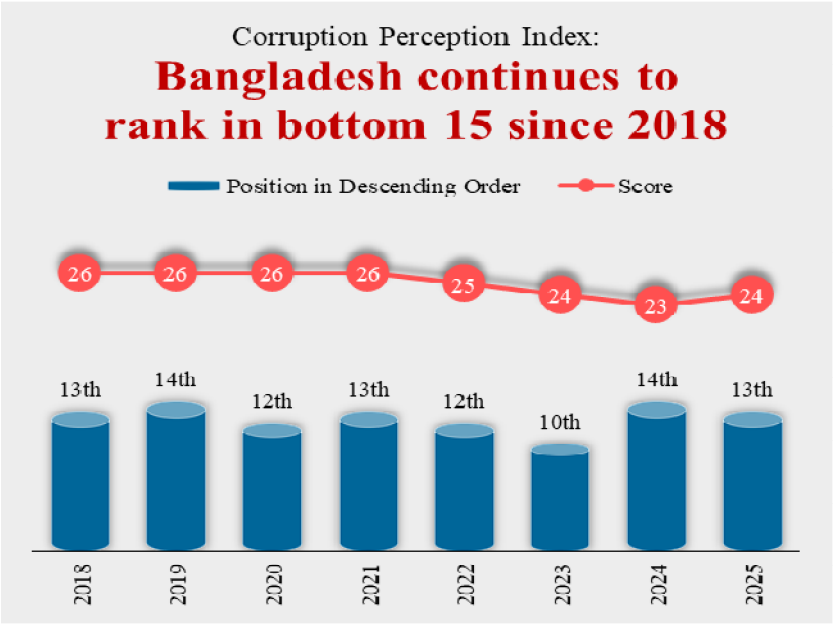
[2] Jon S.T. Quah, 'Minimizing Corruption in Bangladesh: Is this an Impossible Dream?', *Dhaka University Law Journal,* Centennial Special Issue, Vol. 32(1), Dhaka, 2021, p.102

[3] Staff Reporter, 'Bangladesh ranks 13th in corruption', *The Daily Sun*, 10 February 2026

[4] Transparency International (TI), a Berlin-based organization, published the Corruption Perceptions Index (CPI) 2024, which places Bangladesh as the 14th

the Asia-Pacific area and the second-worst in South Asia. The country's score increased slightly from 23 in 2024 to 24 out of 100 in 2025; however this improvement did not result in a higher ranking internationally. Rather, when measured from the bottom of the rating, Bangladesh fell one spot from the previous year to the 13th most corrupt country in the world.[5] In previous years, Bangladesh ranked 10th in 2023, 12th in 2022, 13th in 2021, 12th in 2020, 14th in 2019, 13th in 2018, 17th in 2017, 15th in 2016, and 13th in 2015.

Report of Corruption Perceptions Index (CPI)



Nearly one-third of respondents to a recent Bangladesh Bureau of Statistics (BBS) survey said they had paid bribes for necessary public services. With a sample of more than 84,000 people nationwide, this is a national disaster rather than an isolated problem.[6] Corruption in

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most corrupt nation out of 180. TBS, "Bangladesh's position in the Corruption Perceptions Index (CPI) 2025 presents a mixed but ultimately worrying picture," TBS Report 2025, www.tbsnews.net/bangladesh, last accessed on February 10, 2026. Visit *www.jagonews24.com* to read the Senior Staff Reporter article, "Bangladesh ranks 14th among the world's most corrupt countries." (Accessed on 11 February 2025)

5 *Ibid.*

6 Mamun Rashid. 'Can Bangladesh get rid of corruption?', *The Daily Star*, 18 October 2025

Bangladesh is viewed as a low risk, high reward activity since only 1956 cases (2.33%) of the 83895 cases were filed by the ACC between 2020 and 2025. According to these numbers, there are more complaints than corruption cases filed.

Statistics of Corruption Cases from 2020 to 2025[7]

Year	Complaints received	CasesFilled
2020	18,489	348
2021	14,789	347
2022	19,338	406
2023	15,437	404
2024	15,842	451
Total	**838895**	**195**

Of the 15,842 complaints that were filed in 2024, 1,894 were chosen by ACC to be investigated. The acceptance percentage is a stunning 11.95%, more than twice as high as it was in 2023.[8] In total, 12,827 complaints have been received by the ACC over the past 11 months (5 August 2024 to 4 June 2025). Of these, 3,406 were filed in November last year. Proceedings are also under way on around 3,500 complaints received from the ACC chairman's office and other offices.[9]

3. A Brief Overview of the Anti-Corruption Commission (ACC)

Corruption is a national problem in Bangladesh, which is one of the obstacles to development and progress.[10] In Bangladesh, corruption has long been seen as a significant barrier to growth and government. The Bureau of Anti-Corruption (BAC), which was established during the Pakistan era, was in charge of anti-corruption initiatives prior to the creation of the ACC. However, the BAC's lack of independence,

7 AI Data, available at *https://www.google.com*, (Accessed on 12 March 2026)

8 Mamun Abdullah, 'ACC breaks records in 2024, but conviction rates, politics cloud progress', *The Dhaka Tribune*, 30 April 2025

9 Dipan Nandy, 'Since August 5, 243 government officials have been charged with graft.', *The Daily Star*, 11 July 2025

10 Muhammad Muhiuddin, 'Present Situation, Problems and Solutions in the Legal System related to Corruption Control and Corruption Cases in Bangladesh', Bangladesh Journal of Law, Vol. 10, Issue 1and 2, Dhaka, 2006, pp 149-155

inefficiency, and political meddling drew harsh criticism. The BAC continued to function after Bangladesh gained independence in 1971, but it was unable to successfully combat corruption. Calls for a more autonomous and potent anti-corruption body grew over time as a result of growing public discontent, pressure from civil society, and demands from international organizations. Consequently, the government passed the ACCA, which resulted in the ACC's founding in 2004. The ACC officially replaced the BAC and was envisioned as an autonomous institution capable of addressing corruption more effectively. The ACCA creates the ACC as an impartial, independent agency charged with looking into and prosecuting crimes involving corruption.[11] The Anti-Corruption Commission Rules (ACCR) was subsequently drafted in 2007 by the caretaker administration. Despite the ACCA's description of the ACC as an 'independent and impartial commission', several studies contend that throughout the past 20 years, the ACC has not been able to win the public's trust.[12] Especially in recent years, when the incidents of state-sponsored corruption and money laundering have aroused great public anger, the ACC has ensured the protection of the powerful corrupt through mysterious silence and inaction. Known from the beginning as the 'paper tiger' against corruption, the ACC has over time established its image among the larger population of the country as an institution that 'protects the corrupt'. Furthermore, the public has a strong belief that the ACC has frequently been utilized by the ruling class as a tool to harass political opponents or other unhappy individuals.[13] The main provisions and weaknesses of this Act are discussed below:

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[11] According to Helal Uddin Ahmed, 'Reforming the ACC', *The Daily Financial Express*, 30 September 2024, corruption was previously defined as: (i) dishonest or deceptive misuse or other conversion for one's own use any property granted to him or under his authority as a public servant, or permitting others to do so; (ii) collecting valuable items or monetary benefit by unethical or illegal means, or by otherwise abusing his position as a public servant; and (iii) accumulating wealth beyond recognized sources of income.

[12] Dr. Akash Mazumder and P. K. Karker, 'Weaponizing Accountability: Allegations of political bias in the ACC', available at *dailyrepublicbd.com*, last accessed on 14 July 2025;Nurul Huda Sakib, 'Why have anti-corruption efforts failed in Bangladesh?', available at *https://blogs.lse.ac.uk/southasia*, (Accessed on 3 October 2019)

[13] See Chapter 3(1) (i) and 3(1) (ii); Md. Rezwanul Kabir, Mst. Taskin Ara Taznin Bithi, Tanzima Aktar Jyoti, Tabassum Rahman, 'A Unique Study of Corruption in

3.1 Status and Structure of the ACC

The ACCA mandates that the ACC shall be an independent, self-governing and neutral Commission.[14] In *Obaidul Kader vs State*,[15] in accordance with Rules 8 and 11 of the ACC Rules, 2007, the court noted that the ACC must use its powers of discretion in a transparent manner, giving people a chance to answer questions. In reality, the independence and impartiality of the ACC have been quite questionable for most of the past twenty years.[16] To be successful and gain reputation, an ACC needs to be independent. An ACC's ability to investigate and prosecute corruption violations could be jeopardized if it depends on a particular governmental agency.[17] The Commission is specifically permitted by the ACCA to rely on government financing and power.[18] It also stipulates that the Commission's organizational structure and budget will be determined by the government, which restricts the Commission's autonomy.[19] It also enables the government to intervene and resolve any problems that may arise due to the ACCA's uncertainty over the Commission's powers and responsibilities.[20] Therefore, if weaknesses of laws are not removed, the Commission's operational independence cannot be completely guaranteed. Once more, the appointment or removal of an officeholder determines the structure and independence of a Commission. If there is a responsible mechanism outside of the government and the appointment process ensures unanimous backing for an applicant though parliament as opposed to the government, there will be less opportunity for abuse or partisan action.[21] A number of institutions should share responsibility for selecting and appointing the ACC executive or executives. In the ACC case, this did not occur. An ACC should be able to hire its own employees in addition to choosing its

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Bangladesh', *Saudi Journal of Humanities and Social Sciences*, Scholars Middle East Publishers, Dubai, United Arab Emirates, 2021, p.23, available at *https://saudijournals.com,* (Accessed on 10 December 2025)

14 The Preamble and Section 3(2), *The Anti-Corruption Commission Act*, *2004*

15 63 DLR 425

16 Nurul Huda Sakib, *Op.cit.*

17 *Ibid.*

18 Section 25, *The Anti-Corruption Commission Act*, *2004*

19 Section 30, *Ibid.*

20 Section 36, *Ibid.*

21 Helal Uddin Ahmed, *Op.cit*

own leadership. There have been instances of the Commission acting in a partisan manner because the Commission's selection is subject to political consideration.[22] The broad population thinks there are numerous instances of political influence. In this regard, two case studies illustrate how political meddling threatens the ACC's independence.

(i)The Padma Bridge Conspiracy scenario shows how the government assumed the role of patron and ACC became a client. The World Bank's inquiry report and the ACC's initial investigation both implicated the Minister in the scheme. The government put pressure on the ACC to remove his name from the charge sheet, even though they claimed to be independent. Since the Chairman and Commissioners were appointed politically, they are loyal to the ruling party.[23]

(ii)The Hallmark-Sonali Bank Scam attracted a lot of public attention after the Hallmark Group duped loans of Tk. 35,470 million ($422 million). Due to the purported involvement of a high-ranking official, there is a serious impropriety in the sanctioning and disbursement of a state-owned bank, even though Hallmark's name is not on the charge sheet. The incidents clearly show how the government plays a hypocritical role, undermining ACC's independence by pressuring ACC to defend the party's reputation in general and its alleged corrupt officials especially.[24]

3.2 Qualification and Appointment of the Commissioners

A five-person Selection Committee is established by the ACCA to nominate candidates for ACC Commissioner Appointments.[25] The Selection Committee's sole role under the current legislation is to suggest candidates for Commissioner Appointments.[26] It is merely a selection committee that may periodically examine the ACC's operations as well as the duties and actions involved in choosing

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22 Shadhan Kumar Das, *Anti-Corruption Commission of Bangladesh: Diagnosis of a Fading Hope,* an Unpublished MPhil Research Paper, International Institute for Social Studies, The Hague, The Netherlands. November 2013

23 Nurul Huda Sakib, *Op.cit*; TIB Media Release 30 June 2012, TIB Press Release 21 September 2012; *The Daily Star*: 4 April 2012, 21 April 2013, 18 March 2013, 14 June 2013; *The New Age*: 6 September 2013, 28 September 2013

24 Shadhan Kumar Das, *Op.cit*

25 Section 7, *The Anti-Corruption Commission Act*, *2004*

26 *Ibid.*

Commissioners. In that instance, the committee's current name must be changed. The Selection Committee has five members under the current legislation.[27] These include: (1) a judge of the Supreme Court's Appellate Division nominated by the Chief Justice; (2) a judge of the Supreme Court's High Court Division nominated by the Chief Justice; (3) Bangladesh's Auditor General and Comptroller; (4) the Chairman of the Public Service Commission; and (5) the most recent retired Cabinet Secretary. The stakeholders claim that in the past, the prevailing political party had a definite impact on the Selection Committee's recommendations when it came to the selection of Commissioners. The selection process is difficult to understand, private, and sometimes the selection.[28] Actually, the decisions made since the Commission was formed and the ACCA was passed have reinforced the general perception that the Prime Minister made the decisions. Although the formal recommendations of the Selection Committee were obtained, the members' consent was swayed to support the Prime Minister's wishes.[29] Occasionally, the selection committee attempts to follow the government's orders and satisfy the government.[30] As demonstrated by the ACC Chairman during the 1/11 Caretaker Government, the personality and bravery of the Chairman would have a significant impact on the exercise of independence. However, the party-based administrations did not choose such a brave, truthful, and impartial chairman because the leaders of the ruling parties are afraid of the ACC's independence and efficacy.[31] Therefore, the composition and process of the existing Selection Committee is quite one-sided and requires necessary reforms. Transparency and accountability are lacking in the current procedure for choosing names under section 5 of the 2025 Amendment in order to make recommendations for the appointment of Commissioners. It is not clear on what basis and by what process the recommendations are finalized from among the qualified persons for the post of Commissioner. Such a system hinders the possibility of forming an independent and impartial ACC.

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27 *Ibid.*

28 Shadhan Kumar Das, *Op.cit*

29 *Ibid.*

30 *Ibid.*

31 *Ibid.*

According to the ACCA, candidates for the position of Commissioner must have 20 years of expertise in one of five fields: law, administration, education, the judiciary, or law enforcement.[32] Additionally, it would be preferable if one or two commissioners were chosen from (a) financial institutions, (b) the accounting and auditing fields, and (c) governmental or private organizations involved in anti-corruption or good governance initiatives. This will lead to increased variety and the growth of competence in the ACC's practical actions and viewpoints. It should be mentioned that the 20-year minimum experience requirement should be lowered to 15 years. This will present a chance to choose one or more Commissioners who are comparatively younger, making the ACC more dynamic and adaptable. Three Commissioners make up the ACC, according to the ACCA.[33] It is extremely challenging for two Commissioners to adequately oversee every aspect of the ACC's operations. Above all, the number of Commissioners must be increased in order to enhance and fortify the ACC's leadership with a diverse and multidisciplinary mix. Additionally, a multi-stakeholder monitoring mechanism that keeps an eye on the ACC's operations depends on the involvement of the judiciary, Parliament, and civil society. However, the ACCA lacked such a framework.[34]

3.3 Complaint Management, Investigation and Trial

The ACC's primary duties include investigating and prosecuting corruption and various associated offenses (the offenses specified in the ACC's Schedule), as well as filing and prosecuting cases based on these findings. Even though there is a fairly good legal structure, there is typically a culture of non-compliance and insufficient legislative implementation and enforcement.[35] There is a need for comprehensive reforms in the existing legal framework and procedures for complaint management, investigation of offences under the jurisdiction of the ACC in the interest of transparency, accountability and effectiveness.

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[32] Section 8, *The Anti-Corruption Commission Act*, *2004*

[33] Section 5(1), *Ibid.*

[34] Shahadat Hossain, 'ACC reform drive stalls as key proposals dropped from ordinance', available at *https://www.tbsnews.net/bangladesh*, (Accessed on 26 December 2025)

[35] Md. Rezwanul Kabir, Mst. Taskin Ara Taznin Bithi, Tanzima Aktar Jyoti, Tabassum Rahman (2021), *Op.cit.*

3.3.1 Complaint Management

According to the ACCR, any person may file a complaint orally or in writing to a police station.[36] It is to be noted that in the case of a complaint filed at a police station, the concerned police station will forward the complaint to the ACC district office for action.[37] In addition, the ACC may, on its own initiative, consider any complaint of any scheduled offence.[38] Currently, the ACC registers complaints received through various channels.[39] According to the ACCR, there is a provision to form one or more Verification and Selection Committees (VSCs) consisting of three members at the ACC Head Office, District Office or Divisional Office to scrutinize the registered complaints.[40] The recommendations given by the VSCs of the ACC District or Divisional Office regarding the received complaints are required to be scrutinized again by the VSCs of the ACC Head Office.[41] In this process, the VSCs formed for the ACC Head Office are involved in scrutinizing each complaint. The recommendations of the said VSCs are submitted to the Commission for decision through the Commissioner in charge.[42] These provisions of re-verification of all recommendations given by the ACC District or Divisional Offices by the ACC Head Office may create unnecessary procrastination. This existing mandatory re-verification mechanism, while intended to ensure oversight and uniformity, results in procedural duplication and delays. A calibrated, risk-based review system could achieve the same accountability objectives with greater efficiency. Failure to take prompt action gives the accused an opportunity to influence the decision-making process of the ACC and

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36 Rules 2(b), Rule 3(1) and Rule 4, *The Anti-Corruption Commission Rules, 2007*

37 Rule 4, *The Anti-Corruption Commission Rules, 2007*

38 Section 17(c), *The Anti-Corruption Commission Act, 2004*

39 Notable among these are, complaints are received from various government departments, written complaints are received directly/by post/email, complaints are received through the media or social media, complaints are received on the ACC hotline number 106, complaints are raised in public hearings, complaints are received on the ACC's verified Facebook page, complaints are received by the ACC through intelligence activities, complaints are received in complaint boxes installed in various departments, complaints are received from banks, financial institutions, NGOs or development cooperation organizations and complaints are sent from courts/houses.

40 Rule 3(4) and 5, *The Anti-Corruption Commission Rules, 2007*

41 Rules 3(6)- 3(8), *Ibid.*

42 Rules 3(1), 6(1), *Ibid.*

destroy information and evidence. In this case, the decision-making process can be decentralized. The ACC can further speed up the activities of the ACC by exercising its power to delegate under section 18 of the ACCA. However, given the size of the nation, the accessibility of ACC for complainants is rather limited. Basically, influential people of the society are involved in most of the corruption cases. Due to political crisis and weak ACC system, people of Bangladesh are in such a situation that they are afraid to express or inform the incidents of corruption to the ACC Personnel. There is no strong victim and witness protection mechanism or Act in Bangladesh.

3.3.2 Investigation and Prosecution

According to ACCA, "investigation" means 'any proceeding conducted by the Commission or any person authorized by it, after receipt or knowledge of a complaint relating to a Scheduled Offence, for the purpose of ascertaining the prima facie truth of the complaint before it is taken up for investigation and recorded by the Commission'.[43] In the existing law, there is no requirement for an 'investigation' like murder, rape or robbery, there is no justification for such an obligation in the case of corruption crimes. In addition, unnecessary delays are created due to the necessary pre-investigation and such unnecessary delays in the initial steps of the ACC give influential accused persons the opportunity to exert undue influence on the work of the ACC. As a result, the tendency of corruption increases among the ACC officials.

According to the ACCA, the offences listed in the ACC's Schedule are only subject to investigation by the ACC.[44] Considering the prevalence of the offences listed in the Schedule, it seems that the such a provision is unrealistic. If the ACC takes action on all corruption cases of a relatively small scale at various levels of the state, the investigation of major corruption is hampered and delayed. At present, the complaints of relatively small-scale corruption are recorded by the ACC and sent to the concerned ministry or department for closure or, in some cases, for appropriate action.[45] While the referral of minor corruption cases to respective ministries enables the ACC to concentrate on major

[43] Section 2(a), *The Anti-Corruption Commission Act, 2004*

[44] Section 20, *Ibid.*

[45] ACC Official Website.

corruption, the absence of robust oversight mechanisms may undermine accountability and allow petty corruption to persist. A hybrid approach combining prioritization with structured monitoring is therefore necessary. As a result of such a system, the ACC actually gets the opportunity to 'pick and choose' in considering the level of corruption. On the other hand, the application of criminal law cannot be ensured in cases of relatively small-scale corruption. It is very important to resolve this anarchy through practical policies and strategies. Section 32A is part of the 2013 amendment to the ACC Act. In filing a case against a judge, magistrate, or government employee, the ACC is required by this section to follow section 197 of the Code of Criminal Procedure. Therefore, in order to file a case against the aforementioned individuals, the ACC must first secure the government's assent. The 2013 modification violates the ACC's independence and is discriminatory. Section 32A has previously been ruled unlawful and invalid by the Supreme Court's High Court Division.[46] In 2011, the Norwegian Agency for Development Cooperation (NORAD) assessed Bangladesh's anti-corruption initiatives and found that the ACC had a serious implementation difficulty when it came to conducting investigations and filing charges.[47] Similarly, the 2014 assessment of Bangladesh's national integrity system found that the ACC lacked credible and experienced field-level officials and those who were employed had inadequate training. Furthermore, the ACC's capacity to look into and prosecute cases needed to be improved.[48] A more recent evaluation found that the ACC officers lacked the expertise to deal with the issues of property conversion, corruption in the banking sector, and property detention, and that it usually took them three years to complete an investigation.[49] However, older ACC officers don't have the expertise

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[46] *Human Rights and Peace for Bangladesh v. Hon'ble Speaker, Bangladesh Jatiyo Sangsad*, HCD, 67 DLR 191

[47] Norwegian Agency for Development Cooperation, Joint Evaluation of Support to Anti-Corruption Efforts: Bangladesh Country Report (2011) 31; Jon S.T. Quah, '*Op.Cit*' p.102

[48] Salahuddin Aminuzzaman and Sumaiya Khair, National Integrity System Assessment Bangladesh 2014 (Transparency International Bangladesh 2014) 176; Bangladesh ACC, Annual Report 2017 (2018) 84; and Bangladesh ACC, Annual Report 2018 (2019) 84; Jon S.T. Qua. *Ibid.*

[49] *Ibid.*

to look into money laundering instances.[50] The ACC's 2018 assessment found that the attorneys it selected lacked the training and experience required to act as public prosecutors.[51] It is not unexpected that the conviction rate for the ACC has varied between 72% in 2020 and 48% in 2024.[52] Despite the fact that the ACCA mandates the creation of a permanent prosecution unit, this unit has not yet been established despite the length of time that has passed. The ACC has been using contract-appointed temporary lawyers to handle cases in court since its founding.[53] In the long run, the establishment of a permanent prosecution unit in accordance with the law's provisions will boost the ACC's institutional efficiency and help guaranty the accountability of the attorneys handling the cases. It is also true that permanent prosecutors cannot take the position of all contractual attorneys overnight. In this case, the law can be partially implemented by first designating 10% to 20% of the contractual attorneys as permanent prosecutors, and then replacing 10% to 20% of them with regular prosecutors on a yearly basis.

3.3.3 Judicial Courts, Judges and Plea-Bargaining System

According to the ACCA, the offences listed in the ACC Schedule are triable only by Special Judges.[54] Currently, the ACC has 36 integrated district offices.[55] However, not all the districts where integrated district offices are located have special judge courts. As the backlog of cases is increasing due to the shortage of judicial courts and judges, the people seeking justice are also suffering. There is no alternative to increasing the number of judicial courts to ensure speedy exemplary punishment in corruption cases. Due to a shortage of judges and lower-level employees, corrupt and ineffective public prosecutors, a lack of infrastructure and logistics, and a massive backlog of cases, including many ACC cases, legal proceedings is actually drawn out and delayed. It is also true that the court system has flaws. Because, the Law

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50 Shammi Laila Islam and Shahzada M. Akram, Anti-Corruption Agency Strengthening Initiative Assessment of Bangladesh Anti-Corruption Commission 2018 (Transparency International Bangladesh 2020) 52; *Ibid.*

51 Jon S.T. Quah, '*Op.cit*', p.102

52 ACC Web Page

53 Bangladesh ACC, Annual Report 2016 (2017) 31

54 Section 28(1), *The Anti-Corruption Commission Act, 2004*

55 ACC Web page

Ministry may interfere with the courts for a variety of reasons, some appointing judges, including Divisional Special Judges and staff, have been appointed based on political considerations. Separate tribunals must be established in order to provide prompt justice. If each division had at least one judicial and one appeals tribunal, swift decisions could have been made. At the moment, all cases become stuck in the High Court, resulting in years-long delays in corruption trials. The ACCA does not provide for plea bargaining by the accused in the investigation or trial process. Such a system has made a significant contribution to making the anti-corruption process effective and dynamic in many countries of the world. There is a need for a close review to examine the feasibility of the plea-bargaining system in the activities of the ACC, especially in the case of petty corruption and money laundering abroad.

3.4 Inter-agency Cooperation and Coordination

By itself, the ACC cannot produce comprehensive anti-corruption outcomes. It is dependent upon other government agencies. The ACC can be the most effective institution when all relevant institutions, including the judiciary, police and other law enforcement agencies, the public service, the private sector, the public procurement system, and the media, uphold the highest standards of integrity, efficiency, and professionalism. Determining the coordination gap between them is therefore essential. In this regard, several practical reforms can ensure significant changes. Close inter-agency cooperation can also be helpful in uncovering information about corruption in many cases. In its daily work, the ACC is heavily dependent on the cooperation of several agencies. These also include the National Board of Revenue (NBR), the Criminal Investigation Department (CID), and the Bangladesh Financial Intelligence Unit (BFIU) of the police and the Directorate of Registration.

All courts, government officials, and employees are audited by the Comptroller and Auditor General of Bangladesh (CAG), who also audits the Republic's government accounts. However, the Ministry of Planning's Implementation Monitoring and Evaluation Division (IMED) keeps an eye on and assesses how government development projects are being carried out and guaranties that government procurement procedures are transparent. It goes without saying that

due to the nature of the work, it is easier for CAG and IMED to identify corruption than many other institutions. In these above agencies, the ACC is having a specific focal person for cooperation will make it easier for the ACC to get the desired cooperation in the shortest possible time. In the investigation of high-level corruption or corruption of important persons of the state, the formation of task forces can play a more effective role, as needed. The absence of an approved National Anti-Corruption Strategy in Bangladesh results in fragmented institutional responses, weak coordination, and limited accountability. Developing and implementing a comprehensive, the United Nations Convention against Corruption (UNCAC)-aligned strategy is essential to ensure a coherent and effective national response to corruption. Legislature, executive organ, judiciary, law enforcement agency, Election Commission, Ombudsperson, OCAG, ACC, local government, political parties, media, civil society, and business sectors etc can provide effort here.

3.5 Institutional and Financial Management of the ACC

Without effective and up-to-date institutional and financial management, it is not possible for any institution to achieve the desired success in the long term. There are several weaknesses or deficiencies in the existing institutional and financial management of the ACC.

3.5.1 Organizational Management

According to the ACC Act, the organizational structure of the ACC is determined by the government.[56] In the manpower structure (organogram) approved by the government, there are 8 posts of Director General for the ACC. At present, there are 8 sub-divisions of the ACC headed by 8 Directors General.[57] The officers and employees of the ACC mainly perform their duties under one or the other sub-division, therefore the importance of the sub-divisions in conducting the overall activities of the ACC is immense. The eight existing divisions are:

(i) Administration and Human Resources

(ii) Prevention and Research

[56] Section 30, *The Anti-Corruption Commission Act*, *2004*

[57] ACC Web Page

(iii) ICT and Training

(iv) Legal and Prosecution

(v) Investigation and Investigation-1

(vi) Investigation and Investigation-2

(vii) Special Investigation and Investigation and

(viii) Money Laundering.

The 8 existing divisions are not sufficient to make the ACC dynamic and effective. More divisions are required for investigation and covert investigation. A separate division for information technology is needed to automate the activities of the ACC. In addition, the creation of a separate division for internal discipline can play an important role in ensuring the internal accountability of the ACC.

According to the existing manpower structure, there are 2098 posts of officers and employees (including supernumerary posts) as per the government approved manpower structure for the ACC Head Office, 8 Divisional Offices and 36 Integrated District Offices. Currently, the ACC has 1,153 staff across headquarters, divisional offices, and district offices.[58] The ACC investigates corruption allegations and undertakes prevention activities like training integrity committees, awareness programs, and collaborating with other institutions. The ACC also works to engage citizens in prevention through over 20,000 integrity units in schools and over 400 corruption prevention committees at the local level.[59] As of 30 September 2024, 945 posts of the approved manpower structure are vacant.[60] This shortage of manpower is considered to be one of the reasons for the slow pace of the ACC in its search, investigation, prevention and other activities. Currently, the ACC has 36 integrated district offices. Almost half of the districts in the country do not have an ACC office. This is a major limitation in making the activities of the ACC visible to the public. If there is an ACC district office in each district, the victims of that district can easily file complaints with the ACC.

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58 *Ibid.*

59 *Ibid.*

60 ACC Web Page.

In addition, the involvement of the district office is essential in preventing corruption and creating public awareness against corruption at the local level. It is very difficult to work effectively in another district through an integrated office established in one district. There is a need for major changes in the existing appointment system of the official posts of the ACC. Currently, there is no opportunity for direct appointment to the posts of Director General, Director and Deputy Director. On the other hand, there is a provision for appointment of 60 percent direct appointment and 40 percent through promotion for the posts of Assistant Director and Deputy Assistant Director.[61] In the interest of increasing the overall efficiency of the ACC, it is necessary to expand the scope of direct appointment to higher posts.

3.5.2 Financial Management

According to Section 25 of the ACCA, the Government is required to set aside money each year to pay for the Commission's costs. As a result, the government supplies the ACC's budget and will continue to do so. The Commission has the authority to determine how to distribute and utilize the monies that are available. It ought to have the authority to choose how to allocate and use the funds at its disposal.[62] Subject to both internal financial management and an external audit by the Comptroller and Auditor General, the Commission must determine how to use the budget after receiving it.[63] In Bangladesh, the Public Accounts Committee (PAC) is mandated to oversee how public funds are used, primarily based on audit reports from the Office of the Comptroller and Auditor General.[64] Since the Anti-Corruption Commission (ACC) is a publicly funded institution, it does fall within the PAC's financial oversight jurisdiction. Additionally, the Commission's administrative power is limited in this regard. Article 30

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61 Schedule 1, *The Employees Service Rules 2008*

62 Iftekharuzzaman, 'Can we expect an effective ACC?', *The Daily Star*, 23 February 2010

63 Salahuddin M Aminuzzaman, Shahzada M Akram, Shammi Laila Islam, *Op.cit*, p.73

64 Md. Shahidul Islam, *Public Accounts Committee: Its Role in Bangladesh, Institute of Governance Studies, A* Dissertation submitted for fulfilling the partial requirements for the Degree of MA in Governance & Development,
Institute of Governance Studies BRAC University, Dhaka, November 2010

of the ACCA makes it quite clear that the Government will decide on the Commission's funding and organizational structure. The ACC may undoubtedly be severely impacted by this clause. The Act's opacity regarding the Chairman's and other Commission members' status is another significant shortcoming. The ACCA just states that the Chairman and Commissioners' honorarium, allowances, and other benefits shall be decided by the Government.[65] As of this moment, Bangladesh has not enacted any laws that would explicitly prohibit the practice of legitimizing black money or create a particular legal structure for settling and avoiding disputes of interest for decision-makers at various levels who hold positions of authority or are responsible for deciding matters that affect people's interest.

3.6 Internal Discipline and Accountability

A large number of ACC officers and staff, including several of its former commissioners, have been implicated in widespread corruption and have deliberately tried to shield the corrupt, according to a wealth of evidence and popular rumors in recent years.[66] As a result, the social status and reputation of the ACC have been tarnished. Without overcoming this situation, it is not possible to establish the credibility of the ACC in the public mind. The ACC as an organization must exhibit unwavering commitment to the professionalism and integrity its employees. If not, the public's confidence and the company's reputation will suffer. The ACC may request that any complaint under this committee be looked into by another investigating body outside the commission, such as DGFI, RAB, CID, DB, NSI, etc., if it thinks it is essential. The Internal Anti-Corruption Committee has not been able to effectively combat corrupt ACC executives and workers in recent years. The Internal Anti-Corruption Committee has not been able to effectively combat corruption of ACC executives and workers in recent years. Seldom has the ACC asked an outside body to conduct an investigation. As a result, the ACC needs to establish a separate internal disciplinary division. In Bangladesh, the ACC can be answerable to this division.[67] No attempt to reform the ACC will be adequately successful if corrupt officials and staff are not found,

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65 Section 13, *The Anti-Corruption Commission Act, 2004*

66 Rule 19, *The Anti-Corruption Commission Rules, 2007*

67 *Supra note* 58

removed from their positions, and disciplined. However, if the suggested actions are implemented, the public's perception of the ACC's institutional credibility would be strengthened, hastening the state's and society's fight against corruption. For the betterment of the Commission's accountability, a Citizens Oversight Committee may be established with a number of subcommittees on topics such policy recommendations, preventative efforts, and citizen outreach.[68] The absence of any internal oversight mechanism is the main issue with ACC's accountability and supervision. There is no public representation in the structure, despite the fact that ACC has a Monitoring and Evaluation (M&E) Branch for routinely reviewing inspection findings. Despite the fact that the President receives the ACC's yearly report, the Parliament has not discussed this report.

3.7 Role of the Government and Political Commitment

Most people think that the government has been using the corruption issue as a weapon against people who disagree with it or who are political opponents, and that it has depended on the ACC to do this.[69] According to newspaper analyzes, there is a propensity to provide "final reports" after investigations against ruling party members (political workers and leaders), arguing that there is not enough proof of corruption, while charge sheets are given to political adversaries.[70] Some cases are said to have been withdrawn due to political reasons within the past three years.[71] The ACC's everyday activities are hampered by political influence. Many ACC officials said they had to consider the political implications of bringing a corrupt case.[72] Before any proceedings against a suspect begin, party members often leak information from within the ACC.[73] Thus, the politicization of the

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[68] *Ibid.*

[69] Salahuddin M Aminuzzaman, Shahzada M Akram, Shammi Laila Islam, *Op.cit.*2017; Staff Reporter, 'The ACC does not find corruption information against pro-government people', *The Daily Prothom Alo*, 9 December 2015; Staff Reporter, 'ACC sets record in giving clean chits', *The Daily Star*, 1 January 2016.

[70] *Ibid.*

[71] Staff Reporter, 'The ACC does not find corruption information against pro-government people', *The Daily Prothom Alo*, 9 December 2015

[72] *Ibid.*

[73] Staff Reporter, 'ACC sets record in giving clean chits', *The Daily Star*, 1 January 2016

ACC's day-to-day activities and Commissioner nominations has undermined its independence. This has raised serious questions about the ACC's capacity to fairly try cases involving corruption. The ACC must have the courage and resilience to prosecute dishonest people without bias or favoritism, and without being influenced by political meddling.[74] The ACC's low operational budget and continued incapacity to conduct successful investigations and prosecutions of dishonest politicians and officials indicate a lack of political will for this action, even in spite of the implementation of some additional sanctions and incentives.[75]

Political will is the ongoing dedication of political leaders to pass anti-corruption laws and programs to deal with the underlying causes of corruption in the nation.[76] No government has yet to give the ACC total autonomy, nor has it been able to operate well enough for the public to trust it. In actuality, the ACC's function is to hold the government responsible even though it was created by the government. As a result, the ACC has viewed itself as a government agency and succeeding governments have viewed it as a part of their executive branch. Due to their lack of political will, vested interests in positions of authority have the capacity to subjugate and even destroy the leadership. The Commission may experience a "don't touch us" mentality as a result of political interference.[77] Investigating individuals in positions of authority within the current government would then become more challenging. Elections are seen as a zero-sum game where the winner has the chance to misuse authority for personal benefit, politics is about investment, and political meddling is typically associated with an "it's our turn" mentality.[78]

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74 Salahuddin M Aminuzzaman, Shahzada M Akram, Shammi Laila Islam, *Op.cit*, *TIB,* Dhaka, 2017

75 Nurul Huda Sakib, *Op.cit*

76 Jon S.T. Quah, Combating Asian Corruption: Enhancing the Effectiveness of Anti-Corruption
Agencies (Carey School of Law, University of Maryland 2017) 7

77 *Supra note* 58; Shadhan Kumar Das, *Anti-Corruption Commission of Bangladesh: Diagnosis of a Fading Hope,* An Unpublished MPhil Research Paper, International Institute for Social Studies, The Hague, The Netherlands. November 2013

78 *Supra note* 58

The government must give the ACC permission to expand its district and human resources offices.[79] The Committee suggests that the Secretary be appointed by the Government, while Section 16 of the ACC Act states that the Commission shall appoint the Secretary. It also proposes promoting the Secretary to Chief Accounts Officer, which will likely undermine the Chairman's authority as Chief Executive. Such a move must be avoided since it could weaken the commission's authority and give a government office operational power.[80]

4. Restructuring the ACC under the Anti-Corruption Commission (Amendment) Ordinance, 2025

To provide greater representation, accountability, and authority, the Anti-Corruption Commission (Amendment) Ordinance, 2025 drastically reorganized the ACC. The 2025 amendment clearly acknowledges the commission's enforcement and intelligence operations inside the legislation and broadens the ACC's jurisdiction over money laundering violations. Under the Prevention of Money Laundering Act, 2012, the amendment expands the ACC's jurisdiction to look into a greater variety of money laundering offenses. Forgery, fraud, falsification, smuggling of foreign or local currency, offenses relating to customs, and tax evasion are all included in this extended scope.[81] The 2025 Ordinance explicitly incorporates enforcement and intelligence activities directly into Section 3 of the ACCA, elevating them from subordinate regulations to statutory recognition. This amendment also outlines the composition of the selection committee, which includes a High Court judge, Comptroller and Auditor General, PSC Chairman, and parliamentary representatives. The Ordinance mandates that at least one-woman commissioner and one commissioner with high-level skills in information and communication technology (ICT) must be included. One of the commissioners will be appointed as chairman by the President.[82] The ordinance also reorganizes the commissioner appointment screening procedure by renaming and rearranging the search body. The former "search

[79] *Ibid.*

[80] *Ibid.*

[81] Section 7, *The Anti-Corruption Commission (Amendment) Ordinance*, 2025.

[82] Staff Correspondent, 'ACC Ordinance issued to expand anti-graft authority', *The Daily Observer*, 25 December 2025

committee" has been replaced by a "Visiting and Selection Committee" that has drastically changed its composition.[83] The legal acknowledgment of the ACC's enforcement and intelligence operations, which are now expressly included in Section 5 of the Act, is one of the most significant changes. Territorial bounds are no longer unclear according to the 2025 Amendment. Every Bangladeshi citizen living anywhere in the globe is now covered by the Act, as are non-citizens living in Bangladesh and foreign actors who conduct listed crimes against Bangladesh from overseas.[84] The Ordinance strengthens the ACC by removing section 32(a) of the ACCA, a controversial clause that required government approval before commencing legal action against judges and public officials. The government's previous approval is no longer required for the ACC to file complaints.[85] Under the amended law, the ACC will get a specific budget from the government. The ACC has operational financial flexibility because it doesn't need government approval from approved heads to spend money after it is allocated.[86]

In order to expedite justice, Section 4(2) of the Ordinance requires the government to create a Special Judges Court close to any ACC office. This eliminates the need to transport inmates or files across great distances. A clever "Plea Bargain" mechanism is introduced by the 2025 Amendment to promote the return of stolen property.[87] A new "selection and oversight committee" is established under this ordinance in place of the current search committee. The Ordinance does include some procedural improvements, such as the creation of special courts where ACC offices are situated and the implementation of district-level verification procedures to expedite preliminary complaints. The Ordinance also ensures at least one female commissioner and reduces commissioner terms from five to four years. These surface-level changes, however, are unlikely to address the fundamental problem of institutional dependence on political authority. However, experts argue that these above-mentioned measures, though positive, only

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83 Section 7, *The Anti-Corruption Commission (Amendment) Ordinance, 2025*

84 Section 2 (A), *Ibid.*

85 Ahasan Uddin Bhuiyan, 'Draft ACC ordinance fails to do away with political influence', *The Daily Observer,* 8 November 2025

86 Section 25, *The Anti-Corruption Commission (Amendment) Ordinance, 2025*

87 Section 28, *Ibid.*

scratch the surface of the deeper structural weaknesses.[88] Many of the ACCA's shortcomings have been rectified by the Anti-Corruption Commission (Amendment) Ordinance, 2025, which also has many advantages. The Ordinance has certain unfavorable features as well. Not all of the concerns listed in this article's third chapter were covered by the Ordinance.

5. ACC Bodies: A Comparison with Other Countries

When anti-corruption organizations are compared to those in other nations, it becomes clear why some are successful while others are not. Important benchmarks for assessing the ACC of Bangladesh are provided by successful models like the Corrupt Practices Investigation Bureau (CPIB) in Singapore and the Independent Commission Against Corruption (ICAC) in Hong Kong. Anti-corruption initiatives in Singapore and Hong Kong are supported by strong political will at the highest governmental levels. Authorities always take a zero-tolerance stance, making sure that even senior officials are held responsible. This legitimacy discourages corrupt behavior and strengthens public confidence.[89] The ICAC and CPIB are mostly free from executive intervention in their operations. Their leadership appointments are intended to reduce political interference, and their investigative powers are legally protected. Because of their independence, they are able to investigate cases including those involving influential political figures—in an unbiased manner.[90] The effectiveness of the legal system is a crucial component of these systems. Investigations are promptly followed by prosecutions, and corruption cases are settled quickly. This improves deterrence by guaranteeing that justice is administered and perceived as being administered.

The ACC of Bangladesh is still unable to completely replicate these success elements in spite of recent reorganization efforts. Anti-corruption campaigns in Bangladesh are frequently seen as politically driven or selective. Although there are official protections, executive

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88 Ahasan Uddin Bhuiyan, '*Op.Cit*'

89 Jon Quah, *Curbing Corruption and Enhancing Trust in Government: Some Lessons from Singapore and Hong Kong*, in Handbook of Asian Criminology, November 2013, pp.25-47, available at *www.researchgate.net/publication,* (Accessed on 12 February 2026)

90 *Ibid.*

influence and unofficial pressures still exist. Extended judicial proceedings reduce the effectiveness of anti-corruption initiatives as a deterrent. In comparison to global best practices, preventive and educational functions are yet underdeveloped. The contrast implies that institutional design is not enough on its own.

Comparative Table[91]

Country	Institution	Independence	Structure	Strength	Weakness
India	CVC + CBI	Moderate	Multi-agency	Checks & balances	Fragmentation
Hong Kong	ICAC	High	Unified	Strong enforcement + prevention	Depends on political will
Singapore	CPIB	High	Centralized	Fast & effective	Limited external oversight
Pakistan	NAB	Moderate	Centralized	Strong powers	Political misuse
Malaysia	MACC	Moderate	Independent commission	Transparency efforts	Partial independence

When compared to international models, Bangladesh's ACC's institutional architecture is still quite poor. The ACC lacks complete operational independence, a robust enforcement capability, and a coordinated anti-corruption strategy, despite ongoing improvements. Bangladesh has to provide true autonomy, judicial effectiveness, and ongoing political commitment in order to attain efficacy comparable to Hong Kong or Singapore. Therefore, it is unlikely that the ACC's reorganization will result in significant or long-lasting advances in the fight against corruption until these fundamental problems are resolved.

6. Suggestions for Restructuring the ACC

From the beginning ACC has been struggling with various bottlenecks. Some weaknesses are covered by the 2025 Ordinance, some are not addressed. Therefore, effectiveness of the ACC has still been questioned due to structural weaknesses, legal constraints, and

[91] Relevant Institutional Websites

operational inefficiencies.[92] Although many structural issues have been resolved by the 2025 Ordinance, the researcher desires to make the following recommendations for reorganizing the ACC after discussing flaws in chapter 3 of the paper:

(i) The appointment procedure of the ACC chairperson and commissioner is still susceptible to political influence. The government is unwilling to change its policies, as seen by the long-standing use of the ACC as a tool to intimidate opponents and support the ruling party. In addition to the Ordinance provision, the opposition party's representation on the ACC Selection Committee should take the place of the speaker in order to select the Commissioners and Chairman. The law should include a clause requiring the identities of shortlisted applicants to be made public. The following changes should be made to Section 8(1) of the ACCA:

> "A person having at least 15 (fifteen) years of experience in law, education, administration, judiciary, law enforcement, financial institutions, accounting and auditing profession or in a government or private institution engaged in good governance or anti-corruption activities shall be eligible to be a Commissioner."

(ii) The government and the ACC were both aware that the creation of a "Review Committee" was required to ensure the ACC's accountability, and all political parties united on this.[93] The present "Selection Committee" should be renamed the "Selection and Review Committee" and given a broader mission to evaluate ACC performance every two years, according to this article.

(iii) The law should include the establishment of "end-to-end automation" of ACC activities, specifically complaints management, investigation, confidential inquiries, and case handling.

(iv) To permanently end the practice of legitimizing black money,

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[92] Md. Abdullah Al Mahmud, 'Key Reforms Proposed for the Anti-Corruption Commission in Bangladesh', available at *https://www.linkedin.com*, (Accessed on 11 February 2025)

[93] Staff Correspondent,' ACC LAW AMENDMENT: TIB slams govt. for omitting strategic recommendations', *The New Age*, 30 October, 2025

specific legislation must be passed. Bribery and corruption in the private sector ought to be covered by the law. It is important to evaluate the viability of implementing plea bargaining in situations involving money laundering and corruption. It is necessary to implement a thorough Corruption Prevention Strategy that includes anti-corruption material in textbooks and ethical instruction at all levels, from primary to high school.

(v) A Citizens Advisory Committee of representatives from the court, Parliament, and civil society could be considered in order to establish a multi-stakeholder oversight mechanism and monitor the ACC's functioning.

(vi) At present, a special judge should be appointed immediately in every district where the ACC has an office. If an ACC office is established in a district later, it should be ensured that a special judge court is established in that district as soon as possible. A new human resource structure should be implemented and open posts must be fulfilled right away.

(vii) Contractual attorneys must be gradually replaced as part of the initial implementation of the Permanent Prosecution Unit. Priority must be given to automating every aspect of ACC operation, including case management and investigations. The Chairman should receive direct reports from the Digital Forensic Lab, which should also be reinforced. It is suggested that ACC employees have their own training academy. It is necessary to establish ACC's own law enforcing body and constitute ACC's own investigation team for carrying out inquiry in any matter having minimum 5000 personnel. Recruitment of this force will be made through competitive examination. Members of this body shall have special training for arresting every aspect of corruption.

(viii) The ACC should have twelve directors general instead of just eight, and the following twelve sub-divisions should be established under them: (1) Administration, Finance, and Human Resources; (2) Prevention and Mass Communication; (3) Information Technology; (4) Training, Research, and Development; (5) Legal and Prosecution; (6) Investigation-1;

(7) Investigation-2; (8) Special Investigation; (9) Money Laundering; (10) Covert Investigation-1; (11) Covert Investigation-2; and (12) Internal Discipline.

7. Conclusion

Regardless of its political, social, religious, or economic affiliation, an independent, self-sufficient, and fearless ACC serves the state and serves as deterrence to corruption and corrupt parts of society. Although the ACC of Bangladesh has made significant contributions, genuine independence, sufficient funding, and strong political will are necessary for it to be effective. By strengthening these elements, the Commission will be better able to carry out its purpose and help Bangladesh become a more accountable and transparent society. Even though the ACC was created to lessen corruption in Bangladesh, it is unable to accomplish its objectives due to a number of contributing factors, such as political interference, structural flaws, and a shortage of personnel, a lack of integrity, accountability, transparency, and independence. The legal, political, and operational challenges are the main barriers to an independent and effective ACC, and they are becoming less significant because of a lack of political will. An important step in bolstering governance and battling corruption is the reorganization of Bangladesh's ACC. In contrast to foreign models like ICAC and CPIB, the ACC of Bangladesh is still less successful in its fight against corruption. Achieving global standards necessitates greater institutional capability, less political meddling, and structural independence, even though reforms are still under progress. The article's investigation indicates that the ACC's shortcomings include political, institutional, and systemic in addition to structural. Therefore, it is unlikely that the reorganization of the ACC will result in significant or long-lasting advances in the fight against corruption until these fundamental problems are resolved.

Disability Rights in India: A Socio-Legal Study

Dr. Mousree Basistha*

Abstract

I am instinctively more reclusive than I would like to admit due to the fact that not everyone is able to grasp my soul. Since childhood, I have learned to accept this hard truth of being a differently abled person. This is a common scenario in every remote space in India where physical disability is identified as a curse even in this day and age. It is frustrating to the disabled community at large when their voices are stifled. Governments of developing countries like India views persons with disability as a burden. But this perception swiftly changes around the time of the election when they become a potential vote bank. In recent times only a handful number of representatives raised their voices in favor of disabled people which changed the fact that now we are referred to as differently abled. Truth is told it is an utter mockery when the title of the legislation retains the old terminology i.e. The Rights of Persons with Disability Act, 2016. One potentially dire consequence of that is if it changes the narrative of disabilities from being serious physical or mental agony to being a fun level of complexity to life. In 1995 India enacted the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act but implementation was scarce. India is one of the ratifying members of the UNCRPD (United Nations Convention on the Rights of Persons with Disabilities) which was adopted in 2006. There are various legislations for the protection of disability rights like the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999, etc. In this research paper, I would like to include a few important measures which will substantiate the intellectual corpus related to this subject and in turn, sensitize the able-bodied masses and make them aware of the difficulties and challenges faced by a disabled person. The present research is conducted primarily using the 'Doctrinal' method of legal research, while the non-doctrinal method has been employed to a limited extent to supplement the findings and enhance the overall analysis.

Keywords: *Disability, Rights, India, Socio-legal, Challenges*

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1. Introduction

Due to the numerous challenges a person with disability encounters, including financial, physical, and mental ones, people with disabilities are particularly susceptible. We can remove these obstacles, and we have a moral obligation to do so. But most importantly, removing these obstacles will enable a vast number of people to realize their full potential and make significant contributions to society. A vast number of people with disabilities across the world remain excluded from health care, rehabilitation, education, employment, and support services. As a consequence, they get very limited opportunities to achieve their full potential. Governments must take effective measures to address the longstanding inequalities.

In India, the movement for disability rights has developed over the course of four decades. Early in the 1970s, voices started calling for the rights of persons with disabilities, but it was still a long way from being a movement. The numerous requests from both groups and individuals were widely dispersed.

2. Historical Background of Different Rights

We the Disabled, who live in India, are very much influenced by the life of Hellen Keller on which the '*Black*' movie was picturized with Rani Mukerjee and Amitabh Bachchan. She stated, "The chief handicap of the blind is not blindness, but the attitude of seeing people towards them."[1]

In India, the disability rights movement has developed over the course of four decades. Early in the 1970s, voices started calling for the rights of persons with disabilities, but it was still a long way from being a movement. Groups and individuals made a wide range of requests, which were incredibly dispersed.

In order to represent the interests of the disabled, numerous groups' demands were organized under a cross-disability umbrella in the 1980s. During this decade, a a wide range of non-governmental organizations became active in the disability sector, which gave the

[1]' Helen Keller quotes on optimism, and Triumph over Adversity,' https://www.afb.org/about-afb/history/helen-keller/helen-keller-quotes/helen-keller-quotes-optimism,(Accessed on 15 July 2023)

DRM[2] further momentum. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (also known as the PWD Act), which set aside three percent of government positions for those in the PWD category, was passed by the government in response to numerous petitions and demonstrations. As a result, 1995[3] was recognized as a turning point for the DRM since it initiated a phase in which persons with disabilities became more visible within governmental and educational institutions.

The United Nations formally adopted the Convention on the Rights of Persons with Disabilities in 2006, which was an important development in the new millennium. This convention was signed and ratified by India in 2007. By that time, a number of organizations focusing on disability issues had begun to call for an increase in the quota for the PWD category. A disability law was developed by the Indian Union Government by 2012, and after minor revisions, the draft was subsequently presented to the parliament in the following year. The Rights of Persons with Disabilities Bill, 2016[4], was approved by both houses of parliament after a wait of more than three years. In India, over 26 million people with disabilities continue to wait for the proposed legislation to be formally enacted.

Up until the 1970s, the majorities of people with any form of impairment was regarded as outcasts from mainstream society and were despised. To put it clearly, any disabled person was treated like trash in Indian society, despite the fact that this may sound politically inappropriate. The majority of these persons were either perceived as beggars or, in better circumstances, as being connected to the music industry. Even the system viewed them as a liability; because they were seen as having no value to society, their concerns were given little weight. Many people believed that disabilities were the result of past misdeeds, making them accountable for their current state. This folly prompted India to experience many sorts of injustice.

India's disability sector underwent significant development throughout the final decade of the millennium. In the 1970s, a distinct self-

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2 Disability Rights Movement.

3 *Disability Rights Act, 1995*, 14 chapters and 74 clauses (Amendment Act, 2016).

4 17 chapters and 102 sections.

advocacy movement of individuals with disabilities began to advocate for the defense and acknowledgment of their human rights. It pushed for the adoption of extensive legislation with a rights-based perspective, with a focus on social and economic rights[5] in particular.

3. Implementation and Applications

Any physical or mental impairment[6] that makes it difficult for a person to do any task in that condition is referred to as a disability. There are many different perspectives on disability, including anthropological, sociological, medical, and psychological perspectives. The term "medical disability" refers to a physical limitation that necessitates medical attention in order to function normally. The limitations that society imposes on the disabled are referred to as social disabilities.

India has about 80 million people that are crippled, whether it be through birth, an accident, or other medical issues[7]. According to World Bank statistics, India has one disabled person for every 12 dwellings. According to the Indian Express, persons with disabilities account for 2.21% of India's population, placing the country behind Sri Lanka and Myanmar[8]. This statistic was taken from the 2011 census report. Despite these statistics, it is necessary to examine whether the rights, needs, and aspirations of persons with disabilities are being adequately met.

Although various legal provisions have been introduced to safeguard the rights of persons with disabilities, violations of those rights remain widespread. They are viewed as the weaker group in society and as being powerless to do anything. They sometimes don't get the chance to go to school, and there are no career opportunities for them. They

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5 *The Indian Constitution,* Art.25 (1).

6 Types of impairment- Visual impairment, Deaf or hard of hearing, Mental health conditions, Intellectual disability, Acquired brain injury, Autism spectrum disorder, Physical disability.

7' 'Working towards a disabled friendly society' https://www.thehindubusinessline.com/opinion/working-towards-a-disabled-friendly-india/article25040700.ece, (Accessed on 20 July 2023)

8' Underestimating Disability' https://indianexpress.com/article/opinion/columns/underestimating-disability-use-of-divyang/,(Accessed on 21 July 2023)

suffer from social torture[9] as well, as other people in the community frequently violate their legal rights. They are frequently viewed as sinners who are currently suffering as a result of their past sins. Let's examine the challenges they face in their daily lives.

The majority of Indian colleges are not adapted effectively for students with disabilities. A barrier to receiving a quality education is the absence of accessible buildings and accessible transit options. The government must establish additional schools with vocational education centers and provide free training to disabled persons. Additionally, there is a severe shortage of teachers who can work with impaired students. These are a few examples where the disabled people's legal right to equal chances is not being properly implemented. In *Disability Rights Group & Anr. vs. Union of India*[10]the Supreme Court discussed problems relating to accessibility of educational institutions and accommodations for people with impairments. Justice Muralidhar of the Delhi High Court observed in the case of *Lalit and Others v Govt. of NCT and Another*[11]that the presented facts highlighted the inadequate accommodation facilities for children with disabilities. The court also acknowledged the related issues concerning insufficient resources, poor hygiene, and a lack of accountability in institutions catering to disabled children. Emphasizing the fundamental human rights of persons with disabilities, the court stressed that due regard must be given to the mandatory provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PDR Act), particularly Sections 26 and 30 together with the Convention on the Rights of Persons with Disabilities (CRPD), which India has ratified. The court drew attention to several provisions of the CRPD, particularly Articles 7, 9 and 24.Article 7 addresses the protection and well-being of children with disabilities, while Article 9

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9 "Social torture" refers to the systematic and often subtle forms of mistreatment, discrimination, and exclusion that individuals or groups face within society due to their perceived differences, vulnerabilities, or marginalized statuses. In the context of people with disabilities, social torture signifies the emotional, psychological, and social hardships they endure as a result of discriminatory attitudes, unequal treatment, and limited opportunities.

10 *Disability Rights Group & Anr vs. Union of India* (2017) SC (50).

11 *Lalit and Others v Govt. of NCT and Another*, W.P. (C) No. 3444/2008.

concerns accessibility and requires states to take appropriate measures to ensure essential services such as "schools, housing, medical facilities,". Article 24, in turn, recognizes the right to education for persons with disabilities. By referring to these provisions, the court underlined the significance of safeguarding the rights of children with disabilities and ensuring that appropriate measures are taken to fulfill their needs and guarantee their access to education, housing, and healthcare facilities.

People with disabilities' health are of utmost importance. The government should be in charge of it. Many disabled people come from low-income backgrounds. Mothers' improper care during pregnancy can potentially result in a child having a variety of problems. For persons with disabilities living in severe poverty, shelter homes and other NGO-supported facilities may become their only source of accommodation and care. However, the conditions prevailing in those shelter homes and other facilities for the disabled can negatively affect their health and overall well-being. Reports have documented the deaths of 228 residents across several shelter homes, including *'Asha Kiran'*[12] raising serious concerns about the conditions prevailing in such institutions. They live in appalling conditions, according to a report in the Times of India[13]. Poor sanitation conditions expose them to a range of serious health problems.

Overcrowding further compounds the difficulties within these facilities, particularly by placing additional strain on food provision and adversely affecting the health of persons with disabilities. Persons with disabilities are often compelled to reside in mental health institutions, which can adversely affect their psychological well-being. They are frequently subjected to appalling, unhygienic, and inhumane living conditions within these institutions. The Government must take these situations seriously and make the necessary provisions as quickly as possible to improve the current situation of the society's disabled members.

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[12] Delhi Govt. Social Welfare Department, 1989, Rohini Sector, Home for girl children.

[13] An Indian English-language daily newspaper and digital news media owned and managed by the Times Group, 3 November, 1838.

In *Bhagwan Das and Anr. v. Punjab State Electricity Board*[14], the appellant had been serving the respondent Board as an assistant lineman when he became completely blind during the course of his employment. But the Board did not provide him an alternative post as contemplated by Section 47 of the Persons with Disabilities (PWD) Act and subsequently brought his employment to an end.

The appellant challenged the termination before the High Court of Punjab and Haryana. But his petition was unsuccessful, and he therefore carried an appeal to the Supreme Court, which allowed the appeal and held the Board was bound to comply with Section 47 because the disability was acquired while the appellant was in service.

In reaching this conclusion, the Supreme Court relied on an earlier decision in *Kunal Singh v. Union of India and Anr.*[15] The Court reiterated that the provisions contained in social welfare legislation concerning the rights of persons with disabilities should be interpreted in a manner that furthers the underlying purpose of the legislation, particularly its objective of securing equal opportunities, protecting rights and facilitating the full participation of persons with disabilities. In essence, the Court emphasized that the purpose of the PWD Act should not be obstructed or defeated by any restrictive interpretation and that measures ensuring the rights and opportunities for disabled persons should be prioritized.

People with disabilities are viewed as a burden on their family. Opportunities for employment are crucial for these men and women. Most corporate human resources departments are no longer content with hiring a person with a disability. They don't invest money in training or alter workplaces to accommodate employees with particular needs. Currently, there is a 3% reservation for people with disabilities, with 1% allotted to those who are physically, visually, or audibly challenged. However, in practice, this 3% reservation will only account for 1% of all openings because the personal zone personnel are not covered by the current act. In *Union of India v National Federation of the Blind*[16] it was claimed that the appellants in this case had neglected

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14 *Bhagwan Dass and Anr v. Punjab State Electricity Board,* Appeal (Civil) 8 of 2008.

15 *Kunal Singh v. Union of India and Anr* (2003) 4 SCC 524.

16 *Union of India v National Federation of the Blind* (2013)2 SCC 772.

to give reservation to the blind and low vision individuals, who are essentially left out of the recruitment process for government positions as required by the aforementioned Act. The petition called for the implementation of section 33 of the Act. The court investigated how the 3% reservation was determined, including whether it took into account the number of openings or the size of the cadre. According to the consensus, the 3% figure represents a portion of all cadre strength openings. The Court further observed that remedies available under Article 32 and 226 of the Indian Constitution could play an important role in securing equality and human dignity for persons with disabilities. In this context, it noted the legislative objective of ensuring their representation in employment, including a minimum 3% representation in appropriate government establishments and an intended 5% share of the overall workforce across both the public and private sectors. Women with disabilities face significant challenges in both the public and private realms because they lack access to vocational training and employment. Institutionalization is considerably more likely to occur with them. Inequality in hiring, selling prices, remuneration for similar work, access to education and retraining, credit scores, and other productive resources make them suffer, and they hardly ever participate in economic decision-making. India has made progress in a number of areas related to people with disabilities, but there is still a long way to go because there are still many issues that we haven't been able to solve.

4. Sketch of Rights and Application

Human rights and other laws in India as well as other perspectives on the rights and laws of people with disabilities must be understood and studied in order to ultimately bridge or lessen the gap between people with disabilities and people of different abilities and achieve personality and dignity[17] in the truest sense of the word.

The Indian Constitution's drafters were cognizant of the challenges faced by individuals with disabilities and by society's disadvantaged groups. In order to guarantee economic and social justice and equality for people with physical and mental disabilities, specific constitutional provisions must be made. The study discovered that these provisions,

[17] V.N Shukla, *The Constitution of India* (13th ed., Eastern Book Company 2019).

which are in fact made, are distributed in various ways. Since the founding of the Republic of India, many administrations and constitutional writers have demonstrated care for the disabled. An examination of the relevant constitutional and legislative provisions helps to explain this concern. These fundamental rights are also relevant to persons who are disadvantaged in educational, social, and economic terms, including persons with disabilities. The constitutional provisions may not always expressly mention disability, but the principles of equality and equal opportunity cover them as well. State has a responsibility[18] to remove barriers that prevent persons with disabilities from enjoying these principles in practice. They are entitled to the same legal rights, protection and opportunities as other members of society. Article 21 safeguards life and personal liberty[19] under the Indian Constitution. These rights cannot be taken away except through a procedure established by the law. Judicial interpretation of Article 21 has further recognized the right to live with dignity. It also covers things like employment possibilities, educational resources, health benefits, and affordability. However, many of these fundamental ideas are not present in the life of a person with a physical disability. Few persons with impairments lead dignified lives, but the vast majority experience constant misery.

Indian Education Policy and Disabilities - The Indian Constitution only uses the word "disability" once, in Article 41 of the Constitution of India. An accident or other damage renders a person incapable of using any part of their body, among other things. In some situations, persons with disabilities may also face inappropriate expectations because of the severity of their impairments. Under applicable law, the government-funded higher educational institutions as well as institutions receiving government assistance are required to provide a minimum of 5% of their seats for persons with disabilities. Additionally, such individuals should be granted a relaxation of 5 years in the upper age limit for admission to these institutions. The Supreme Court's ruling in the case of *Purswani Ashutosh v. Union of India and Ors*[20], clarified that the term "higher education institutions"

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18 *The Indian Constitution*, Art.41 (Directive Principles of State Policy).

19 *Ibid*, Art.14.

20 *Purswani Ashutosh v. Union of India and Ors* (2018) SC 3999.

includes not only general academic institutions but also technical institutions. This includes specialized institutions like medical colleges and engineering colleges, which are regulated by specific governing bodies. In essence, the scope of higher education institutions, as defined by the court, encompasses a wide range of academic and technical institutions that receive government aid and are required to adhere to the reservation and age relaxation provisions for persons with disabilities.

Disability and health laws: The Constitution of India in article 47 of the Directive Principles of State Policy, states that one of the key responsibilities of the state is to improve the nutritional and living conditions of its citizens, as well as to maintain public health. In particular, the State will work to implement a prohibition on the consumption of intoxicating beverages and substances that are damaging to one's health, except for medical grounds.

- *Niramaya Health Insurance*: In regard to individuals with disabilities, affordable healthcare insurance is designed under this scheme. Maximum health insurance coverage of INR 1 lakh is provided under this scheme.
- *Deendayal Disabled Rehabilitation Scheme*: The major purpose of this initiative is to foster an inclusive and supportive atmosphere that ensures equal opportunity, social justice, and empowerment for people with disabilities. Financial aid is granted to volunteer organizations that work to rehabilitate people with impairments. This comprises numerous services such as early intervention, training in everyday life skills, education, and general development.
- *District Rehabilitation Centre's*: The government, specifically for persons with disabilities, has set up 325 district rehabilitation centers across the country. In the respective districts essential support and services provide to individuals with disabilities, as aimed by these centers

Family Law and Disability: The government has passed a number of marriage rules that apply to diverse groups, and the disabled are no

exception. The majority of these laws have included the following conditions that prevent a person from getting married.[21]

Although Article 41 of the Constitution of India is framed as a Directive Principle and does not itself create an enforceable right, it has an important bearing on the protection of persons with disabilities. The provision directs the State, subject to its economic resources and development level, to take effective measures concerning work, education and public assistance in situations such as unemployment, sickness, old age, disability and other forms of need. The Supreme Court, therefore, has recognized the relevance of this constitutional objective in interpreting legislation concerning persons with disabilities. The courts are expected to adopt an interpretation that promotes the economic and social objective reflected in Article 41.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came into force on 7 February 1996. The enactment represented an important legislative development in recognizing the rights and participation of persons with disabilities. It addressed several areas necessary for their social and economic inclusion. These included prevention and early identification of disabilities, education, employment, vocational preparation, reservation, research and development of trained personnel, protection against discrimination, accessibility, rehabilitation, social security, and other forms of institutional support.
The principal areas covered by the Act may be summarized as follows:

- Prevention and Early Identification of Disabilities
- Education
- Employment
- Research and Manpower Development
- Non-Discrimination
- Social Security
- Affirmative Action
- Grievance Redressal

[21] *The Constitution of India*, Art-21(Right to Marriage).

In the case of *Javed Abidi vs. Union of India and Others,*[22] the Supreme Court considered a plea requesting the provision of 'ambulifts' to assist orthopedically disabled individuals in boarding aircraft from the ground level. Granting the relief sought, the Court strongly emphasized the need to establish a barrier-free environment for persons with disabilities. It highlighted that creating such an environment is essential not only to protect the rights of individuals with disabilities but also to ensure their integration into society. The Court underscored that the objectives of the law include not only safeguarding their rights but also providing them with access to medical care, education, training, employment, and rehabilitation. In conclusion, the Court emphasized that the prime objectives of the Act are to promote an inclusive society and cater to the diverse needs of persons with disabilities.

In the case of *Government of India v Ravi Prakash Gupta*[23] the respondent, a person with vision impairments, showed up for the Union Public Service Commission's civil services examination and was deemed successful. Even though he was ranked No. 5 among candidates who were visually handicapped, he was not given an appointment. The respondent filed a claim with the Central Administrative Tribunal[24], which denied it. The respondent then filed a claim with the High Court. The State challenged the High Court's direction before the Supreme Court, which required the respondent's name to be included in the merit list. The State contended that the respondent could not claim any special accommodation because the post in question had not been identified for persons with disabilities and was not subject to reservation for that category. The State administration argued that section 33 of the Act's reservation and appointment requirements included the designation of employment, but the Supreme Court rejected this argument. The Court held that the legislative intention embodied in Section 32 could not be interpreted in a manner that would deprive persons with disabilities of the benefits available under Section 33. It observed that such an interpretation would be inconsistent with the legislative purpose behind these provisions.

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22 *Javed Abidi vs. Union of India and Others,* MANU/SC/0794/1998.

23 *Government of India v Ravi Prakash Gupta*(2010) 7 SCC 626.

24 *The Constitution of India*, Art.323 A (42nd Constitutional Amendment).

Section 32 was not intended to defeat the obligation imposed on the appropriate Government to ensure appointments in establishments in accordance with the statutory scheme.[25] Though there is a provision to get appointment on the basis of reservation but due to strict limitations of the Judiciary so he was not appointed by the Government of India

5. Discriminations In India

According to me, this is a mockery towards the disabled persons, nowadays they are called 'Differently abled,' but unfortunately in all kind of *Acts* could not identify and adopt this kind of terminology.

Discrimination based on a disability has only recently received official recognition. Disability was not typically included in the list of forbidden forms of discrimination in laws that were passed 20 years ago. For instance, the Indian Constitution's articles 15 and 16 prohibit discrimination on the basis of handicap, but they do not specifically mention it when it comes to employment or access to public amenities. In reality, until 1995, entrance into higher grades of service for people with disabilities was substantiated by the Service Rules.

Every culture displays a structural blindness towards certain groups of people that are marginalized, segregated, and socially disempowered because they do not conform to the dominant discourse or idea of "normality." The existence of a constructed environment devoid of basic services for the disabled because it only attends to the needs of able-bodied people sustains this social and cultural apartheid. According to study, ableism is an attitude that distinguishes disability based on an evaluation of able-bodiedness and its criteria. As a theoretical instrument, ableism is hardly subject to any laws or other regulations governing social norms, making it simple to situate itself in the fields of knowledge production and accumulation. The definition of what constitutes ableism in the society is not widely agreed upon. According to an ableist perspective, all attempts should be taken to alleviate, treat, or even completely eradicate impairment or handicap from the body as well as society, regardless of the cause or severity of the illness.

[25] Secretary and Anr. 2010(7) SCC 626.

While pursuing my Master of Social Work (MSW) (2009–2014), my fieldwork with an NGO provided firsthand insight into the prevalence of ableism-related discourses in the media. The distinction between the so-called 'able' and the 'disabled' is created by the use of terminology in advertising such as 'normal, 'able,' and 'beautiful' men and women. Even when the focus is on ability and handicap in films or on television, the portrayal is generally negative.[26]

Disablism is a combination of beliefs (conscious or unconscious) and behavior's that encourage treating individuals differently or unfairly due to real or imagined disability. The traditional area of research in disability studies has focused on disablism, a concept extensively developed by Colin Barnes, referring to the systematic discrimination and social oppression experienced by persons with disabilities. Disablism advocates and investigates how the physically impaired are treated differently from the able-bodied. The medical model views disability primarily as a consequence of an individual's physical or mental impairment and therefore focuses on medical treatment and care. In contrast, the social model considers disability to arise largely from social, institutional and environmental barriers rather than from an individual's impairment itself. This designates the disabled as the 'Other'.

In the case of *Union of India v. Sanjay Kumar Jain*[27], the Supreme Court of India invalidated the decision to deny permission to a visually disabled petitioner to participate in a viva voce test. The court ruled that the denial was solely based on the petitioner's disability, which was unjustifiable. Following this landmark decision, both the Bombay High Court and the Madras High Court also adopted a similar approach in cases involving individuals with visual disabilities. They too upheld the principle that denying opportunities based solely on disability grounds is not permissible under the law.

The forced segregation of people with disabilities into "*special*" schools or "*sheltered*" workplaces due to restricted choice and structural support of these options is an excellent illustration of systemic ableism. The outcome is the same even though the procedure of pressuring

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[26] *Sparsh*, 30th January 1980, Sai Paranjpye.

[27] *Union of India v. Sanjay Kumar Jain* (2004) 6 SCC 708.

individuals into these choices no longer happens in such obviously rude ways. In *Pankaj Sinha v. Union of India*[28], the Supreme Court acknowledged that people with leprosy confront further prejudice because of their disease-related disabilities. Such prejudice may prevent persons with disabilities from accessing essential services such as health care, education and employment. Such exclusion not only undermines the principle of equality but may also affect their constitutionally protected right to life and dignity. In response, the court issued various directives to the central government, one of which involved conducting extensive awareness campaigns. These campaigns aimed to spread the message that people affected by leprosy can lead normal lives, including having a family, participating in social events, and pursuing work or education just like any other individual. By accepting leprosy patients into society without stigmatization, the court emphasized that it would significantly contribute to reducing the social stigma attached to the disease.

The ingrained idea that people with disabilities are less valuable than persons without disabilities is known as disablism. Similar to the cases detailed in the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability, it is discrimination against people with disabilities. Disablism is a more overt, deliberate kind of prejudice and mistreatment. Examples include ignoring someone, using derogatory language about their impairment, or speaking patronizingly.

Fighting ableism and disablism is a difficult but worthwhile endeavor. The current quo must be confronted and challenged, different forms of knowledge and experience must be valued, and our unconscious prejudices must all be acknowledged.

Private establishments are not obligated to reserve job positions for persons with disabilities. At the same time, the Persons with Disabilities (PWD) Act impose certain obligations on such establishments. According to the PWD Act, it is unlawful for any establishment to discriminate against a person based on their disability unless it can be demonstrated that the discriminatory action serves a legitimate purpose and is proportionate to that objective. In cases of

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28 *Pankaj Sinha v. Union of India* (2018) SC 4297.

discrimination, the responsibility lies with the "head" of the establishment, who must ensure that the provisions of the Act are not misused to the detriment of persons with disabilities. The Act aims to protect the rights of individuals with disabilities and hold the responsible authority accountable for any discriminatory practices within the establishment.

Systems, policies, virtual and physical environments, goods, and experiences need to be planned and delivered at a systemic and societal level in collaboration with individuals with disabilities, or even better, through disability-led initiatives. In *Deaf Employees Welfare Association v Union of India*[29] the court held that the Disabilities Act does not permit discrimination between persons with different forms of disability, including blindness and hearing impairment. The Court emphasised that persons with disabilities are entitled to equal treatment and protection under the law, particularly in matters concerning their participation in government employment and other public activities. The court found that the state must protect the dignity of those with hearing loss. Even the assumption that someone with hearing loss or difficulty speaking suffers less than someone who is blind effectively marginalizes them; as a result, they must be allowed the same rights as blind people. The values established in articles 14 and 15 of the Indian Constitution ensure the state actions in such regard are coherent to such articles. In this instance, it was determined that government employees who are blind or have orthopedic disability should receive the same transportation perks as the deaf and dumb.

6. Comparative Study between National and International Ambit

The Indian *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* has adopted a distinctive approach to equality and non-discrimination. The 1995 Act, which was subsequently replaced by the 2016 legislation, relied considerably on affirmative measures, including reservations in several sectors.[30]

[29] Civil Petition 107 of 2011.

[30] A survey on International, Comparative and Regional Disability Law Reform' https://dredf.org/news/publications/disability-rights-law-and-policy/a-survey-

Compared with broader civil rights legislation, its framework placed greater emphasis on such preferential measures than on general provisions prohibiting discrimination. The responsibility to ensure accessibility for persons with disabilities is subject to certain limitations based on the State's economic capacity and level of development. Consequently, these duties can be easily evaded by organizations. A 3% reservation is provided for persons with disabilities in government employment, government-aided educational institutions, and poverty alleviation programmes. Under this scheme, three percent of government jobs are reserved for individuals with specific types of impairments, such as visual, hearing, and physical impairments.

One intriguing aspect of this law is that any shortfall in meeting the three-percent quota requirement for government employment in a given year can be carried forward to the following year. In theory, this could result in a situation where government agencies that have not met their quota obligations might be compelled to hire or promote disabled employees in subsequent years. Many foreign laws also include quota provisions, especially in the public employment sector. Indian law establishes a comprehensive system for planning and monitoring across different sectors. At the state level, a central coordination committee, headed by the Chief Commissioner for Persons with Disabilities, is responsible for matters relating to persons with disabilities. Moreover, the law mandates that a specific number of seats in each committee must be occupied by disabled individuals[31].

One of the most important features of the comparative research is the paradigm shift[32] from the medical to the social model of disability, which sees disability as a human rights issue rather than a medical problem. This trend was motivated by the 2006 ratification of the United Nations Convention on the Rights of Persons with Disabilities

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of-international-comparative-and-regional-disability-law-reform/#_ftnref123, (Accessed on 20 July 2023)

31 Breslin, M.L. and Yee, S."*Disability rights law and policy: International and national perspectives"* (Ardsley,NY: Transnational Publishers 2002).

32 Addlakha, Renu and SaptarshiMandal,'Disability Law in India: Paradigm Shift or Evolving Discourse?' (2009) vol. 44, no. 41/42, *Economic and Political Weekly*, http://www.jstor.org/stable/25663681 (Accessed on 29 August 2023)

(CRPD), a historic international treaty that supports people with disabilities' full integration and involvement in society.[33]

The current approach of Indian disability law is a mix of medical and social approaches, but it is still dominated by the medical approach. This means that the Indian law still focuses more on the impairment or condition of the person, rather than the barriers or discrimination faced by the person. In regard to identification of persons with disabilities, under the Indian legislatures a recognized medical authority must provide a disability certificate to such individual in order to obtain any benefit under the law. Indian legislation has also made major strides toward a social approach to disability, increasing the number of recognized disability categories from seven to twenty-one and ratifying the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2007[34]. The CRPD advocates for a social approach to disability, viewing it as an evolving concept resulting from the interaction of people with impairments and attitudinal and environmental barriers that prevent them from fully and effectively participating in society on an equal footing with others. As a result, additional reform and implementation of Indian disability law is required to bring it in line with international disability rights norms and principles.

7. Conclusion

We the '*bangali's*' are very much influenced by the late guru dev 'Rabindra Nath Thakur'. One of his poem '*Hat*'(a big market happened in a weekly day), he wrote one sentence '*On dhokanaip at herdharevikha kore*' unfortunately, when the '*Chandrayan-3*' landed in the moon, the disabled people are treated like this '*Ondho Kanai*' everywhere in India, though there are many recognized people like Masudur Rahman Baidya,[35] Sudha Chandran,[36] Sadhan Gupta[37] etc., who were

[33] A Survey of International, Comparative and Regional Disability Law Reform 'A Survey of International, Comparative and Regional Disability Law Reform (dredf.org)', 23 July 2023.

[34] Gandhi, A., Singh, S. 'Disability studies and the law: In conversation with Professor (Dr) Nilika Mehrotra' (2021) *Jindal Global Law Review* 12, https://doi.org/10.1007/s41020-021-00159-0 (Accessed on 30 August 2023)

[35] Masudur Rahman Baidya was an Indian swimmer who was the world's first physically disabled swimmer to swim across the Strait of Gibraltar.

established their life with a very dynamic manner. Through this article, I seek to demonstrate, as a person with a disability, that disability lies not in one's health or physical condition but in society's mindset. This article succinctly and comprehensively illustrates the significant progress achieved by our society, community, legal consciousness, country, and individuals. It highlights how the human rights, stemming from our Constitution, evolved into constitutional and fundamental rights. As time advanced and needs changed, there was a necessity for further legal amendments, leading to the remarkable development of the PWD Act, 1995, and eventually with the enactment of the Rights of Persons with Disabilities Act, 2016. Through collective and mindful efforts, we have successfully journeyed a long path in advancing the rights and welfare of persons with disabilities.

The journey ahead is a continuous one, where we must learn from the past, find motivation in the present, and draw inspiration from our envisioned future—a world characterized by equality and fair distribution of rights and resources. A detailed and critical analysis of the laws impacting persons with disabilities reveals certain areas that need further refinement and bridging of gaps. Some of the inconsistencies and suggestions include:

Legal Capacity: The PWD Act requires further amendment to explicitly outline the rights concerning the legal capacity of persons with disabilities. There should be clarity regarding the level of decision-making capacity necessary for individuals to exercise their rights fully. Additionally, the interplay between the PWD Act and other significant laws pertaining to guardianship of persons with disabilities, such as the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999, needs to be clarified.

Education: The legal framework governing persons with disabilities requires further harmonization with the current statutory regime. A significant concern is that certain legal provisions continue to rely on

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[36] Sudha Chandran is an Indian Bharatanatyam dancer and actress who appear in Indian television and films. In 1981, she hurt her leg in a road accident and her one leg was amputated.

[37] 1st Adv. General in West Bengal (full blind).

the outdated Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, despite its replacement by the Rights of Persons with Disabilities Act, 2016. This inconsistency creates ambiguity and undermines the effective implementation of the contemporary legal framework for persons with disabilities. The Rights of Persons with Disabilities Act, 2016, has significantly expanded the recognized categories of disabilities to include mental illness and several additional physical and intellectual disabilities. Nevertheless, uncertainty persists regarding whether references to persons with disabilities in older legislative provisions should be interpreted in accordance with the expanded categories recognized under the current law. Moreover, the concept of inclusive participation in education field, which was absent under the 1995 Act, was not adequately reflected in the earlier legal framework, thereby necessitating greater legislative coherence.

Regarding Private Establishments: The PWD Act requires certain refinements to enhance its effectiveness. These improvements include a clearer framework for the responsibilities of the head of an establishment to prevent discrimination in cases where the acts are not directly attributable to them or are beyond their control. Additionally, there should be clarity on whether the requirement of having a percentage of the workforce comprising persons with disabilities in the private sector is mandatory or merely a directory provision. Another crucial aspect that needs attention is the absence of any official notification from the government regarding incentives for private establishments to encourage the engagement of persons with disabilities in their workforce. These issues call for further clarifications and improvements to make the PWD Act more comprehensive and effective in promoting the inclusion of persons with disabilities in private sector spaces.

Undoubtedly, one of the most crucial aspects of human rights necessitates dedicated efforts from the legislature, executive, and judiciary for its enforcement. This entails increased sensitization in both the public and private sectors and heightened awareness of the laws that protect these rights. All these measures are essential to ensure the effective protection and promotion of fundamental human rights.

Creating Safe Campuses: Sexual Harassment Prevention and Sustainable Development at the University of Rajshahi

Dr. Md. Abdul Alim*

Abstract

The sexual harassment of women is considered to be a form of violence. Today, one out of three women has faced physical or sexual violence at some point in her life. Sexual harassment of women takes place because of the inequality and dependence between genders. Gender discrimination and inequality lower women's status in society. According to the Committee on the Elimination of Discrimination against Women, violence against women is discrimination against women, which significantly limits women's rights and freedoms, as well as their opportunities for development on a equal basis with men. In this regard, the study examines the legal and constitutional guarantees of women's rights, taking into account the UN conventions, and analyzes to what extent they are implemented in higher education, specifically at the University of Rajshahi. The research also highlights whether there are any forms of gender discrimination and sexual harassment in the university's legal and regulatory framework and how these problems can be solved. Besides, this research aims to find out the factors that need to be taken into account to stop negative attitudes towards females. Therefore, it can help contribute to the sustainable development of Universities in Bangladesh.

Keywords: *Sexual Harassment, Gender-based Violence, Masculinity, Sustainable Development*

1.1 Introduction

The United Nations works to promote gender equality and women's empowerment to prevent violence against women and girls throughout Asia and the Pacific. In Bangladesh, UN efforts have

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concentrated on primary prevention of violence,[1] transforming harmful masculinities, and strengthening local and regional organizations through participatory approaches.[2] The University of Rajshahi, one of the largest in Bangladesh, consists of 59 departments under twelve faculties, with around 32,000 students, 1,300 teachers, and 1,000 staff. Despite having 18 residential halls—including six for women, eleven for men, and one international dormitory housing shortage persist, forcing many students into private off-campus residences.[3] These conditions, combined with patriarchal social structures, often place female students at a disadvantage in securing rights and dignity. This research seeks to examine how harmful masculinities and gender-based violence can be addressed within higher education institutions. It further explores existing disciplinary frameworks, protection mechanisms against sexual harassment, and the recognition of education and dignified work as fundamental human rights.

1.2 Gender Education Empowers Everyone

Gender education helps students on understanding the concept of gender equality and challenges stereotypes and biases. It encourages them to treat everyone with respect, regardless of their gender identity or expression. Masculinity originates from residence and is a notion embedded in social hierarchies. By promoting equality, gender education contributes to build a more inclusive and just society. However, it is important to acknowledge that gender discrimination can exist in any institution, including universities. While I tried to provide specific examples from Rajshahi University and can mention some common forms of gender discrimination that is occurring in educational settings. At the University of Rajshahi, incidents of sexual

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1 Violence against women and girls (VAWG) is defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life

2 Partners for Prevention, *Lessons Learned Earned About Primary Prevention of Violence Against women and Girls in the Asia and the Pacific Region*, retrieved from file:///G:/2019/2020/Article%20on%20Sexual%20harassment/RBAP-DG-2018-P4P-Lessons-Learned-Prevention-VAWG-Asia-Pacific.pdf dated on 2 June 2020.

3 Ministry of Education, *Bangladesh Bureau of Educational Information and Statistics*, Retrieved July 2020 from http://data.banbeis.gov.bd/images/chp08.pdf

violence are believed to be high, though largely unreported. Female students have reported experiencing harassment both inside and outside the classroom, sometimes even by their teachers.[4]Sometimes newspaper highlights the problems. Forced marriage is common in Bengali society. Women often have no control over their right to marry, as the decision is made by their guardians.

Most physical and sexual violence against women is perpetrated by men, often by friends, relatives, partners, or husbands. Globally, about half of all ever-married women have experienced physical and/or sexual violence, with one in four of these incidents occurring in the past 12 months.[5] Studies show that more than half of men have physically assaulted female intimate partners, and over one in ten have committed sexual violence against women, either partners or non-partners.[6] Literature identifies sexual entitlement and perceived "fun" as common justifications for such violence, while gender-inequitable attitudes rooted in harmful patriarchal norms remain widespread among both men and women.[7]The 2030 Agenda for Sustainable Development, adopted in 2015, includes 17 Goals and 169 targets, notably Goal 5: "Achieve gender equality and empower all women and girls." Gender considerations are integrated across other Goals as well. Targets such as SDG 11.7, which focuses on providing safe public spaces, and Goal 16.1, aimed at reducing all forms of violence and related deaths, provide measurable indicators to monitor and address violence against women and girls.[8]

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4 Abdul Alim, "Gender-Based Violence Specially Sexual Harassment Prevention In Higher Educational Institution" in *Journal of Humanities and Social Sciences,* vol. 4 issue 2, 2021, US.

5 Bangladesh Bureau of Statistics (BBS). 'Report on violence against women (VAW) survey 2015' *in Bangladesh Bureau of Statistics*, (Dhaka: UNFPA, 2016).

6 Naved, R., Huque, H., Farah, S., Shuvra, M.M.R, Men's attitudes and practices regarding gender and violence against women in Bangladesh: Preliminary findings, in *Partners for Prevention, The Change Project* (Dhaka, UNFPA, 2011).

7 Abdul Alim, "Understanding Masculinity and Sexual Harassment for Sustainable Development," in Social Science, Humanities and Sustainability Research Vol. 4, No. 5, 2023, SCHOLINK INC. United States(US)

8 *Ibid*.

1.2.1 Research Questions

What are the prevalent forms of masculinity in higher education, and how do they contribute to an environment that may tolerate or perpetuate sexual harassment?

What strategies can higher education institutions implement to redefine masculinity in ways that promote respectful and inclusive behavior?

How can higher education institutions incorporate sustainable development goals (SDGs), particularly gender equality (SDG 5), into policies aimed at preventing sexual harassment?

What are the roles of faculty, administration, and students in creating an institutional culture that prevents toxic masculinity and sexual harassment?

How efficient are the existing strategies implemented in higher institutions against sexual harassment, and what innovative approaches are applicable and would yield desirable results?

What significance does the educational approach on gender and masculine norms present in preventing sexual harassment?

How do higher institutions measure the effectiveness of the masculinity and sexual harassment approach on campus culture and student achievement?

What challenges do higher institutions face in the implementation of strategies to promote masculinity reformation and prevent sexual harassment, and how can they maintain such approaches for sustainability?

How does combating toxic masculinity and sexual harassment yield sustainable results and contribute to a more educated community within higher education institutions?

What role do legal and policy frameworks play in higher institutions' efforts to ensure harassment-free campuses and promote sustainable development?

1.2.2 Methodology

A mixed-method research design may be the best choice because it allows gathering the most comprehensive set of data. Here is a list of methods that may be used. Qualitative Methods include such techniques as:

Interviews: Research conducts interviews or organize focus groups among students, faculty, and staff to understand their views on masculinity, sexual harassment experiences or observations, and prevention perspectives.

Content Analysis: It analyzes the content of various documents, such as policies, to identify how masculinity is conceptualized and what strategies are proposed or used for the prevention of sexual harassment.

Case Studies: Researcher conducts case studies of various colleges or universities to learn how they address the issue of preventing sexual harassment in higher education.

As for quantitative methods, there are also several options:

Surveys: Researcher develops and distributes questionnaires to students and staff to gather statistical data about their experiences and attitudes towards the prevention of sexual harassment.

Statistical Analysis: It analyze the data obtained from the questionnaires using statistical software to identify trends and patterns, for instance, to determine whether there is a link between participants' responses about gender attitudes and their tolerance of sexual harassment.

1.3 Sustainable Development and Preparation of the University of Rajshahi

The United Nations Sustainable Development Goal 5 and 16 along with the government of Bangladesh are determined to eliminate all forms of sexual harassment, gender-based violence and discrimination. In particular, Sustainable Development Goal 5 Gender Equality is focused on achieving gender equality and empowering all women and girls. Eliminating violence against women along with other forms of discrimination and gender-based violence is also the ultimate goal of

Sustainable Development Goal 16 Peace, Justice and Strong Institutions. In addition, universities have the responsibility to ensure that all students are educated in an environment that is conducive to their studies. Universities need to consider the needs, rights, dignity, and welfare of the victims of sexual harassment, abuse, and exploitation. The duty of University is to ensure that appropriate services are available to female students. Moreover, universities must promote a respectful, equitable, and accountable culture and zero tolerance, as well as resident environmental governance. As a result, it will be possible to contribute to the achievement of the SDGs and ensure the development of society without sexual harassment and exploitation.

According to Professor Tanzima Zohra Habib, Chair of the Sexual Harassment Prevention Committee at Rajshahi University, she has been serving in this role since July 2022. She informed the researcher that the Committee has received four complaints during her tenure. After receiving the first complaint, considerable time has elapsed, but the complainant was very reluctant to get any remedy. The second complaint was a wife of a teacher, who submitted complaint against her husband and it was about their family matter. In contrast, Committee has an observation that it was their out of jurisdiction. Another complaint was made by a female student against her classmate, and after few days she told the committee that they wished to settle the issue mutually. The Convener of the harassment prevention committee told they are very much dedicate themselves to work on it and she is trying to organize a daylong seminar involving each of the departments and institutions so that everyone come to know about the gender policy of the University. She also added the University could put the committee's members list in the official website and could fix a hotline emergency helping number allow students to obtain information on filling a complaint and get necessary information. This research has observed that it is a crucial moment for the female student to get mental support and sometimes she needed a safe shelter. The Rajshahi University Sexual Harassment and Exploitation Prevention Policy was formulated on 2010 but after 13 years have gone no one tried to publish or reprint the guideline or policy. The University authority must publish the gender policy accessible to all in both printed and online official website.

A member secretary of the Rajshahi University Sexual Harassment Prevention Committee named Professor Rawnok Jahan has told the researcher that the sexual harassment prevention policy of Rajshahi University should be amended according to the need of the technological advancement and there are some technical clarity needed for the definition of the sexual harassment. She added each of the department should have a counseling center and they could collect the evidence and sent it to the University Sexual Harassment Prevention Committee with the complaint petition. It has a crucial investigation system and must be in confidential forms so to collect the evidence and to preserve is not so easy task. So they asked to the Vice Chancellor of Rajshahi University to provide on call vehicle services with technical assistant. She also added disciplinary action must be very prompt otherwise perpetrators get courage to do repeatedly the same offence.

Professor Abu Bakar Md. Ismail of the Department of Electrical and Electronic Engineering, and a member of the Sexual Harassment Prevention Committee, stated that laws lose value when implementation is delayed. He emphasized that punishment must follow promptly after investigation, and reports should be submitted to the Vice Chancellor and placed before the Syndicate within 15 working days. He noted with concern that some reports are often ignored. Advocate Shikha, another member of same Committee, stressed that awareness programs are crucial in addressing sexual harassment. She highlighted the need for lawful investigations and involvement of legal professionals. Professr Asabul Haque, Proctor of Rajshahi University, explained that he devotes much time to maintaining discipline on campus. He pointed out that relationship conflicts sometimes lead to threats of exposing private photos or videos, which is a common issue among students. He urged students to focus on studies and practice good conduct as future leaders. Student Advisor Professor Jahangir Alam Saud stated that he advises a few students regarding relationship issues, which sometimes require the guidance of counselors. Both he and the Proctor stated that no complaints of sexual harassment have been filed with them. It is quite surprising to the researcher that about 35,000 students 1200 teachers and 500 stuffs are staying together and no harassment or gender based discrimination prevails in such a big campus. The researcher believes wholeheartedly that speaking out against sexual

harassment is a taboo and that victims of sexual harassment suffer from random blaming. Consequently, they are more inclined to be harassed and less inclined to report the problem. Subsequently, the silence is the best solution to this vicious cycle.[9]

As part of the qualitative study, the researcher interviewed Professor Rezina Laz**,** former Convener of the Sexual Harassment Prevention Committee, Rajshahi University. She added there were some complaints against male students by female students. But at some point female students have to withdraw the complaint due to the pressure of the accused person or family members were very much reluctant to go on the sexual harassment issues. She worked in the corona pandemic period from between 2020 to 2022. She was expressing her commitment on zero tolerance specially three cases were investigated by the committee and had submitted the report.[10] Latter on the University authority never try to proceed on to the syndicate for establish justice. It is the point why syndicate is silent? Why authority is reluctant to punish the perpetrator?

The same question was raised by Professor Selina Parveen of Zoology Department, Rajshahi University. She was also Convener of the Sexual Harassment Prevention Committee during the period of 2016-2018. During her tenure, the committee had resolved 6 harassment cases and interesting fact is that none of the investigation report was sent to the syndicate. Member Secretary of the same committee, Professor Ferdousi Begum of Botany Department, Rajshahi University, has emphasized on the continuation of the experienced members so that procedural requirements must to maintain. She added if proper punishment is not given by the higher authority or if file goes to ghost room the tremendous work has no value. So report execution mechanism must be within a short period. Syndicate again form an executive committee with political persons and the impact of the report of the harassment prevention committee goes down to the dust.

Professor Zannatul Ferdous of the Department of Social Work, Rajshahi University, informed the researcher that she had served as the convener of the Sexual Harassment Prevention Committee in 2019, and

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9 Abdul Alim, 'From Awareness to Action: Implementing Preventive Mechanisms against Sexual Harassment in the University of Rajshahi'in Rajshahi University Law Review, vol. XII, 2026.

10 *Ibid.*

she had held the position for 10 months. During this period, she arranged a public hearing in an incident happened in Institute of Education and Research (IER). She mentioned 4 cases were investigated during that time.

Table 1.1: Sexual Harassment Prevention Committee from 2011-2023 in University of Rajshahi

Period	Convener	Number of Complaint Cases	Investigated by the Committee	Total Member of the Committee
2011-2012	Professor Tanzima Yeasmin	5	4	7
2013-2015	Professor Mahbuba Kaniz Keya	8	8	7
2016-2018	Professr Selina Parveen	8	6	7
2019-2020	Professor Zannatul Ferdous	5	4	7
2020-2022	Professor Rezina Laz	4	4	7
2022- cont	Professor Tanzima Zohra Habib	4	1	7

This Sexual Harassment Prevention Committee of Rajshahi University is mandate to receive complaints, and to conduct investigation and make recommendations. The Complaint Committee will have minimum five members and majority of the members will be women. The University of Rajshahi is far ahead in terms of Committee member that is seven members. The Rajshahi University Sexual Harassment and Exploitation Prevention Policy was formulated 2010 prescribes two members should come from Women rights or Human rights organization who are working for a long time on that issue. Sometimes these provisions were not followed by the authority.[11] Furthermore, the study reveals that the Committee has not consistently submitted annual compliance reports to the appropriate government authority, despite this being an important accountability mechanism under the Guidelines.[12]

[11] *Ibid.*

[12] Sexual Harassment Prevention Guideline 9 (4) by honourable high Court division 2010.

These institutional shortcomings may affect Bangladesh's ability to achieve the United Nations Sustainable Development Goals (SDGs). Specifically, it may hinder the country's efforts to meet SDG 5 Gender Equality, which calls for an end to all forms of violence and discrimination against women and girls, and SDG 16 Peace, Justice and Strong Institutions, which promotes sustainable development through accountable and transparent institutions and access to justice. As a leading public university, the University of Rajshahi has a responsibility to be at the forefront of combating and preventing sexual harassment and upholding the rights and dignity of all.

1.4 Illustrative Case Analyses

According to the report in the Daily Star that nine teachers of the department lodged a separate complaint to the VC of Rajshahi University. They demanded disciplinary action against a teacher of Psychology Department. The respondent sexually harassed a teacher, and again two days later he repeated the same behavior with another teacher of the department and then that teacher complained to the Vice-Chancellor.[13] If such a situation exists even among the female professors, then one can imagine how female students are struggling with that teacher. Most of the complainant has said they are not comfortable with filing complaints because they fear their identities will be revealed and they will have to face repercussions, which stands against a fundamental function of the Committee protecting the victims.[14] After changes in the university administration, the respondent was released from his two-year expulsion. He was later appointed as the chairman of another department. This study calls for the creation and effective operation of active Anti-Sexual Harassment Committees in all universities, in compliance with the 2009 High Court directive mandating such committees in every educational institution and workplace.

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[13] *The Daily Star*, 'Nine RU Teachers Seek Action against Psychology Teacher over Sexual Harassment Allegation' , 25 May 2023

[14] Abdul Alim, "Understanding Masculinity and Sexual Harassment for Sustainable Development," in Social Science, Humanities and Sustainability Research Vol. 4, No. 5,2023, SCHOLINK INC. United States(US)

Case Study 1.1
A Senior Faculty Member of the Department of Geology and Mining

On October 21, 2014 a first year student of the Rajshahi University, lodged a written complaint to the university authorities accusing Prof Kamrul Hasan Majumder of sexually harassing her.[15] Later, on April 27, 2015, an investigation committee formed by the authorities recommended suspending the teacher as he was found guilty in the incident. Sexual Harassment Prevention Committee said the accused teacher had sent many objectionable proposals to the girl through mobile SMSs. He allegedly tried to take advantage of her by exploiting his position as a teacher and guaranteeing her good grades if she responded. The student maintained that she had initially tried to evade the harassments but finally decided to lodge a written complaint after the harassment became unbearable.

Case Study 1.2
A Junior Faculty Member of Institute of Education and Research[16]

Bishnu Kumar Adhikary, an Assistant Professor at the Institute of Education and Research of RU, was set to be suspended by the university administration because it found the sexual harassment allegations made by two female students against the professor to be credible. In June 2019, the two students filed a written complaint against Bishnu Kumar Adhikary for sexual harassment. Additionally, the two female students filed a GD with Motihar Police Station on June 28, 2019. Two students had complained to the authorities of the institute about the mental and sexual harassment the teacher was subjecting them to on June 25 and 27, 2019. Without any reason, the teacher called in her to his office. The student in her complaint further said that the teacher often made offensive and sexual comments in class room in presence of other female students of the institute about women and their bodies. Noted, some female students of evening course of the institute earlier brought sexual allegation to the chairman of examination committee asking exemption from academic activities of that batch. Then on July 2, he was placed on a temporary leave

[15] *The Daily Star*, 22 April 2016.
[16] *Dhaka Tribune*, 27 February 2021.

from classes, while the university authorities constituted a committee to probe the matter. The committee is said to have found the charges against him as true and recommended his termination from the post of assistant professor during the 504th syndicate meeting of the university. After the disciplinary proceedings concluded, the university imposed final penalties (loss of promotion, four-year increment stoppage, and warning).

Case Study 1.3
42 Female Students of Law Department Complaint against a Classmate[17]

A number of female students came up with the decision following the allegations submitted against Shishir, a student of the Law Department of Rajshahi University, in different times. They told it is a case of sexual harassment and that they have asked the Sexual Harassment Prevention Committee to probe the allegations and take action against him. Earlier this March 2018, some students of the university had complained to Malopara Police Station, city of Shishir for harassing them through social media. Police arrested Shishir in connection of the complaint but released him the same day. The victim students again filed a separate complaint to the Vice-Chancellor of the University Prof. M Abdus Sobhan, Pro-VC Professor Ananda Kumar Saha, and the student adviser Professor Zannatul Ferdous, Law Faculty's Dean Professor Abu Naser Md. Wahid, and the Department's Chairman Professor Mohammad Abdul Hannan requesting to take strict action against Shishir. Shishir was sending lewd messages and sharing naked photos of him with his classmate/senior in Face book through fake id. The authorities have expelled him from the University after taking extensive inquiry into the matter.

1.5 Stereotype and Stereotyping Data and Findings

Stereotypes disregard individual differences and can be positive or negative but are usually derogatory. Some examples include:"Women are not able leaders."/ "Men should not express their emotions."/ "Law students are argumentative."

"Older people cannot learn new technologies."

17 *The Daily New Nation*, 1 April 2018.

Stereotyping refers to a process or practice of attaching stereotypical beliefs or traits to individuals merely because they are members of a specific group.

Examples: Assuming that a female student is not good enough to study engineering just because she is a woman. Thinking that a male sexual harassment victim does not need help because men are not vulnerable. These are stereotyping examples because judgment is made on an individual depending on their gender and not on a case-to-case basis. Therefore stereotyping is regarded as a threat to gender equality, non-discrimination, and access to justice and rights in law and human rights by the European Union Agency for Fundamental Rights. Table-1.2 of the data section shows that the prevalence of stereotypes among higher-educational students of Rajshahi University is through higher and still significant.

Table-1.2: Gender Stereotypes Concerning Character

Questions	Agree	Disagree
1. Do you think that male and female must have separate field of work?	84.9%	15.1%
2. "All the great creations of the world that are eternally good, half of them is done by women, half of them by men".	86%	14%
3. It is better to have more sons than the daughter.	73.6%	26.4%
4. Do you think that men should participate equally with women in household works?	24.9%	75.1%
5. Do you think, girls are the best to take care of the older family member of babies?	87.7%	12.3%

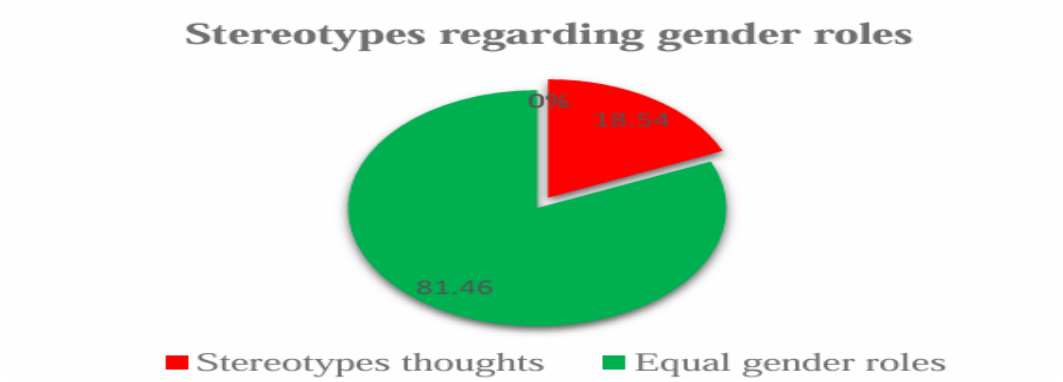


Chart-1: Stereotypes Regarding Gender Roles

Questions in relation to gender roles comprise whether the participants believe males and females have separate filed of work, half of all the great creations of the world that are eternally good are made by men and women equally, the male should participate equally with women in household works, who is to decide when to have sex between a couple, affirming or negative the opinion "the girls are best to take care of older family member or babies" etc. The responses to questions of this subset show that about 81.46% of participants believe in stereotypes roles, while about 18.54% of subjects rely on equal gender overall. Further, it is noticed that the dominance of stereotypes is lower among students pursuing graduate degrees compared to the students having their undergraduate courses. It is, therefore, presumed that higher education helped them in mitigating stereotypes regarding gender roles and developing a sense of equal gender roles in various aspects of familial, public, and national life. This table also represents data regarding stereotypes based on superstitions and inferences. This group also has superstitious beliefs includes thought bellow:

i. The favorite color of all women is pink;
ii. The woman who eats before her husband after cooking, misfortune soon comes into her house;
iii. Shame is the ornament of women;
iv. There is no way for women to be without husbands.

The replies of the candidates represent that up to 90% of them approve of superstitious thoughts and rather generalizations concerning gender equality.

Table-1.3: Gender Stereotypes Concerning Decisions Making

Questions	A	d
1. A man needs to have male friends to talk about his problems.	42.7%	57.3%
2. A man should have the final word about decisions in his home.	62.1%	37.9%
3. Are they agreed to complain against harassment to complain body?	90%	10%
4. Do you know are there any sexual harassment prevention Committee to file the complaints?	8%	92%

a= agree/partially agree **d=** disagree/partially disagree

From table 1.3, we can see that this table involves questions regarding stereotypical thoughts on the decision making. There are four questions in this subset. The questions are whether they think that a man needs to have male friends to talk about his problems; a man should have the final word about decisions in his home, whether they agreed to complain against harassment to complain body, and knowledge about Sexual Harassment Prevention Committee to file the complaints.

Responses were recorded to understand the participants' views on whether they thought it was important for a man to have male friends to talk about his problems. 42.7% of the respondents supported the view, while the remaining majority of 57.3% refuted the view.

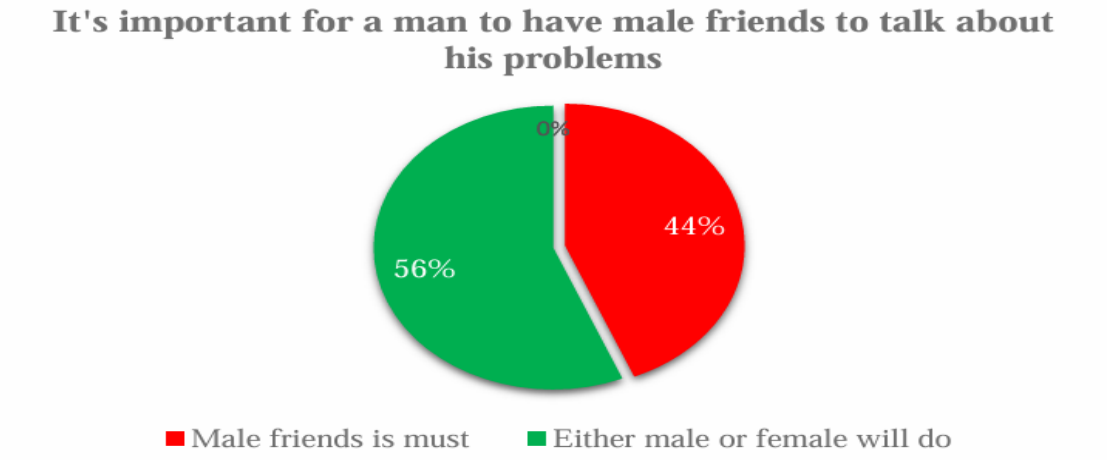


Chart-2: Whether It's Important for a Man to have a Male Friend to Talk about Problems

It is found that stereotypes are deeply rooted in regard to the decision making process. Most of the participant, higher-educational students of Rajshahi, believes in stereotypical thoughts and deems that 42.7 % men should have different types of problems and must talk with male friends. Masculinity attitude is another arena where stereotypes are dominant and entrenched. This category includes two questions on Masculinity attitudes to testing stereotypes among higher-educational students of Rajshahi University. The result of those questions answer was somewhat surprising. Because it is unimaginable that such a

significant portion of respondents believes in stereotypes regarding masculinity attitudes. A majority of the respondents, i.e., 62.1%, consider that a man should have the final word about decisions in his home. The other 37.9% think that decisions regarding home shall be finalized by cooperating between men and women.

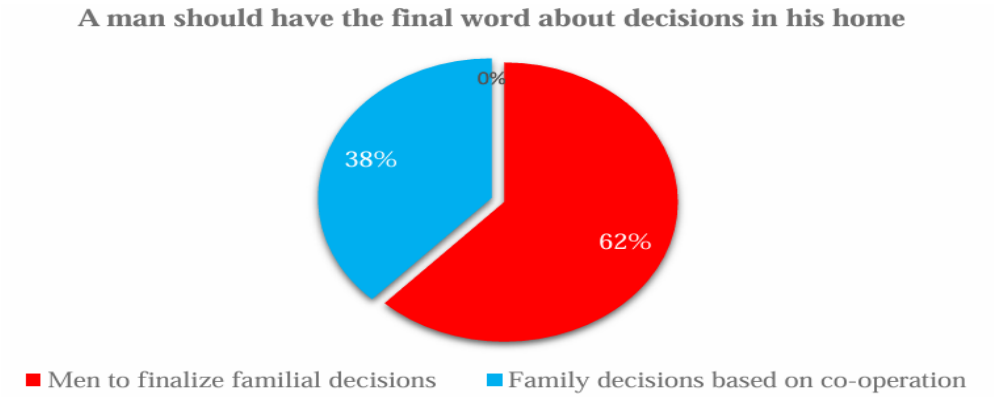


Chart-3: Whether a Man should have the Final Word about the Decision in his Home

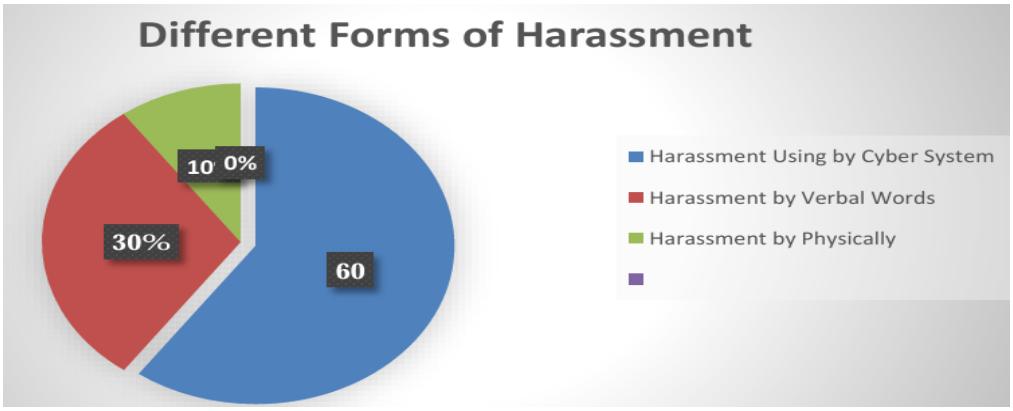
Questions in this category involve whether they think a man should have the final word about decisions in his home and whether it's important for a man to have male friends to talk about his problems. 62.1% of interviewees agree with the view that a man should have the final word about decisions in his home which is clearly a gender-centric stereotype.

A majority of subjects, i.e., 90%, consider it is unnecessary to complain against sexual harassment to complain authority. They could do nothing rather than victim will suffer a lot. Another question is based on the knowledge about Sexual Harassment Prevention Committee to file the complaints. A majority of 92% do not know the name of the present convener of sexual harassment prevention committee.

1.6 Patterns and Perpetrators of Sexual Harassment

The survey of 200 graduate and undergraduate students reveals a concerning pattern in the prevalence and nature of sexual harassment on campus. Classmates were identified as the principal perpetrators by 56% of respondents, followed by seniors/juniors (24%), outsiders (11%), and faculty members (9%). The findings further indicate that

cyber harassment (60%) is the most frequently experienced form of harassment, substantially exceeding verbal abuse (30%) and physical harassment (10%). The prevalence of cyber harassment suggests both the shifting landscape of gender-based violence in higher education and the need for institutional policies that address both digital and physical spaces, promote awareness, and ensure accessible reporting and support mechanisms for survivors.



Meanwhile, 90 percent of them said no complaint was filed regarding the incidents. Of the rest, 5 percent complained to the department teachers and only 5 percent could file a complaint to the Sexual Harassment Prevention Committee of the University. Moreover, 92 percent told they did not file a complaint for fear of judgment and character assassination. They informed perpetrators were influential and involved with ruling party. However, 92 percent students didn't know the name of the convener of Sexual Harassment Prevention Committee and did not know where to file the complaints. Most of the students told- they heard about it, but did not notice any activities. They didn't have any idea about the competency of such Committee or other authoritative bodies in the university. Therefore, there must be sufficient orientation before the formal classes start for a new session in educational institutions, and monthly, half yearly orientation in all workplaces and institutions. Immediately we are requesting the university authority to arrange seminars, workshops or women rights awareness movement and to be informing students how to file a complaint and where to file as per the directives of High Court.

Female students informed a teacher, or a faculty member would not be of much help, even not supportive or cooperative with the victim. They feel helpless and teachers are so busy with their task not have enough time to talk or meeting with them. So asking for dedicated and expert teachers must work with the students in each and every student as like sports teacher.

1.7 Legal Framework Governing Sexual Harassment

Discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Sexual harassment prevention policy is a set of guidelines and procedures implemented by an organization to prevent and address incidents of sexual harassment in the educational institutions. Such a policy is essential for creating a safe and respectful learning environment for all students. While policies may vary between organizations, here are some key elements typically included in a comprehensive sexual harassment prevention policy:

1.7.1 Defining and Regulating Sexual Harassment

Internationally recognized standards emphasize that sexual harassment extends beyond physical acts and includes offensive remarks, gestures, electronic communications, and other unwelcome conduct that undermines an individual's dignity. This definition should align with the legal definition in the applicable jurisdiction in Bangladesh. The policy should explicitly state that sexual harassment is strictly prohibited in the education institutions, workplace, including any affiliated events or locations where work-related activities take place. The policy should clarify that the prohibition of sexual harassment extends to all employees, regardless of their position or seniority, as well as third parties such as clients, customers, vendors, and contractors.

1.7.2 Complaint and Investigation Procedures

Essential Elements of an Effective Sexual Harassment is Prevention and Response Policy. The policy should be created to address sexual harassment allegations made by the victims or witnesses. The policy should create a procedure for reporting such allegations to a particular individual, human resource department, or an anonymous hotline. Besides, the management should encourage employees to report incidents as soon as possible. The policy should also contain instructions on how to review reported cases of sexual harassment. For example, interviews and investigations can be initiated to determine the validity of the allegations. It should also specify the time allocated to such processes. The document should confirm that each report of sexual harassment will be handled with confidentiality to the maximum extent. The policy must prohibit any form of retribution against the respondents and witnesses. Furthermore, the management should periodically review and update the policy to ensure it addresses legal issues efficiently.

1.7.3 Training, Disciplinary Measures, and Policy Compliance

The policy should state the disciplinary actions that the company will take against employees found to be perpetuating sexual harassment. It includes oral and written warnings, retraining, transfers, suspensions, and dismissals depending on the seriousness and frequency of the offense. The policy should require the company to provide training on preventing sexual harassment to employees at all levels. The training should include educating individuals on how to prevent harassment, bystander intervention, and the complaint procedure. The policy should require giving and providing all employees with a copy of the company's sexual harassment prevention policy. Moreover, it should be easily accessible to all employees, for instance, on a company intranet. Lastly, the policy should require that newly hired employees receive sexual harassment prevention training as part of their orientation before joining.

Notably, sexual harassment prevention policies differ depending on the location since different jurisdictions have different standards and requirements. Therefore, companies should work with legal experts to develop policies that meet the requirements of the applicable laws. Several respondents said that they do not have the resources to fund the operations of the Standing Committees and investigations.

1.8 Towards a Gender-Inclusive and Safe University Campus

Universities are not only centers for educating young people but also serve to uphold safety and a feeling of security. It is of particular importance that they take action to prevent sexual harassment and establish a respectful environment conducive to learning.

- Early childhood teachers greatly shape the perception of genders within an educational setting. The childhood teachers have influential role to change gender roles for many aspects of children's educational understandings adding gender lens.
- The suggestion is to organize a counseling center in each deanery so that students can receive the necessary help right away. Review and revise our policies and procedures to enhance accountability and increase the ability to ensure compliance by working closely with our external partners and beneficiaries.
- Across the country, the issue of internal and external sexual misconduct such as sexual harassment needs to be addressed by expanding and improving our policies and procedures for preventing, investigating, and responding to sexual harassment allegations
- To create a respectful culture within our higher education sector which is free from Sexual misconduct and harassment, the university needs to encourage reporting, act Accordingly to the problem while respecting the dignity and feelings of the involved parties and stop any form of retaliation.

- The university should be answerable to its employees by measuring performance through the collection and analysis of relevant data.

1.8.1 Creating a Safe and Inclusive Campus

It is vital to combat gender discrimination by implementing policies, awareness, and support programs within the university to promote education equality and respect. It is essential to investigate the issue of gender discrimination in Rajshahi University more closely and consider establishing a center for gender and development studies to post local news, reports, or research on gender discrimination in Rajshahi University.

In addition, a victim support center is also a great idea for Rajshahi University. Bystanders of students should be involved in the process of developing policies and various training programs for them to encourage reporting to the proctor or campus police.[18]

1. Gender Gender discrimination is manifested in giving less opportunity to one gender in termsof education and other needs such as scholarships, employment, or resources in comparison with another gender.

2. Students' gender discrimination also refers to the stereotyping, or biases that affect their perceptions and judgment towards others.

3. Gender-based harassment, including sexual harassment, can create an unsafe and hostile environment for students. This can occur in various forms, such as unwanted advances, offensive comments, or other forms of gender-based violence.[19]

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[18] McDonald, P., Charlesworth, S. & Graham, T. 2016. "Action or Inaction. Bystander Intervention in Workplace Sexual Harassment." *International Journal of Human Resource Management*, 27: 548–566.

[19] Abdul Alim, *Sexual Harassment in Hostile Work Environment: A Legal Study*, Institute of Bangladesh Studies Journal, 2015, University of Rajshahi, Rajshahi, Bangladesh.

4. In academic and administrative roles, there can be a disparity in salaries and benefits based on gender. This pay gap can reflect and perpetuate gender inequality within the university setting.
5. The underrepresentation of certain genders in leadership positions, faculty, or curriculum materials can contribute to a culture of gender discrimination. It can limit diverse perspectives and role models, perpetuating gender biases.

1.8.2 Bystander Intervention and Institutional Strategies

The duty of bystander students has a great role as individual of witnessing the incidence of sexual harassment. They can shout or protect is also an important feature among organizational factors relevant for prevention of sexual harassment in higher education especially in Rajshahi University. The intervening students as a bystander when sexual harassment occurs is based on gender, sexuality, social class and perceived similarity in terms of position within the organization may protect students.[20] The research finds structural system must be developed that can produce job satisfaction that is well-integrated also reduce the sexual harassment occurrence.[21] So, structurally egalitarian workplaces where women and men share power and leadership equally prevent sexual harassment; women in male-dominated workplaces are at greater risk of sexual harassment.[22] The type of contract that employees work under is related to their risk of being subjected to sexual harassment, where more secure jobs result in a reduced risk of victimization.[23]

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[20] Dessel, A. B., K. D. Goodman, and M. R. Woodford. 2017. "LGBT Discrimination on Campus and Heterosexual Bystanders: Understanding Intentions to Intervene." *Journal of Diversity in Higher Education* 10: 101–116.

[21] Ollo-López, A., and I. Nuñez. 2018. "Exploring the Organizational Drivers of Sexual Harassment: Empowered Jobs Against Isolation and Tolerant Climates." *Employee Relations* 40 (2): 174–192.

[22] Buchanan, N., I. Settles, A. Hall, and R. O'Connor. 2014. "A Review of Organizational Strategies for Reducing Sexual Harassment: Insights From the U.S. Military." *Journal of Social Issues* 70 (4): 687–702.

[23] Hennekam, S., and D. Bennett. 2017. "Sexual Harassment in the Creative Industries: Tolerance, Culture and the Need for Change." *Gender, Work & Organization* 24 (4): 417–434.

The focus of future research should be more on preventive work and the effects of preventive measures. In the process for developing preventive strategies is studying of sexual harassment incidence, including the new characteristics and inducements of perpetrators physically or virtually.[24]

1.11 Conclusion

In conclusion, sexual harassment issues at the University of Rajshahi can be solved, and it is our responsibility as students, faculty members, and citizens to solve it as soon as possible. In modern times, to develop professional and social skills, gender education is vital. Students can acquire the necessary professional skills to become successful workers in the future. Furthermore, gender education enables students to be aware of gender-based discrimination and violence and promote positive attitudes and behaviors in the workplace and other places such as the University of Rajshahi, so that they can be able to prevent such incidents and respond appropriately if they occur.

Gender education makes people empathetic and understanding towards the problems of people and promotes the establishment of trusting and equal relationships. It also reduces school bullying, gender discrimination, and sexual harassment and makes students respect others 'feelings and needs. Gender education is essential to achieve a conducive environment for students while practicing the Universal Declaration of Human Rights. Gender education helps students to cope with their problems of sexual harassment and gives them an opportunity to become active members of society capable of making responsible decisions about their future lives. Moreover, it enables students to know their rights, so that they can respect others' rights and develop their potential as responsible workers and leaders, which, in turn, contribute to the development of an equitable and inclusive society. Gender education makes students reduce the impact

[24] VothSchrag, R. J. 2017. "Campus Based Sexual Assault and Dating Violence: A Review of Study Contexts and Participants." *Affilia: Journal of Women and Social Work* 32: 67–80.

of stigmatization, discrimination, and exclusion of victim students and helps them become leaders capable of promoting equity. In addition, gender education helps students to raise awareness about violence against people based on their gender identity, which can be attained by organizing training sessions for students on human rights education, gender-based violence, and sexual harassment. It is also essential to educate students in an appropriate and sensitive way depending on their ages.

Ultimately, a university free from sexual harassment will contribute to academic excellence, social justice, sustainable development, including the protection of human dignity, and promote Bangladesh's development aspired by 2030 Agenda for Sustainable Development Goals. In other words, making universities safe for women and other vulnerable groups will enable them to study and graduate to contribute to Bangladesh's social and economic development.

Towards Effective Advancement of Climate Justice: Narrating Sustainable Livelihood Initiatives of India and Bangladesh

Dr. Debashree Mukherjee*

Abstract

Sustainable livelihoods aim to reduce poverty, address vulnerabilities and challenge social inequities that have resulted due to climate change and global warming. Initiatives to generate awareness and to strengthen the applicability of sustainable livelihoods must be fostered at the grassroots level in order to address unequal power coordinates and barriers to sustainable development. In doing so, the notions of climate justice stand upheld and appreciated. India with its developmental history of 75 years has undertaken various initiatives towards sustainable development and climate justice. Bangladesh, on the other hand, with its chequered history of 52 years, has also initiated various actions that aim to mitigate and adapt to climate change and thereby to attain climate justice. This research paper shall attempt to discuss the inter-relationship between sustainable livelihoods and climate justice and bring out through narrative discourses how the two countries have adopted sustainable livelihood initiatives towards effective advancement and realisation of climate justice.

Keywords: *Climate Justice, Sustainable Development, Sustainable Livelihood, Adaptation, Climate Change*

1. Prelude

The approach towards carving a decline in global warming and its impacts across the globe has been undertaken for many decades now. However, that this approach has not been consistently taken across the globe uniformly and at uniform pace has been very clearly projected through the findings of the latest Synthesis Report of the Intergovernmental Panel on Climate Change. The Climate Change Synthesis Report of 2023 published by the Intergovernmental Panel on

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Climate Change displays very grim futures ahead for the world community. The Report glaringly summarises that human induced global change in the last two decades have resulted in rise of global surface temperatures by 0.99 degrees Centigrade in comparison to global surface temperatures between 1850 – 1900.[1] Human induced net cumulative carbon-dioxide emissions have risen by 42 percent.[2] In 2019, atmospheric CO2 concentrations (410 parts per million) were higher than at any time in at least in the past 2 million years[3] while the concentrations of nitrous oxide and methane were higher than what it was in around 800,000 years.[4] Fossil fuel combustion continues to play a dominating role in the contribution of global greenhouse gases emissions followed closely by industrial processes, transport and energy sectors. Agriculture, forestry and other land use and degradation also made contributions towards the enhancement of annual greenhouse gases emissions.[5] As a consequence of such human-induced activities that have contributed to the emission of the greenhouse gases and to the rise of global surface temperatures, ecosystems and their components have been severely affected. The Synthesis Report of 2023 states that approximately 3.3 to 3.6 million people across the globe remain severely impacted adversely by the impacts of climate change. Abrupt climate extreme events have exposed communities to the wrath of food insecurity, water insecurity and climate induced displacements. For instance, the indigenous communities of Small Island Development States and the Least Developed Countries of Asia and Africa are highly vulnerable communities that have contributed the least to the increase in the greenhouse gases emissions but are the worst affected and with each passing day, face the challenges of survival.

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1 IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001, can be accessed at https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf; (Accessed on 02 October,2023)

2 *Ibid.*

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*

Extreme heat has resulted in affecting food production and also impacted the availability of potable water. The incidence of water borne and vector borne diseases are on the rise in many parts of the globe. In some areas, mental health challenges have also begun to surface. Such challenges have been caused as a consequence of trauma induced by extreme weather events, displacement and challenges to survival. The loss of livelihoods has also aggravated the mental health challenges scenario across the globe most of which are as a result of human induced climate change. Economic disparities caused as a consequence of losses in agricultural outputs, loss of income, destruction of assets and property, and loss of livelihoods have inundated various parts of the globe. While in urban areas, the major concerns have been the compromise that have to be made in generation of income, disruption of services and compromises to be made in well being of the masses, the rural areas face challenges of survival as it houses the major strength of the population that belong to the socially and economically marginalised communities who do not have the required resources to combat the adversities that climate change has in store for them.

Such shortcomings and challenges continue to be contested with the aid of adaptation and mitigation strategies in different parts of the globe. Planning and implementation of diverse strategies and policies have been undertaken with differential success rates. Almost 170 nations across the globe have initiated policies to adapt to climate change[6] which include changes adopted in farm water management, storage water management, conservation strategies addressed towards the retaining the soil moisture, community-based adaptation, sustainable land management practices, etc. In spite of such measures being undertaken, the results are not very impressive as most of such initiatives are region specific, financially challenged and improperly

[6] IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001, can be accessed at https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf; (Accessed on 02 October 2023)

manoeuvred and managed. Hence it is imperative at this hour to devise and execute strategies that will help ecosystems to thrive and address the needs of the lower income groups across nations and continents.

2. Understanding the notion of 'Sustainable Livelihoods Framework'

One of the best ways identified, by which the adversities faced by the marginalised communities across countries can be assisted, is by adopting the 'needs based approach' that will help these communities to adapt to climate change, on the one hand, and also empower them with financial strength and prowess. Designing sustainable livelihoods as a policy is therefore being undertaken by governments across the globe as a mechanism to address the vulnerabilities associated with climate change. The sustainable livelihoods policy is an approach that is designed to first identify the gaps or challenges to climate change survival, second – to locate the factors that contribute towards widening such gaps and finally, to device policies that address such gaps with enhanced livelihood opportunities.

Sustainable livelihoods policy is a people centred holistic approach that is responsive and participatory in character. It is a multi-pronged approach wherein actions have to be initiated with the collaborative efforts of the community, public and private sectors with the thought of designing and implementing mechanisms that are dynamic, robust, cost effective and sustainable. The sustainable livelihood policy initiates the involvement of human resources towards devising synergistic policies that, on one hand, contribute towards financial empowerment and also address the vulnerabilities caused as a consequence of climate change. This approach also results in the sustainable use of natural resources with the involvement of public and private participation thereby addressing the practical priorities of the communities with a 'sensitive human rights-based approach'. The sustainable livelihoods policy is designed keeping in mind the strengths and the assets of the marginalised communities of a region and utilises their skills, social network and their ability to influence local institutions to design sustainable outcomes through appreciative

inquiry.[7] Appreciative inquiry is a tool that was originally used by corporates to minimize negative influences by maximising on the positive influences of the workforce in generating and gathering information and use such information to formulate alternative solutions to the problems faced. The appreciative inquiry tool is also used in the 'sustainable livelihoods policy' wherein the communities are engaged to identify their fortes and their priorities and then combine the two to cull out initiatives that serve their requirements of survival and wellbeing.

O. Serrat (2017)[8] has rightly pointed out that the 'sustainable livelihoods framework' addresses the context of vulnerabilities as it appears in different forms – climate change impacts, lack of defence mechanism to address such impacts and uninformed decision – making caused due to reduced climate literacy. It attempts to understand the various trends – economical, technological, demographic and governance trends in order to enact policies that holistically address such trends and align them towards positive outcomes of sustainable development. Environmental policies enacted by governments are implemented through processes that may be totally public in character or may involve public-private partnerships. Such processes are integral to every aspect of livelihood and they help in exercising a strong influence on the minds and assets of the communities with which they associate. Thus, it can be said that the 'sustainable livelihoods framework' objective is to attain livelihood outcomes that includes better income generation, afford improved standards of living and well-being of the communities involved, sustainable use of natural resources and preservation of human dignity of the communities. In short, what can be summarised and said is that the 'sustainable livelihoods framework' prioritizes local circumstances and tries to devise and execute programmes and policies to enhance the livelihoods of the communities engaged therein.[9]

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7 O. Serrat, Knowledge Solutions, DOI 10.1007/978-981-10-0983-9_5, Asian Development Bank 2017, pp 21-26

8 *Ibid.*

9 *Ibid.*

3. Historical Development of the Concept of 'Sustainable Livelihood'

The concept of 'sustainable livelihood' owes its origin to the development of the coinage 'sustainable development' pioneered by the Brundtland Commission on Environment and Development in 1990. The first United Nations Human Development Report of 1990 does make a passing mention of the term 'sustainable livelihood' but does not provide any explanation of the term.[10]

The United Nations Conference on Environment and Development held at Rio de Janeiro, Brazil, in June, 1992, expanded on the concept of sustainable development to call for a programme of action, more commonly known as 'Agenda 21' which called on the nation States to invest in the future by finding and adopting new strategies to address and participate towards the establishment of a sustainable economy. As part of the program, the Conference endeavoured to address global environmental concerns through environment development and cooperation. The integration of international policies into the national fold through the adoption of laws and programmes of action in association with the non-State actors like non-governmental organizations was regarded as one of the major ways to tackle the impending danger of climate change. Agenda 21 in Chapter 3 expressly laid down that the poor communities must be enabled to tackle and reduce poverty and one of the primary ways identified to achieve so, was by enabling the poor to achieve 'sustainable livelihoods. The term 'sustainable livelihoods' was not defined specifically in Agenda 21 but the objective of sustainable livelihood has been clearly earmarked in the said document. It has been expressly mentioned that attainment of the objective of 'sustainable livelihood implies integrating into the concept the notions of sustainable utilization and management of natural resources, issues of development and poverty eradication.

The report of the Conference on Environment and Development clearly indicates that in order to attain sustainable livelihoods, there must

[10] *Ibid.*

occur enabling actions at the international and national levels and involve actors from the local level to the global level. Programmes designed to promote sustainable livelihoods should focus on the empowerment of local communities through the principle of delegating authority. Also, a long-term strategy must be designed towards poverty eradication and reduction of inequalities among the communities for whom such programmes are designed. The Report further indicated that women, non-governmental organizations and peoples' organizations have proven ability to promote sustainable livelihoods. Hence, governments should initiate programmes and frame policies that promote a community-driven approach to sustainability wherein women are empowered by permitting their full participation in decision-making. Such policies should also respect the rights of the indigenous communities and establish grass root mechanisms for sharing of experience and knowledge between communities. The programmes should also establish a network of community-based learning for capacity-building and sustainable development.

In 1992, Robert Chambers and Gordon Conway in their working paper titled ''Sustainable Rural Livelihoods: Practical Concepts for the 21st Century", published by the Institute of Development Studies,[11] proposed a composite definition of the term 'sustainable rural livelihood'. The definition proposed by them indicated that such a livelihood must be one that is able to sustain the pressures, shocks and stresses associated with climate change, enhance its capabilities and provide sustainable livelihood opportunities for the next generation.[12]
The advancement of the concept of 'sustainable livelihoods' towards the 'sustainable livelihoods framework occurred during the nineties when the idea of sustainable livelihoods was worked upon by various developmental organizations, namely Oxfam in 1993, Care International in 1994 and the United Kingdom's Overseas

[11] Nithya Natarajan et al; A sustainable livelihoods framework for the 21st century; Elsevier; available at https://doi.org/10.1016/j.worlddev.2022.105898; 2022

[12] https://commdev.org/wp-content/uploads/pdf/publications/The-Sustainable-Livelihood-Approach-to-Poverty-Reduction-SIDA.pdf

Development Administration in 1995 (Solesbury, 2003).[13] According to Scoones (1998), five key indicators are important for assessing sustainable livelihoods: 1) poverty reduction, 2) well-being and capabilities, 3) livelihood adaptation, 4) vulnerability and resilience, and 5) natural resource base sustainability.[14]

In the recent past, the Paris Agreement of 2015 set out targets to be achieved to address the menace of climate change and also streamlined pathways to achieve the same. Article 3 stressed on the need to foster climate resilience while Article 7 highlighted strengthening the resilience of socio-economic and ecological ecosystems. The next Article focused on the need to strengthen communities, livelihoods and ecosystems.[15]

The 2018 IPCC Report, inter alia, have clearly indicated that increased abrupt weather events such as floods and droughts have rendered livelihoods unsustainable as farmers have been exposed to the vagaries of weather events which has affected agriculture and raised food security concerns.[16] Concerns caused due to desertification, reduction in pollinator populations, acidification of rain and the depleting groundwater level have all posed fresh challenges to the burden of rural living and exposed the rural population to climatic shocks and tremors. As per the Intergovernmental Panel on Climate Change

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[13] Nithya Natarajan et al; A sustainable livelihoods framework for the 21st century; Elsevier; available at https://doi.org/10.1016/j.worlddev.2022.105898; 2022

[14] Nesar Ahmed, 'The Sustainable Livelihoods Approach To the Development of Fish Farming In Rural Bangladesh'; Journal of International Farm Management Vol.4. No.4 - February 2009; pp. 1-18

[15] https://actalliance.org/wp-content/uploads/2021/02/Climate-Resilient-Sustainable-and-low-emission-livelihoods.pdf

[16] IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)], p. 9. Retrieved on November 13, 2020 from https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf

Report of 2018, the rural livelihoods have been exposed to severe challenges caused due to the rising prices for natural resources appropriation.[17]

It can therefore be concluded that historically, the different legal instruments lay down that any sustainable livelihood framework must have three objectives to achieve:

a) Include policies or programmes that permit the community to resist the shocks and tremor of climate change;

b) Provide for sustainable use of existing natural resources;

c) Enhance the capabilities of the community socially and economically and

d) Promote sustainable livelihood opportunities for the next generation to adopt and improvise upon.

4. Sustainable Livelihood as a Component of Climate Justice

Climate change enormously affect populations across the globe but the most precariously affected include the poor and marginalised communities whose rights, interests, needs and dignity are compromised. Their contribution to the enhancement of green house gases is the least but they stand at the verge of extinction with voices remaining unheard or buried under the garb of right to development. The impacts of climate change further bring out the vulnerabilities of the poor as it leaves lasting impacts on the health of the poor. Food insecurity, non-availability of clean drinking water, saline soils that impeded the proper development of agriculture, incessant rains leading to floods in several parts of the globe, loss of subsoil, loss of vegetation, land degradation are some of the many ways in which climate change challenges the enforcement of the human rights of the fragile and marginalised communities. The Third Assessment Report of the Intergovernmental Panel on Climate Change categorically pointed out that the developing economies are likely to face the brunt of climate change. This is majorly because of the limited human,

[17] *Ibid.*

institutional and financial capacities of the climate-sensitive actors to foresee and counter the direct and indirect impacts of climate change.

Overall, the propensity to succumb before the wrath of adverse impacts of climate change is high in the developing and least developing economies. Countries with fewer resources and those who do not have the ability to sustainably utilize their resources are the fastest victims and they have to shoulder the burden of climate change in terms of loss of life, loss of resources and thereby the loss to the economy. It can therefore be concluded in ways more than one, the justice – social, economic and political is being denied to them. Thus, presently ensuring and achieving the enjoyment and enforcement of such rights is collectively termed as 'climate justice'.

The achievement of climate justice is a process that encompasses the mechanisms through which the human rights that have either been depleted or denied of the marginalised sections, are attempted to be given back to them. Such mechanisms involve undertaking various adaptation mechanisms by which the adaptive capacities of the poor are enhanced to enable them to cope with the issues of climate change impacts. Institutional structures have to be re-oriented towards the attainment of climate justice. Such re-orientation is possible only by engaging in collaborative action involving the various stakeholders in cooperative spirit implementing good governance models that exhibit transparency, objectivity, accountability and participative decision-making. Empowering the marginalised communities so that they can actively participate in generating awareness at the grass root level about the impacts of climate change and understand the adaptive measures that may be initiated to tackle climate change, can go a long way to the achievement of climate justice. Such communities must also be made to participate in feed assessments related to climate -poverty information and in vulnerability assessments which increase their pliability to tackle the shocks of climate change. All such actions fall within the ambit of sustainable livelihoods framework and thus, promoting sustainable livelihoods is regarded as an integral component of climate justice.

5. Sustainable Livelihood Narratives from India

Article 3.1 of the United Nations Framework Convention on Climate Change reiterates that Member Countries must take the necessary initiatives to protect the climate system for the present and the future generations on the basis of common but differentiated responsibilities and respective capabilities. Hence nations, big or small, developed or developing or least developed, must be encouraged to accept responsibilities of the burden of climate change and global warming and devise and implement strategies that reduce the impact of climate change.

In India, the major challenges caused as a consequence of climate change include among others, catering to the livelihood sources of the poor. The extreme weather events often cause enormous damage to the lives and livelihoods of the Indian population, a large section of which still continue to live below the poverty line and lack proper education. They are more prone to be affected by natural disasters as most of the infrastructural resources within their reach are non-permanent in character. Again, in times of stress, to tide over such exigencies, they do not hesitate to sell over their little physical assets such as small fragments of lands, bicycles, farming tools in their possession. In doing so, they undermine and trade-off the sustainability quotient in their livelihoods. India is home to almost 18 percent of the world's population and has the highest number of people who live below the international poverty line of USD 1.90 per day, as per the Report of the World Bank.[18]

With the variations in securing the means of alternative livelihoods caused due to unequal financial and social means, they are more prone to other risks related to health and status. For instance, in parts of rural India, women still occupy inferior positions and are constrained by social structures to face the maximum burden caused as a consequence of climate change, like having to walk for miles in search of potable drinking water along with manage the household chores and support

[18] https://avpn.asia/wp-content/uploads/dlm_uploads/2018/11/Sustainable-Livelihoods-in-India_Demand_webversion.pdf; (Accessed on 3 October 2023)

their families financially, while their male counterparts contribute by only engaging themselves in agricultural work but exercise control in terms of access to income and exercising the choice of decision-making. Along with such gender based disparities, due to poor nutritional support, the coping efficiencies to different diseases and health hazards are quite poor among the marginalised populations. They are more prone to vector-borne diseases and the population densities in their respective areas of thriving further aggravate the spread of such diseases. Also, the habitats in most of India have thrived close to rivers. Land degradation and loss caused due to floods makes the population susceptible to frequent migrations and loss of identity. Such loss of lands also limits the habitats necessary for the survival of species. Heavy rainfall coupled with degraded forest mountain slopes, caused as a consequence of deforestation erode the soils resulting in landslides and loss to property and lives. The access to drinking water and food also become causes of concerns. Thus it can be said that climate change results in loss of biodiversity and thereby increase the risk of extinction in different parts of India.

India therefore stands at the crossroads where, on one hand, it is creating history by taking strides to become a world leader in geopolitics and foster increased economic growth, while on the other, it continues to remain the home of around 70 million people who are in the rural hinterlands and pass each day compromising on their needs and rights. There is thus a growing urgency to address such social gaps and the governments in India along with several social groups play prominent roles to bridge such gap. Efficient poverty alleviation schemes continue to remain floated by the Governments which play pivotal roles in increasing the income of the poor population and allows them the access to make informed choices.

With every passing year since the nineties, sustainable livelihoods framework in India has shaped up in order to judiciously confront issues related to poverty alleviation and promote equity –social, economic and environmental. The major thrust of sustainable livelihoods initiatives in India have been in agricultural and related sectors. This is evident as one broods into government's budget

planning and allocations. In recent years, the Union Budget has emphasised upon the growth and development of agriculture and has placed major emphasis on irrigation, sustainable groundwater management and promotion of organic farming. The Mahatma Gandhi National Rural Employment Guarantee Scheme, is one of the many important schemes rolled out by the government to ensure financial empowerment to the rural poor alongside creating opportunities of sustainable livelihoods. It aims to achieve the Sustainable Development Goal 1 which caters to the elimination of poverty and the goal set to be achieved by the Scheme is to eradicate poverty in all its forms and manifestations by 2030. The Scheme attempts to reduce the burden of poverty from the masses covered under the Scheme through central social protection mechanisms, ensuring the enjoyment of rights of such communities to productive assets and resources and help them build resilience against environmental odds. The Deendayal Antyodaya Yojana, which is the country's flagship Livelihoods Programme focuses upon sustainable agriculture practices adopted by the people from time to time to promote sustainable futures. Earlier known as '*Ajeevika*' or the National Rural Livelihoods Mission, the Mission also establishes efficient and productive institutional frameworks that cater to the needs and aspirations of the rural poor by forming Self-Help Groups. Multiple components to the Program such as institution capacity building initiatives promote social inclusion and development along with self –employment, entrepreneurship and skill development. The State of India's Livelihood Report of 2022 has highlighted that in the recent past, producers' organizations have played significant roles in enhancing the incomes of the farmers. Also, a new trend of promoting agri-entrepreneurs by training and equipping them with the desired knowledge related to sustainable agricultural practices has met with great success as the stakeholders involved are entrepreneurs promoted from among the rural poor who are well versed with the challenges of ground reality and remain sensitive to the needs of the rural society.[19]

[19] https://www.accessdev.org/wp-content/uploads/2023/07/SOIL-Report-final_web-version2.pdf (Accessed on 3 October 2023)

It has also been realised by the Government that one of the basic ways by which the livelihoods requirement of the poor can be addressed is through skill development and entrepreneurship. Hence, in 2015, the Indian government launched the National Skill Development Mission with the goal of achieving skill enhancement of 400 million people by 2022. Training courses through different Ministries have accordingly been floated involving training partners who have and continue to train people to enhance their skill set and make them employment oriented. This has in turn helped the marginalised communities to acquire and develop various skills and landed them in jobs thereby providing for the economic empowerment. Another important step towards economic empowerment is the Atal Innovation Mission, launched by the Indian Government to promote a culture and environment of innovation and entrepreneurship among the masses. Established in 2016, the Atal Innovation Mission has its goal to develop a culture of innovation beginning from the schools. Towards achieving such goal, the concept of 'Atal Tinkering Labs' has been introduced in over 10000 schools across 680+the country to motivate and nurture the innovative skills of students studying between Grades 6 to 12.[20] Over 2 million students have benefited from the Mission so far. At the University level, Atal Incubation Centres mandates to inculcate a culture of innovation and entrepreneurship.[21] In doing so, the Atal Innovation Mission attempts to create an ecosystem connecting the Universities with the research organizations and the corporates across the country thereby promoting start-ups and entrepreneurs. The Atal Incubation Centres support the start-ups in numerous ways namely by guiding on the technical angle, assisting in financial support, partnership and networking, providing co-working spaces and lab facilities amongst others. 2900+ start-ups have been facilitated by the Atal Incubation Centres of which 900+ start-ups are spear headed by women. Over, 30,000 jobs have thereby been created catering to the

[20] https://aim.gov.in/overview.php
[21] https://aim.gov.in/overview.php

employment needs of the nation.[22] To boost product and service innovations in the country, under the Atal Innovation Mission, 24 Atal New India Challenges have been established partnering with 5 different Ministries.[23] Out of 950 applicants who have applied to participate in such initiative, 52 applicants have been selected who are currently receiving assistance by the mentors of the Mission and 13 innovations are already receiving grant in aid support from the Central Government. The rest are in the process of due diligence waiting to contribute to the economic empowerment of the masses and the economic development of the nation.[24] The MSME sector in India promotes entrepreneurship mind set and tries to establish entrepreneurship as a career. This thought process has motivated numerous entrepreneurs to establish micro-enterprises who hire the labour of the local communities to deliver success. These initiatives receive full support in terms of financing by angel investors, banks, venture capitalists and target demographic beneficiaries. The Report of the Expert Committee on Innovation and Entrepreneurship recommends focusing on young and innovative technology firms, upcoming manufacturing businesses and rural innovator companies. Hence the Governments across the country lay emphasis on improving the market efficiency by motivating in the creation of new jobs through such efforts. The goal is to create 'mass entrepreneurs' and target the creation of 11 million jobs by 2040.

It can therefore be concluded that all such initiatives undertaken by the Government to promote sustainable livelihoods cater to the growing needs of the market and simultaneously inspire the job-seekers to convert themselves as entrepreneurs resulting in creating avenues of self-employment and leading to further job creation. In doing so, such initiatives help in the attainment of the objectives of the sustainable livelihoods framework.

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22 https://aim.gov.in/overview.php
23 https://aim.gov.in/overview.php
24 *Ibid.*

6. Sustainable Livelihood Narratives from Bangladesh

With a population of 144 million, spread over an area of 144000 sq. Kms,[25] Bangladesh is the leading example of a nation vulnerable in today's global scenario as it has a low-lying coastline, huge population and fosters an economy that is based on agriculture as the primary means of livelihood. The country is severely affected by weather events such as cyclones and floods which multiply exponentially to exacerbate the climatic conditions leading to salt water intrusion, lack of availability of freshwater, challenges to food security caused due to reduced agricultural productivity and inundation of lands thereby affecting human rights of major chunks of its population. Between 1974 and 1998, Bangladesh experienced seven major floods (Matin 1998) affecting over 30 million population adversely causing 918 deaths (Choudhury 1998). The economic losses estimated was around 3.3billion U.S. Dollars which was equivalent to 8 percent of the country's GDP (Choudhury et al. 1999).[26] The riverine dwellers of the country are prone to floods and loss of lands and are therefore vulnerable to adverse impacts of climate change. The IPCC Vulnerability framework and the Livelihood Vulnerability Index when applied to the riverine communities of Bangladesh clearly indicated their propensity towards loss of livelihood opportunities caused as a consequence of soil erosion and land degradation caused by floods[27].

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[25] Nesar Ahmed, 'The Sustainable Livelihoods Approach To the Development of Fish Farming In Rural Bangladesh'; Journal of International Farm Management Vol.4. No.4 - February 2009; pp. 1-18

[26] Poverty and Climate Change: Reducing the Vulnerability of the Poor through Adaptation; prepared by African Development Bank Asian Development Bank Department for International Development, United Kingdom Directorate-General for Development, European Commission Federal Ministry for Economic Cooperation and Development, Germany Ministry of Foreign Affairs - Development Cooperation, The Netherlands Organization for Economic Cooperation and Development United Nations Development Programme United Nations Environment Programme The World Bank; 2002; available at https://www.oecd.org/env/cc/2502872.pdf; accessed on 03.10.23 at 02.26 am

[27] Md Nazirul Islam Sarker et al; 'Livelihood Vulnerability of Riverine-Island Dwellers in the Face of Natural Disasters in Bangladesh', Sustainability 2019, 11,

Context specific intervention programs are designed to address the vulnerability issues affecting the char dwellers of Bangladesh who face catastrophic situations every year between September to November due to the inundation of lands thereby affecting their food security, mobility and development.[28] Targeted interventions to improve the conditions of female headed households are undertaken in comparison to male headed households as they are most vulnerable to the impacts of climate change. The other approach observed to be followed in Bangladesh is that job creation is majorly driven by enterprises and over 57 percent of such jobs have been created by involving one or two persons.[29]

Aquaculture and fisheries comprise the prominent sectors of the economy of Bangladesh. Unfavourable season patterns and shocks are the major vulnerability concerns of the fish farmers of Bangladesh as these weather events affect the capital assets of the households of the poor farmers and consequently on their ability to generate incomes. Such events are not within any kind of control of the fish farmers. Further, environmental changes, political conflicts and increasing population may aggravate the problem of meagre incomes. The fish farmers therefore depend upon stronger governmental policies that can remove constraints to the development of fish farming. As part of the sustainable livelihoods initiative, extension facilities and training workshops arranged for them will structure the means of doing business and also facilitate ways by which structured mechanisms of doing business can be availed by them. Further, credit facilities and governmental assistance in the nature of subsidies will go a long way to build intergenerational equity in the lives of the fish farmers. The competition created in the market with the increase in population can

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1623; doi:10.3390/su1106162; available at http://www.mdpi.com/journal/sustainability; (Accessed on 3 October 2023)

28 *Ibid*.

29 Sustainable Livelihoods in India, 2018; Published by AVPN and Ennovent India Advisors Private Limited in September 2018; available at https://avpn.asia/wp-content/uploads/dlm_uploads/2018/11/Sustainable-Livelihoods-in-India_Demand_webversion.pdf; (Accessed on 3 October2023)

also be streamlined to a certain extent by devising off-farm employment opportunities in the nature of hatcheries, feed industries, fish processing and marketing.[30] The livelihood outcomes of fish farmers in Bangladesh are positive and there has occurred significant increase in fish productivity and in incomes generated from such sectors. Fish farming has also significantly contributed towards social and economic benefits. Improved housing facilities, better food consumption, child education, health and sanitation facilities and better employment opportunities all go to ensure that sustainable livelihoods framework remains viable and operative in Bangladesh.

7. Conclusion

Despite the initiatives taken in the two neighbouring countries to ensure the full realisation of the sustainable livelihoods framework, issues pertaining to governmental support need to be strengthened in both countries. Financial support through institutional initiatives and involving the private sector through public-private partnerships can go a long way in establishing the achievement of the Sustainable Livelihoods Framework leading towards the achievement of Sustainable Development Goals.

[30] Nesar Ahmed, 'The Sustainable Livelihoods Approach To the Development of Fish Farming In Rural Bangladesh'; Journal of International Farm Management Vol. 4. No.4 - February 2009; pp. 1-18

Independence of Election Commission and Its Implication for Rule of Law: A Comparative Study of Bangladesh and India

Dr. Md. Shahidul Islam*

Abstract

Independence of electoral management body (EMB) is closely interlinked with the principle of Rule of Law for free, fair and inclusive elections. On this argument, this study examines the structural independence of the Bangladesh Election Commission (BEC) and the Election Commission of India (ECI) vis-à-vis adherence to the principle of Rule of Law while conducting elections. Upon extensive analysis, using doctrinal method, of the electoral legal regime of Bangladesh and India, it discovers that the structural independence of the BEC and the ECI is seriously undermined due to total executive dominance in appointing the top officials to these two top EMBs. Consequently, they are unable to exercise their constitutionally guaranteed independence. Under the circumstances, the Indian Supreme Court has enunciated a new mechanism for ensuring the structural independence of the ECI. As the judgment of the Anoop's case rules, now there is a committee that comprises of the Prime Minister of India, Leader of the Opposition in the House of the People and Chief Justice of India to recommend names for appointment to the post of Chief Election Commissioner of India and other Election Commissioners. In a similar line, this paper suggests for a committee in combination with the Prime Minister, Opposition Leader in the House, Chief Justice of Bangladesh, a female member and a representative from all minority groups to be nominated by the President in consultation with the Chief Justice and one civil society representative to be nominated by the President for recommending

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names for appointment in the BEC higher echelon. This paper further suggests that the names so recommended shall be made binding upon the President and to this effect necessary amendment shall be introduced in article 48(3) of the Constitution of Bangladesh. With this the paper draws its conclusion.

Keywords: *Independence of Election Commission, Rule of Law, Bangladesh Election Commission (BEC), Election Commission of India (ECI), Electoral Management Body (EMB)*

1. Introduction

Fundamental function of an electoral management body (EMB) is to hold fair and free election but involves a wide range of tasks that encapsulate issuance of code of conduct for the stakeholders, processing nomination papers, preparation of electoral registration databases, conducting polls, monitoring the vote tabulation process and compiling country-wide results and authorising the official declaration of election results and seat allocation.[1]

While elections are called the 'practical form of democracy',[2] principle of Rule of Law constitutes the 'very bedrock' of democratic system.[3] Democracy is interlinked with free and fair election.[4] An electoral process reflecting the requirements of Rule of Law demands that:

> Voter registers should be accurate, up to date, and comprehensive. Participation in political procedures should be inclusive … Polling should be accessible and convenient for citizens ... Balloting should be secure and free of fraud, vote rigging... Voting should be universal, equal, free, secret and with direct suffrage.[5]

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1 Pippa Norris, *Why Elections Fail* (USA: Cambridge University Press, 1st published 2015) p 136.

2 Dr. Vikash Kumar, "Electoral Reforms in India: Needs, Issues and Challenges", 9(1) 2021, *International Journal of Political Science and Development*, pp 17-24, p 17 <https://pdfs.semanticscholar.org/3fcd/923bcf9bab42bb4a24362e5e11c4826a1d08.pdf> (Accessed on 24 July 2023)

3 *Anoop Baranwal v Union of India*, AIR 2023 SC 213, para 165.

4 *Abdul Mannan Khan v Bangladesh*, 64 DLR (AD) (2012), para 1496(4).

5 Pippa Norris, n 1, p 137.

Rule of Law is interwoven with democracy.[6] Electoral rules are expected to satisfy the standards 'of independence, impartiality and fairness, integrity and honesty, and transparency and openness' which generate 'trust and confidence in the electoral process'.[7] Embodying these values, there is widespread consensus that elections should be held fairly and efficiently by a neutral body.[8] However, all these are possible only when the EMB is independent and free from the influence of any kind from any quarter.

Here comes the relevancy of the Rule of Law which is a pre-requisite to parliamentary democracy. There is no alternative to create an equal opportunity for all competing candidates, a level playing field, laws with transparent and wide circulation governing elections, equal access to information of all the stakeholders, unhindered access to the media, fair and expeditious disposal of the election disputes for a fair, free, participatory and credible elections at all level.

Having premised upon the linkage between democracy and rule of law, both Bangladesh and India has adopted parliamentary democracy as a component of their respective governance. The Constitution of Bangladesh and the Constitution of India empower their respective Election Commission to do everything within their respective legal framework to make the elections free, fair and credible to the citizen-voters. India is a democratic republic.[9] This character of India is manifested through parliamentary form of democracy which empowers the citizens to choose their representatives by casting votes

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6 UN General Assembly Resolution adopted on 24 September 2012 entitled, "Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels", para 5<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/478/66/PDF/N1247866.pdf?OpenElement> accessed on 28 September 2023.

7 Ujjwal Kumar Singh and Anupama Roy, *Election Commission of India: Institutionalising Democratic Uncertainties* (Oxford University Press, India, 2019, 1st edition) p 263.

8 Pippa Norris, and Andrea Abel van Es (eds), *Checkbook Elections? Political Finance in Comparative Perspective* (New York: Oxford Academic, 2016, online edn, 2016). Cited in Pippa Norris, n 1, p 136.

9 *The Constitution of India*, Preamble.

at regular intervals following the principle of adult franchise.[10] Meanwhile, the principle of Rule of Law has been declared as a basic structure of the Constitution of India in many cases.[11] Similarly, Bangladesh is a people's republic.[12] The republic feature of Bangladesh is characterised by parliamentary democracy manifested through periodic elections to be held in fair and free manner.[13] The democratic process envisioned in the preamble of the Constitution of Bangladesh aims to establish a society where, among others, rule of law is to be secured.

Given this backdrop, explores the legal frameworks of Bangladesh and India governing the establishment, powers and functions of the Bangladesh Election Commission (BEC) and Election Commission of India (ECI). Equally, this paper examines the degree of structural independence these two top electoral bodies exert while holding elections by maintaining the requirements of Rule of Law.

2. Constituents of Independence of Election Commission

Generally independence of an EMB can be explained as structural or institutional independence, functional independence and financial independence. The expression, institutional or structural independence of implies that the EMB is completely insulated from the executive organ of the government.[14] This type of independence derives its existence either from the constitution itself or statutory law.[15] Here the constitution or the legal framework as a whole provide for structural independence of the EMB.[16] When the question of institutional or

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10 Dr. Vikash Kumar, n 2, p 17.

11 See *Kesavandanda Bharati v State of Kerala,* (1973) 4 SCC 225 and *Indira Nehru Gandhi v Raj Narain*, (1976) 2 SCR 347.

12 *The Constitution of Bangladesh*, preamble & Art.1

13 *Ibid*, Art. 65 (2)

14 Helena Catt, *et el*, *Electoral Management Design* (International Institute for Democracy and Electoral Assistance, Sweden, revised edition, 2014) p 21<httpwww.eods.eulibraryIDEA.Electoral-Management-Design.pdf> (Accessed on 29 September 2023)

15 *Ibid*.

16 Helena Catt, *et el*, *Electoral Management Design* (International Institute for Democracy and Electoral Assistance, Sweden, revised edition, 2014) p21

structural independence of EMB comes, the commitment of the EC members to 'independent decision-making' is more important than formal structural independence.[17] Strong leadership is crucial for upholding an EMB's independence of action.[18] Institutional or structural independence of an EMB is to be measured in terms of establishment and composition of EMBs and appointment and removal mechanism of the EMB high officials.

3. Rule of Law: A Brief Overview

Rule of Law is a major component of the concept of electoral governance of a country. AV Dicey's concept of Rule of Law includes three elements: supremacy of law, equality before law and predominance of constitution as the ordinary law of the land.[19] After being so coined by AV Dicey, the principle of Rule of Law has been given wider interpretation by the legal luminaries in international arena.

The United Nations (UN) defines the Rule of Law as a 'principle of governance' which makes accountable all institutions, private and public alike with wide public circulation, equal enforcement mechanism and independent adjudicatory system.[20] Furthermore, Rule of Law requires ensuring supremacy of law, equality before law, fairness in the implementation of law devoid of arbitrary approach.[21]

<httpwww.eods.eulibraryIDEA.Electoral-Management-Design.pdf> (Accessed on 29 September 2023)

17 *Ibid*.

18 *Ibid*, 2014) pp 21-22.

19 AV Dicey, *Introduction to the Study of the Law of the Constitution* (London: Macmillan, 8th edition, 1915) pp 120-121<http://files.libertyfund.org/files/1714/0125_Bk.pdf> (Accessed on 10 September 2019)

20 Report of the UN Secretary General, "Delivering justice: programme of action to strengthen the rule of law at the national and international levels", para 2 <https://documentsddsny.un.org/doc/UNDOC/GEN/N12/267/01/PDF/N1226701.pdf?OpenElement&_gl=1*16oa4r7*_ga*NDkwODcyNTc4LjE2OTU4OTAzODQ.*_ga_TK9BQL5X7Z*MTY5NTg5MDM4My4xLjEuMTY5NTg5MTgwOS4wLj AuMA..> (Accessed on 28 September 2023)

21 *Ibid*.

The principle of Rule of law works at the 'heart of the social contract' by the State with its citizens.[22] It guarantees full human protection for 'peaceful and fair' redressal of disputes.[23] It embodies 'a set of outcomes' that it brings to societies.[24] The International Commission of Jurists in its Delhi Congress considers Rule of Law an important tool of protection from arbitrary actions of government.[25]

Symmetrically, the World Justice Project (WJP) finds Rule of Law as a 'durable system of laws' which has been translated in four universal principles in terms of *Accountability, Just Law, Open Government*, and *Accessible and Impartial Justice*.[26] The principle of *Open Government* adheres to the 'processes' through which the law is enacted and enforced are 'accessible, fair and efficient'.[27] The WJP Rule of Law Index 2022 has developed these universal principles into eight factors under the headings, *Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice*.[28] While further disaggregating these principles into another 44 sub-factors, the first factor emphasises on the importance of power transfer under the law of the land.[29] The *modus operandi* of power transfer shall be taken place through elections with 'integrity of the electoral process' which is conditioned by access to ballot, absence of intimidation and public scrutiny of election outcomes.[30]

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22 *Ibid*, para 4.

23 *Ibid.*

24 *Rule of Law Index* 2022 (World Justice Project, United Nations, Washington, 2022) p 13<https://worldjusticeproject.org/rule-of-law-index/downloads/ WJP Index 2022. pdf > (Accessed on 28 September 2023)

25 See, "The Rule of Law in a Free Society", a Report on the International Congress of Jurists in Delhi, India in 1959, p 197, para 4 <https://www.icj.org/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf> (Accessed on 29 September 2023)

26 *Rule of Law Index* 2022, n 24, p 14 .

27 *Ibid*.

28 *Ibid*.

29 *Rule of Law Index* 2022, n 24, p 15.

30 *Rule of Law Index* 2022, n 24, p 16.

4. Independence of Election Commission in Regional and International Instruments

The issue of independence of EC has been viewed through the lens of Rule of Law in different legal instruments in the regional and international arena.

4.1. Independence of EC in the Regional Instruments

The European Commission for Democracy through Law (Venice Commission) adopts the Code of Good Practice in Electoral Matters 2002 putting much emphasis on the establishment of an 'impartial body' independent of the government.[31]

As a permanent organisation, this impartial electoral body should include minimum one member from the judiciary and representatives of parties in the legislature 'qualified in electoral matters'.[32] It must ensure equality or proportionality of representation among the political parties and its members shall have security of tenure.[33] Such members should be given 'standard training' on electoral matters.[34]

The African Charter on Democracy, Elections and Governance, 2007 (African Charter) endorses the need for an independent and impartial EMB to hold an election freely, fairly and neutrally. For this purpose, the State Parties to the African Charter gives commitment for the establishment of a strong 'independent and impartial' EMB at national level for election management.[35]

4.2. Independence of EC in the International Instruments

From 1980 to 1990, the UN has been engaged in organization, conduct, supervision and control of elections and the verification of electoral processes.[36] Since its inception, the UN has demanded for timely appointment of independent and impartial EMBs, registration and regular revision of electoral rolls and fair access to public media.[37]

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31 *Code of Good Practice in Electoral Matters* 2002, section II, 3.1(a).

32 *Ibid*, section II, 3.1(d)(i) &(ii).

33 *Ibid*, section II, 3.1(e) & (f).

34 *Ibid*, section II, 3.1(g).

35 *African Charter on Democracy, Elections and Governance* 2007, Art. 17(1).

36 Domenico Tuccinardi, edit, *International Obligations for Elections: Guidelines for Legal Frameworks* (Sweden: International Institute for Democracy and Electoral Assistance,2014)p8<https://www.idea.int/sites/default/files/publications/international-obligations-for-elections.pdf> (Accessed on 26 September 2023)

37 *Ibid*.

The UN Charter confers upon the United Nations Security Council (UNSC) the primary responsibility to maintain international peace and security. [38] This mandate includes the responsibility towards maintaining or restoring 'international peace and security'. [39] It mandates for taking measures to freeze 'assets' or impose 'travel bans on individuals' involved in election manipulation.[40] Even the UNSC is authorised to 'remove an outgoing head of state' if he refuses 'to concede defeat' an election certified by UN mission.[41] The Universal Declaration of Human Rights (UDHR), 1948, endorses that will of the people expressed through universal and equal suffrage exercised in a free environment constitutes the basis for governmental authority.[42]

In this context, the General Comment No. 25 adopted pursuant to the International Covenant on the Civil and Political Rights (ICCPR), 1966, establishes a legally binding obligation for signatory member States to hold in a manner which is free and fair.[43] Every signatory State should have an 'independent electoral authority' to supervise and ensure a fair, impartial and lawful conduct of electoral process keeping consistency with the ICCPR. [44] To uphold the probity in electoral process, it further stipulates that there shall be measures which will guarantee the secrecy in the process of voting and protect the voters from any unlawful or arbitrary interference in the course of voting.[45]

In addition, while adequate security 'must be guaranteed' to the ballot boxes, the votes should be counted in the candidates' or their agents' presence maintaining 'independent scrutiny' in vote counting process.[46] Moreover, the electors shall have access to judicial review to

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38 *Charter of the United Nations*, article 24.

39 Domenico Tuccinardi, n 36, p 8.

40 *Ibid*.

41 *Ibid*.

42 UDHR, Article 21.

43 Oliver Joseph, *Independence in Electoral Management* (Sweden: International Institute for Democracy and Electoral Assistance, 2021) p13. <https://www.idea.int/sites/default/files/publications/independence-in-electoral-management.pdf> (Accessed on 25 September 2023)

44 Office of the High Commissioner for Human Right, *CCPR General Comment No. 25*, paragraph 20<https://www.refworld.org/docid/453883fc22.html> (Accessed on 25 September 2023)

45 *Ibid*.

46 *Ibid*.

redress their grievances in connection with the electoral processes.[47] The voters with disabilities should be assisted by such mechanism so that they can exercise their voting rights independently.[48] All the electors should be fully communicated of these guarantees.[49] The International Institute for Democracy and Electoral Assistance emphasises on the necessity to maintain electoral integrity in the following terms:

> [M]major challenges to the conduct of elections with integrity [includes] building the rule of law to substantiate claims to human rights and electoral justice, developing professional and competent electoral management bodies (EMBs) with full independence of action.[50]

The Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections (Electoral Handbook), 1994, asserts that the election related law should ensure that 'an objective, unbiased, independent and effective' EMB is there to hold elections.[51] Careful attention is to be paid to the appointment procedure and other terms and conditions of the electoral staff.[52] The electoral staff shall be free from 'bias and political pressure'.[53] The electoral body shall be 'headed by Chief Electoral Office' or 'Electoral Commission' with 'fair partisan representation' and 'recognised neutrality' or combination of both.[54] There shall be legal guarantee to keep the electoral administration away from 'bias or corruption'.[55] The staff involved in the electoral process shall be given 'adequate advance training.[56] The entire working proceeding of the electoral body shall be conducted in a 'transparent manner'.[57]

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47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

50 Helena Catt, n 14, p 1.

51 Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections 1994 (Geneva: United Nations, 1994) para 101 <https://www.ohchr.org/sites/default/files/Documents/Publications/training2en.pdf> (Accessed on 26 September 2023)

52 *Ibid.*

53 *Ibid.*

54 *Ibid.*

55 Human Rights and Elections, n 51, para 102.

56 *Ibid.*

57 Human Rights and Elections, n 51, para 101.

5. Structural Independence of the BEC and ECI: An Examination of Its Implication for Rule of Law

The structural independence of the BEC and the ECI is measured through the issues involving (i) establishment and composition and (ii) appointment and removal mechanism.

5.1. Establishment and Composition of the BEC and ECI

The Bangladesh Election Commission (BEC) is constitutional body established under article 118(1) of the Constitution of Bangladesh.[58] It consists of the Chief Election Commissioner of Bangladesh (CECB) and not more than four Election Commissioners.[59] The President of Bangladesh is vested with the power to appoint the CECB and other Election Commissioners following the Constitution and any other relevant law.[60] In the event any other Election Commissioner is appointed, the CECB as the Chairman of it.[61] The tenure of office of an Election Commissioner is five years from the date of his taking oath as such.[62]

In parallel to the BEC, the ECI is a constitutional body created under the auspices of the Constitution of India.[63] The ECI is a constitutional body consisting of the CECI and other Election Commissioners.[64] Conventionally, all of them are from the Indian Administrative Service (IAS)[65] and are appointed by the President of India.[66] The President of India is left with the discretionary power to fix the number of EC.[67] The CECI acts as the Chairman of the ECI in the event any other EC is

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58 *The Constitution of Bangladesh*, Article 118(1).

59 *The Constitution of Bangladesh*, Article 118(1). Before the Fifteenth Amendment to the Constitution comes into effect, the BEC would constitute with a Chief Election Commissioner and such number of other Election Commissioners, if any, as the President would desire. For details see, section 35(a) of the *Constitution (Fifteenth Amendment) Act* 2011.

60 *The Constitution of Bangladesh*, Art. 118(1)

61 *Ibid*, Art. 118(2)

62 *Ibid*, Art. 118(3)

63 *The Constitution of India*, Art. 324.

64 *Ibid*, Art. 324(2)

65 Ujjwal Kumar Singh, n 7, p 28.

66 *The Constitution of India*, Art. 324(2)

67 *Ibid*, Art. 324(2)

appointed. [68] Though a plain reading of article 324(2) of the Constitution of India provides for a multi-member ECI, this institution continued as a 'one-man Commission' till October 1993.[69]

Fort the first time in 1989, the President of India appointed two additional Election Commissioners. This appointment was encountered by some legal controversies before the Supreme Court of India. The legal battles ended with the Supreme Court ruling declaring the ECI a multi-member body as envisioned in article 324 of the Constitution of India.[70] This tradition of appointing two ECs started on 01 October 1993 is still being followed. In a multi-member combination, the CECI functions as the Chairman of the ECI.[71] In such a combination, while the powers of the ECs are 'coordinate and coequal', the decisions are to be taken by consensus or majority vote.[72]

5.2. Appointment and Removal Mechanism

Since the creation of the BEC, the CECB and other Election Commissioners are being appointed by the Presi dent following the constitutional mechanism *verbatim*. Though there is a mandate for the Parliament to legislate governing the appointment and other terms and condition of the BEC high officials, it has not been done to date. However, in 2022 the Parliament has passed the Appointment of the Chief Election Commissioner and Other Election Commissioners Act, 2022, basically for forming a Search Committee for recommending names to the President of Bangladesh for appointment in the post of CECB and Election Commissioners.

This *Act* determines qualifications and disqualifications of the members, and *modus operandi* of, the Search Committee. The six-member Search Committee (Committee) consists of a Judge from each Division of the Supreme Court of Bangladesh to be nominated by the Chief Justice, Chairman of the Bangladesh Public Service Commission (BPSC), Auditor-General, and two eminent citizens of the country

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[68] *Ibid*, Art. 324(3)

[69] Ujjwal Kumar Singh, n 7, p 29.

[70] See *SS Dhanoa v Union of India,* 1991 SCR (3) 159 and *TN Seshan v Union of India,* 1995 (4) SCC 611.

[71] Ujjwal Kumar Singh, n 7, p 31.

[72] *Ibid*.

nominated by the President one of whom shall be a woman.[73] Presence of maximum three members constitutes quorum for holding meeting of the Search Committee.[74] Decision of this Committee shall be taken by majority and if a deadlock arises of evenness of vote, the presiding officer shall have second vote or casting vote to break the deadlock.[75] The Committee shall submit its recommendation to the President of Bangladesh within fifteen working days from the date of its formation.[76]

The Committee will search for the names by itself and will request the political parties and professional organisations to communicate names for this purpose.[77] After getting the names for the names, the Committee shall recommend two names against each vacancy of the post of the CECB and other Election Commissioners.[78]

On the Indian side, the provisions of the Constitution have been followed *stricto senso* in making appointment of the CECI and other Election Commissioners since the inception of free India. Meanwhile, there has been reform proposal, time and again, connecting the appointment mechanism to the ECI but with no success. Under the circumstances, there happens a paradigm shift in the appointment procedure of the CECI and ECs of the ECI at the behest of the Supreme Court of India through the verdict of *Anoop*'s case.[79] In this case, the Supreme Court terms independence as a 'virtue' which 'must be' related, to the question of 'what is right and what is wrong'.[80] Such an approach needs persons with unbending character to be placed in the higher echelon of the ECI to uphold the true spirit of independence.[81] In view of the Court, the present appointment regime of the CECI and Election Commissioners leaves matter of selection and appointment to

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73 *Appointment of the Chief Election Commissioner and Other Election Commissioners Act 2022*, section 3(1)
74 *Ibid*, section 3(3)
75 *Ibid*, section 3(4)
76 *Ibid*, section 3(5)
77 *Ibid*, section 4(2)
78 *Ibid*, section 4(3)
79 *Anoop*, n 3.
80 *Ibid*, para 186.
81 *Ibid*.

the total discretion of the Government of India and consequently cannot ensure full independence of the ECI members. Moreover, there is a great likelihood that the members appointed may feel a sense of obligation to the appointing authority and hence make them indebted to the Government. To make matter more clear, the Court observes the ECI needs such persons who would not feel obligated to his appointing master and discharge his duties in accordance with concept of democracy, principle of Rule of Law, equality before law, secularism and purity of elections.[82]

Based on these arguments, a unique mechanism for the appointment of the ECI higher officials is articulated. Thus, until the Indian Parliament adopts a law in this regards, there shall be a committee to comprise of the Prime Minister of India, Opposition Leader in the House of the People and the Chief Justice of India to recommend names to the President for appointment to the post of CECI and EC to the ECI.[83]

The BEC is institutionally independent for the very reason that the CECB and other ECs have security of fixed tenure. They cannot be removed otherwise than the procedure for removal of a Supreme Court Judge.[84] Likewise, the CECI and other Election Commissioners also enjoy security of tenure. The CECI cannot be removed by an ordinary procedure. While the CECI can be impeached only by following the procedure followed in the case of a Supreme Court Judge, an Election Commissioner can be removed only after recommendation of the CECI in that regard.[85] From these perspectives, it can be assumed that the ECI has been ensured with institutional independence.

5.3. Structural Independence of BEC and ECI and Its Implication for Rule of Law

A simple analysis of the Committee formed under the Appointment of the Chief Election Commissioner and Other Election Commissioners Act, 2022, reveals the fact that except the two Judges from two Divisions of the Supreme Court of Bangladesh to be nominated by the

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82 *Ibid*.

83 *Ibid*, para 366.

84 *The Constitution of Bangladesh*, Art.118(5)

85 *The Constitution of India*, Art. 324(5)

Chief Justice of Bangladesh, placement of the other members namely the Chairman of the Bangladesh Public Service Commission (BPSC), the Auditor-General and the two eminent citizens to be nominated by the President in the Committee are entirely made in accordance with the political line of the party in power. It is for the reason that the President appoints the Chairman of the BPSC and the Auditor-General in accordance with the advice of the Prime Minister in pursuance of the binding clause of article 48(3) of the Constitution. Similarly, while nominating two eminent citizens, the Presidential discretion is again circumscribed by the will of the Prime Minister by force of article 48(3) of the Constitution. A collective result that yields is that out of six members at least four are placed in the Search Committee in complete alignment with the political philosophy of the party represented by the Prime Minister. Meanwhile, quorum by the presence of three members and decision by majority of the members present has made the matter more aggravating. The worst is that the names so recommended are not binding upon the President. Likewise, appointing persons in total disregard of the names recommended does not make it unlawful if those are made following the advice of the Prime Minister under article 48(3) of the Constitution. Moreover, firmness in the character of the CECB and Election Commissioners is also essential condition to ensure independence of the BEC. Capricious appointment of CECBs and Election Commissioners without wider political consensus has put the BEC's neutrality to question.[86]

In the context of India, the provisions to appoint the CECI and other Election Commissioners are stipulated in the Constitution of India and the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 (Election Commission Act, 1991). While the President is empowered by the Constitution of India to appoint the CECI and other Election Commissioners subject to parliamentary enactment,[87] the Election Commission Act 1991 spells out the provisions in respect of terms of office and benefits of the ECI members, and transaction of business of

[86] Salahuddin M Aminuzzaman and Sumaya Khair, *Governance and Integrity: The National Integrity System in Bangladesh* (Dhaka: University Press Ltd, 1st edition, 2017) p 189.

[87] *The Constitution of India*, Art.324(2)

the members of the ECI as a whole.[88] Though the Election Commission Act, 1991, points clarifies the tenure of the service of the CECI and other Election Commissioners, it leaves the matter of appointment mechanism intact in line with the provisions of the Constitution of India. The ultimate conclusion is that the Executive of the day holds the total discretionary power to decide who to be appointed as the CECI and Election Commissioners of India.[89]

The total executive discretion in the appointment of the ECI high officials has been criticised from different corners. The Supreme Court of India while dissolving of writ petitions on this issue calls for the relevance of the Doctrine of Reciprocity attached with the appointment of the EMB higher officials. As this Doctrine advocates, the recipient of a benefit feels obligated to reciprocate.[90] To state further, receipt of a favour leads to 'reported feelings of obligation' by its recipient.[91] As Robert Cialdini points out, recipient of a gift feels indebted and hence his judgment is compromised for the very reason of his receiving the gift.[92] The essence of reciprocity rule puts the favour giver to 'exploit' and 'control' the receiver.[93]

Therefore, what the Supreme Court of India argues in *Anoop* that a person who is appointed in the higher echelon of the ECI being favoured by the sole executive discretion of the Indian Government is likely to feel obligated to repay by tendering undue favour to his appointing master. In this connection, the Court observes:

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88 See generally the *Election Commission Act 1991*.

89 While article 324(2) empowers the President to appoint the CECI and ECs to the ECI, article 74(1) of the Constitution binds the President to act in accordance with the aid and advice of the Council of Ministers the Prime Minister being at the head.

90 *Supreme Court Advocates on Records Association v Union of India*, (2016) 5 SCC 1, para 310.

91 Dennis T Regan, "Effects of a Favour and Liking on Compliance". Cited in *Supreme Court Advocates on Records Association v Union of India*, (2016) 5 SCC 1, para 311.

92 Robert Cialdini, *Influence: The Psychology of Persuasion* (UK: Collins, 1st revised edition, 2007). Quoted in *Supreme Court Advocates on Records Association v Union of India*, (2016) 5 SCC 1, para 312.

93 *Ibid*.

> A person, who is in a state of obligation or feels indebted to the one who appointed him … [and] can have no place in the conduct of elections ... Holding the scales evenly, even in the stormiest of times, not being servile to the powerful … would qualify as true independence … Independence must embrace the ability to be firm, even as against the highest.[94]

In this situation, the Supreme Court of India has intervened through the judgment of the *Anoop*'s case by enunciating a three member committee to recommend names for appointment in the higher echelon of the ECI as depicted in section 5.2 of this Article. The names so recommended shall be made binding on the President.

Thus if this be the level of structural independence of the BEC, it will highly impossible for the institution to ensure fair play, neutrality, transparency and openness in the preparation of electoral rolls, regulating election expenditure, registering and de-registering political parties, accrediting election observers, allocation of election symbol and redressing election disputes. Moreover, to decriminalise politics needs courageous approach of the BEC. In all these aspects, the BEC has to demonstrate and exercise high level of independence in order to portray the requirements of Rule of Law in holding a free, fair, participatory and credible election. In discharging all these functions the BEC has to rely on the government functionaries, otherwise, it is a helpless institution.[95]

6. Suggestions and Conclusion

Based on the foregoing deliberations, this section puts forwards suggestions and draws conclusion.

6.1. Suggestions

Considering the findings recorded above, this Article finds it apposite to amend the provisions governing formation of the Search Committee introduced in the Appointment of the Chief Election Commissioner

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[94] *Anoop*, n 3, para 186.

[95] Tofail Ahmed, "EC in Bangladesh: A Fragile Institution with a Strong Legal Framework" published in *The Daily Star Supplement*, 15 October 2023 entitled, "Road to Elections 2023-2024: Can the EC Really Deliver?" p S2.

and Other Election Commissioners Act, 2022, by lowering down the executive exclusivity and ensuring fair representation from different aspects. To this end, this Article suggests that:

- A six member commission should be established which will be significantly insulated from executive participation or with least executive participation having no dominance in recommending names for appointment in the BES structure;
- Such commission should comprise of the Prime Minister, Opposition Leader in the House, Chief Justice of Bangladesh, a female member having clean background with expertise in electoral governance to be nominated by the President in consultation with the Chief Justice of Bangladesh and one civil society representative nominated by the President;
- The decision by the commission shall be taken by two-third majority and each member shall be independent in tendering his opinion. Opinion shall be in written form;
- There shall be arrangements for public notifications of the names recommended by the commission before placing the same to the President for his consideration for appointment in the BEC higher echelon and
- There shall be introduced necessary amendment to article 48(3) of the Constitution of Bangladesh empowering the President to appoint BEC members from the list prepared by and tendered to him by the commission.

6.2. Conclusion

In view of the UN the principle of Rule of Law implies adherence to the principle of supremacy of the law and equality before the law.[96] It also makes everyone accountable to the law and ensures to be fair in the application of the law.[97] Further, Rule of Law advocates for

[96] UN General Assembly Resolution adopted on 16 March 2012 entitled, "Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels", para 2<https://documents-dds-ny.un.org/doc/UNDOC/GEN/ N12/267/01/PDF/N1226701.pdf?OpenElement.> (Accessed on 14 October 2023)

[97] *Ibid*.

separation of powers and legal certainty.[98] It asserts to avoid arbitrary approach and guarantees procedural and legal transparency. [99] Meanwhile, democracy is a matter to be cultured, exercised and shown to have in practice in a given society following the law in this regard. Fair, free, periodic and credible elections are the practical aspect of democracy. In order to hold such an election, the Election Commission has to ensure fairness in the preparation of electoral rolls, equality and transparency in regulating the election funding and election expenditure as well in the process of registration and de-registration of political parties. Equally, the Election Commission has to demonstrate neutrality, openness and non-bias approach while allotting electoral symbol and disposing of election petitions. In addition, the Election Commission has to be courageous enough to introduce necessary reforms in the electoral governance system to decriminalise politics. Decriminalisation of politics is a demand of the time given the fact that politics is being rapidly going under the clutch of the criminal gangs and miscreants. Being empowered with the force of black money and unhindered flow of weapons, the criminals are destroying the very foundation of democracy violating the norm that the law breakers should not be law makers. Therefore, to make politics free from criminals in order to ensure the electors choose their representative upholding the spirit of democracy, it is sine qua non that the Election Commission shall be meticulous in discharging its duties keeping consistency with the requirements of the Rule of Law. To do all these which are crucial for holding a fair, free, participatory and credible elections, structural independence of the BEC should be ensured keeping in view the suggestion articulate in this Article.

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[98] *Ibid.*

[99] *Ibid.*

Internet Blackout in India: Exploring the Limits of Law

Dr. Kavita Lama*

Abstract

Freedom of speech and expression upholds among the human rights and the United Nations considers as most vital, since democratic governance cannot function without it. UNESCO has separately underlines that the internet carries substantial developmental value, which means that expressive freedoms once reserved for traditional media must now extend equally to online spaces that underpin a nation's growth and democratic life. As yet internet blackouts have become a contested instrument through which governments choke information flows and disrupt communication networks. The Universal Declaration of Human Rights nonetheless considers denial of internet access as a serious breach of free expression, one that undermines both individual autonomy and the public's capacity to voice opinion within the democracy. The study follows a doctrinal, analytical method constructed entirely on secondary material such as constitutional provisions, the Indian Telegraph Act, 1885, the Temporary Suspension of Telecom Services Rules, 2017, the Information Technology Act, 2000, rulings of the Supreme Court of India and courts abroad, international instruments such as the UDHR and ICCPR, and existing academic literature and reports. With the help of case-law analysis and a comparative reading of statutes, the paper tests India's legal regime governing internet shutdowns against international human-rights benchmarks, examining how far speech and expression are actually realised online, what role law plays in regulating that exercise, and what social, economic, and political consequences blackouts produce within India. It by considering the international dimension, the human-rights objections voiced by bodies such as the UN against the excessive use of shutdowns to muzzle dissent and suppress democratic participation.

Keywords: *Internet Blackout, Freedom of Speech and Expression, Human Rights, Limits of Law, Digital Media*

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1. Introduction

In an increasingly interconnected world, access to the internet has become a fundamental right for individuals worldwide. The internet serves as a platform for communication, expression, information dissemination, and economic activities. However, in some instances, governments and authorities have resorted to internet blackouts, intentionally cutting off internet access in a specific region or across an entire country. Such blackouts seriously affect human rights, particularly by restricting freedom of expression, access to information, and the right to peaceful assembly

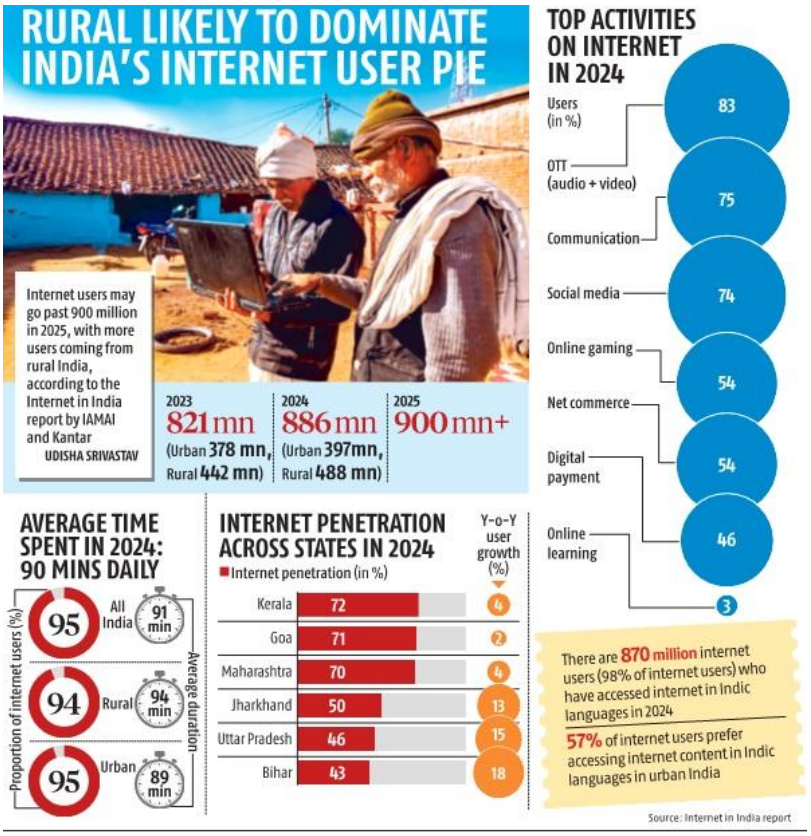


Fig 1: Source – IAMAI

India's internet landscape has been expanding rapidly. A recent report by IAMAI and Kantar estimates that by 2025, more than 900 million people in India will use the internet, with a significant number from rural areas and small towns.

Now, rural India has more internet users than urban areas. This shows the widespread availability of digital access beyond the big cities. The internet has become the most essential part of the daily life of the rural and urban people of India. People not only use the internet for communication and social media, but also use it for entertainment, including streaming content through OTT platforms. This pattern shows the role of the internet in people's communication, access to entertainment, and daily interaction.

Though the use of the internet is growing across different parts of India, the pace is not the same everywhere. In Kerala, Goa, and Maharashtra, a large number of people are already using the internet, while Uttar Pradesh and Bihar are adding new users at a very fast rate. At the same time, more online material is becoming available in Indian languages, enabling users to access information and entertainment in the languages they use in daily life. Taken together, these developments suggest that internet use is rapidly increasing in India and is becoming common across the country.

India's use of the internet has changed considerably in recent years. The growing number of users and the expansion of the digital economy have changed the way people communicate, work, and conduct business. At the same time, internet shutdowns and restrictions on connectivity have become an important part of this changing digital environment. Any kind of blackout interrupts the daily life and communication of the people. The Indian Constitution guarantees the citizens the right to freedom of speech and expression. It is also applicable to the expression of views and sharing of information online. Any restriction on these activities therefore needs to have a proper legal and constitutional basis. Beyond the domestic charter, Article 19 of the Universal Declaration of Human Rights enshrines the same expressive freedom, complemented by Article 18's protection of thought and opinion and Articles 20–21's guarantees of association and participation in government.

The United Nations ranks free speech and expression among the human rights most essential to a functioning democracy, and UNESCO has separately flagged the internet's considerable developmental value. Read together, these positions suggest that expressive freedoms once

reserved for print and broadcast media must now extend to the internet, given its role in national development and democratic life. The U.S. Supreme Court's unanimous decision in *Reno v. ACLU* went so far as to describe the internet as a free-speech zone, and India's own Supreme Court held in 2020 that speech and trade freedoms under Articles 19(1)(a) and 19(1)(g) retain full constitutional protection when exercised online.[1] Governments confronting political unrest, however, frequently respond by shutting down websites, India's own example being the near year-long, state-wide internet suspension in Jammu and Kashmir that followed the withdrawal of Article 370's special-status protections. Shutdowns of this kind are becoming a worldwide habit, growing more frequent by the year, and they do more than block access: they also open the door to surveillance, folding neatly into broader patterns of internet censorship.

Governments worldwide have turned to internet blackouts as a contested means of controlling information and choking communication channels, even though such denial of access is widely regarded including under the UDHR, 1948, as a serious breach of expressive freedom and a threat to the individuality and public voice that democratic life depends on. India's constitutional framers built comparable protection into domestic law: among the six fundamental rights, Article 19(1)(a) guarantees speech and expression, encompassing the right to hold opinions and to seek, receive, and impart information. Nevertheless, this right is not unconditional. Article 19(2) of the Constitution and Article 19(3) of the ICCPR, 1966, both carve out permissible restrictions.

This paper examines whether India's domestic and international laws and commitments provide adequate protection to the people's basic freedom in case of internet shutdowns. It considers whether the existing rules properly ensure balance between public safety and national security with the right to freedom of expression, access to information and privacy. This paper also considers possible reforms to the existing laws and regulations and whether international standards can provide useful guidance for protecting these rights while allowing governments to respond to national security concerns.

[1] *Anuradha Bhasin v. Union of India*, AIR 2020 SC 1308.

The discussion begins by examining whether free speech and expression matter for people who use the internet to express their views. It also examines how restrictions on the internet disrupt those rights of people. This paper reviews some specific instances of restrictions the government imposed on the internet, such as the suspension of the internet in Jammu and Kashmir during the revocation of Article 370, the shutdown in Darjeeling during political unrest in West Bengal, and restrictions imposed in Manipur aimed at communal violence. These examples are reviewed to assess the cost and the justifications for the internet shutdowns in India. This paper shows how far the freedom of expression and speech can be exercised in India and how the laws can regulate this exercise.

2. Internet Blackouts Vis-à-Vis Human Rights

Blackouts carry results for several distinct human rights, chiefly expression, access to information, and participation in public life. The sub-sections below trace how each of these intersects with a shutdown.

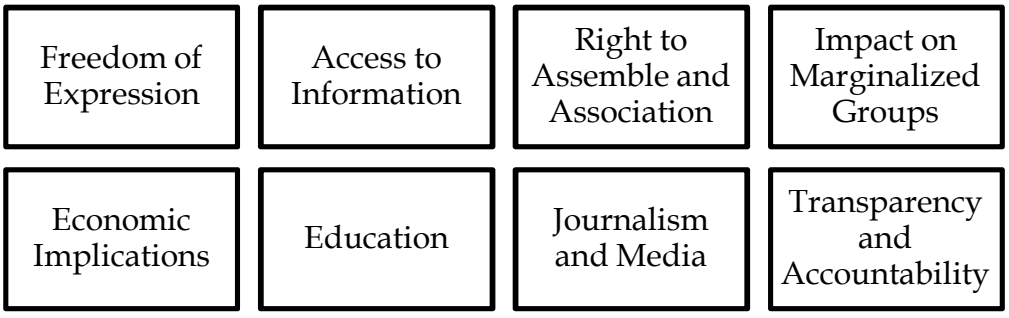


Fig 2: Linkage between Internet Blackouts and Human Rights

Freedom of Expression – A recent report by IAMAI and Kantar estimates that by 2025, more than 900 million people in India will use the internet, with a significant number from rural areas and small towns.

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Accesses to Information–People rely on the internet for information, particularly for news, education and health. It allows them to follow current events, pursue learning development, and obtain information before making decisions. When internet services are shut down, this access is impeded. The situation can worsen during the crisis period when people depend on accurate information to make decisions.

Economic Implications – The internet now support many economic activities. It includes online business, remote work, and e-commerce. Small and medium -sized businesses often reach customers through digital platforms. Internet shutdowns can therefore interrupt business, because financial loses discourage investments.

Impact on Marginalized Groups – Internet shutdowns can have a severe impact on disadvantaged communities that depend on online platforms for advocacy and social connections. Shutdowns can affect their access to information and cause economic and social exclusion.

Right to Assemble and Association – The internet helps people to communicate and hold peaceful assemblies. It is now an essential part of the people's civic activities. Internet blockades severely affect public meetings and protests, both online and offline. Such restrictions therefore cause an impediment to expressing their common concerns and participating in public life.

Education –Online education depends on uninterrupted internet access. A shutdown can disrupt students from using academic resources, submitting exam forms, and completing admission on time. The 2017 Darjeeling shutdown caused risks of losing an academic year to many students. The UN Human Rights Council's 2016 Resolution addressed that the right to education should be protected online as well as offline.

Journalism and Media – Reporting events and sharing news rely on uninterrupted internet connectivity. Disrupted connectivity hampers reporting and deprives people of timely access to information.

Transparency and Accountability – Governments often rely on the internet to share information and promote transparency. Shutdowns can limit public access to information and weaken accountability of governments.

3. Legal Challenges and Courts' Decisions

"Digital" or 'internet' shutdown means deliberate restrictions imposed by the authorities on internet access in a particular area or across the country. Its legality depends on the circumstances, applicable laws and reasons for restrictions.

International Law – Internet shutdowns may violate international human rights standards, especially those connected with the right to freedom of expression and access to information.

National Laws –Governments may impose an internet shutdown if national laws permit it in a specific situation, particularly in the case of national security and public safety. However, these restrictions should be necessary and proportionate.

Procedural Safeguards – Combating internet access can infringe expressive freedom under both domestic and international law, the state carries the burden of balancing security imperatives against citizens' rights.

Human Rights Concern – Where a shutdown falls disproportionately on marginalised populations cutting off access to essentials such as healthcare information raises independent human-rights concerns.

Global Norms – International instruments such as the United Nations and various regional human-rights institutions have gone on record condemning shutdowns that are indiscriminate or disproportionate.

Taken together, the legality of any given blackout turns on multiple interacting factors. Even where restricting access is justifiable, the action must remain proportionate, transparent, and rights-compliant if it is to withstand legal scrutiny. In India, the operative legal basis is the Telegraph Act, 1885, which together with its subordinate rules permits an internet ban only where public safety is threatened or a public emergency exists.[2] In practice, though, Indian governments have repeatedly reached for shutdowns as a political instrument whenever convenient. The 1885 Act was originally enacted simply to regulate telegraph communication in India; it now carries a subordinate rule, the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, framed to empower the Union Home Secretary and equivalent state officials to order the suspension of telecom services including the internet during a public emergency or safety threat. Both the parent statute and the 2017 Rules make clear that such restrictions must rest on reasonable grounds.

Governs wired and wireless telegraphy, telephones, teletype, and digital data communications	**Vests the Government of India with exclusive authority to establish, maintain, operate, and license wired and wireless communication within Indian territory**
Authorises government and law-enforcement agencies to monitor communications and tap phone lines within constitutional limits	**Section 5(2) lets the Centre and States prevent transmission of messages during a public emergency, in the interest of public safety, sovereignty, and the security of the State**

Fig 3: Overview of the Indian Telegraph Act, 1885

[2] Gyan Tripathi, Policy Trainee, Internet Freedom Foundation.

Article 19(1)(a) of the Constitution confers on every citizen the right to freedom of speech and expression — the liberty to voice convictions and opinions through speech, writing, print, imagery, or any other medium, and to publish or propagate the views of others. That guarantee covers any act of seeking, receiving, or imparting information, whatever channel is used. Drawing on John Milton's writings, commentators treat free speech as a multi-layered right embracing not merely expression and dissemination but also the capacities to seek, receive, and impart. None of this, however, is unconditional: expression carries attendant duties and responsibilities and may accordingly be subject to statutory restriction. India has long numbered among the countries granting citizens this freedom, and its record, on balance, still compares favourably with many counterparts elsewhere. Even so, the picture is shifting, particularly where speech is exercised through social media and the internet, given the uneven and sometimes arbitrary enforcement of India's cyber-law regime — Section 66A of the Information Technology Act, 2000 being the most notorious example. India has no dedicated social-media statute, but several existing cyber-law provisions can nonetheless be invoked to redress rights violations occurring online. These are set out below.

The Information Technology Act, 2000

(a) Chapter XI of the Act — Sections 65[3], 66, 66A, 66C–66F, and 67–67B — criminalises a range of computer-related offences that can equally be committed through social media: tampering with source code, the offences listed under Section 43, sending offensive messages, identity theft, impersonation-based cheating, privacy violations, cyber-terrorism, and the publication or transmission of obscene, sexually explicit, or child-exploitative material in electronic form.

(b) Section 69 empowers the Central or a State Government to direct the interception, monitoring, or decryption of information transmitted through any computer resource, on grounds ranging from sovereignty and defence to public order and the investigation of offences.

[3] Whoever knowingly or intentionally conceals, destroys, or alters, or causes another person to conceal, destroy, or alter, any computer source code is punishable with a fine that may extend to two lakh rupees, or with imprisonment, or with both.

(c) Section 69A similarly authorises the Central Government to order the blocking of public access to information on comparable grounds.

(d) Section 69B allows the Central Government to authorise agencies to monitor and collect traffic data for cyber security purposes.

(e) Section 79 shields intermediaries from liability for third-party content, data, or links hosted on their platforms.

Section 66A of the Information Technology Act, 2000

Among these provisions, none has attracted more controversy than Section 66A. Before turning to that controversy, it is worth setting out the provision itself. Inserted by the Information Technology (Amendment) Act, 2008, Section 66A penalised the sending of offensive messages through a communication service. It read as follows:

> *"Any person who sends, by means of a computer resource or a communication device –*
> *(a) any information that is grossly offensive or has menacing character;*
> *(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently by making use of such computer resource or a communication device;*
> *(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience, or to deceive or mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine."*

The Temporary Suspension of Telecom Services Rules, 2017, issued under the Telegraph Act, 1885, separately lay down the procedure and conditions under which authorities may suspend telecom services, including the internet, in the interest of public safety and security.

The Information Technology (Procedure and Safeguards for Interception, Monitoring, and Decryption of Information) Rules, 2009 lay down the procedure for lawful interception, monitoring, and decryption under the IT Act. Because shutdowns sometimes coincide with surveillance measures, this framework becomes directly relevant. In a landmark ruling[4], the Supreme Court recognised "freedom to

[4] *Anuradha Bhasin v. Union of India*, 10 January 2020.

access the internet" as a fundamental right protected under Article 19(1)(a), and held that suspension orders issued under the 2017 Rules are amenable to judicial review — though the Court stopped short of declaring the Jammu and Kashmir shutdown itself illegal, directing instead that a review committee re-examine the order.

Historically, the phrase "freedom of speech and expression" is traced back as far as the fifteenth century B.C., though the underlying democratic principle is generally associated with ancient Athens in the late sixth or early fifth century BC. Erasmus and Milton later championed the idea in their own writings, while Edward Coke, in the 1590s, described free speech as "an ancient custom of Parliament" — a claim subsequently affirmed in the Protestation of 1621.

Broadly, 'freedom of speech' denotes the power to voice opinions free of censorship or legal penalty, while 'freedom of expression' extends that liberty to seeking, receiving, and imparting information and ideas across borders, whatever medium is used. The English Bill of Rights of 1689 first entrenched free speech as a constitutional guarantee, a status it retains today. Article 19 of the Universal Declaration of Human Rights affirms that everyone has the right to hold opinions without interference and to freedom of expression, including the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers." The equivalent provision in the International Covenant on Civil and Political Rights adds that exercising these freedoms carries "special duties and responsibilities" and may accordingly be restricted where necessary to protect the rights and reputation of others, national security, public order, or public health and morals. Earlier still, the French Declaration of the Rights of Man and of the Citizen (1789) affirmed free speech as inalienable, its Article 11 describing "the free communication of ideas and opinions" as among the most precious of human rights, while the American First Amendment enshrined the same freedom in 1791.

Today this freedom is recognised across international and regional human-rights instruments alike — Article 19 of the ICCPR, Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights, and Article 9 of the African Charter on Human and Peoples' Rights. Following Milton's framing,

the right is best understood as multi-faceted, comprising not just expression and dissemination but three further elements:

a. the right to seek information and ideas;
b. the right to receive information and ideas;
c. the right to impart information and ideas.

India's own constitutional lineage contains earlier attempts at the same guarantee — the Commonwealth of India Bill 1925, the Nehru Report 1928, and the States and Minorities document of 1945 — each carrying its own built-in restrictions. More recently, in *Anuradha Bhasin v. Union of India* (2020), the Supreme Court confirmed that speech and trade freedoms under Articles 19(1)(a) and 19(1)(g) apply fully to internet use, subject to the reasonable restrictions set out below.

Reasonable Restrictions

- Sovereignty and integrity of India
- Defence of India
- Friendly relations with foreign States
- Public order, or preventing incitement to commit a cognizable Offence

Fig 4: Reasonable Restrictions of Freedom of Speech and Expression

A three-judge bench of Justices N.V. Ramana, R. Subhash Reddy, and B.R. Gavai decided the case, which had challenged the Jammu and Kashmir shutdown imposed on 5 August 2019 following the abrogation of Article 370 of the Constitution[5] — by that point already the longest suspension in Indian history, at five months. Full restoration did not come until 6 February 2021, some 552 days later, making it, per the Internet Shutdowns Tracker, the longest continuous shutdown any democracy has imposed.[6] The same tracker records

[5] Article 370 of the Constitution of India granted the State of Jammu and Kashmir a special status.

[6] <Internet Shutdowns Tracker, SFL Cin, available at https://internetshutdowns.in/static-page/jammu-kashmir/>

Jammu and Kashmir's first shutdown as far back as 26 January 2012 and shows the region accounting for well over half of all shutdown orders recorded across India since.

In a related matter, *Foundation for Media Professionals v. Union Territory of Jammu and Kashmir* (2020), the Supreme Court directed the J&K administration to revisit every existing internet restriction, reaffirming that access itself is a fundamental right deserving respect. Internationally, the U.S. Supreme Court's decision in *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997), struck down the Communications Decency Act as an unconstitutional, "content-based blanket restriction" on speech — the law had tried to shield minors from harmful material but ended up suppressing lawful adult speech in the process, leading the Court to hold that internet speech deserves the highest tier of First Amendment protection. Back in India, *S.P. Gupta v. Union of India* recognised the right to know as integral to free expression, requiring government performance and functioning to be disclosed as a rule rather than an exception; as technology advanced, the concept of 'speech and expression' grew to cover any medium — electronic, print, or audiovisual, including film. *LIC v. Manubhai D. Shah* illustrates the point: when Doordarshan refused to air the documentary *Beyond Genocide*, about the Bhopal gas tragedy, on the grounds that it was outdated and critical of the state government, the Supreme Court held that the filmmaker's Article 19(1)(a) right to exhibit the film placed the burden on the objecting party to justify the refusal, and that a publicly funded, state-run broadcaster could decline telecast only on grounds actually listed in Article 19(2).

Nor is this right confined by national borders. The communications revolution and the rise of electronic media have dissolved transnational barriers, letting information travel worldwide within seconds and reach large audiences scattered across different places. In *Maneka Gandhi v. Union of India*, the Supreme Court confronted precisely this question—whether Article 19(1)(a) applied only within Indian territory — and concluded that it did not, holding that the right to hold opinions and to seek, receive, and impart information "regardless of frontiers" extends beyond national boundaries.

4. Findings of the Study

This paper's central finding is that, notwithstanding judicial recognition of internet access as intrinsic to Article 19(1)(a), the statutory scheme governing shutdowns chiefly the 2017 Suspension Rules hands the executive broad, loosely bounded discretion. That gap has produced shutdowns that are frequent, prolonged, and poorly reviewed, as the episodes in Jammu and Kashmir, Darjeeling, and Manipur all demonstrate. Procedural checks such as periodic review committees and judicial oversight exist on paper but function weakly in practice, leaving India's approach short of international human-rights benchmarks and underscoring the need for rights-based legislative reform.

5. Suggestions

Examining the legal boundaries surrounding internet blackouts in India is a matter with real consequences. The following suggestions are offered for further investigation and possible policy or legal reform:

i. Comprehensive Legal Review- Carry out an evaluation of current Indian legislation, such as the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, as well as international legal benchmarks pertaining to internet shutdowns.

ii.. Right-Based Approach- Explore the feasibility of adopting a right-based approach in legislation, clearly defining the circumstances and procedures under which internet shutdowns can be implemented, with a focus on protecting fundamental rights such as freedom of expression, privacy, and access to information.

iii. Transparency and Accountability- Investigate mechanisms for enhancing transparency and accountability in the decision-making process for internet shutdowns, including judicial oversight, reporting requirements, and impact assessments.

iv. Data Collection and Reporting- Encourage the collection of comprehensive data on internet shutdowns, including their frequency, duration, and reasons, to facilitate evidence-based policymaking and international comparisons.

v. Human Rights Impact Assessment- Implement a Human Rights Impact Assessment framework to evaluate the human rights implications of proposed or enacted internet shutdowns, with input from relevant stakeholders.

vi. International Cooperation- Explore possibilities for India to collaborate with international companies and neighbouring nations to develop common concepts and guidelines for handling internet shutdowns across cross-border incidents.

vii. Legal Remedies- Investigate the feasibility of establishing legal remedies for individuals and entities affected by internet shutdowns, including avenues for seeking compensation and redress.

viii. Civil Society Engagement- Encourage the active involvement of civil society organizations, human rights defenders, and legal experts in advocating for legal reforms and monitoring the implementation of existing laws.

ix. Review International Treaties- Examine India's international treaty obligations, such as those under the International Covenant on Civil and Political Rights (ICCPR), and assess their relevance to internet shutdowns, potentially leading to reform or clarification.

The above suggestions can serve as a starting point for a more in-depth examination of the legal aspects of internet blackouts in India and can guide policymakers and stakeholders toward more rights-respecting policies and practices.

6. Conclusion

Internet blackouts present a significant challenge to human rights in the digital age. They undermine freedom of expression, restrict access to information, impede economic activity, and curtail the right to peaceful assembly. Addressing this issue requires a concerted effort from international organizations, governments, and civil society to ensure that the digital space remains a platform for open communication, information sharing, and the promotion of democratic values. As the world becomes increasingly interconnected, safeguarding digital rights is essential to upholding the principles of human rights and freedom.

The right to freedom of expression is fundamental to democracy, and the media serve as guardians of that freedom. Prevailing norms and values among the populace constitute the preconditions for freedom of expression, with reasonable limits. The Internet has democratized the public sphere, but new technologies also raise questions about the limits of freedom of expression. This right is one of the most important human rights, as recognized by the United Nations, to ensure the successful functioning of a democracy. Also, UNESCO recognizes that the Internet holds enormous potential for development. Therefore, the principle of freedom of expression and human rights must apply not only to traditional media but also to the Internet, which will contribute to development and democracy in a country.

The behaviour of the concerned authorities under the Indian government makes it prima facie clear that they are not interested in upholding the basic rights of its citizens, if banning the Internet in the interest of the State means the government gets to control dissent and discourse. The apex court recognized the right to freedom of speech and expression as a fundamental human right of the people, and an internet ban without valid reasons is a breach of the said rights guaranteed under Article 19 of the Indian Constitution and other relevant provisions of the various statutes.

Every suspension or arbitrary ban of internet services impacts the fundamental rights of citizens. In the year 2020, the State of Kerala became the first state to declare the internet as a basic human right. The same conscience should be followed by the other states of the democratic country, so that there is no hurdle in enjoying the basic rights of human beings. If we trace back to the history of many countries and also the states in India, especially the State of Jammu and Kashmir and the district of Darjeeling in the State of West Bengal, where these rights have been infringed several times, the actions of such nature have impacted the daily lives of the local residents and violated the right to education and fundamental rights under Indian Constitution.

Role of District Legal Aid Offices (DLAOs) in ADR: A Study on Selected DLAOs of Bangladesh

Dr. Armin Khatun*

Abstract

The words and vibrations of the preamble of the Constitution of Bangladesh provide meanings and momentum to the directive principles of state policy and fundamental rights, enshrined in the Constitution. Following the constitutional promises, several laws and regulations have been legislated to assist the indigent to get legal aid at state cost. The central legislation on legal aid is the Legal Aid Services Act, 2000. To fulfill the purposes of the Act, the Government of Bangladesh (GoB) has established the National Legal Aid Services Organization (NLASO), a national body that stands at the apex of the legal aid hierarchy. Under the supervision of the NLASO, District Legal Aid Committees (DLACs) have been established for each district, with the District Legal Aid Offices (DLAOs) headed by an executive head as Legal Aid Officer (LAO). The prime functions of the DLAOs, among others, are to provide legal advice and to apply mediation or Alternative Dispute Resolution (ADR) processes. Nowadays, the DLAOs have a strong role in the field of ADR. This study is an attempt to present the practice of state-oriented legal aid and ADR, i.e., mediation services made available especially through the DLAOs. This paper critically reviews, assesses, and evaluates the policies, legislation, and application-level approaches regarding the DLAOs actually administered on the touchstone of the country's socio-economic needs and the judicial guidelines. People's perception is an important segment of this study, as this is an empirical work that has been collected through cautious fieldwork. This paper aims to analyze legal aid seekers' perceptions and satisfaction level with the provided services. Apart from these, this study has also pointed out the challenges required to be identified and addressed concerned with

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mediation services provided by the DLAOs. Moreover, this study proposes the reformation of existing laws where the capacity of services by the DLAOs needs to be enhanced further.

Keywords: *Social Justice, Legal Aid, Alternative Dispute Resolution (ADR), National Legal Aid Services Organization (NLASO), District Legal Aid Committees (DLACs), District Legal Aid Committees (DLACs), Legal Aid Officer (LAO)*

1. Introduction

Legal aid is a human right, not a charity. The main objective of human rights standards is to ensure a dignified human life. So long as the poor exist in society, legal aid will be necessary if the human right to equality has any meaning. The idea of a welfare state is that the claims of social justice must be treated as cardinal and paramount. Social justice seeks to do justice to all the citizens of the state. The State should strive to establish a social order which would ensure… 'Freedom from Want' and 'Freedom from Fear' for all.[1] As social justice is the keynote of the Constitution of Bangladesh,[2] so it becomes a democratic obligation to make the legal process a surer means to social justice. The scenario of Bangladesh, therefore, demands heavily the legal aid provisions for a vast majority of the poor population to ensure equal access to justice by eliminating all kinds of social and economic constraints.

In a country like Bangladesh, legal aid as a component of the justice delivery system needs to be approached differently. A people (poor) friendly legal aid scheme can go a long way to open new vistas through which light may penetrate and enlighten the lives of the hitherto forgotten, deprived, unfortunate citizens of the country who are no less 'owners of the republic'.[3]

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1 On July 6, 1941 US President Franklin D. Roosevelt addressed the very famous Four Freedoms Speech in 1941 State of Union Speech before Congress. He proposed four fundamental freedoms that people everywhere in the world ought to enjoy. These were freedom from speech, freedom of worship, freedom from want and freedom from fear. Available at https://en.wikipedia.org/wiki/Four_Freedoms (Accessed on 14 July 2023)

2 Preamble of the Constitution of the People's Republic of Bangladesh

3 Professor Dr. Mizanur Rahman, Statement of a PhD interview, dated 22.03.2020 at 02:16 pm

Alternative Dispute Resolution (hereinafter ADR) is a non-formal method of dispute settlement using the form of negotiation, mediation/conciliation, or arbitration through in-court or out-of-court proceedings to reach an amicable settlement. It is mostly applied in civil suits, is inexpensive and less time-consuming. ADR has become the easiest, cheapest, and most popular way across the world.

> *"ADR is an informal settlement of legal and judicial disputes as a means of disposing of cases quickly and inexpensively. It is not a solution to all evils but an alternative route to a speedier and less expensive settlement of disputes. It is a voluntary and comparative way out of the impasses".*[4]

An organization named National Legal Aid Services Organization (hereinafter NLASO)[5] and a governing body called National Governing Board (NGB)[6] have been formed as per the Legal Aid Services Act, 2000[7] (hereinafter the LASA, 2000) under the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs. It comprises provisions in sections 9; 10; 11; 14; 15 (2); 16(1); 21A; 22A; 24 regarding establishment and formation of District Legal Aid Committees (hereinafter DLACs); duties and functions of the DLACs; meeting and funds of the DLACs; panel lawyers of the DLACs; application for legal aid to the DLACs; appointment of Legal Aid Officers[8] (herein after LAO); and power to make rules respectively. Next, LAO are appointed as chief executive in every district with a specific office structure named District Legal Aid Offices (DLAOs).[9]

ADR is an essential method of providing legal aid reducing cost and time of litigation and releasing involved parties from complex legal and judicial processes. The LASA, 2000 include provisions to resolve disputes through mediation before filing a litigation with the help of government legal aid. After the Code of Civil Procedure (Amendment) Act, 2012[10], ADR is mandatory to all civil suits through mediation

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4 Justice Mustafa Kamal, The Daily Star, April 29, 2007

5 Section 3, *The Legal Aid Services Act, 2000* (LASA) 2000)

6 Section 6, *Ibid.*

7 Act No. VI of 2000

8 Appointed under section 21A, inserted by the Legal Aid Services (Amendment) Act, 2013

9 SRO No. 153-Law/20 May, 2010 and SRO No. 100-Law/5 April, 2012

10 Act No. XXXVI of 2012

process.[11]The provisions of ADR were incorporated into the Legal Aid Services (Amendment) Act, 2013[12] inserting section 21A[13] to the Act. In order to give effect to section 21A (2) of the Act, the government has promulgated a set of rules named the Legal Aid Services (Legal Consultation and Alternative Dispute Resolution) Rules, 2015[14] (hereinafter the Rules, 2015).The Rules, 2015 impose duty[15] on LAO to settle the disputes both before filing any litigation and in the ongoing cases by way of settlement conference or through mediation as a form of ADR.

Thus, this article aims to study the existing legal provisions on formation, duties and functions of DLACs and DLAOs and LAOs; their role and services in providing ADR to the legal aid seekers; current service status; and people's perception and opinion regarding selected DLAOs. This study also provides specific suggestions to enhance the services of the DLAOs of Bangladesh.

2. Methodology of the Study

This research is an analytical and empirical study. Qualitative and quantitative data collection methods have been used to conclude the research. Data, resources, and necessary information are collected from primary and secondary sources of the relevant field. Primary data are collected by in-depth interviews through questionnaire surveys, observations, case studies, and information from registers, annual charts, and notice boards of the NLASO and selected DLAOs. Secondary sources include relevant textbooks, articles, journals, newspapers and electronic media, published and unpublished theses, juristic writing, written opinion of the concerned experts, and internet browsing. The respondents for this research are legal aid seekers and

11 Section 89A, 89B and 89C, the Code of Civil Procedure (Amendment) Act, 2012

12 Act No. LXII of 2013

13 Section 21A reads as: (1) - The Government may in the manner prescribed by rules, appoint necessary number of Legal Aid Officers and determine their duties and responsibilities. (2)- The Legal Aid Officers may give legal advice to the litigants seeking legal aid, and if any matter is referred by any Court or Tribunal to the Legal Aid Officers working in the local limit of its jurisdiction for alternative dispute resolution under any existing law, the concerned Legal Aid Officer shall have the power to settle the issue.

14 SRO No. 25-Law /9 February, 2015

15 Rules 4-17, the Legal Aid Services (Legal Consultation and Alternative Dispute Resolution) Rules, 2015 (the Rules, 2015)

beneficiaries. 100 respondents are selected deliberately from them to fulfil the study. To collect data from primary sources, six districts are selected by applying the purposive sampling procedure. The districts are: Jhinaidah, Pabna, Nilphamari, Narayanganj, Rangpur and Kushtia. Collected data are coded and analyzed using tabular format, SPSS-2021 software, and Microsoft Excel worksheet. Selected literature was reviewed and studied to complete this research and to find out the gap in the present issue and an effort to fill the gap.

The major difficulty the researcher had to overcome was the maintenance of improper and outdated records in the DLAOs. Another handicap was that all the LAOs and legal aid beneficiaries were not in a position to provide free and frank information at all times. But these handicaps are overcome by hard labor and sincerity. Thus, the observation of this empirical study shows a real and true picture of legal aid practice in Bangladesh.

3. Research Questions

The following questions are addressed to facilitate this work and to come to a definite conclusion:

I. Are existing laws and policies on legal aid adequate and effective enough for the ADR process to ensure equal access to justice and meet the needs of the poor?

II. Do the DLAOs under the NLASO function effectively?

III. What measures should the state authorities undertake to make the ADR process more meaningful for enhancing the domestic legal regime of legal aid?

4. Objectives of the Study

The general objective of this research is to analyze the role of DLAOs in ADR processes. Certain other specific objectives are:

i. To observe the prevailing legal aid laws, rules, and policies on ADR processes;

ii. To evaluate the effectiveness of ADR in legal aid services through DLAOs;

iii. To find out the limitations and to make suggestions on how government legal aid services can be reached to its targeted group by utilizing ADR.

5. District Legal Aid Offices (DLOAs) Under the NLASO

NLASO is dedicated to providing legal advice and services for cases filed or pending or to be filed before a court, to provide any other assistance, including relevant expenses for cases, to pay remuneration to the mediator or arbitrator and to panel lawyers for conducting the legal aid cases.[16] NLASO provides a Citizen Charter with its **Vision:** "Ensuring Equal Access to Justice for All"; **Mission:** "Provide Legal Assistance with High Quality to the Poor People According to the Law" and the following committed services: service towards citizens; service towards internal staff; and remedial service for complaints. The structure of DLAOs under the NLASO are shown as follows:



Figure 1: Institutional Framework of DLAOs[17]

DLACs are the effective operational and coordinating part of NLASO, chaired by the District and Session Judge.[18] The prime function of the DLACs is to provide legal aid for the litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness, and various socio-economic conditions, so far as possible, upon considering their applications or petitions in accordance with the criteria determined and policies formulated by the NLASO. DLACs

[16] Section 2(a), the LASA, 2000
[17] http://www.nlaso.gov.bd/ (Accessed on 19 April 2022)
[18] Sections 9-11, the LASA, 2000

implement financial and administrative powers delegated by the DLAOs established at every district level. Presently, DLAOs are working in all 64 districts of Bangladesh. There are UZLACs and ULACs[19] to assist and support the DLACs and DLAOs.

It is observed that there was no full-time staff to coordinate the NLASO's activities at the district level before 2010. In December 2010, an allocation was passed for a full-time legal aid office staff member who would be a judicial officer designated as LAO. Creation of the post of an LAO is a great inclusion in the LASA, 2000. Since then, the staff have been recruited and trained in a batch-wise process. Each new staff member receives comprehensive training with practical learning materials before posting at their respective offices at the district level. These staff act as a linchpin to the legal aid system, activating and supporting the committees, facilitating the receipt of applications and referrals, following up with panel lawyers[20] and administering their fee payments[21] as well as enabling better oversight and communication between local and national level. Now 64 LAOs are working for 64 districts as the chief executive and as the Member-Secretary of DLAOs. The responsibilities and functions of the LAO have been determined by the Rules, 2015. The stipulated functions of DLAOs are to provide legal advice; to apply mediation or alternative dispute resolution process; to conduct the legal aid service program; to prepare the list of panel lawyers and distributing cases; to supervise the conducting of cases; to take step for excluding the name of a panel lawyer if he fails to comply with the provisions as stated in the Legal Aid Service Regulations, 2015; to maintain the case diary and to demonstrate the cause list; to perform the administrative functions of legal aid office; to perform the financial activities; to arrange monthly meeting of district legal aid committee; to arrange coordination meetings with lawyers and litigants for supervising conduct of cases; to hold public awareness programs for implementing legal aid programs; to perform daily routine works/ conduct office; and to complying with the directions passed by NLASO.

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19 Section 12, *Ibid*.

20 Section 15, the LASA, 2000

21 Article 6, the Legal Aid Services Regulations, 2015, SRO No. 166-Law/2015

Here is an overall scenario in **Table-1** of government legal aid services by the 64 DLAOs:

Legal Advice	Legal aid in Litigation		Alternative Dispute Resolutions (ADR)			Hotline Service	Beneficiaries	Realization of Compensation (Taka)
	Cases provided Legal Aid	Cases Settled	Initiative for ADR	Settled through ADR	ADR Beneficiaries			
172358	357919	180287	102767	92818	176614	17328	724219	1474767386

Table-1: Government Legal Aid Services by 64 DLAOs: (From 2009 to August, 2023)[22]

6. ADR Services by the DLAOs

ADR and Legal Aid have a close connection in the legal field. Legal aid must be used as an instrument for the resolution of disputes through alternative means so as not to disturb social cohesion and harmony.[23] Necessary legal aid and advice are required to make the ADR program successful. The main target of government-provided legal aid is now centering mainly on making the DLAOs a mediation corner and increasing the rate of ADR to reduce the huge backlog of cases and to build a peaceful, healthy society. The following **Table 2** shows the number of pending cases before the judiciary of Bangladesh:

Name of Court	Nature and Number of Cases			Pending Cases
	Civil	Criminal	Contempt Petition	
	1688195	2388610	119798	
	Number of Judges		**Per Judge**	
Appellate Division of the Supreme Court (AD)	7		2847	19928
High Court Division of the Supreme Court (HCD)	89		5805	516674
Lower Courts/District Level Courts	1920		1901	3650001
A **Total** Number of Pending Cases				**4196603**

Table 2: Number of Pending Cases under Different Courts (Till December 31, 2022)[24]

[22] http://www.nlaso.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/annual_reports/2446eee2_807c_4d00_a411_dfffd619227f/2023-09-18-06-25-43e052eb004b50910acf22d887f31e6c.pdf (Accessed on 24 September 2023)

[23] *Supra Note 3*

[24] https://www.thedailystar.net/news/bangladesh/news/cases-pile-courts-3305171;

To serve the purpose effectively, the Code of Civil Procedure (CPC)[25] has been amended in 2017,[26] referring all civil suits and empowering the LAO to act as a mediator or take initiatives to mediate. Under the Rules, 2015,[27] a dispute may be resolved through ADR in the following circumstances:

(a) When it is considered to be resolved through ADR by the LAO directly; or

(b) When it is referred by the Court or Tribunal to be resolved through ADR.

The following procedures have to be followed by a LAO to provide legal advice and conduct ADR:

6.1 Resolving Disputes through ADR by the LAO Directly

(a) Pre- ADR Stages

I. **Verification of Application:** It is the duty of an LAO to give legal advice to any applicant. When the officer receives any application from the DLAC or directly, then it is his duty to verify such application as to whether the applicant is entitled to get legal aid or not.[28]

II. **Hearing Statement and Examination of Documents:** Once it is determined that the applicant is eligible for getting legal aid, then the officer shall hear the statement of the applicant and also examine the documents and deeds submitted by him, if any.[29]

III. **Advice for ADR:** If the officer satisfies after hearing the statement and examining the documents that there is enough reason to file a suit and the suit is of a nature to settle mutually, then the officer will advise the applicant to resolve the dispute through ADR. Where the applicant does not agree to settle the dispute mutually,

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https://www.supremecourt.gov.bd/web/indexn.php?page=judges.php&menu=11&div_id=2&lang= (Accessed on 24 July 2023)

25 Act No. V of 1908

26 Act No XX of 2017

27 Rules 4-17, the Rules, 2015

28 Rule 3(1,2), *Ibid*.

29 Rule 3(3), *Ibid.*

and the application comes from DLAC, the officer can send back the application with a report to the DLAC and cancel it in case of a direct submission.[30]

(b) ADR stages

i. **To Take Initiative for ADR:** Where an applicant gives consent to solve a dispute through ADR under rule 3(4)a, the LAO, with intent to resolve such dispute through ADR, shall inform the other parties by mentioning a specific date as per Form-1[31]to seek the applicant's written consent.[32]

ii. **Settlement Conference:** Where the opponent party, by filling up the second part of Form-1, gives consent, the officer shall take an initiative to hold a settlement conference with the presence of the parties.[33]

iii. **Time and Place of Settlement Conference:** The LAO shall arrange the settlement conference on such a date or time as specified by him. The settlement conference may be held in the legal aid office or in any convenient place.[34]

iv. **Serving of Notice:** The LAO shall serve a notice to the parties as per Form-2[35] to appear in the settlement conference.[36] Notice shall be served personally.[37] Where any party fails to appear on a fixed date, the LAO, if it deems fit, shall fix a new date, and send a notice again as per Form 2A for settlement conference.[38]

v. **Proceedings of the Settlement Conference:** The LAO will be the chairman of the settlement conference and determine the proceedings of it. He will describe the benefits of the settlement conference to the parties or their representatives. The officer shall take the attendance of the parties or their representatives, as the case may be, as per Form-3. He shall write down the proceedings

30 Rule 3(4,5), *Ibid.*
31 Rule 4(1, 2), *Ibid.*
32 Rule 4(1), *Ibid.*
33 Rule 4(2) *Ibid.*
34 Rule 5, *Ibid.*
35 Rule 6(1) and 8, *Ibid.*
36 Rule 6, *Ibid.*
37 Rule 7, *Ibid.*
38 Rule 8, *Ibid.*

of the settlement conference. After completing the settlement conference, the officer shall read out the written proceedings to the parties and take all parties' signatures, bearing his own signature also. The officer shall file the entire proceedings of the settlement conference and shall also file the result of the settlement conference in a register.[39] To make the proceedings easier, the LAO shall have to create a friendly environment, explain the principles or manners of the settlement procedure to the parties, collect related information from them, maintain impartiality, be careful about any information and communication gap, facilitate the parties to reach a solution, and after all shall act as a mediator.[40]

vi. **Settlement Agreement and Report:** Where any dispute is settled through settlement conference, then the LAO shall write down the terms and conditions of the settlement as a contract as per Form-5. In this regard, the signature of both the parties and their representatives, as the case may be, and witnesses from each party are required, and after getting such, the LAO shall sign the contract with his seal. Within five days after completing the settlement proceedings, the LAO shall submit the 'mediation agreement' or 'failure report', as the case may be, to the parties and committee.[41]

6.2 Settlement of Cases through ADR Referred by the Courts and Tribunals

Where any case is referred to the LAO to resolve through ADR by the Court or Tribunal as mentioned in section 21A (2) of the LASA-2000, then the officer will take an initiative to resolve the dispute and send a notice to the parties in this regard.[42] In case of settlement of the dispute through ADR, the LAO shall follow the procedures of the concerned law, or if there are no detailed provisions there, then follow the direction of the court or tribunal.[43] The LAO shall provide and send the copy of the settlement agreement or the report of the proceeding, whichever may happen, to the party and to the court or tribunal with the documented file it received.[44]

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39 Rule 9, *Ibid.*
40 Rule 11, *Ibid.*
41 Rule 13(3), *Ibid.*
42 Rule 17 (1), *Ibid.*
43 Rule 17 (2), *Ibid.*
44 Rule 17 (3), *Ibid.*

6.3 Confidentiality of the Process

The proceedings of the settlement conference shall be confidential, and communication made, evidence adduced, admission, statement or comment made and conversation held between the parties and their representatives shall not be referred to in any subsequent hearing of the same suit or other proceedings. If any such communication, admission, statement, commitment or evidence supplied during settlement conference is placed as evidence for any subsequent hearing that shall not be admissible.[45]

6.4 Effectiveness of Settlement Agreements and Reports

The settlement agreement or, as the case may be, the report executed under these regulations and sealed by the DLAO shall be a valid legal document and shall be admissible in evidence in any legal proceedings.[46]

6.5 Current ADR Service Status of 64 DLAOs

Table-3 and Table-4 shows the statistics of ADR services by 64 DLAOs (from 2015 to 2022-2023):

Year	Dispute received (Pre-Case)	Cases received (Post-Case)	Disposed Disputes (pre- case)	Disposed cases (post-case)	Number of beneficiaries		Realization of Compensation(TK)	
					Pre-case	Post-case	Pre-case	Post-case
2015	454	251	336	190	290	168	=1859000/-	=4942400/-
							Total =6801400/-	
2016	2276	333	1832	270	1420	294	=15291800/-	=5129900/-
							Total =20421700/-	
2017 (June)	1679	160	1475	128	912	124	=11160214/-	=4791499/-
Total	**4409**	**744**	**3643**	**588**	**2622**	**586**	**Total=43174813**	

Table-3: ADR Services by 64 DLAOs (from 2015 to June, 2017)[47]

[45] Rule 14, *Ibid.*

[46] Rule 16, *Ibid.*

[47] https://nlaso.portal.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/annual_reports/93c8e88c_6fe8_42b3_b408_24a75b531876/7.Yearly%20Report%20upto%20July%20-2017.pdf (Accessed on 12 November 2019)

64 DLAOs	ADR Service (Beneficiaries)	Realization of Compensation	withdrawal of ongoing Cases
2017-2018	5228	TK=49329142/-	-
2018-2019	10375	TK=82502270/-	243
2019-2020	24064	TK=169175511/-	243
2020-2021	28513	TK=248460232/-	872
2021-2022	36095	TK=310296548/-	1101
2022-2023	57837	TK=464344592/-	1627

Table-4: ADR Services by 64 DLAOs (from 2017-2018 to 2022-2023)[48]

7. Case Study on Selected DLOAs: Jhenaidah, Pabna, Nilphamari, Narayanganj, Rangpur and Kushtia

The LAOs for 64 DLAOs were not appointed at the same time but gradually. So, the information and data vary from one DLAO to another regarding period of service or time duration. The official register of the selected DLAOs was under process to make it up to date during the field study due to Corona Pandemic, that's why data have been gathered here on average from the year 2015 to 2019 to explore comparatively the same feature. A further study is needed to update the data.

7.1 DLAO, Jhenaidah[49]

The DLAO of Jhenaidah is situated on the third floor of the Chief Judicial Magistrate Court building. DLAO, Jhenaidah provides different types of legal aid, such as formal court aid or litigation support to all eligible people for civil, criminal, family issues, jail appeals, or any type of legal problems; ADR through pre-case and post-case mediation service; counseling, etc. The number of panel lawyers for Jhenaidah DLAO is 62. Among them, 09 members are for civil suits, 53 for criminal cases. The choice of litigants gets priority in the case of distributing cases among the panel lawyers. There are 6 Upazilas and 67 Unions in Jhenaidah district. But all the Upazila and

[48] http://www.nlaso.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/annual_reports/4b651e19_11eb_4b49_8e89_3bc573e5639e/2023-08-29-07-29-f5c16164803c5da3116c71053ae12121.pdf (Accessed on 20 September 2023)

[49] The information are collected from the DLAO, Jhenaidah in February, 2020

Union Committees are not fully activated yet. The maximum number of clients directly comes to the DLAO. GIZ (German Agency for International Cooperation) Bangladesh project on 'strengthening access to justice for women' is working at Jhenaidah with the assistance of 4 paralegals. No mentionable awareness activities were arranged by the DLAC, Jhenaidah, except the observance of the 'National Legal Aid Day'. This office is facing a problem. The DLAO has only two staff, an office assistant cum computer operator and a supporting staff. No process server or bench assistant is appointed for DLAO. At least two process servers are needed for quick, smooth, and quality service. No vehicle is allocated for the DLAC or DLAO to ensure its speedy functions and to visit the remote areas for awareness activities. The UZLACs and ULACs cannot perform their duty properly because of less manpower and lack of office structure.

Case Study-1[50]

Rupali Begum (26) from Jhenaidah Sadar, having a child, came before the LAO with a complaint that her husband is not providing her maintenance properly, husband and mother-in-law are both demanding dowry and torturing her daily for that. The LAO provided necessary advice to her, enlisted the problem at the register, and ordered to serve a notice to her husband and mother-in-law to appear before the LAO within 15 days (as of 02.03.2020) from the notice served to attempt to mediate the case. The matter remained pending before the LAO till the writing of this research paper.

Case Study-2[51]

It was a pre-case mediation. The Complaint No. 978/2020. Party-1: Mst. Jinia Khatun (18), Party-2: Md. Bajlur Rahman (48), both from Jhenaidah Sadar. The complaint was first filed on 02.02.2020. A date was fixed for the appearance of both the parties. Both parties appeared before the LAO on the date of 16-02-2020. The relation between the parties is father-daughter. Party-1 complained that Party-2 (who divorced her 1st wife, mother of Party-1, and married again) was not providing her any maintenance. The LAO heard both parties. Party-2 agreed to pay TK =2500/- for each month as maintenance to Party-1, and Party-1 agreed to that amount. The LAO advised them to give and

[50] Observed on 16-02-2020 before the LAO at 1.30 pm

[51] Observed on 16-02-2020 before the LAO at 11.30 am

take the amount by post and preserve the receipt. A mediation agreement was then in writing, signed by both parties, and the matter was settled successfully.

7.2 DLAO, Pabna[52]

Pabna is an old city of the British period of Bangladesh. The government legal aid service in Pabna conducts activities with the close supervision of DLAC. The DLAO is situated on the ground floor of the old Judge Court building, very soon will be sifted at Chief Judicial Magistrate building. DLAO, Pabna is providing different types of legal aid as per law and rule, and the rate of pre-case mediation is satisfactory. If no cause of action is seen *prima facie*, then LAO discourages parties from filing suit. The number of panel lawyers for Pabna DLAO is 77. Among them, 32 members are for civil suits, 45 for criminal cases. The choice of litigants gets priority in the case of distributing cases among the panel lawyers. DLAO also tries to maintain equality in the distribution of cases among lawyers. If any lawyer charges extra to any litigant, then the DLAO excludes his name from the panel, sends a show-cause notice to him, and forwards the complaint to the District Bar Association. DLAO monitors the progress of cases and the response of panel lawyers sent to relevant courts from DLAO. There are 9 Upazilas and 73 Unions in Pabna district. But not all Upazila and Union Committees are fully formed yet. The maximum number of clients comes directly to the DLAO. No associated project of NLASO is running in Pabna. No mentionable awareness activities were conducted by the DLAC, Pabna, except the observance of the 'National Legal Aid Day'. The response of the legal aid seekers is too poor; it needs to increase further. This office is also facing the same kind of problem as of Jhenaidah.

Case Study-3[53]

It was a pre-case mediation. The Complaint No. is 03/2020. Party-1: Mst. Sabina Yasmin (25), Party-2: Md. Al-Amin (25), both were from Harolpara, Khidirpur, Atghoria thana, Pabna. The complaint was first filed on 03.02.2020. The present date was fixed for appearance of both the parties. Both parties appeared before the LAO. The relation between the parties is husband-wife. Party-1 complained that Party-2

[52] The information are collected from the DLAO, Pabna

[53] Observed on 18-02-2020 before the LAO at 12.00 pm

was not providing her maintenance properly, mother-in-law and sister-in-law were interrupting their conjugal life. The LAO heard both the parties. Both parties agreed upon certain conditions to settle the dispute at this stage. The main conditions were 1) Party-1 will never talk to Party-2 with any complaining word, will maintain a healthy relationship with father-in-law, mother-in-law, and sister-in-law, and will never try to commit suicide (as Party-2 complained that Party-1 had threatened to commit suicide several times). Party-2 always gives importance to his family life, provides maintenance with his best capacity, and takes care of his parents. 3) The relatives of Party-2 never interrupt at his conjugal life. The mediation agreement was then in writing, signed by both the parties, and the matter was settled successfully.

Case Study-4[54]

Mst. Sufia Khatun (23) from Pabna Sadar, having two children, came before the LAO with a complaint that her husband is drug-addicted, plays gambling, and beats her regularly for many days. The LAO provided necessary advice to her, enlisted the problem in the register, and ordered the service of a notice to her husband to appear before the LAO within 15 days (as of 03.03.2020) from the notice served to attempt to mediate the case. The matter remained pending before the LAO till the writing of this research paper.

7.3 DLAO, Nilphamari[55]

Nilphamari is a developing District of North Bengal. There are 6 Upazilas and 61 Unions at Nilphamari District. The number of panel lawyers for Nilphamari DLAO is 61. Among them, 5 members are female lawyers, 56 are male lawyers. Of the total panel lawyers, 13 specialize in civil cases, 29 specialize in criminal cases, and the remaining 19 handle both civil and criminal cases.

7.4 DLAO, Narayanganj[56]

Narayanganj is an overcrowded city, and its court premises are also a busy area. There are 9 Upazilas and 73 Unions in Narayanganj district.

[54] Observed on 19-02-2020 before the LAO at 1.00 pm

[55] Information are collected from the DLAO, Nilphamari

[56] The information are collected from the DLAO, narayanganj

The number of panel lawyers for Narayanganj DLAO is 40. Among them, 02 members are civil lawyers, 38 are criminal lawyers. The maximum number of clients appear directly or through jail authority to the DLAO.

7.5 DLAO, Rangpur[57]

Rangpur is a developing District and divisional city of North Bengal. There are 8 Upazilas and 83 Unions at Rangpur District. The number of panel lawyers for Rangpur DLAO is 43. Among them, 10 members are female lawyers, and 33 are male lawyers. All panel lawyers are enlisted to handle both civil and criminal cases. The Rangpur DLAO has been conducting Alternative Dispute Resolution (ADR) activities since 2017.

7.6 DLAO, Kushtia[58]

The government-provided legal aid service in Kushtia District is operated by the DLAO under the close supervision of DLAC, Kushtia. The DLAO is situated on the ground floor of the Chief Judicial Magistrate building. In Kushtia, DLAO is providing different types of legal aid such as formal court aid or litigation support to all eligible people for civil, criminal, family issues, jail appeals, or any type of legal problems; ADR through pre-case and post-case mediation service; counseling, etc. The number of panel lawyers for Kushtia DLAO is 56. Among them, 23 members are for civil suits, 33 for criminal cases. The choice of litigants gets priority in the case of distributing cases among the panel lawyers. There are 6 Upazilas and 66 Unions at Kushtia district. 5 UZLAC have been formed and are functioning here, but all Union Committees are not fully formed yet. Kushtia DLAO arranges legal awareness and publicity programs like observance of 'Legal Aid Day', experience and opinion-sharing meetings with local people at Upazila and Union Parishad areas, and with panel lawyers also. However, like the Jhenaidah District Legal Aid Office, the Kushtia DLAO faces several operational and administrative challenges in providing effective legal aid services.

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[57] The Information are collected from the DLAO, Rangpur

[58] The information are collected from the DLAO, Kushtia and the souvenir "Dokhin Hawa-2019", a booklet published by the DLAC, Kushtia.

7.7 Service Status of the Selected DLAOs at a Glance

The current ADR service status of selected DLAOs is shown in **table-5**:

Name of the DLAOs	Initiation of Mediation	Successful	Documented	Pending
Jhenaidah	590	130	384	76
Pabna	730	314	416	-
Nilphamari	123	37	55	31
Narayanganj	641	267	373	01
Rangpur	617	266	201	65
Kushtia	824	512	248	64

Table-5: ADR services by the selected DLAOs[59]

8. Analysis on Legal Aid Seekers and Beneficiaries Perception and Findings

People's perception is essential to fulfil the purpose of an empirical study. People's perception is the belief or opinion, often held by many people and based on how things seem to them.[60] As mentioned in the methodology, a total of 100 respondents have been selected for this study. The data and outcomes were collected from respondents by asking selected questions. From the field study, the assessments are mentioned below:

8.1 Factual Information

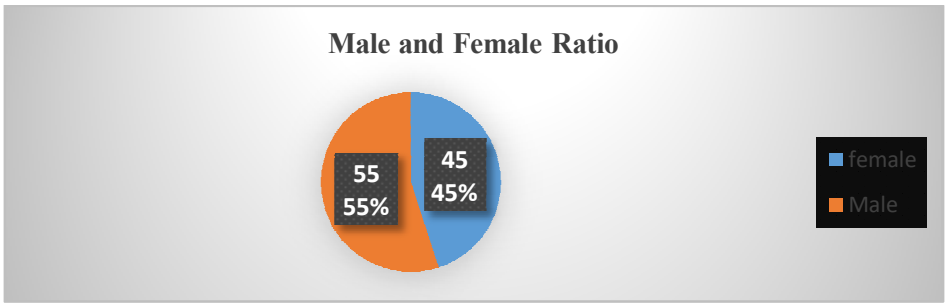
i. District-wise Number of Respondents

Sl.No.	Name of District	Number of Respondents
1.	Jhenaidah	20
2.	Pabna	20
3.	Nilphamari	20
4.	Narayangaj	10
5.	Rangpur	10
6.	Kushtia	20

[59] Information are collected from the selected DLAOs office register

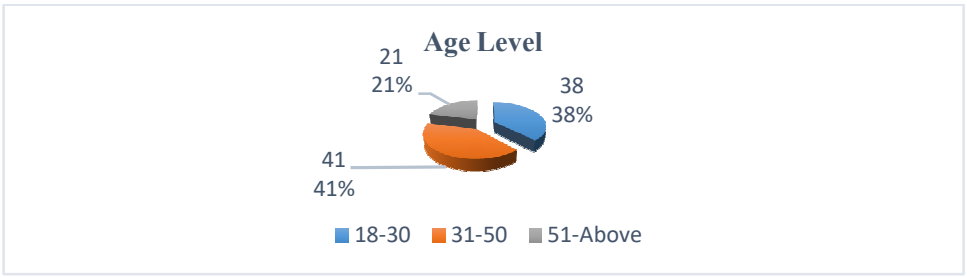
[60] https://dictionary.cambridge.org/dictionary/english/perception/ (Accessed on 27 March 2023)

ii. Male and Female Ratio



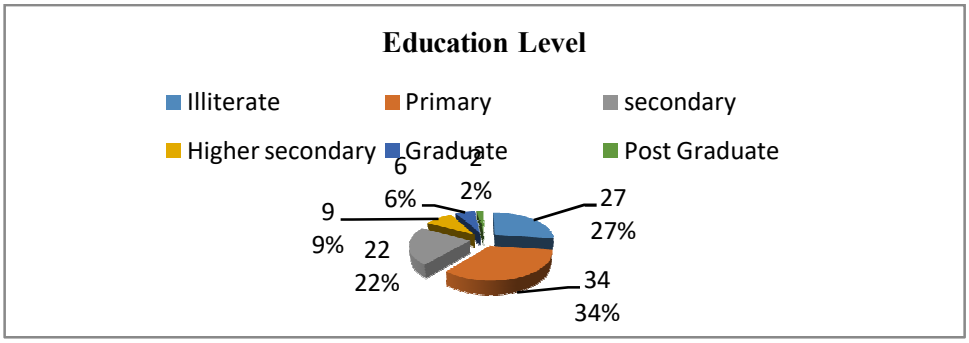
Of the 100 respondents, 55 were male and 45 females.

iii. Age Level



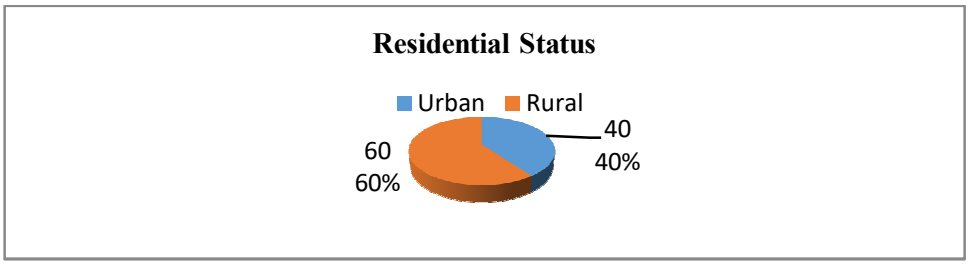
The above diagram shows the age level of the respondents.

iv. Education Level



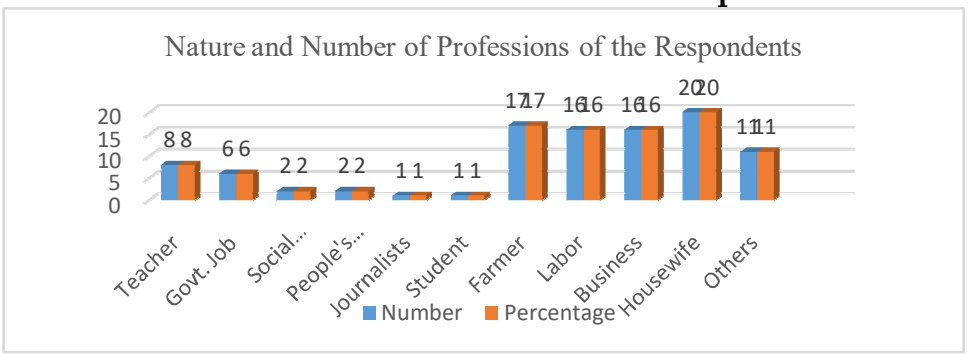
The above diagram shows the education level of the respondents.

v. Residential Status



The above diagram shows the residential status of the respondents.

vi. Nature and Number of Professions of the Respondents



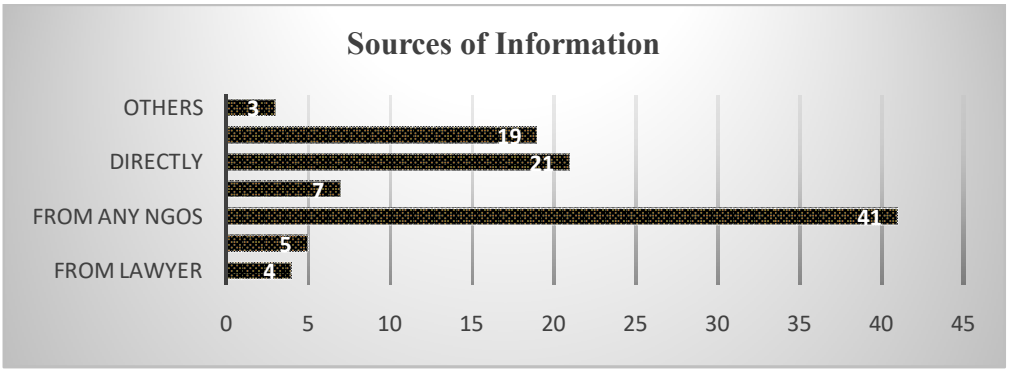
The above chart shows the nature and number of Professions of the respondents.

8.2 Response on Specific Questions

This section synthesizes the empirical findings regarding legal aid seekers' experiences and perspectives on DLAO services. Overall, the data reveals that NGOs serve as the single most prominent channel for disseminating information (41.0%), followed by direct inquiry (21.0%), and jail authorities (19.0%), while formal judicial channels like courts (5.0%) and lawyers (4.0%) play a minimal role. The detailed question-wise analysis and corresponding data distributions are elaborated below:

Question No.-1: Opinion about sources of information the legal aid seekers got

Sources of Information	
Question No. 1	
Perception Level	**No. of Respondents**
From Lawyer	4
Court	5
From Any NGOs	41
From Local Representatives	7
Directly	21
Jail Authority	19
Others	3
Total	**100**

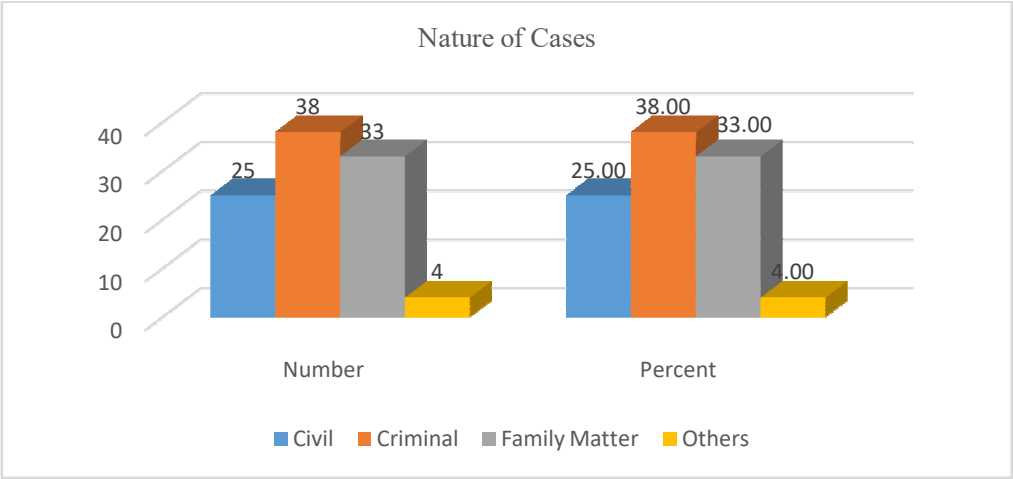


Source: Q-1

Analysis of perception on sources of information: The above diagram shows that considering all categories of respondents, 4.0 percent of respondents were informed about ADR at DLAOs through the lawyer, 5.0 percent through the court, 24.0 percent through NGOs, 7.0 percent through local representatives, 38.0 percent through direct contact with the DLAOs, 19.0 percent through jail authority, and 3.0 percent through other sources. The Investigation reveals that NGOs play a more significant role in disseminating information about ADR services than the National Legal Aid Services Organization (NLASO).

Question No.-2: Opinion about nature of disputes/cases for which respondents visit DLAO

Nature of Disputes/Cases	
Question No. 2	
Perception Level	**No. of Respondents**
1. Civil	25
2. Criminal	38
3. Family Matter	33
4. Others	4
Total	**100**

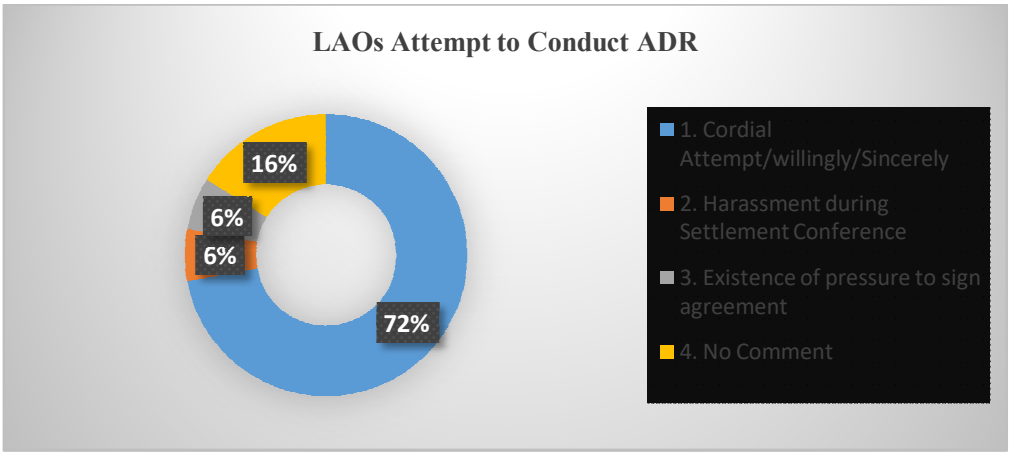


Source: Q-2

Analysis of perception on the nature of cases: The above diagram shows that considering all categories of respondents, 25.0 percent respondents reported receiving legal aid in cases of civil nature, 38.0 percent in cases of criminal nature, 33.0 percent in cases of family dispute, and 4.00 percent in other kind of cases. The Investigation reveals that the rate of getting legal aid in criminal cases is high.

Question No.-3: Opinion regarding LAOs attempt to conduct ADR

LAOs Attempt to Conduct ADR	
Question No. 3	
Perception Level	**No. of Respondents**
1. Cordial Attempt/willingly/Sincerely	72
2. Undue influence (by any side) during Settlement Conference	06
3. Existence of pressure to sign agreement	06
4. No Comment	16
Total	**100**

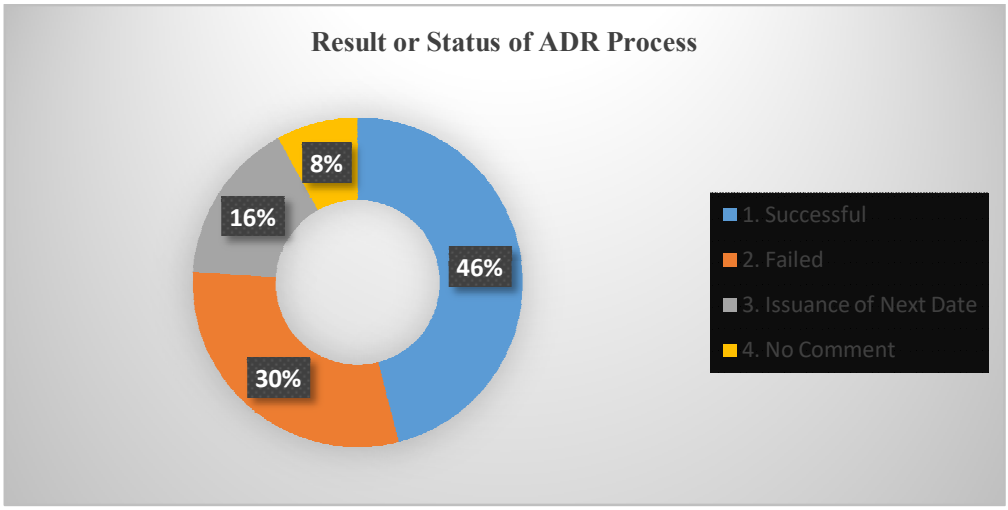


Source: Q-3

Analysis of Perception on the LAOs attempt to conduct ADR: The above diagram shows that considering all categories of respondents, 72.0 percent stated that LAO made sincere and voluntary efforts to conduct ADR, 6.0 percent expressed being influenced or provoked by opponents, engaged pleaders, or touts within the DLAO premises during settlement conference, 6.0 percent respondents indicated that experienced pressure to sign agreement, and 16.0 percent respondents expressed no opinion on the question. The investigation reveals that the LAOs' attempt to conduct ADR is satisfactory.

Question No.-4: Opinion regarding result or status of ADR Process

Result or Status of ADR Process	
Question No. 4	
Perception Level	**No. of Respondents**
1. Successful	46
2. Failed	30
3. Issuance of Next Date	16
4. No Comment	08
Total	**100**

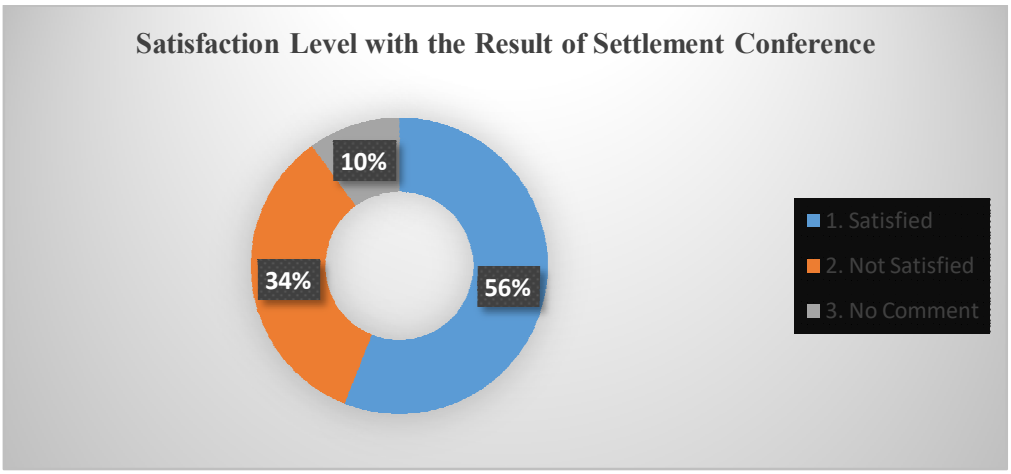


Source: Q-4

Analysis of Perception on the result or status of ADR process: The above diagram shows that considering all categories of respondents, 46.0 percent respondents expressed that the ADR conducted by the LAO was successful, 30.0 percent respondents expressed that the ADR conducted by the LAO failed, 16.0 percent respondents expressed that LAO issued further date for settlement, 08 percent respondents expressed that they had no opinion for this question. The Investigation reveals that the satisfaction level of successful ADR conducted by the DLAO is on average.

Question No.-5: Opinion about satisfaction level with the result of settlement conference/ADR

Satisfaction Level with the Result of Settlement Conference/ADR	
Question No. 5	
Perception Level	**No. of Respondent**
1. Satisfied	56
2. Not Satisfied	34
3. No Comment	10
Total	**100**

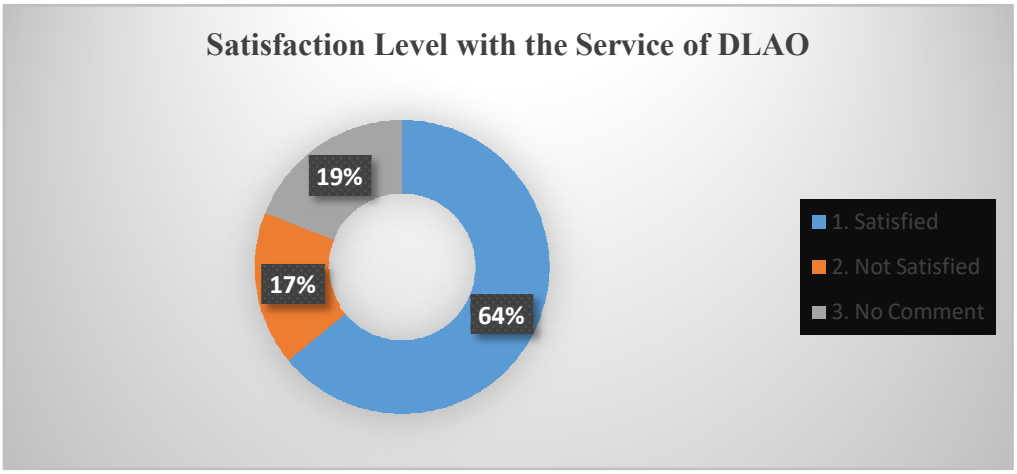


Source: Q-5

Analysis of Perception on the satisfaction level with the result of mediation service of DLAO: The above diagram shows that considering all categories of respondents, 56.0 percent respondents expressed that they were satisfied with the result of ADR, 34.0 percent respondents expressed that they were not satisfied with the result of ADR and 10.0 percent respondents expressed no opinion on this question. The Investigation reveals that satisfaction level with the result of ADR service by the DLAO is on an average position and that matter is alarming for huge case backlog.

Question No.-6: Opinion about the satisfaction level with the overall service of DLAO

Satisfaction Level with the Service of DLAO	
Question No. 6	
Perception Level	**No. of Respondent**
1. Satisfied	64
2. Not Satisfied	17
3. No Comment	19
Total	**100**



Source: Q-6

Analysis of Perception on the satisfaction level with the service of DLAO: The above diagram shows that considering all categories of respondents, 64.0 percent respondents expressed that they were satisfied with the service of LAO, 17.0 percent respondents expressed that they were not satisfied with the service of LAO, and 19.00 percent respondents expressed no opinion on this question. The Investigation reveals that the overall service of DLAOs is satisfactory.

9. Limitations and Suggestions

Certain loopholes and lacunas are identified, and suggestions are made thereto for more effective service by the DLAOs:

a) **Binding Effect of Mediation Agreement:** A mediation agreement would not be effective without any binding force. An LAO-conducted mediation has no binding effect upon the parties. The Act and the Rules should be amended without any delay in this regard to treat it as a legal document admissible in evidence according to the Act or Rule. It results in bringing the parties back to the court again. A successful mediation agreement conducted by the LAO should get the status of a decree under Order XXIII and should be executed under Order XX of the CPC. In post-case mediation, sometimes it needs to amend the plaint or written statement, but LAO has no such power. The Rules should also be amended in this regard immediately.

b) **Appointment of Higher Judicial Official for the Post of LAO:** There is an acute shortage of trained mediators at the DLAOs as the LAOs are appointed from the judicial officer ranking assistant judge or senior assistant judge who have a minimum experience or no experience in judicial and legal aid service. They have very little or no training at all on the functional aspects of mediation. DLAOs should be more active and effective, but the chairman of the DLAC ex officio is a busybody as he is a District Judge. Thus, for the smooth and proficient running of the DLAOs, the LAO would be appointed from the judicial officers ranking Joint District Judge. The post of 'Assistant Legal Aid Officer (ALAO)' can be created where a judicial officer ranking Assistant Judge would help the LAO with different wings. Necessary actions could be taken by amending section 21A of the Act to serve the purpose.

c) **Provision of CrPC and Certain other Laws should come under the Purview of DLAOs:** Section 345 of the CrPC[61] deals with compoundable offences, but there is no provision for ADR or

[61] Act No. V of 1898

mediation by the LAOs. More petty offences from the Penal Code need to be included in the purview of section 345 of CrPC and should be brought within the jurisdiction of LAOs to mediate. Along with the CrPC, certain other laws like the Negotiable Instruments Act, 1881, and the Dowry Prohibition Act, 2018 should come under the purview of ADR by the DLAOs. These laws need to be amended like the CPC to empower LAOs.

d) **Reasonable Fees for the Panel Lawyers along with Coordination Fees:** Lawyers are the primary persons who can play an active role to bring the disputants under the platform of ADR by motivating them, highlighting the advantages of the process, and can reduce the backlog of cases. It is found during the study that there is a major lack of interest and commitment on the part of the lawyers in conducting legal aid cases for the fees allocated to panel lawyers. Fees are too small compared to the fees in private cases. If the fees are time-demanding, reasonable, and attractive with the pace of the economic situation, then lawyers can also encourage the parties to mediate the cases at the DLAOs. The Legal Aid Services Regulations, 2015 could be amended to fix the fees handsomely and could introduce coordination fees to them. The government has not provided any type of financial support or state-oriented financial structure for the lawyers. This results in making them non-cooperative in resolving disputes through mediation in referred cases at DLAOs. Lawyers should be paid handsomely by fixing an amount from the government authority. The government can direct such an amount by amending the provisions of the Legal Aid Regulations, 2015.

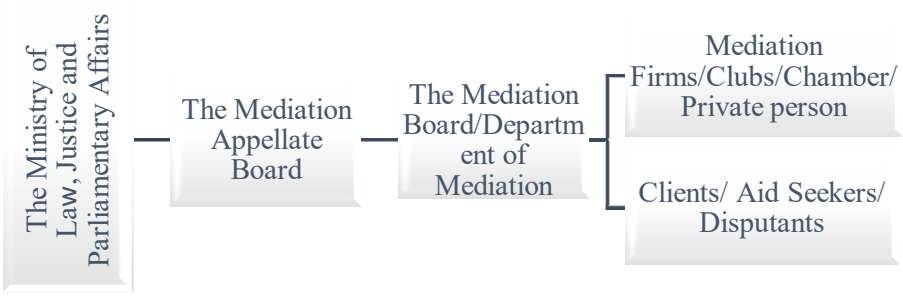
e) **Need to Enact Specific Legislation on Mediation:** Like the Arbitration Act, 2001 of Bangladesh,[62] it needs to enact a

[62] Act No. I of 2001

concrete law on mediation where stages, facilities, functions, office structure, application area, procedure of a mediation process, and techniques and qualities of mediators will be mentioned clearly. Separate civil and criminal mediation courts need to be formed and established under this legislation, and well-trained full-time mediators will be appointed at those courts with full force.

f) **Institutional and Structural Capability:** DLAOs are situated at the District and Session Judge Court premises in 64 districts. It needs a separate building, which is a demand of the time for DLAOs with different cells like 'information desk', 'mediation cell', etc. It's very difficult to serve notice to the necessary parties without a process server of the office's own. Due to weak manpower, indigent people are not able to connect themselves with the office at their desired time. There are no transport facilities of its own for any DLAOs. The administration of DLAOs has been formed comprising an officer and two other staff, one of whom is a computer operator, and the other is the office assistant. No accounts officer, process server, or desk assistant is appointed yet at this office. NLASO should appoint an accounts officer and more supporting staff for DLAOs on an emergency basis.

g) **Separate Mediation Board with Number of Mediation Centers:** It is not expedient that only DLAOs will provide ADR and carry the load with the government legal aid scheme. A statutory body/board could be incorporated for formulating rules, planning and monitoring mediation or for the total ADR system to overcome the backlog of cases. Several mediation firms can be set up countrywide (can be 400-600 in number) under a central Mediation Board. Appeals can be filed with the Mediation Appellate Board under the supervision of the Ministry of Law, Justice and Parliamentary Affairs. The formation of the Board would be as follows:



h) **Establishment of National Mediation Academy:** Adequate training should be arranged for LAOs, other related officials, and lawyers from time to time. In this respect, Bangladesh International Mediation Society (BIMS)[63] is currently serving mediation-related training services privately. However, a national, state-oriented organization named National Mediation Academy could be established, like Bangladesh Judicial Administration Training Institute (JATI)[64] to provide foundation training. It will help them to be sensitized enough and more professional about their services. Bangladesh Judiciary, Bangladesh Bar Council and Bar Associations need to work together along with the NLASO in this regard.

i) **Legal Aid Cells/Clinics at Upazila/Union Level:** A poor legal aid seeker needs to travel a long distance to the district level just to file a complaint. Many poor villagers willing for mediation do not turn up considering the distance of DLAOs. Hence, to increase participation from the farthest corner of the root level, LAO or proposed ALAO may sit at Upazila on designated days by rotation. Application forms should be made available there. To align with the DLAOs, Legal Aid Clinics can be set at every UZLAC/ULAC level, like 'community clinics', which have been set for rural and urban health care, all over Bangladesh.[65]

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63 BIMS is the 1st international mediation institute of Bangladesh, working from 31st May, 2017, a non-profit and non-political government registered society

64 Established in 1997

65 14000 Community Clinics are serving right now

j) **E-Response System for ADR:** NLASO initiate e- response system for the ADR process through Legal Aid Office Management Software. Sending automatic messages (SMS) to the parties about the notice for ADR, and the date fixed for the settlement conference are the services of this system. But parties cannot directly participate in this digitalized process, as they cannot return a message asking if they have any problem with the due dates to mediate; or they cannot get any office copy of the decision through online service. All these digitalized services could be provided by the DLAOs to the legal aid seekers.

k) **Online Dispute Resolution (ODR):** ODR evolved as a new method of ADR though it was used in the e-commerce space since the 1990s.[66] This process includes the use of email and fax, and web-based communications. Mediation services of the DLAOs should be made available through the ODR process where parties desire, in the form of e-filing or e-lodgment; video conferencing; e-hearing and e-settlement.

l) **Public Relations Officer (PRO) and Village Paralegal (VP):**The Legal Aid Services (Officers and Employees) Rules, 2010 could be amended to create a post for Public Relations Officer (PRO), one or more at every district level for bridging the DLAOs with the grassroots level. NLASO can also appoint and select a significant number of Village Paralegals (VP) who would assist the PROs and will establish a strong relationship with local representatives. Role of a **paralegal**[67] is to be a connector to fill the gap between the law and justice system and the common people specially deprived and destitute ones, by providing them legal, social, and humanitarian support. A paralegal is not a

[66] Justice Naima Haider, The Digital Future of ADR: The Concept of Paperless Arbitration, Annual Report, 2021, Supreme Court of Bangladesh, P. 129

[67] A paralegal is a person knowing about law and legal procedure, well-trained and experienced, but not a lawyer or advocate.

lawyer, not a clerk of a lawyer. His role is 'in between' them. Those who possess a strong commitment to do something for the poor can be recruited as paralegals.

m) **Collaboration with 'Legal Aid NGOs':** It is observed that NGOs combine their legal aid activities with their legal literacy and public awareness programs backed by service-oriented and target group-friendly approaches. The main reason for the ineffective operation of the legal aid mechanism is a pervasive lack of knowledge on the part of its primary beneficiaries, most of whom are poor in number, about the scheme. The government legal aid program has not yet reached its desired goal, though 23 years have passed since enacting the LASA, 2000. DLAOs need to work in collaboration with the leading human rights or legal aid NGOs to enrich the service.

n) **Change of Mentality by Awareness and Publicity Program:** Common people have very little or no knowledge at all about DLAOs' mediation. When any cases are referred from the court or tribunal to the DLAOs to mediate, many are misguided by their engaged pleaders about the purpose and process of mediation. So, awareness and publicity are the main challenges of the government legal aid service. Awareness activities should spread at grass root level through different plans and programs by the DLAOs. Publicity programs should start at the school and college level. Meeting with students and providing them with a booklet or leaflet, showing them a docudrama, will be more effective to inform them and their family about the service. People need to be informed about the advantages of ADR service, and DLAOs also have to work to promote mediation and to change the mindset of common people. Chairman of the DLAC has to be very dynamic and influential on this matter. Finally, the role of civil society and media is very much important to disseminate the service.

o) **ADR as Restorative Justice:** Restorative justice is based on the principles of relationship, respect, responsibility, repair, and reintegration, refers to an approach to justice that seeks to repair harm by providing reciprocal opportunity. Initiatives should be taken to popularize ADR, explore opportunities and scope for greater application of this alternative recourse to justice as less expensive, less formal, less time-consuming, and so on. Greater emphasis should be given on restorative justice methods not only in DLAOs but at the courts and tribunals also. Importance could be given to every shalish, mediation, arbitration, and also village courts[68] to secure local settlement of disputes.

p) **Proper Monitoring and Follow-Up:** Proper follow-up is the pre-condition of the success of any people-oriented program. The DLAOs should keep an eye on whether the parties are adhe ring to the agreement's terms and conditions and whether succe ssful social rehabilitation has been accomplished after the settle ment. Many legal aid NGOs get good results by maintaining the 'follow-up' of the disputant parties. DLAOs should regularly monitor and follow-up the parties in a successful mediation agreement. It will help to curb the backlog of cases of the judiciary.

10. Conclusion

Legal aid is related to the broader notion of social justice and its realization depends upon appropriate legal arrangements, a sound institutional framework and coordinated efforts of the state apparatus and civil society. Ensuring equal justice is the main goal of legal aid.ADR maintains a healthy relationship between the parties and enhances social integration by serving a win-win approach to disputes. The words 'case' or 'court' sometimes bring panic to most of the people. ADR is an effective way to remove such anxiety, as the exquisiteness of a settlement conference is that, at DLAOs, each party

[68] Established under *the Village Court Act, 2006* (Act No. XIX of 2006)

has the opportunity to voice their own point of view. Building a positive, pro-people image and people's trust is now a big challenge for DLAOs' ADR service. The judiciary should work more on it. Otherwise, the constitutional mandate regarding equality before law and equal protection of law for all will merely exist in case of exclusion of the people from enjoyment of their fundamental and legal rights. The State could take necessary steps along with other stake holders to ensure that ADR and legal aid services and other provisions aimed to assist the poor and weaker sections of society are implemented. Finally, it is hoped that the above-mentioned suggestions can be very helpful for the government and policymakers to work together to apply the ADR process by the DLAOs successfully.

Practices of Serving Show-Cause Notices in the Universities in Bangladesh: A Field Inquiry

Dr. Md. Shawan Uddin *

Abstract

The objectives of this study are to investigate the realities relating to the practices of serving show-cause notices issued for conducting inquiries into allegations against the accused by the Universities of Bangladesh of complying with legal provisions and to find out the gap between the university authority's show-cause notice and pertinent legal clauses. This study has been conducted employing a qualitative method using interpretivist paradigm. This study applied multiple case studies approach, using documentary analysis. Due to this study's extensive qualitative nature, eleven cases were selected purposively for detailed investigation. The source of data collection was the show-cause notices provided to the teachers, officers, and office staff of five selected Universities in Bangladesh. The collected data were analyzed through content analysis. This study found that as a higher educational institution, the Universities issue show-cause notices without providing details of the allegations against the accused and adducing any documents relating to inquiries into the allegations. The accused are given a nominal notice and are asked to provide an explanation which is the violation of the legitimate and constitutional rights of the accused. This study will contribute significantly to the existing literature on human rights and social justice. This study will help to be aware of the particulars and requirements of show-cause notice, especially in the higher educational institutions in Bangladesh. This study also implies the future reference to conduct the empirical assessment in terms of show-cause notice and legitimate expectancy of human beings. This study will be the source for the next researchers who may consider the wide area of the field of study to get an overall picture of the research matter using a larger sample size, applying random sampling technique and employing quantitative or mixed-methods instead of qualitative method only ensuring the validity and reliability of the data. As far as originality is concerned, to the best of the researcher's knowledge, no prior research has been conducted

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to investigate the realities surrounding the practice of issuing show-cause notices for inquiries into allegations against the accused in higher educational institutions in Bangladesh, particularly in universities.

Keywords: *Show-cause Notice, Higher Educational Institutions, Legitimate Expectancy, Principles of Natural Justice*

1. Introduction

According to Article 135(2) of the Constitution of the People's Republic of Bangladesh (Act No. of 1972) no person shall be dismissed or removed or reduced in rank until he or she be afforded a reasonable opportunity of showing cause why the action should not be taken.[1] The Government Servant Ordinance, 1979 of Bangladesh provides that, if a government servant (hereinafter called "accused") is to be proceeded against in respect of any of the offences enumerated in section 3, the government servant to whom he is subject, or any person authorised by him, shall prepare a charge and send a notice containing the charge to the accused, requiring him to show cause within a period[2].

Section 6(A) of the Government (Discipline and Appeal) Rules, 2018 of Bangladesh states that the accused shall be informed in writing of the allegations brought against him and may be directed to explain his conduct within 10 working days of receipt of the complaint by the accused. Moreover, Section 7[1(A)] explicitly states that the complainant shall determine and specify the proposed penalties and shall inform the employee of the allegations on which the complaint is based by issuing a show-cause notice, including the relevant details and any other circumstances the authority deems appropriate to consider when issuing the order[3].

Article 311(2) of the Constitution of India is a protection to civil servants. According to this Article, a civil servant may not be

1 Prianka, N. A. (2019). Rights of the Accused in Bangladesh: A Critical Appraisal of Legal Framework (Doctoral dissertation, East West University).

2 Bari, M. E. (2017). Preventive detention laws in Bangladesh and their increased use during emergencies: A proposal for reform. Oxford University Commonwealth Law Journal, 17(1), 45-74.

3 Haque, S., Tawfique, M., & Mahfuzul Haque, M. (2019). The Civil Service System of Bangladesh. In Civil Service Management and Administrative Systems in South Asia (pp. 49-72). Palgrave, Macmillan, Cham.

dismissed, removed or demoted from his/her service without being provided with reasonable opportunity to show cause in relation to the action proposed to be taken against him/her.[4] Show-cause notice is an order that is issued by a court, competent authorities, or an organization that requires a person or group of people to explain or 'show cause in writing' why the disciplinary action should not be taken against the person or the group of people involved in certain incidents or wrongdoing.[5],[6] Often it involves serious misconduct, occupational health and safety issues, workplace bullying and harassment, underperformance, theft, fraud, assault, use of illegal drugs and refusal to complete tasks, etc.[7],[8] It also encompasses: not working to a standard or not at all; not following rules or policies; and disruptive or negative behaviour. A notice calling for the presentation of arguments, explanations or proof of a point in case or controversy. Notice to show cause can be used in a myriad of contexts, such as court proceedings, as well as in workplaces for disciplinary actions.[9] A show-cause notice is a formal notice sent to one of the parties involved in a dispute. This notice is issued by the competent authority once he/she has checked the incident through and should, if he/she believes the person accused or perhaps the person who could be accused of wrongdoing, provide them with an opportunity to hear him and his explanation of his actions and take this chance of avoiding disciplinary action. After getting complaints of certain incidents, the competent authority or organization holds a prima facie investigation and if finds a responsible person for certain incidents or wrongdoing then the delinquent is required to be informed by a formal notice that she/he is responsible for such certain incidents or wrongdoing. This notice is required to issue to the delinquent to give him a fair opportunity to

4 Laxmikanth, M. (2021). Indian Polity Fifth Edition For Civil Services Examination.

5 Cass, R. A., Diver, C. S., Beermann, J. M., & Freeman, J. (2020). Administrative Law: Cases and Materials. Aspen Publishers.

6 Weiss, J. W. (2021). Business ethics: A stakeholder and issues management approach. Berrett-Koehler Publishers.

7 Rayner, C., & Lewis, D. (2020). Managing workplace bullying: The role of policies. In Bullying and harassment in the workplace (pp. 497-519). CRC Press.

8 Vardi, Y., & Weitz, E. (2016). Misbehavior in organizations: A dynamic approach. Routledge.

9 Edelman, L. B., Erlanger, H. S., & Lande, J. (1993). Internal dispute resolution: The transformation of civil rights in the workplace. Law & Soc'y Rev., 27, 497.

submit his/her reply to the concerned authority regarding the complaints filed against him/her.[10]

A show-cause notice sets out details of an alleged offense and gives the receiving party the chance to explain itself or otherwise face some further consequences. It provides the recipient an opportunity to present their side of the story and why action should not be taken. It provides the party to whom the notice is issued with procedural fairness, in other words. A show-cause notice/letter should be simple, short, clear, devoid of emotion and issued as early as possible. It should clearly define the problem, such as a violation of the law, a violation of the code of conduct or a violation of a term of employment, and outline the desired level of performance. The notice should include specifics of the allegations to be answered, such as dates, times, witnesses, documents, or location, and specify the evidence the employer must present to substantiate the allegation. It should also outline the disciplinary action that is proposed, outline any previous disciplinary action that has been taken and outline how and when the delinquent person will be expected to respond.

The show-cause notice should have included allegations in writing, independent verification of allegations, and opportunity for the delinquent to respond and the opportunity to have a support person present at the interview. It is important to state the particular reason for the notice and clearly to state what the consequences of not replying to the notice are. Moreover, if the competent authority or organization holds a prima facie investigation or inquiry and finds the person responsible incidents or wrongdoing then the delinquent is required to provide an inquiry report with the show-cause notice. The notice should be sent to the concerned person alone and such a notice may be served personally and may also be sent to their home address and the receipt of the notice should be kept on record for further reference. As of 2025, there are 56 public universities and around 116 private universities in Bangladesh, which are engaged in imparting knowledge and nurturing creativity to produce world-class human resources to address the changing needs of the times (UGC, 2025).

[10] Cubitt, T. I., & Judges, S. J. (2018). Show cause analysis: A qualitative assessment of the factors influencing police misconduct from the perspective of the officers who commit it. Policing: An International Journal.

One of the core values of these universities are to maintain international standards in education with focus on both knowledge and skills, and humanitarian and ethical values to meet the needs of the society and state. The four autonomous universities of Bangladesh namely Rajshahi, Dhaka, Chittagong and Jahangir Nagar Universities are governed by their respective Acts of 1973. Besides, other government universities of the country are also managed according to the respective University Act passed by the National Parliament. The Private Universities Act 1992 (with amendment of 2010) regulates the Private Universities. All universities have to comply with their respective laws or the existing laws or constitutional provisions of the country. All universities have rules and regulations that give a high priority to fairness to all faculty, staff and students. The total number of teachers in all the Bangladeshi universities is, 23934. 11439 teachers are working in the public universities, while there are 12495 teachers in the private universities.[11] It was found in literature that there are about 853,267 university students in Bangladesh. Among them 454,530 are in public universities and 398,737 are private universities.[12] It should be noted that all universities have legal governing bodies like syndicate and academic council that are legally bound to take any decision in the frame of the law.

Most universities have the chance to obtain legal advice and opinions from their legal cell. Moreover, most universities have a panel of legal advisors who are active practitioners in the lower and higher courts of Bangladesh, to whom the university authorities approach for legal advice. In general, a lawyer is also a member of the Syndicate, the top governing body of the university. A large number of teachers and officials work in the universities of Bangladesh, who perform the academic and administrative work of the university as per the prevailing laws and regulations of the university and the country. Teachers and officials are sometimes involved in academic and administrative activities in the university, and they are charged with

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11 Rahman, M. M. (2022). Teacher education: theory and practice in Bangladesh. In *Handbook of research on teacher education: Innovations and practices in Asia* (pp. 111-140). Singapore: Springer Nature Singapore.

12 Islam, N., Ara, R., & Das, P. (2023). Selection of Fast-Food Items by the Young Consumers in Bangladesh.

various charges. The university authorities used to set up an inquiry committee to investigate the complaint against the accused in view of the complaint. Besides, the university authorities establish inquiry committees to investigate the accusations of different students, teachers, officers and office staff of the university, including the presence of the university teachers and legal experts as members of these committees.

It is a constitutional right of every citizen to have the opportunity to defend themselves against any charge brought during the inquiry into an allegation. In universities-the highest educational institutions in the country-teachers and the legal cell are engaged to conduct inquiries into allegations. According to the country's constitution, an accused has to be served show-cause notice regarding any charge brought against him/her. The question of this study is, does the contents incorporated in the show-cause notices issued by the university authorities or inquary committees in the investigation of complaints brought against the students, teachers and officials of the university comply with the leagl framework? Moreover, what is the gap between the university authority's show-cause notice and pertinent legal clauses?

2. Statement of the Problem

Although the Constitution of Bangladesh and other legal frameworks mandate that every accused individual must be given a fair opportunity to defend themselves through a properly framed show-cause notice, the practices followed in Bangladeshi universities reveal significant gaps in compliance with these requirements. The inquiry committees or university authorities often issue vague and incomplete show-cause notices without specifying the date, time, place, or nature of the alleged incidents, nor do they provide supporting documents, inquiry reports, or details of complainants. As a result, accused teachers, staff, and students are denied adequate information to prepare their defense, leading to judicial interventions where courts have frequently declared such notices and subsequent disciplinary actions invalid on the grounds of violating principles of natural justice. This lack of adherence to constitutional safeguards and statutory provisions not only undermines due process but also damages the credibility of universities as institutions that are expected to uphold

fairness, justice, and transparency. Therefore, it is essential to investigate whether universities in Bangladesh comply with legal provisions when issuing show-cause notices and to identify the gaps between current practices and established legal standards.

3. Objectives of the Study

The objective of this study is to critically examine the extent to which universities in Bangladesh comply with constitutional and statutory provisions in issuing show-cause notices to teachers, officers, staff, and students, with a particular focus on assessing whether these notices provide adequate details such as the time, date, place, nature of allegations, and relevant supporting documents or inquiry reports. The study further seeks to identify the gaps between existing practices and the established legal requirements, to explore how such deficiencies undermine the principles of natural justice and the rights of the accused, and to contribute to the broader discourse on human rights, procedural fairness, and administrative justice within higher educational institutions in Bangladesh.

4. Literature Review

Notice comes from the Latin word 'notifia' meaning 'being known. Thus, it implies knowledge of circumstances or making known what a man was or might be unaware of before[13]. The first step of a fair hearing is to serve a notice on the person concerned, requesting them to explain[14],[15] and to give reasons why the proposed action should not be taken. The hearing starts with the issuance of notice to the affected person[16]. If the order is passed without notice to the person, it is

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13 Muhammad, Y., & Abdullahi, Y. (2021). An Overview on the Conceptual Origin of the Doctrine of Constructive Notice as Applicable to Corporate Law in Nigeria.

14 Simonis, M. (2019). Effective court administration and professionalism of judges as necessary factors safeguarding the mother of justice-The right to a fair trial. In IJCA (Vol. 10, p. 47).

15 Vogiatzis, N. (2022). Interpreting the Right to Interpretation under Article 6 (3)(e) ECHR: A Cautious Evolution in the Jurisprudence of the European Court of Human Rights?. Human Rights Law Review, 22(1), ngab027.

16 Settem, O. J. (2016). Applications of the" Fair Hearing" Norm in ECHR Article 6 (1) to Civil Proceedings. With Special Emphasis on the Balance Between Procedural Safeguards and Efficiency.

against the principles of natural justice and it is void ab initio[17]. Even if the statute does not contain any provision regarding giving notice, and even if giving notice has a negative effect on the rights of a person, in such cases, the notice is required to be given as well.[18]

A notice should be adequate and include: time, place and nature of the hearing, statement of specific charges or grounds and proposed action, must be clear and unambiguous, must give the party sufficient time to prepare his/her case, must provide sufficient information relating to the case, must be full disclosure of evidential facts, must be full disclosure of documents[19]. It involves having information about the issues on which the authority will be making a decision. It is a part of the right to defend oneself. The rule is that the adjudicating body shall make its decision on the material before the parties. No evidence can be taken into consideration that has not been disclosed to the concerned party, and the party must also be informed of the legal authority under which the hearing is to be held[20]. The party is not afforded the desired reasonable opportunity by a vague or imprecise notice.[21] A notice would be vague if it is based on no material or if it is vitiated by non-application of mind.[22]

The duty of the decision making body is to issue a show cause notice to a person before taking any action against him.[23] The show cause notice should be reasonable and include the time and place of the hearing, its

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17 Maheshwari, P. (2020). Natural Justice in Departmental Inquiry. Available at SSRN 3620940.

18 Ferris, C. E. (2008). The search for due process in civil commitment hearings: How procedural realities have altered substantive standards. Vand. L. Rev., 61, 959.

19 Craig, P. P. (2022). Natural Justice in English Administrative Law: Continuity and Change from the 17th Century. Liber amicorum per Marco D'Alberti (Torino, Giappichelli, 2022).

20 Prianka, N. A. (2019). Rights of the Accused in Bangladesh: A Critical Appraisal of Legal Framework (Doctoral dissertation, East West University).

21 Bayles, M. E. (2012). Procedural justice: Allocating to individuals (Vol. 10). Springer Science & Business Media.

22 Nair, A. R. (2013). Principles of Natural Justice as an Effective Mechanism To Control Administrative Discretion (Doctoral dissertation).

23 Shome, P. (2021). Dispute Management. In Taxation History, Theory, Law and Administration (pp. 445-453). Springer, Cham.

nature, and other particulars[24]. If the show cause notice is faulty or ambiguous, then all the subsequent proceedings would be rendered vitiated. In this instance, the charges that were the basis of the fine were not included in the show-cause notice. The purpose of a show cause notice is to give the person a chance to respond to the claims made against him/her.[25] The concept of "administrative fairness" requires that an Authority while taking a decision that affects a person's right prejudicially, must act fairly and the following law.

Following the law, the show-cause notice does not merely state the incident took place but needs to give specific facts with particulars along with an inquiry report in preventing the accused from giving a proper reply to the allegations brought against him which ensures the principles of natural justice. In case of failure to comply with such rights of the accused leads to arbitrariness, which in turn, vitiates the decision taken against the accused by the authority (13, SCOB, p.65). It is now established that a show-cause notice is not a technical or a formative exercise. The notice should not be general or simply restate the language of the statute.[26] In not giving specific facts with particular in the show cause notice, the rule of fairness which is a part of the natural justice has been offended.[27]

5. Research Gap

To the best of the researcher's knowledge, this is the first work on the nature and legal features of show-cause notices issued by a competent authority particularly the highest educational institution in a country. An investigation of the reality of the practice of serving show cause notices in the eye of the law, particularly in the university arena, has not been researched before. The researcher is not aware of any previous study conducted comparing the legality of the show-cause notices issued by a university authority or inquiry committee and its validity in the eye of law. Even this is the first research at the University level that will contribute to the existing literature.

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24 Mcgregor-Lowndes, M., & Hannah, F. (2022). ACPNS Legal Case Notes Series: 2022-8 Shipton v South East Queensland Sport Aircraft Club Incorporated.

25 Shome, P. (2021). Dispute Management. In Taxation History, Theory, Law and Administration (pp. 445-453). Springer, Cham.

26 [49 DLR (AD), 1997, p. 177; 31 DLR (AD), 1979, p.240]

27 [48 DLR (AD), 1996, p.20].

6. Methodology

The method of this study is qualitative, interpretivist paradigm to answer the research questions. Qualitative research is rooted in understanding a research question in a humanistic or idealistic way. Qualitative method is used to gain an understanding of people's beliefs, experiences, attitudes, behavior and interactions. Produces non-numeric data. The interpretivist paradigm was employed in order to comprehensively grasp the different views of social phenomena. The main goal of the interpretivist is to understand the meaning of social situations from the point of view of those who are living it. The researcher, therefore, held a meeting with the teachers, officers, the office staff and students of Universities served show-cause notices in respect of allegations against them to investigate the practices of serving show-cause notices as per legal provisions of conducting inquiries into allegations. There are general types of qualitative research that are of interest, such as case studies, observational studies, interview studies, and documentary/textual analysis of a variety of written records[28].

6.1 Research Design

The present study uses multiple case studies approach with documentary evidence based content analysis to find out the practices of giving show cause notice to the teachers, officers and office staff of five selected Universities of Bangladesh. The use of multiple case studies is recommended by Yin[29] because '…the evidence from multiple cases is often more compelling and the overall study is therefore regarded as being more robust'. Multiple case study approach helps to understand the differences between different cases and to replicate certain findings across cases. This study is therefore designed following the multiple case study approach, which consists of several independent instrumental case studies, in order to provide insight on the area studied. Moreover, as one of the categories of qualitative research, documentary analysis of various written records is

[28] Pope, C., & Mays, N. (1995). Qualitative research: reaching the parts other methods cannot reach: an introduction to qualitative methods in health and health services research. bmj, 311(6996), 42-45.

[29] Yin, R. K. (1994). Discovering the future of the case study. Method in evaluation research. *Evaluation practice*, *15*(3), 283-290.

used in investigating this research aim. Many researchers[30],[31],[32] said document research is a group of institutional memoranda and reports, census publications, government pronouncements and proceedings, diaries and countless other written, visual and pictorial sources, in various forms and so on. Both documents and records are natural sources of information-a pleasure to the naturalistic inquirer.[33] The strength of documentary analysis as the authentic, credible, representative and meaningful research method[34] makes it widely used by classical social theorist like Karl Marx (1818-1883) and Emile Durkheim (1858-1917) as documentary evidence can provide the researcher with abundant rich and detailed information which is not biased by the data collecting process[35]. The sampling technique and size are discussed. The sampling technique and size is discussed. All the cases in this study are the teachers, officers and office staff of the five selected Universities in Bangladesh who got show-cause notice regarding allegations against them. The respondents were sampled purposefully to obtain greater diversity. There is no consensus in the literature on the number of cases that should be included in a study. Eisenhardt[36] recommends that cases be added until theoretical saturation is achieved and recommends 4-10 participants for a case study. The number of cases should be sufficient to provide a progression of understanding regarding the puzzle being examined. As this study is of an in-depth qualitative type, 11 cases have been purposively selected to be investigated in detail.

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30 Bailey, K.D. 1994. Methods of Social Research. New York: The Free Press.

31 Polit, D. F., & Hungler, B. P. (1991). *Study Guide for Nursing Research: Principles and Methods*. Lippincott Williams & Wilkins.

32 Webb, E. J., Campbell, D. T., Schwarz, R. D., & Sechrest, L. (2017). The use of archival sources in social research. In Sociological research methods (pp. 113-130). Routledge.

33 Tight, M. (2019). Documentary research in the social sciences. Sage.

34 Ahmed, J. U. (2010). Documentary research method: New dimensions. Indus Journal of Management & Social Sciences, 4(1), 1-14.

35 Appleton, J. V., & Cowley, S. (1997). Analysing clinical practice guidelines. A method of documentary analysis. Journal of Advanced Nursing, 25(5), 1008-1017.

36 EISENHAHDT, K. M. (1989). Building theories from case study research. *Academy of Management Review*, *14*(4), 5324550.

6.3 Data Collection Method

Both documentary evidence-based secondary data sources were used in this study to answer the research questions. The source of data collection was the different offices of the university from where the show-cause notices are served to the teachers, officers, and office staff. The researcher finds three sources of the data collection for this study as registrar's office, the conveners of the inquiry committees, and the proctor office of the university. During the time of data collection, the researcher requested vide official letter from the concerned offices and sources to provide show-causes notices. After having the letter from a researcher the registrar and the proctor's office instructed the concerned sections to provide the show-cause notices which are already provided to the researcher. Moreover, the researcher collected some show-cause notices from the teachers personally. The researcher collected a total of 11show-cause notices and used them for this study. The data were collected from 1st September 2022 to 30th June 2023. To maintain secrecy, the University and respondents' names were not disclosed.

6.4 Data Analysis

Law as a field of practice is also closely concerned with documents-both as the source of evidence and records of judgments.[37] Sociologists, like other researchers, are central to the use of documentary information sources of all kinds[38]. The data analysis in this study follows a content/thematic analysis under two broad themes; complying with legal provisions by the authority of the universities of Bangladesh when it comes to issuing a show-cause notice to any existing employees and the gap between the show-cause notice and pertinent legal clauses. Gasson and Waters [39] have outlined two general methods of analyzing qualitative data, which are content analysis and grounded theory. The first one tries to select specific categories and criteria before the analysis process begins and the second one does not prepare any criteria, but all the measures and themes only come up in the process of collecting and analyzing the data. Therefore, it can be

[37] Tight, M. (2019). Documentary research in the social sciences. Sage.

[38] Scott, J. (1990). A matter of Record: Documentary Sources. Social Research.

[39] Gasson, S., & Waters, J. (2013). Using a grounded theory approach to study online collaboration behaviors. *European Journal of Information Systems*, *22*(1), 95-118.

observed that grounded theory is more inductive in nature compared with content analysis which is more deductive in nature. The analysis process began with the classification of the data sets collected and then comparing the sets, as suggested by Glaser.[40] The secondary data i.e. institutional memoranda and letters were analyzed. Content analysis was then conducted by writing separate case studies on each of the 11 respondents, and then performing a comparative analysis to fully understand the practices of serving show-cause notices by the Universities. The findings from the cross case comparisons were then analyzed by comparing the data with the memoranda and letters (show cause notices) issued by the Universities and in response to the study key research questions. Finally, suggestions for future policies and research were given.

6.5 Case Studies and Findings

This section provides 11 case studies of selected teachers, officers, and office staff of five purposively selected universities in Bangladesh who had been served show-cause notice concerning allegations raised against them. The case studies were written based on data collected from show-cause notices issued by the university authority and the inquiry committees. The case studies aim to trace the realities relating to the practices of serving show-cause notices issued by the selected Universities and complying with its legal provisions and also to find out the gap between the university authority's show-cause notice and pertinent legal clauses.

Case 1: Mr. X

Mr. X is one of the male teachers at the 'R University' has 3 years of teaching experience and also gets his 1st promotion in his job. On 14.09.2013 Professor Dr. E the Convener of the Inquiry Committee issued a notice informing Mr. X that the Syndicate of the University of R formed an inquiry committee by its decision No. 68(ka) of meeting No. 449 held on 08.07.2013 to enquire into the allegation of Moral Turpitude against the petitioner and requested him to send a representative on his behalf to take part as a member of the said inquiry committee. Having received the aforesaid notice, Mr. X vide letters dated 21.09.2013 requested the convener of the Inquiry

[40] Glaser, B. G. (2007). Doing formal theory. *The Sage handbook of grounded theory*, (Part II), 97-113.

Committee in writing, seeking copies of formal complaints or relevant documents against him to prepare a formal reply or refutation of allegations. After receiving no reply to the letter sent, he again sent a letter to his appointing authority, Registrar of the University of R (This person is also the convener of the Inquiry Committee) on 25.09.2013 asking the copies of formal complaints or relevant documents concerning the allegations leveled against him.

Despite being formally asked again and again the copies of formal complaints or relevant documents against Mr. X, the convener of the inquiry committee issued a show-cause notice to Mr. X on 29.09.2013 without any attachments or supporting documents or copy of formal complaint or mentioning any formal charge to Mr. X and asked him to reply against the allegation of "Moral Turpitude". During the interview, Mr. X showed the show-cause notice which stated as-

> "---------- বিভাগের ------ ব্যাচের ----- বর্ষের ----- সেমিস্টারের ----- জন ছাত্র-ছাত্রীদের আবেদনের প্রেক্ষিতে এবং যৌন হয়রানী নিরোধ কমিটির রিপোর্টির ভিত্তিতে আপনার রিরুদ্ধে নৈতিক স্খলন (Moral Turpitude) অপরাধ জনিত কারনে কেন শাস্তিমূলক ব্যবস্থা গ্রহণ করা হবে না-এ বিষয়ে লিখিত জবাব আগামী ৫/১০/২০১৩ তারিখ দুপুর ১২.০০ (বারো) টার মধ্যে নিম্ন-স্বাক্ষরকারীর দপ্তরে জমা দেওয়ার জন্য অনুরোধ করা হলো।"
>
> (Because of the application of ------- students of ..... batch ..... year .... semester of .....department and based on the report of sexual harassment prevention committee why disciplinary action will not be taken against you on the grounds of moral turpitude allegation, you are requested to submit your reply to the office of the undersigned by 5/10/2013 at 12.00 (twelve) noon.)

After having the show-cause notice, Mr. X replied vide letter dated 05.10.2013 stating inter alia that without knowing about any specific allegations and copy of formal complaint and charge or investigation report, he can't put forward his defense regarding the allegation brought against him. And Mr. X further requested copies of formal complaints or relevant documents against him and the inquiry report of the Sexual Harassment Prevention Committee to prepare his defense. In that letter Mr. X stated,

> "আমার বিরুদ্ধে কি কারণে নৈতিক স্খলনজনিত অপরাধ অভিযোগ আনা হয়েছে তা আমার বোধগম্য নয়। আমার বিরুদ্ধে আনীত অভিযোগসহ যৌন হয়রানী নিরোধ কমিটির প্রতিবেদন আপনার নিকট বারংবার চাইলেও আপনি আমাকে দেননি। সুতরাং তদন্ত সংশ্লিষ্ট

আমার চাহিদামত কাগজপত্র সরবরাহ করা হলে অভিযোগ বোঝা ও আপনার পত্রের উত্তর দেয়া আমার জন্য সহজ হতো।"

(I do not understand why I have been charged with the allegation of moral turpitude. You have not given me the report of the sexual harassment prevention committee including the charges brought against me despite asking you several times. So it would be easier for me to understand the complaint and reply to your letter if the documents related to the investigation are provided as per my request.)

Thereafter the convener of the inquiry committee and the Registrar of the University of R vide a letter dated 08.10.2013 denied the request of Mr. X to supply him required documents in support of the allegations and to specify the allegations brought against him. At the time interview, Mr. X provided that letter where the followings are stated,

"আদিষ্ট হয়ে জানাচ্ছি যে বিষয়টি এখনও তদন্তাধীন থাকায় চাহিত কাগজপত্র আপনাকে সরবরাহ করা সম্ভব হচ্ছে না। তদন্ত শেষে আপনার আবেদন আমলে নেওয়া যেতে পারে।"

(By order to inform you that as the matter is still under inquiry, it is not possible to provide you with the requested documents. Your application may be considered after the inquiry.)

Case 2: Mr. Y

Mr. Y is one of the office staffs of the University of R who works in the controller of examinations section of the University. On 1st November 2013 he got a show-cause notice bearing memo no- 5502(3)/1E-...../Est. Section from Mr. M. who was the Deputy-Registrar (Admin) of the University. The show-cause notice was served to Mr. Y without any attachments or supporting documents or copy of formal complaint or mentioning any formal charge and asked him to reply against the allegation unidentified. The notice which he got was stated as follows,

"আপনার বিরুদ্ধে আনীত অভিযোগ আপনি ৫ জন বহিরাগত ব্যক্তিকে দলীয় কোটায় চাকুরী দিবেন মর্মে তাদের নিকট থেকে ১৪,৫৭,০০০/- চৌদ্দ লক্ষ্য সাতান্ন হাজার) টাকা গ্রহণ করেছেন কিন্তু চাকুরী দেননি এবং উক্ত টাকা ফেরত প্রদান করেননি। এ বিষয়ে পত্র প্রাপ্তির ৭ দিনের মধ্যে জবাব প্রদানের জন্য আদিষ্ট হয়ে অনুরোধ করছি।"

(The allegation brought against you is that you have accepted BDT 14,57,000/- (Fourteen Lac and Fifty Seven thousand) from 5 outsiders to give them jobs under party quota but did not give them jobs and did not return the said money. I request you to reply within 7 days of receipt of this letter regarding this issue)

Case 3: Mr. Z

Mr. Z is one of the male teachers at the University of D has 9 years of teaching experience and also got his promotion from lecturer to assistant professor. On 14.03.2021 Professor M. A. S. who is one of the responsible authorities of the University of D issued a show-cause notice informing Mr. Z that two of the students of the university filed a complaint against him. He is also informed by Professor M. A. S. that as per the decision of the 504th Syndicate meeting held on 27.02.2021, you are requested to send a written reply to the undersigned within 7 working days of receipt of this notice as to why disciplinary action will not be taken against you on the charge of sexual harassment. At the time of the interview, Mr. Z provided that letter where the followings are stated,

> "-------ইনস্টিটিউটের ---------বর্ষের-------- ও----- নামের দুই ছাত্রী আপনার বিরুদ্ধে তাদের লিখিত অভিযোগের প্রেক্ষিতে আপনার দ্বারা তারা বিভিন্ন সময়ে যৌন হয়রানি ও মানসিকভাবে উত্ত্যাক্তের শিকার হয়েছে, যার কারণে তারা মানসিকভাবে ভীষণ বিপর্যস্ত হয়ে পড়েছে এবং মেন্টাল ট্রমায় ভূগছে। উল্লেখ্য গত ২৭.০২.২০২১ তারিখে অনুষ্ঠিত ৫০৪তম সিন্ডিকেট সভার সিদ্ধান্ত অনুযায়ী আপনার বিরুদ্ধে যৌন হয়রানির অভিযোগ অনুযায়ী কেন শাস্তিমূলক ব্যবস্থা গ্রহণ করা হবে না তা অত্র নোটিশ প্রাপ্তির ৭ কর্মদিবসের মধ্যে নিম্নস্বাক্ষরকারী বরাবর লিখিত জবাব প্রেরণের জন্য আপনাকে অনুরোধ করা হলো।"
>
> (In view of their written complaint against you, two female students of --------years---------- Institute have been sexually harassed and mentally harassed by you at various times have been victims, due to which they are deeply disturbed and suffer from mental trauma. Please note that as per the decision of the 504th Syndicate meeting held on 27.02.2021, you are requested to send a written reply to the undersigned within 7 working days of receipt of the notice as to why disciplinary action will not be taken against you for such complaints.)

Case 4: Ms. N

Ms. N is one of the office staff at the University of C. The University authority through a show cause notice dated 11.08.2015 informed that she behaved arrogantly with the officials, unwillingness to work, took leave without permission of the authority, and argued with the higher authorities. For such circumstances, the university authority wanted to know within 7 days through this notice why disciplinary action will

not be taken against him as the said matters are against office discipline. The notice which was given to Ms. N was written as follows,

"আপনার বিরুদ্ধে অভিযোগ পাওয়া গেছে যে, কর্মকর্তা-কর্মচারীদের সাথে উদ্ধত্যপূর্ণ আচরণ, কাজের প্রতি অনিহা, কর্তৃপক্ষের অনুমতি না নিয়ে ছুটি ভোগ করা ও উর্ধতন কর্তৃপক্ষের সাথে তর্ক-বিতর্ক করা। উক্ত বিষয়গুলো অফিস শৃঙ্খলার পরিপন্থী হওয়ায় কেন আপনার বিরুদ্ধে শাস্তিমূলক ব্যবস্থা গ্রহণ করা হবেনা তা এই পত্র প্রাপ্তির ৭দিনের মধ্যে অফিস প্রধানের মাধ্যমে জবাব দাখিলের জন্য নির্দেশ দেওয়া হলো।"

(Complaints have been received against you that you behave arrogantly with the officials, unwillingness to work, taking leave without permission of the authorities and arguing with the superiors. It is directed to submit a reply through the head of office within 7 days of receipt of this letter as to why disciplinary action will not be taken against you as the said matters are against office discipline.)

Case 5: Mr. HR

Mr. HR is one of the office staff of the -----department of the University of C. On 2 December 2013, he got a notice for the allegation against him that one of the outsiders of the university named Mr. AA made a complaint against him that a senior office staff Mr. KHS took cash from Mr. AA for appointing his son to the university. It was alleged that Mr. HR acted as the associate of doing such a crime. It was also alleged against him that he could not able to appoint the son of Mr. AA and also not refunded the money. Such allegations against the office staff of the university damaged the image of the University. Based on such allegations the deputy registrar of the university served a show cause notice and directed Mr. HR to submit his answer regarding the allegations within 3 days of receipt of the said letter. At the time of analyzing the document (show cause notice), Mr. HR received seen as follows-

"জনাব মো.-----আলী, পিতা আলহাজ-------হোসেন, ----------এর নিকট থেকে আপনাদের বিরুদ্ধে অভিযোগ পাওয়া গেছে যে আপনারা মাননীয় সাবেক রেজিস্ট্রার মহোদয়কে দেখিয়ে তার সন্তানকে বিশ্ববিদ্যালয়ে সেকশন অফিসার পদে চাকুরী দিবেন মর্মে ৯,০০,০০০/- (নয় লক্ষ্য) টাকা রেজিস্ট্রার দপ্তরের সিনিয়র সহকারী জনাব--------নগদ গ্রহণ করেন। আপনারা জনাব------এর সহযোগী হিসেবে কাজ করেছেন। আপনারা চাকুরী দেননি এবং বিভিন্ন সময় টাকা ফেরত প্রদানের অঙ্গীকার করেছেন কিন্তু টাকা ফেরত প্রদান করেননি। বিশ্ববিদ্যালয়ের কর্মচারীদের বিরুদ্ধে এ ধরণের অভিযোগ পাওয়া বিশ্ববিদ্যালয়ের

ভাবমুর্তি ক্ষুন্নকরে। আনীত অভিযোগের বিষয়ে পত্র ইস্যুর ৩ দিনের মধ্যে জবাব প্রদানের জন্য নির্দেশ দেওয়া হলো।"

(Mr. Md. -------Ali, Father Alhaj --------Hussain, -------- has made a complaint against you that you showing the Hon'ble Ex-Registrar you committed to give Mr. AA's son a job as a Section Officer in the University for Tk.9,00,000/- (Nine Lac). Senior Assistant of the Registrar's Office Mr. MKH received the cash. You worked as an associate of Mr. MKH. But you have not given the job and have promised to refund the money several times but have not paid the money back. Such accusations against the office staffs of the university tarnish the image of the university. You are directed to reply within 3 days of issue of letter regarding the complaint brought.)

Case 6: Ms. A

Ms. A works as the computer operations supervisor of one of the departments of the University of J. On 17 November 2022 the registrar of the university issued a show cause notice to her. The registrar brought complaints against her that the chairman of the said department informed the registrar vide a letter on 13 November 2022 that Ms. A finds to be absent during office time and behaves uncooperative with his colleagues. Bringing such allegations against Ms. A, the registrar issues a show cause notice directing her to explain to the registrar of the university within 7 days of the issuance of the letter. During the investigation of such notices provided to Ms. A seen as follows,

"----বিভাগের সভাপতির ১৩-১১-২০২২ তারিখের পত্র প্রসঙ্গে জানানো যাচ্ছে যে, আপনি নির্ধারিত সময়ে বিভাগে অনুপস্থিত কেন থাকেন এবং সহকর্মীদের সাথে অসহযোগিতামূলক আচরণ করেন তা পত্র ইস্যুর ৭ কার্যদিবসের মধ্যে রেজিস্ট্রার বরাবর ব্যাখ্যা প্রদানের জন্য আপনাকে নির্দেশ প্রদান করা হলো।"

(In reference to the letter dated 13-11-2022 from the Chairman of the ----------Department, it is informed that you are directed to submit an explanation to the Registrar within 7 working days of the issue of the letter as to why you are absent from the department during the scheduled time and behave uncooperatively with colleagues.)

Case 7: Mr. S

Mr. S was one of the male instructors of a center at the University of S. On 21 August 2013 he got a show cause letter from the deputy registrar of the university stating that one of the teachers of the university and his guardians brought an allegation against him that he harassed a minor girl. As per the allegation of the complainants, the syndicate of the university directed him to submit a reply within 7 days of receiving the letter as to why legal action will not be taken against him. During the investigation of the notice he received and conducting content analysis, the researcher has seen the said notice as follows:

> "এস বিশ্ববিদ্যালয়ের একজন সম্মানিত শিক্ষক ও কন্যা সন্তানের অভিভাবক আপনার বিরুদ্ধে নাবালিকা কন্যার যৌন হয়রানী ও নিপীড়ন এর অভিযোগের প্রেক্ষিতে গত ০৮.০৭.২০১৩ তারিখে অনুষ্ঠিত ৪৪৯তম সিন্ডিকেট সভার ৬৮ নম্বর সিদ্ধান্তে ----- বিশ্ববিদ্যালয় যৌন হয়রানী ও নিপীড়ন, নিরোধ নীতিমালা, ২০১০ অনুযায়ী কেন আপনার বিরুদ্ধে আইননানুগ ব্যবস্থা গ্রহণ করা হবে না তার যর্থাথ জবাব পত্র প্রাপ্তির ৭ দিনের মধ্যে নিম্নস্বাক্ষরকারীর অফিসে দাখিল করার জন্য নির্দেশ দেয়া হলো।"
>
> (A respectable teacher of the S University and the guardian of a daughter, because of the complaint against you of sexual harassment and abuse of a minor daughter, in decision number 68 of the 449th Syndicate meeting held on 08.07.2013, you are directed to file the proper reply in the office of the undersigned within 7 days of receipt as to why legal action will not be taken against you as per the S University Sexual Harassment and Abuse Prevention Policy, 2010.)

Case 8: Mr. SA

Mr. SA is one of the office staff of the registrar's office of the University of P. On 2 December 2013 he got a notice for the allegation against him that one of the outsiders of the university named Mr. AA made a complaint against him that a senior office staff Mr. KHS took cash from Mr. AA for appointing his son to the university. It was alleged that Mr. SA acted as the associate of doing such a crime. It was also alleged against him that he could not able to appoint the son of Mr. AA and also not refunded the money. Such allegations against the office staff of the university damaged the image of the University. Based on such allegations the deputy registrar of the university served a show cause notice and directed Mr. SA to submit his answer regarding the allegations within 3 days of receipt of the said letter. At the time of

analyzing the document (show cause notice) Mr. AA received seen as follows-

"জনাব মো.-----আলী, পিতা আলহাজ-------হোসেন, --------- এর নিকট থেকে আপনাদের বিরুদ্ধে অভিযোগ পাওয়া গেছে যে আপনারা মাননীয় সাবেক রেজিস্ট্রার মহোদয়কে দেখিয়ে তার সন্তানকে বিশ্ববিদ্যালয়ে সেকশন অফিসার পদে চাকুরী দিবেন মর্মে ৯,০০,০০০/- (নয় লক্ষ্য) টাকা রেজিস্ট্রার দপ্তরের সিনিয়র সহকারী জনাব--------নগদ গ্রহণ করেন। আপনারা জনাব------এর সহযোগী হিসেবে কাজ করেছেন। আপনারা চাকুরী দেননি এবং বিভিন্ন সময় টাকা ফেরত প্রদানের অঙ্গীকার করেছেন কিন্তু টাকা ফেরত প্রদান করেননি। বিশ্ববিদ্যালয়ের কর্মচারীদের বিরুদ্ধে এ ধরণের অভিযোগ পাওয়া বিশ্ববিদ্যালয়ের ভাবমুর্তি ক্ষুন্নকরে। আনীত অভিযোগের বিষয়ে পত্র ইস্যুর ৩ দিনের মধ্যে জবাব প্রদানের জন্য নির্দেশ দেওয়া হলো।"

(Mr. Md. -------Ali, Father Alhaj --------Hussain, -------- has made a complaint against you that you showing the Hon'ble Ex-Registrar you committed to give Mr. AA's son a job as a Section Officer in the University for Tk.9,00,000/- (Nine Lac). Senior Assistant of the Registrar's Office Mr. MKH received the cash. You worked as an associate of Mr. MKH. But you have not given the job and have promised to refund the money several times but have not paid the money back. Such accusations against the office staffs of the university tarnish the image of the university. You are directed to reply within 3 days of issue of letter regarding the complaint brought.)

Case 9: A.....J, 10 Students of a University

Ten students of a university were served show-cause notices on 02.02.2014 stated,

"গত ১৩/১২/২০১৩ ইং তারিখে বিশ্ববিদ্যালয় ক্যাম্পাসে ছাত্র ও শিক্ষকদের উপর হামলা এবং মোটর সাইকেল ও বাইসাইকেল পোড়ানোর ঘটনার জন্য গঠিত তদন্ত কমিটির প্রতিবেদন ও সুপারিশ এর ভিত্তি করে গত ৩০/০১/২০১৪ তারিখে শৃঙ্খলা বোর্ডের সভায় নিম্নলিখিত সিদ্ধান্ত গৃহীত হয়।

১। আপনার বিরুদ্ধে অভিযোগ এর সত্যতা মেলায় বিশ্ববিদ্যালয় থেকে আপনাকে সাময়িক ভাবে বহিস্কার করা হয়েছে। আপনাকে কেন স্থায়ী ভাবে বহিস্কার করা হবে না এ ব্যাপাওে আপনার লিখিত বক্তব্য ১৫ (পনের) দিনের মধ্যে নিম্নস্বাক্ষরকারীর নিকট জমা দিতে হবে।

২। নির্ধারিত সময়ের মধ্যে লিখিত বক্তব্য জমা না দিলে বিশ্ববিদ্যালয় বিধি মোতাবেক যথাযথ ব্যবস্থা গ্রহণ করা হবে।"

(Based on the report and recommendations of the inquiry committee constituted for the incident of attack on students and teachers and burning of motorcycles and bicycles in the university campus on 13/12/2013, the following decision was taken in the Disciplinary Board meeting on 30/01/2014. 1. You have been temporarily expelled from the university due to the veracity of the allegations against you. You must submit your written statement to the undersigned within 15 (fifteen) days as to why you should not be permanently dismissed. 2. If the written statement is not submitted within the stipulated time, appropriate action will be taken as per the university rules.)

On reading the show cause notice, it seems that the show cause notice only refers to the occurrence of the incident at the University Campus, and does not specify the location of the incident. Moreover, the said notice reveals that an attack took place on some teachers and students and some motorcycles and bicycles were burnt. There is no mention of the time the incident took neither place nor any details or names of teachers and students who were allegedly injured - nor is there any mention of the nature and extent of injuries sustained by them. No mention also is made of the number of motorcycles/bicycles which was allegedly burnt at the place of occurrence on that day. The petitioners were issued with the show cause notices on the basis of such vague, unspecific and indefinite allegations. Moreover, from the show cause notice, it is clear that an Inquiry Committee had conducted the inquiry and submitted a report and after the report, the decision of the Syndicate to issue the impugned orders of expulsion was taken following the recommendations of the Inquiry Committee. Admittedly, no such report was either annexed with the show cause notice itself nor was it served upon the petitioners to a later stage, thereby preventing them from giving a proper reply to the allegations brought against them, in the show cause notice.

Case 10: Mr. AF

One of the teachers of a university got a final show-cause notice from the university authority on 18.01.2021 having some part of the notice mentioned below-

--------বরং ১০-০১-২০২১ খ্রি. তারিখে দেয়া একটি পত্রে কমিটির প্রাপ্ত তথ্যসূত্রের কাগজপত্রাদি আপনি কমিটির কাছে চান এবং যে ব্যক্তিবর্গেও কাছ থেকে কমিটি সাক্ষ্যগ্রহণ করেছে, তাদেরকে জেরা করার সুযোগ চান। এছাড়াও আপনি আপনার পত্রে, ঘটনাস্থলে

উপস্থিত ১২ (বারো) জন শিক্ষকেরই স্বাক্ষ্য গ্রহণের জন্য কমিটিকে অনুরোধ জানান---------- । যা কর্তৃপক্ষের প্রতি চরম অবজ্ঞা ও অবাধ্যতার শামিল।

(----------Rather, in a letter dated 10-01-2021, you have requested the inquiry committee for the relevant documents on which the committee relied to prepare its report and the opportunity to cross-examine the persons from whom the committee has taken evidence. Also, in your letter, you requested the committee to take the testimony of all the 12 (twelve) teachers present at the place of the incident----------.This include gross contempt and disobedience to authority.)

Case 11: Mr. MSI

MSI is one of the senior auditors of Finance and Accounts Department of the--------University. On 9 March 2017 he got a show-cause notice from the University authority. The content of the letter is seen as follows-

"---- বিশ্ববিদ্যালয়ের ২০১৬-২০১৭ শিক্ষাবর্ষের ১ম বর্ষ ভর্তি পরীক্ষায় এফ' ইউনিটের প্রশ্নপত্র ফাঁসের বিষয়ে ------- বিশ্ববিদ্যালয়ের ছাত্র সংগঠনের ২০-০১-২০১৭ তারিখের লিখিত অভিযোগের প্রেক্ষিতে গঠিত তদন্ত কমিটির প্রতিবেদন গত ৬-৩-২০১৭ তারিখে অনুষ্ঠিত ২৩৩তম সিন্ডিকেট সভায় সর্বসম্মতিক্রমে সিদ্ধান্ত হওয়ায় আপনাকে সিনিয়র অডিটর পদ থেকে সাময়িকভাবে বরখাস্ত করা হলো। -------- বিশ্ববিদ্যালয়ের কর্মচারী দক্ষতা ও শৃঙ্খলা বিধির ৩ (ড) উপ-ধারার অপরাধ সংঘটনের জন্য কেন আপনাকে চাকুরী থেকে চূড়ান্তভাবে বরখাস্ত করা হবে না তা পত্র প্রাপ্তির ৭ (সাত) দিনের মধ্যে কারণ দর্শাতে বলা হলো।"

(In response to the written complaint dated 20-01-2017 by one of the student organizations of ------ University regarding the leakage of question papers of 'F' unit in the 2016-2017 academic sessions, 1st year admission examination of ------- University an inquiry committee has been formed. According to the report of the inquiry committee and decision taken unanimously in the 233rd Syndicate meeting held on 6-3-2017 that you have been temporarily dismissed from the post of Senior Auditor. You are asked to show-cause within 7 (seven) days of receipt of the letter why you should not be finally dismissed from service for committing an offense under sub-section 3 (d) of the ------- University Staff Efficiency and Disciplinary Rules.----------.

The following table 1 shows the frequency of the issues failed to fulfillment and fulfillment of the legal requirement of issuance of show-cause notice served to the participants of the present study.

Table 1:

Issues those a Show-cause Notice must to be had of the Fulfillment and Fulfillment of the Legal Requirement

and the frequencies of failed to Fulfill the Requirement

Particulars	Reference	Respondents (Cases)											
		C-1	C-2	C-3	C-4	C-5	C-6	C-7	C-8	C-9	C-10	C-11	% of failed to Fulfill the Requirement
Have the date of the incident	13 SCOB (HCD), 2020, p. 65; AIR 1982 SC 937, Craig, 2022	√	√	√	√	√	√	√	√	X	X	√	82
Have the time of the incident	13 SCOB (HCD), 2020, p. 65; AIR 1982 SC 937; Robertson, 2016	√	√	√	√	√	√	√	√	√	X	√	91
Have the specific place of incident	13 SCOB (HCD), 2020, p. 65	√	√	√	√	√	X	√	√	√	X	√	82
Details of the complainant (s)	13 SCOB (HCD), 2020, p. 67; Nair, 2013	√	√	X	√	X	√	√	X	√	X	√	64
Information of witness (es)	32 DLR (AD), 1980, p. 83	√	√	√	√	√	√	√	√	√	√	√	0
Providing a copy of allegations submitted by the complainant with the	48 DLR (AD), 1996, p. 33	√	√	√	√	√	√	√	√	√	X	√	91

Particulars	Reference	Respondents (Cases)											
		C-1	C-2	C-3	C-4	C-5	C-6	C-7	C-8	C-9	C-10	C-11	% of failed to Fulfill the Requirement
notice													
Statement of specific charge (s) in the notice	31 DLR (AD), 1996, p. 19; 48 DLR (AD), 1996, p. 33; 25 (BLD), 2005, p. 5	X	√	X	X	√	√	√	√	√	X	√	64
Provide specific facts	49 DLR (AD), 1997, p. 177	√	√	√	√	√	X	√	√	√	X	√	82
Adduced all relevant documents	16 DLR (AD), 1964, p.722, AIR 1959 (SC), p. 1111	√	√	√	√	√	√	√	√	√	√	√	0
Provide inquiry report with the show-cause notice (If the competent authority or organization holds a prima facie investigation or inquiry)	8 BLC (AD) (2003) 49; 46 DLR (AD) (1994) 94; 13 SCOB (HCD), 2020, p. 65; AIR 1961 (SC), p. 1623	√	√	√	NI	NI	NI	√	NI	√	√	√	0 (out of 11 cases 7 cases had the inquiry reports.)
Clear and Unambiguous (Show-cause notice must not vague)	13 SCOB (HCD), 2020, p. 65; 25 (BLD), 2005, p. 5; 49 DLR (AD), 1997, p. 177, AIR 1980 (SC), p. 1157; AIR 1991 SC 271	√	√	√	√	√	√	√	√	√	X	√	91

*√= Failed to fulfillment of the legal requirement of issuance of the show-cause notice served to the participant

*X= Fulfilled of the legal requirement of issuance of the show-cause notice served to the participant

* NI= The authority or organization did not hold a prima facie investigation or inquiry

From the above table out of 11 cases, a significant number of the show-cause notices fail to observe the due process of law specification of the date, time, place of incidents, information of witnesses, providing allegations in writing with the notice, and adducing all relevant documents. From the table, it shows that out of 11cases 7 cases got show-cause notices after the inquiry into the allegation brought against the accused but 100% of the respondents were not given the inquiry report along with the show-cause notice. Moreover, the presented data shows that more than 90% show-cause notices were vague, unspecific, and based on indefinite allegations. In the case of specifying the charges in the show-cause notice, the table shows 64% of respondents did not find any specific charge brought against them.

7. Findings of the Study

The competent authority or organization shall issue a show-cause notice, which shall include the specific allegations against the individual for any wrongdoing, whether the statute requires it to do so or not (13 SCOB [HCD] 2020, p. 65). It is clear and accepted as a fact that a show-cause notice is not a mere formality and a trivial ceremony. The notice must not be vague or in the bare language (49 DLR [AD], 1997, p. 177; 25 [BLD], 2005, p. 5). The results of the present investigation reveal that on mere perusal of the show-cause notices issued by the competent authorities of the Universities under study, it was observed that the show cause notices did not contain any judgement on the issue but merely recounted some incidents that had occurred. From the analysed data, it is seen that almost 100% of the show-cause notices are issued on vague, unspecific and indefinite allegations, which do not allow the accused to provide an appropriate response to the allegations against him/her relating to the violation of the principle of natural justice and denial to the accused of due process of law as guaranteed under the Constitution and the law of the competent authority or organization.

This notice shall include the time, place and manner of occurrence and the specific allegations against the persons to whom the notice is issued. If the competent authority or organization holds a prima facie investigation or inquiry a copy of the report of said inquiry must be attached with the show cause notice even though the regulations of the

competent authority or organization did not make any provision for supplying the inquiry report along with the show cause notice, the competent authority must supply the inquiry report, without which the concerned official was being "seriously handicapped" in making an effective reply to the show cause notice.[41] However, the findings of this study reveal that the competent authorities of the Universities and the inquiry committees have issued the show-cause notices in gross violation of the principles of natural justice as they did not have any copy attachment of the allegation made by the complainant which is the legal requirement for issuance of such show-cause notice, no date, time or location of the incidents are mentioned on the show-cause notice issued by them.

Further, where a report is made by the inquiry committee on which the show-cause notice is issued, a copy of the report should be attached to the notice, as it is essential for the show cause notice to be based on this report for compliance with the rule of natural justice.[42] The results of this study reveal that none of the issued show cause notices after the investigation of the allegations against the participants had any report attached to the show cause notice, which is a violation of the well-settled principles of natural justice and failure to which constitutes a failure to comply with the requirement of law in issuing show cause notice.[43] In short, the majority of the show-cause notices issued by the university authorities and the inquiry committees lacked in stating the time, date and location of incidents and specific allegations against the accused which is not acceptable in the eyes of law. Moreover, non-service of the inquiry report on the accused, failure to specify information of witnesses, giving allegations in writing with the notice, and providing of all relevant documents is a gross violation of the principle of natural justice which compels accused to reply to the allegations against him, thereby offending the justice of both parties, that is, the complainant and the accused.

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41 (46 DLR [AD], 1994, p. 94; 8 BLC [AD], 2003, p. 49)

42 AIR 1961 [SC] p. 1623

43 13 SCOB [HCD] 2020, p. 65

8. Implications of the Study

This research will be a source of knowledge for common people or common victims of society, who do not know about legal affairs, and who do not deal with legal affairs. From the results of this study, common readers can easily know what should be contained in a show cause notice or what is lacking in the show-cause notice received by any accused. This study will also provide a clear idea to the universities, university authorities, students, teachers, officials, staff, and other people of the country about the features of a show cause notice in the eyes of law and such features recognized by the highest court of the country. This research will help the university authorities in the future to issue show-cause notices using appropriate particulars and complying with requirements as per law in investigating the complaints brought against the universities concerned persons. Also, this research will be useful to the Universities' students, teachers, officers, and staff to clarify the concept of show-cause notice and its necessary elements and such will help them to be aware of it. Moreover, the findings of this study will serve as a guideline for the proper investigation of complaints brought against university concerned persons and will help prevent harassment of the concerned persons.

9. Limitations and Future Research Agenda

This study is not free from limitations. One limitation indicates the confined scope of the study field, focusing merely on the show-cause notices and also only five organizations. Including other legal issues and collecting data from a large number of universities will help enrich the generalization of the study findings. Therefore, future studies may consider the wide range of fields and other legal issues related to the universities to assess the overall study result's credibility and reliability. Finally, future study needs to be conducted on the legal expectancy of the persons who are accused of wrongdoing in the universities.

10. Conclusion

One of the missions of the universities is to develop society, the country, and the world by ensuring an environment of education and research with emphasis on knowledge and skills and human and moral

values to meet the needs of society and the country. Besides, one of the core values of a University is to ensure justice for all irrespective of gender, caste, disability, belief, and religion. Students, teachers, officers, and staff play different roles to achieve the universities' goals and objectives. All universities have to follow their own Act for the management of all their stakeholders. Stakeholders associated with this university are accused of various allegations and misconduct in the field of universities work. To protect the discipline of the institution, the university authorities conduct inquiries into the allegations brought against its students, teachers, officers, and staff.

To inquire into any allegation, an accused must be given show cause notice as per the constitution and laws of the country. And this show-cause notice must be valid in the eyes of law. Any person accused of any charge must be given the due opportunity, and a genuine offender can escape prosecution by serving a show cause notice in violation of the law. Besides, many times, due to personal anger or resentment, the authorities issued a nominal show cause notice to the accused and illegally took disciplinary action against the accused without providing any information related to the complaint; which is later declared illegal in the existing courts of the country, which tarnishes the image of the university and causes social, family and emotional harm to the accused persons.

To ensure fairness and compliance with constitutional provisions, universities in Bangladesh should adopt standardized formats for issuing show-cause notices that clearly specify the date, time, place, and nature of allegations along with the names of complainants, witnesses, and all supporting documents, including inquiry reports. Such notices should be vetted by the legal cell or advisors before issuance, and inquiry committee members and administrators should receive regular training on due process and legal requirements. Moreover, universities must uphold the principles of natural justice by allowing adequate time and opportunity for the accused to respond, while introducing monitoring and accountability mechanisms to oversee the process. Finally, reforming disciplinary policies to align with constitutional safeguards and judicial directives will strengthen procedural fairness, prevent arbitrary actions, and protect the credibility of higher educational institutions.

Digital Copyright Protection in Bangladesh: Challenges and Strategies

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Abstract

With the advent of digital technologies, now reproduction of digital content is a matter of clicks which helps the booming of the digital economy but at the same time, paves the way for making pirated copies and transmitting them to millions of people within second. Digital copyright violations have become very rampant in Bangladesh by many means such as watching pirated movies; listening to pirated music; reading and downloading pirated books; using unauthorized software and data etc. Protecting copyright in the digital sphere has become a crucial challenge for the government of Bangladesh because of the existence of many challenges such as inadequate and outdated legislation; inadequate resources, inefficiency and corruption of the copyrights officers; incapacity of cross-border implementation; lack of application of Digital Rights Management (DRM) or Block chain technologies etc. Although Bangladesh is the party to the Berne Convention for the Protection of Literary and Artistic Works 1886, the TRIPS Agreement 1994 etc., but it has not yet join the WIPO Copyright Treaty 1996 or the WIPO Performances and Phonograms Treaty 1996 which are main international treaties on digital copyrights. Domestic legal regime which is primarily administered by the Copyright Act of 2023, the Copyright Rules 2006 and the Cyber Security Act 2026, lacks a clear written policy on digital copyright and does not incorporate essential provisions such as "prohibition of anti-circumvention" and "Digital Rights Management," as required under international treaties. Employing a qualitative doctrinal legal research methodology, complemented by a functional comparative analysis of selected jurisdictions such as the USA, EU, UK, India, and China, this study examines the effectiveness of the existing legal framework governing digital copyright protection in Bangladesh and,

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by exploring international best practices in this regard, proposes few plausible suggestions for strengthening such protection. The findings of this research will offer valuable insights for policymakers, industry professionals and people seeking to promote a sustainable and robust digital copyright regime in Bangladesh.

Keywords: *Digital Copyright, Copyrights Infringement, Digital Piracy, Digital Millennium Copyright Act (DMCA), Digital Rights Management (DRM)*

1. Introduction

The digital era has revolutionized the way creative works are made, distributed, and enjoyed. However, it has posed difficulties for the owners of such works in safeguarding their copyright. Bangladesh has one of the highest piracy rates in the world, with an estimated piracy rate of 94% for music and 92% for software[1]. These figures demonstrate Bangladesh's urgent need for strong digital copyright protection. Digital copyright protection has become increasingly important in Bangladesh due to the growing digital economy in the country. Bangladesh has a large population of internet users, and the government has initiated several projects to promote digitization in various sectors, including education, healthcare, business, finance and entertainment industry. The progress of the digital economy is threatened by the absence of strong copyright protection legislation and the prevalence of piracy in the country. Investors are reluctant to make investments in states where their intellectual property rights are not protected, which ultimately reduce foreign investment. It also discourages the development of new software and digital contents, as there is no guarantee that the resulting works will be protected[2]. Previous studies have identified several factors contributing to the high piracy rate in Bangladesh, including low awareness among consumers about copyright laws, inadequate enforcement measures, and the

1 Rafeyu Riyan, 'The High Cost of Piracy: Bangladesh's Software Industry in Peril' (*LinkedIn*, 17 February 2023) <https://www.linkedin.com/pulse/high-cost-piracy-bangladeshs-software-industry-peril-rafeu-riyan/> (Accessed on 20 September 2025)

2 *Ibid*. Riyan (n 1).

availability of pirated content at a lower cost than legitimate copies[3]. Therefore, it is crucial to understand the legislative framework, policies, and actions implemented by the Bangladeshi government in order to protect digital copyright.

2. Research Objectives

The paper is specifically concerned with the context of Bangladesh, and the researchers have evaluated the effectiveness of the existing legal framework in protecting copyright in the digital sphere of Bangladesh. In order to figure out the proper legal framework for digital copyright management and its enforcement mechanism in Bangladesh, various national and international laws, rules and regulations governing digital copyright has been examined. Additionally, we have explored the challenges faced by stakeholders, including copyright holders and enforcement agencies, to protect digital copyright in Bangladesh. Moreover, researchers have explored the modern digital copyright protection mechanism available worldwide. After analyzing the relevant legislations from few developed jurisdictions, the researchers have suggested few plausible suggestions for better digital copyright protection in Bangladesh.

3. Methodology of the Study

To achieve the research objectives, this study has adopted a qualitative method. To evaluate the legal framework for digital copyright protection in Bangladesh and to explore the challenges faced by copyright owners, the researchers have conducted a comprehensive review of existing literature, such as scholarly articles, government reports, and industry publications. To evaluate the contemporary mechanisms of copyright protection, we have examined the perspectives of several developed jurisdictions, including the USA, European Union, the UK, India, and China. We employed the functional approach of comparative legal research for analysis, as the primary purpose of copyright legislation in all these nations is to protect the interests of the owner. Furthermore, the United States

[3] Faiza Rahman Pushan, 'A Study of the Factors Influencing Digital Piracy Adoption: Portraying Bangladesh Perspective' (BRAC University 2022). <https://dspace.bracu.ac.bd/xmlui/bitstream/handle/10361/17526/18104103_BBA.pdf?sequence=1> (Accessed 21 August 2025)

possesses the most effective copyright system globally to date. The authors of this study believe that this comparative analysis will aid in substantiating the application of the evolved legal principles in Bangladesh.

4. Copyright and Digital Copyright

Simply speaking, digital copyright is the copyright available for digital content such as text, images, music, videos, and software created digitally. The digital era is the time of digital technologies such as computers, the internet, and mobile devices and the personal, social and professional interaction of people have changed dramatically in this era[4].Digital copyright is a subset of copyright law, which grants creators the exclusive right to control the use and distribution of their creative digital works. Works in the digital media are subject to the same copyright standard as other types of works. Section 2(10) of the Copyright Act, 2023 defines digital work as a creative work that is made or used by a computer, mobile phone, or other digital machine to process data and information in order to get a specific result. This includes a wide range of digital, IT-related creative works, such as software, data compilation, data analysis, creative arrangements, annotation, data selection, and similar outputs. This regulation says that if you use digital devices to process information to get a specific result, the creative work is an IT-based digital production. Section 14 of the Act says that IT-based digital works have the same copyright protection as traditional works, such as literary or creative works. Digital technologies have played an important part in reshaping the world; nevertheless, as with a two-edged sword, it comes at a cost to intellectual property owners whose creative works in the digital realm are under critical threat.[5]The US Copyright Office labeled" the illegal act of duplicating, copying, or sharing a digital work without the permission of the copyright holder" as "digital piracy" in 2008. In other words, internet piracy is a type of theft. It is an

[4] 'IP Digital Age Protection: Challenges and Solutions, 'Legal Practice Intelligence' (*Legal practice Intelligence*, 2023) <https://www.legalpracticeintelligence.com /blogs/technology-intelligence/ip-digital-age-protection-challenges-and-solutions> (Accessed on 23 September 2025)

[5] Albert Olu Adetunji, and Nosakhare Okuonghae, 'Challenges of Copyright Protection in the Digital Age: The Nigerian Perspective' 9 <https:// digital commons.unl.edu/libphilprac/7159>(Aaccessed on 21 August 2025)

unethical act or theft to download and distribute any digital content such as software, music, movies, and other media without the permission of owner of that works.[6]In the digital age, copyright infringement has become more prevalent due to the ease of copying and distributing digital content. Digital copyright infringement occurs when someone uses or distributes digital content without the permission of the copyright owner. This includes illegally downloading or sharing copyrighted material over the internet, making and distributing unauthorised copies of software, and using copyrighted pictures or music without authorization. There are many similarities between digital copyright and traditional copyright, but there are also some notable distinctions between the two. One significant distinction is that whereas traditional copyright only protects creative works in tangible media like books, artwork, and pictures, digital copyright covers creative works in digital formats including music, images, and software. While traditional copyright infringement typically involves unauthorised duplication and distribution of creative works in physical form, digital copyright infringement can occur through the unauthorised reproduction, distribution, or sharing of digital works through the internet and other digital channels. Another distinction is that digital copyright necessitates specialised legal and technological skills, as digital works may be quickly duplicated and circulated globally, making detection and prevention challenging. To safeguard creative works, digital copyright demands increasingly complex protections, such as digital rights management and encryption technology. As a result, digital copyright legislation is more complicated and dynamic than traditional copyright legislation.

5. The Significance of Protecting Digital Copyright

In recent years, infringement of copyrights has increased rapidly on a global scale. The quick spread of several methods and tools has made copying work effortless. This leads to the unlawful transmission and use of copyright protected works, depriving authors of their proper

[6] Sharifuzzaman, Digital Piracy: A decades-old self-inflicted wound, (The Business Standard, 2021)<https://www.tbsnews.net/thoughts/digital-piracy-decades-old-self-inflicted-wound-206626 > (Accessed on 25 September 2025)

remuneration.[7]In today's digital age, protecting digital copyright is essential because it helps to guarantee that producers of digital material receive the rewards of their ingenuity and endeavours, and that copyright owners' rights are acknowledged and enforced. Furthermore, digital copyright protection promotes innovation and creativity by incentivizing authors to continue producing innovative and distinctive content. Moreover, digital copyright protection is vital for the growth and sustainability of the digital economy, which is highly reliant on digital content generation and distribution. Without effective digital copyright protection, authors of digital content may become discouraged from creating new works and access to high-quality and diverse digital content by consumers may be hindered. Another key argument for safeguarding digital copyright is to preserve the cultural heritage and diversity found in many communities worldwide. Traditional knowledge, cultural expressions, and other types of intangible cultural resources are increasingly being preserved and shared through digital technology. As a result, ensuring digital copyright protection can assist to ensure that these cultural expressions are not taken over or used without permission or royalty to the communities from which they derive. Additionally, people may have inexpensive access to a variety of high-quality digital works that have both cultural and educational significance. Finally, digital copyright protection may help accomplish the Sustainable Development Goals (SDGs), notably SDG 4 (quality education), SDG 8 (decent work and economic growth), and SDG 9 (industry, innovation, and infrastructure). Digital copyright protection may assist in inclusive and equitable economic growth, education, and innovation by encouraging the creation, distribution, and use of digital content in a responsible and sustainable manner.

6. Digital Copyright Infringements in Bangladesh

Digital copyright protection is applicable to various elements of multimedia such as ‘text, sounds, audio, video, graphics, presentations,

[7] Md. Fahmedul Islam Dewan, Protecting the rights of foreign authors in Bangladesh, (The Business Standard, 2022) https://www.tbsnews.net/thoughts/protecting-rights-foreign-authors-bangladesh-418494 (Accessed on 20 September 2025)

and live videos of speeches, performances, and more'[8] and because of its diversity protecting the rights of above digital content is a daunting task. Digital piracy occurs when somebody copied, distributed course the above contents without authorization for reasons other than education or other fair dealings. Digital copyright infringement is a major problem in Bangladesh, with a high prevalence of piracy and unauthorized sharing of copyrighted content online. This has led to significant losses for copyright owners, as well as a lack of incentives for new creativity and innovation in the digital sphere. After analyzing the incidences of digital copyrights violation, we have found few major methods of infringement of digital copyrights in Bangladesh. One of the main methods of digital copyright infringement in Bangladesh is through the use of peer-to-peer (P2P) file sharing networks, which allow users to share and download copyrighted content without authorization. Another common form of infringement is the use of illegal streaming websites, which allow users to access copyrighted content without paying for it.[9] In addition, there is a significant problem of counterfeit and pirated goods being sold online, including software, music, movies, and other digital content. This not only harms the copyright owners but also puts consumers at risk of purchasing inferior or even dangerous products. Another common kind of infringement is unauthorised downloading and uploading of copyrighted information from the internet. Violation may occur when multiple programs are compiled to generate derivative works, without obtaining the necessary permissions[10], thus infringing on copyright protection. Another practice that violates copyright is hot-linking, which includes displaying pictures on a website by connecting to websites hosting such images, potentially breaching the rights of the copyright owners.[11]Common forms of software piracy include

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8 Tiwari Deepanshi, 'Issues in Digital Copyright' (2023) <https://legalvidhiya.com/issues-in-digital-copyright/>. https://legalvidhiya.com/issues-in-digital-copyright/ (Accessed on 24 September 2025)

9 Sharifuzzaman, 'Digital Piracy: A Decades-Old Self-Inflicted Wound, The Business Standard' (*The Business Standard*, 2021) <https://www.tbsnews.net/thoughts/digital-piracy-decades-old-self-inflicted-wound-206626> (Accessed on 25 September 2025)

10 *Supra Note.* Deepanshi (n 8).

11 *Ibid.*

unauthorised copying and distribution of copyrighted software, as well as selling copies, exporting, renting, or pre-installing pirated software on hardware equipment.[12] Social media platforms and various news media website have emerged as prominent means of global connectivity, but they have also become hotspots for copyright infringements.[13]In addition to these specific cases, there is a broader trend of digital piracy in Bangladesh that poses a significant challenge to copyright owners. According to sections 69 and 83 of the Copyrights Act 2023, it is possible to take legal action against someone who copies electronic content. District Courts can give civil remedies, such as compensation or injunctions[14]. The commercial sale of copyrighted digital works may lead to a maximum of four years of imprisonment or a punishment of Tk 400,000; non-commercial sale may incur up to three months of jail or a Tk 25,000 fine.[15]Subsequent violations incur more severe penalties—up to five years of incarceration or a fine of Tk 500,000.[16]

7. Existing Legal Framework for Digital Copyright Protection in Bangladesh

To protect digital copyright, countries have developed legal frameworks, policies, and initiatives. These measures include international treaties, domestic copyright laws, various digital rights management systems, etc. According to the legal system of Bangladesh, if there are any domestic laws on any subject matter then that will get priorities over international laws. In absence of any domestic laws, the court of Bangladesh may take recourse on established international laws[17] on that subject until the national legislature enacts laws in this regard. There were no clear copyright rules in Bangladesh (formerly known as East Pakistan) before 1962. For the enforcement of copyright at that time, several laws like the Code of Civil Procedure 1908, the Penal Code 1860, the Specific Relief Act 1877, and various British copyright regulations applied. The Copyright

12 *Supra Note.* Digital piracy (n 9).
13 *Supra Note.* Deepanshi (n 8).
14 *The Copyright Act 2023*, s 83.
15 *Ibid.* s 100.
16 *Ibid.* s 106.
17 See BNWLA v Government of Bangladesh and Others 31 BLD, (2011) HCD, at 324.

Ordinance of 1962 which was promulgated in 1962 has consolidated many copyright laws in effect at the time and it was based on the English Act of 1914. Until 1999, this ordinance was in effect. After that, in 2000, the Copyright Act 2000 was passed which contained few provisions in line with international standards. Recently Bangladesh has enacted the Copyright Act 2023 replacing the Copyright Act 2000. The Act implements significant measures that will strengthen copyright protection in the digital era. The Act updates existing definitions and provides new ones to reflect emerging technologies and practices[18]. Notably, digital actions, particularly those carried out via computers, are now clearly covered by the statute. The legislation also includes proposals for addressing copyright infringement on digital platforms.[19] This Act coupled with the Copyright Rules of 2006 is the primary law for ensuring legal protection of copyrights and related rights, computer programmers, database, film, broadcasting, performer's rights, phonograms rights, etc. in Bangladesh. It extends to the website, website contents[20] and other digital documents. Copyright protection is conferred immediately upon the creation of a work under the Copyright Act, and registration is not required. Though, copyright registration is not required under this legislation, registration of any work under this legislation create s*prima facie* evidence of ownership in the case of a conflict. This provision with few more provisions of this Act is not even adequate for protection of physical works, let alone digital works. Bangladesh has a Cyber Security Act 2026 (CSA 2026) which primarily focuses on issues related to digital security, cybercrimes, and online activities rather than copyright matters. While the CSA 2026 is not primarily concerned with copyright issues, it can indirectly impact copyright in some ways, especially in the context of online activities and digital content such as provisions related to the

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18 *The Copyright Act 2023*, s 2(2, 3).

19 H. Muhammad Roman and Christine Richardson, "A Critical Look at Bangladesh's Copyright Laws in the Digital Age: An Assessment of Copyright Act 2000 and 2023," *Jagannath University Journal of Law* (2023), https://www.jnu.ac.bd/journal/assets/pdf/5_2023_557.pdf (Accessed on 23 September 2025)

20 M. F. Hosen, "An Overview of the Copyright Protection Laws in Bangladesh—A Critical Analysis of the Copyright Act, 2000 with Its Loopholes and Recommendations," *Beijing Law Review* 8, no. 2 (2017): 191, <https://doi.org/10.4236/blr.2017.82011> (Accessed on 23 September 2025)

unauthorized distribution or sharing of copyrighted material online, digital piracy or uploading copyrighted content without permission. The provisions of these laws allow copyright owners to take legal action against those who infringe their rights in digital works and provide for the imposition of penalties for unauthorized reproduction, distribution, or communication of digital content. Even after the existence of these laws, legal regime of Bangladesh on digital copyright is much backdated compared to international standard. As mentioned earlier in order to fill up the gap of existing domestic legal regime with international legal regime, Bangladesh can take recourse to international legal principles as international legal regime on digital copyrights protection is far better than that of Bangladesh. Bangladesh has already been working with the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), and United Nations Educational, Scientific and Cultural Organization (UNESCO) to improve its copyright system.[21]Bangladesh is also a signatory to many international treaties, which shows that it agrees with the rules and laws that the world community has put in place to safeguard copyright and related rights. It has been a member of the Paris Convention since 1991 and the World Intellectual Property Organization (WIPO) since 1985. Bangladesh joined the Berne Convention for the Protection of Literary and Artistic Works 1886 in 1999; the Universal Copyright Convention 1971 in 1975 and the TRIPS Agreement 1994 in 1994. These agreements set up rules for protecting copyrighted works in Bangladesh and compel the country to offer appropriate legal remedies for copyright violations. The TRIPS Agreement is the most important source of information about intellectual property in international law. It has had significant impacts on Bangladesh's IP legal system.[22]The Berne Convention administers copyright law and safeguards against unauthorised reproduction or

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[21] Md Milan Hossain, 'Present Situation of Copyright Protection in Bangladesh. Bangladesh' [2012] Bangladesh Res.Pub. J. 7(2) <http://www.bdresearchpublications.com/admin/journal/upload/09320/09320.pdf> (Accessed on 23 September 2025)

[22] 'Intellectual Property Law and Enforcement in Bangladesh: An Overview and the Way Forward – Mahbub & Company' <https://mahbub-law.com/intellectual-property-law-and-enforcement-in-bangladesh-an-overview-and-the-way-forward/>(Accessed on 02 October 2025)

transmission of a creator's work through any means. It demands that member nations set strong minimum standards for the protection of copyright and immediately recognise copyrights held by nationals of all other member parties of the convention.[23] However, the Berne Convention did not include any provisions for copyright infringement in cyberspace. The term "digital copyrights" or this type of terminology is absent in the language of the Berne Convention or in the TRIPS Agreement but by analyzing the provisions of those treaties, we can say that the substantive rights required under the Treaty for a copyright holder include protection against the reproduction and dissemination of digital works.[24] Accordingly many countries such as the U.S.A., U.K., EU, China and India have recognised that reproduction or distribution of any digital works, in whole or in part, over the Internet without the consent of the copyright owner is copyright infringement.[25]

Lack of internet piracy-related provisions in the Berne Convention paved the way of enacting the World Intellectual Property Organization Copyright Treaty (the WCT) and the World Intellectual Property Organization Performances and Phonograms Treaty (the WPPT). The special agreement, the WCT, have ensured the rights of authors in digital sphere. As per the requirement of this legal regime, every member state should grant the author of digital content the exclusive right to communicate his digital work to public, rental rights and reproduction rights. The WCT also urges member states to create a strong legal remedy to prevent the abuse of technical protections put in place by the authors to protect their rights. It also suggests ensuring legal action against anyone who remove or change the right

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[23] 'Intellectual Property Protections in Bangladesh: A Brief Primer for Investors' (*India Briefing News*, 13 May 2021) <https://www.india-briefing.com/news/intellectual-property-protections-in-bangladesh-brief-primer-foreign-investors-22274.html/> (Accessed on 02 October 2025)

[24] See Articles 8, 9, 11, 11bis, 11ter, and 12 of Berne Convention.

[25] *See Playboy Enterprises Inc v. Webb World, Inc.*, 991 F. Supp. 543 (N.D. Tex. 1997)(distribution of copyrighted photographs without permission on the Internet qualifies as copyright infringement); *Shetland Times Ltd. v. Wills*, [1997] FSR 604 (October 1996)(distribution of copyrighted headlines and articles without permission on Internet qualifies as copyright infringement).

management information that the work's copyright owner has attached[26].

The WIPO Copyright Treaty (WCT) is a 1996 international treaty that modernizes copyright regulations for the digital era. It is regarded as a "special agreement" under the Berne Convention, primarily aimed at modifying existing copyright standards to address the issues presented by emerging technologies such as the internet. It affirms that copyright is fully applicable to digital usage and elucidates certain online-relevant rights and obligations for authors and nations that accede to the treaty. Significantly, an "agreed statement" accompanying the treaty elucidates that the storage of a protected work "in digital form in an electronic medium" constitutes a reproduction; thus, temporary and cached copies generated by computers fall under the purview of the reproduction right (subject to exceptions in national law).[27] The Treaty addresses two subjects eligible for copyright protection: (i) computer programs, irrespective of their mode or style of expression; and (ii) collections of data or other materials ("databases").[28]

In addition to the rights recognized by the Berne Convention, the WCT grants creators of digital works new or clarified rights to address the unique nature of online distribution. These include:[29] i) Right of Distribution, ii) Right of Rental and iii) Right of Communication to the Public. The Right of Distribution is the sole authority that allows people to make their works available to the public by selling them or giving them away in other ways. It is an important right for controlling how digital copies are shared.[30] The right of rental grants the authors sole authority to allow the commercial rental of their

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26 *Supra Note.* Adetunji and Okuonghae (n 5).

27 Wipo, "WIPO Lex" (February 15, 2012) https://www.wipo.int/wipolex/en/text/295456 (Accessed on 23 August 2025) See also: U.S. Copyright Office and others, "DMCA Section 104 Report" (2001) <https://www.copyright.gov/reports/studies/dmca/sec-104-report-vol-1.pdf> (Accessed on 23 August 2025)

28 "WIPO Copyright Treaty (WCT)" https://www.wipo.int/treaties/en/ip/wct/ (Accessed on 24 August 2025)

29 "Summary of the WIPO Copyright Treaty (WCT) (1996)" <https://www.wipo.int/treaties/en/ip/wct/summary_wct.html> (Accessed on 24 August 2025)

30 "Summary of the WIPO Copyright Treaty (WCT) (1996)" (n 29).

products, including computer programs and cinematographic works. This right allows them to control and receive compensation for the commercial use of their creations.[31] The Right of Communication to the Public is undoubtedly the most significant new right. It grants authors the exclusive right to authorize the public distribution of their works through wired or wireless means. This explicitly includes the public distribution of their works, permitting others to access these works at their convenience and preferred location. This rule is essential for regulating on-demand digital transmissions, which underpin several contemporary services such as streaming and file-sharing.[32]

The WCT does not stipulate precise penalties or damages; instead, it mandates member countries to establish comprehensive legal frameworks to address infringement. It necessitates two primary forms of protection: i) Technological Measures Protection and ii) Rights Management Information (RMI) Protection**.** Countries need to make sure that people who use successful technological measures (like encryption or Digital Rights Management, or DRM) to protect their works are protected by the law and can get their problems fixed. This rule is meant to stop hackers and other people from getting into copyrighted information without permission.[33]Again, the treaty mandates governments to prohibit the removal or change of electronic rights management information.**[34]** This information, which is commonly found in a digital file, tells you what the work is, who wrote it, and what the rules are for using it. To ensure the integrity of the digital economy and to manage and enforce copyright properly, it's important to protect this information.[35] The WCT clearly says that there

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31 "WIPO Copyright Treaty (WCT)" (*The Faculty of Law*) <https://www.jus.uio.no/english/services/library/treaties/10/10-02/wipo_copyright_treaty.html> (Accessed on 26 August 2025)

32 *Supra Note.* "WIPO Copyright Treaty (WCT)" (n 31).

33 "WIPO Internet Treaties" (*Copyright*) https://www.wipo.int/en/web/copyright/activities/internet_treaties (Accessed on 31 August 2025)

34 OPOCE, "EUR-LEX - 22000A0411(01) - EN" <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22000A0411(01)> (Accessed on 31 August 2025)

35 Uollb First Class Law Notes, "WIPO Copyright Treaty" (*UOLLB®*, July 13, 2024) <https://uollb.com/blogs/uol/wipo-copyright-treaty> (Accessed on 2 September 2025)

must be "adequate and effective legal remedies" (including injunctions, damages, and penalties) for circumvention and RMI tampering. However, the Treaty does not say exactly how these remedies should be used or how damages should be calculated.[36] The WPPT specifically aimed to secure the rights of filmmakers, actors, artists, singers, and creators of audio recordings in digital formats distributed over the web.[37]Though Bangladesh is a contracting party to the Berne Convention[38] but has not ratified the WCT[39] and WPPT[40] yet which are popularly known as the 'Internet treaties'.[41] Because of this, WCT and WPPT are not directly applicable to Bangladesh but as an established principle of international law court of Bangladesh can rely upon these conventions in absence of any relevant provisions. We might conclude that Bangladesh's copyright laws are insufficient to meet copyright protection in the current digital era. One the other hand the WCT and the WPPT is the best version of protection available in present era, so we can use these treaties to bridge the gap until the enactment of more sophisticated legislation.[42]From the above discussion it is clear that legal framework of Bangladesh is not adequate for protection of digital copyrights. As digital copyright is a borderless phenomenon, there is an option of using international legal framework to protect the rights of the owner of digital works.

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36 Article 12: Obligations concerning Rights Management Information (WIPO Copyright Treaty), Intellectual Property: Law & the Information Society, <https://opencasebook.org/casebooks/472-intellectual-property-law-the-information-society/resources/6.12-article-12-obligations-concerning-rights-management-information-wipo-copyright-treaty/> (Accessed on 24 August 2025)

37 *Supra Note.* Adetunji and Okuonghae (n 5).

38' WIPOLex' <https://www.wipo.int/wipolex/en/treaties/parties/remarks/BD/15> (Accessed on 2 October 2025)

39 'WIPO Lex' ttps://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=16> (Accessed on 2 October 2025)

40 'WIPO Lex' ttps://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=20> (Accessed on 2 October 2025)

41 Pistorius, T., & Mwim, O.S., 2019, 'The impact of digital copyright law and policy on access to knowledge and learning', Reading & Writing 10(1), a196.<https://doi.org/ 10.4102/rw.v10i1.196> (Accessed on 23 September 2025)

42 *Supra Note.* Adetunji and Okuonghae (n 5).

8. Challenges in the way of Digital Copyrights Protection in Bangladesh

Despite the existence of a legal framework for copyright protection in Bangladesh, enforcement of copyright law remains a challenge. The Copyright Act is often not enforced effectively, and copyright infringement continues to be a widespread problem in the country, particularly in the digital sphere. Apart from the jurisdictional challenge, few major challenges of digital copyright protection are the handiness of copying devices such as laptop, tablet, smart phone etc., easy reproduction process, effortless sharing & distribution of copyrighted materials and the relatively tough tracing process of the sources of such infringement.[43] Due to the intangible nature of the internet, cases of online copyright infringement get more complicated when multiple countries or regions are involved. This makes deciding the proper jurisdiction to handle such situations a difficult issue.[44]The absence of efficient enforcement methods for digital copyright infringement in Bangladesh makes the issue even more difficult. The inadequate capability and resources of the court and law enforcement are one of the causes of this. As a result, instances of copyright infringement may take a long time to resolve, and even if proven guilty, infringers may incur little penalties. Another barrier to tackling digital copyright infringement is a lack of coordination and collaboration among key government agencies and stakeholders. This includes copyright enforcement agencies, as well as internet service providers, digital platforms, and other intermediates engaged in the circulation of copyrighted content. To address these challenges, there is a need for better coordination and collaboration among relevant parties, as well as more resources and capacity-building for law enforcement and the judiciary. Other steps might be taken including expanding education and outreach activities, developing technological measures to protect copyrighted content, strengthening enforcement mechanisms, and encouraging a culture of respect for copyright among the general public. Bangladesh can ensure that creators and copyright owners can benefit from their creative work while also promoting innovation and creativity in the digital sphere by

[43] *Supra Note.* Adetunji and Okuonghae (n 5).

[44] *Supra Note.* Deepanshi (n 8).

working together to strengthen the legal framework for copyright protection, improve enforcement mechanisms, and promote a culture of respect for copyright.

9. Modern Development of Digital Copyright Protection Worldwide and Suggestions for Bangladesh

Worldwide, various legal and technological approaches have been established to defend the rights of authors and owners of digital contents. These mechanisms aim to strike a balance between fostering innovation, ensuring fair compensation for creators, and preserving the public's access to knowledge and culture. As mentioned earlier, the Berne Convention 1886 is the primary international treaty for copyright protection but there was no specific mention of digital copyright protection. In addition to the Berne Convention, several other international agreements and treaties address specific aspects of digital copyright protection. The World Intellectual Property Organisation (WIPO) administers these agreements, which include the WCT and the WPPT, both of which were adopted in 1996. These treaties are primarily concerned with adapting copyright law to the digital world, covering issues such as Digital Rights Management (DRM), anti-circumvention measures, and the protection of phonogram performers and producers. National copyright laws are important in protecting digital copyright. These laws vary from country to country but generally reflect the principles established in international treaties like the Berne Convention, the WCT, and the WPPT etc. Copy right laws grant authors exclusive rights to their works, such as the right to reproduce, distribute, and perform their works publicly. These exclusive rights serve as the cornerstone for digital copyright enforcement. The notion of 'fair usage' or 'fair dealing' is a prominent component of copyright law in the digital era. While the specifics vary by country, this concept permits limited use of copyrighted content without the permission or payment of the copyright owners. Fair use principles, which establish a balance between copyright protection and freedom of speech, are critical for activities such as education, criticism, commentary, and parody. However, identifying what constitutes fair usage may be complicated and vary from case to case, frequently demanding legal interpretation.

To enforce copyright in the digital realm, many countries have implemented robust legal mechanisms to combat digital piracy. The methods encompass the Digital Millennium Copyright Act (DMCA) in the United States, the European Union's Copyright Directives, and identical legislation globally. The Digital Millennium Copyright Act (DMCA) of 1998, a federal copyright statute in the United States, serves as a fundamental component of the U.S. legal framework regarding copyright issues. In the nascent stages of the internet, regulations and protections for online content were scarce; however, the DMCA transformed the digital environment by affording copyright proprietors enhanced authority over the utilization of their works, incorporating digital rights management to prevent infringement, establishing notice-and-takedown protocols, providing safe harbor protections for online service providers, and implementing anti-circumvention measures. In the USA, Internet Service Providers (ISP) must promptly remove the content or risk liability for copyright infringement. Digital Rights Management (DRM) is one such mechanism that uses encryption and access control technologies to restrict the copying and distribution of digital content. DRM systems[45] are employed in various industries, including music, film, e-books, and software. In the United States, most issues regarding piracy on the internet are settled through civil litigation governed by TRIPS-compliant judicial procedures.[46] However, electronic theft of copyrighted works, regardless of whether the offender received a direct financial profit or commercial advantage from that conduct, is treated as criminal offence under the laws such as the No Electronic Theft Act 1997 (NET Act).[47] The European Union has made significant strides in digital copyright protection through the EU Copyright Directives. The EU copyright law comprises 13 directives and 2 regulations, which serve to harmonise the fundamental rights of

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45 While DRM is effective at preventing unauthorized copying, it has been a subject of controversy due to concerns about user privacy, interoperability, and consumer rights.

46 Michael Keplinger, Regional Workshop for Countries of Asia andthe Pacific on the WIPO Internet Treaties and Electronic Commerce, (WIPO, 2001) https://www.wipo.int/edocs/mdocs/copyright/en/wipo_cr_ec_mnl_01/wipo_cr_ec_mnl_01_3.doc (Accessed on 22 September 2025)

47 *Supra Note.* Keplinger(n 46).

authors, performers, producers, and broadcasters.[48] EU copyright law reduces national discrepancies by setting harmonised standards. It introduces several key provisions (Article 17), which place greater responsibility on online platforms to prevent the upload of copyrighted material without authorization[49]. It also includes provisions for fair compensation for content creators when their works are used on online platforms. Member states of the EU have been working to implement these directives into their national laws. The UK copyright system not only allows for frequent reviews of its IP laws but also has a large portion of its copyright content available on the internet. As a result, the UK is seen to have a mostly copyright-aware populace. Under the Digital Economy Act 2010, the Office of Communication in the United Kingdom - analogous to Bangladesh's Ministry of Information collaborates with ISPs to enforce copyright in digital environments.[50] Japan has implemented digital copyright protection mechanisms through its Copyright Act 1970. These mechanisms include provisions for the protection of digital works, anti-circumvention measures, and statutory damages for copyright infringement. Japan also has bilateral agreements with other countries to combat piracy and cross-border copyright issues. China has been strengthening its digital copyright protection mechanisms in recent years. The country has adopted laws and regulations to combat online piracy and copyright infringement, including measures to hold online service providers accountable for hosting infringing content. China also has specific rules regarding copyright in the digital environment and encourages the use of technological protection measures (TPMs) to safeguard digital content. India has updated its copyright laws to address digital copyright

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48 The EU copyright legislation, (European Commission,2023)<https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation > (Accessed on 21 September 2025)

49 Ally Boutelle and John Villasenor, The European Copyright Directive: Potential impacts on free expression and privacy,2021, < https://www.brookings.edu/articles/the-european-copyright-directive-potential-impacts-on-free-expression-and-privacy/> (Accessed on 21 September 2025)

50 Tarana Halim, 'Protecting Creativity in Bangladesh' (*WhiteBoard is a Quarterly Policy Magazine*, 17 September 2022) <https://whiteboardmagazine.com/3394/protecting-creativity-in-bangladesh/> (Accessed on 2 October 2025)

protection. The Copyright (Amendment) Act, 2012 strives to harmonise and put copyright law in line with "Internet Treaties," i.e. the WCT and the WPPT. It protects against the circumvention of efficient technical means used to safeguard copyrights, as well as the circumvention of rights management system (DRM).[51] India also has a notice-and-takedown system for addressing online copyright infringement.

Apart from above legal provisions, there are few technological measures which many countries and various organizations are using to protect digital copyrights worldwide. Though, these techniques are very effective for copyright protection but not yet legally recognized worldwide. Watermarking[52] is a technique used for digital copyright protection. Watermarking is commonly used in the stock photography and media distribution industries. Another technology, block chain[53], has gained attention as a potential tool for digital copyright protection. Startups and organizations have explored using block chain to create transparent and immutable copyright registries, simplifying the process of verifying and licensing digital content. However, it's important to note that block chain-based copyright protection is still in its early stages, and there are challenges to overcome, such as scalability, adoption, and legal recognition. Artificial intelligence and machine learning are being used to detect instances of copyright infringement[54]. The effectiveness of any digital copyright protection method depends on its widespread adoption and enforcement, which can be a complex and evolving issue. Apart from legal and technological mechanism, international cooperation is also important for protecting digital copyright. For Instance, Interpol and Europol collaborate with law enforcement agencies worldwide to combat online piracy and counterfeiting. In conclusion, digital copyright protection

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51 Manoj K Sinha and Vandana Mahalwar: *Copyright Law in the Digital World, Challenges and Opportunities*, (2017) 234.

52 Watermarks are digital markings that are inserted inside media files to identify their origin and ownership.

53 *Blockchain* is a distributive ledger where data is stored in large databases. Block chain provides a decentralised and tamper-resistant ledger for recording information regarding copyright ownership and licencing.

54 Intellectual Property Challenges in the Digital Age, 2023, <https://www.globalipconvention.com/blog/intellectual-property-challenges-in-the-digital-age> (Accessed on 23 September 2025)

methods involve a complicated interaction of international treaties, national laws, technological instruments, and enforcement actions. It is a continuing task that necessitates constant adaptation to the changing digital context.

10. Suggestions

This research paper found major lacunae in the legal framework for digital copyright protection in Bangladesh such as absence of specific law governing Digital Rights Management (DRM) technologies, lack of anti-circumvent provisions, and poor enforcement mechanism. There are various lacunae in our digital copyright enforcement ecosystem such as lack of capacity among law enforcement agencies, limited resources and corruption, lack of public awareness, delay in the disposal resulting in apathy among the public to obey the laws.[55] Despite these challenges, there exists several opportunities for improving digital copyright protection in Bangladesh. In order to establish a more efficient and sustainable framework for copyright protection in the digital era, policymakers, copyright owners, and other stakeholders must work together. Stronger enforcement measures are required to solve this problem, including improved cooperation across pertinent government agencies, more effective punishment for copyright violations, and increased public awareness of the value of respecting copyright of the authors. In addition, inclusion of alternative dispute resolution mechanisms, such as mediation and arbitration, in copyright related disputes may also help to resolve the disputes more efficiently and cost-effectively. The modern development of digital copyright protection worldwide continues to evolve in response to advancements in technology, changing consumer behavior, and the global nature of digital content distribution. These lessons from these developed states can provide valuable insights for Bangladesh as it seeks to enhance its digital copyright protection measures. The Bangladesh Copyright Office can take some idea from the US copyright alert system as well. The Copyright Office can pursue legal action against copyright violators with the assistance of internet service

[55] Mardiah Chowdhury, 'Copyright and Protection against Infringement in Bangladesh' (*Jural Acuity*, 5 January 2021) <https://juralacuity.com/copyright-and-infringement-protection-in-bangladesh/> (Accessed on 2 October 2025)

providers(ISPs).Government should develop effective mechanisms for combating online piracy and copyright infringement such as notice-and-takedown procedures, legal actions against infringing websites, and collaboration with internet service providers.

At this stage of our research, we would like to suggest few plausible suggestions for policy makers on the basis of the finding of the study. Firstly, it's high time to update the legal framework for copyright protection in Bangladesh to address the unique challenges posed by digital works. This includes developing new laws, regulations and infrastructure to govern Block chain Technology, Digital Watermarks, Access Control and Copy Control[56], and Artificial intelligence. The digital world needs a well-crafted and flexible legal framework to address issues like the pervasive digital piracy and the challenges of using technologies like DRM.[57] Ensure that DRM is used in a way that benefits both creators and consumers. Government can explore the potential of block chain technology, giving it legal recognition for copyright protection. Obviously, relying just on legal provision is insufficient to offer effective consumer protection.[58] The authors of digital content should adopt independent modern technological measures such as DRM to prevent undue exploitation.[59] Secondly, the government should invest in building the capacity of law enforcement agencies to effectively enforce digital copyright laws. This involves providing law enforcement professionals with training and tools, as well as partnering with international organisations to create best practices for digital copyright enforcement. This is necessary because the internet's global reach blurs jurisdictional lines and makes it difficult to track down infringers. To successfully resolve these issues, international collaboration and the harmonisation of copyright laws are essential.[60] Thirdly, there is a need to raise awareness among the public about the importance of respecting intellectual property and the

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56 Access control and copy control permissions are the certain measure software that identifies the original work to the author and the duplicate work to its culprit/offender.

57 *Supra Note.* Deepanshi (n 8).

58 Alan Weintraub and James Lundy, The Gartner Group, Best Bet for Copyright Protection Lies with Your Strategy, July 20, 2001.

59 *Supra Note.* Adetunji and Okuonghae (n 5).

60 *Supra Note.* Deepanshi (n 8).

laws governing copyright protection. This includes providing education and training to students, educators, and professionals about copyright laws and the ways in which they can protect their digital works. Finally, digital copyright infringement is a worldwide issue that needs international collaboration to solve it properly. Finally, the government should work with international organisations, neighbouring nations, and trading partners to coordinate copyright protection measures. Bangladesh should join key international treaties on digital copyrights such as the WCT and the WPPT, to boost global protection. By putting these suggestions into action, Bangladesh may enhance its legal framework for digital copyright protection, encourage better respect for intellectual property, and foster the creation of a vibrant and dynamic creative economy in the digital era.

11. Conclusion

The emergence of new technology is always followed by a reform of copyright law. Digital technology is no exception. The quick distribution of digital works and the simplicity of reproducing such works present unforeseen challenges to copyright law. Protecting digital copyright in Bangladesh is a difficult and diverse issue that necessitates a collaborative effort on the part of governments, copyright owners, and other stakeholders. The present legal framework in Bangladesh for copyright protection is mostly based on classical copyright rules, which are not well-suited to addressing the specific issues of digital sphere. Despite these challenges, Bangladesh government is trying to improve digital copyright protection mechanism in Bangladesh through various strategies. Based on the findings and suggestions presented in this paper, it is obvious that preserving digital copyright in Bangladesh would necessitate a holistic strategy that takes into account legal, technological, and cultural aspects. Bangladesh can make major gains towards preserving digital copyright in the digital age by strengthening the legislative framework, improving enforcement procedures, boosting awareness and education, encouraging the use of technology, and expanding international collaboration.

Alternative Dispute Resolution (ADR) Mechanisms Specially in Civil and Family Suits in Bangladesh, Japan & the USA: A Comparative Study

Md. Ahsan Habib*

Abstract

The judicial system of Bangladesh is overburdened by a huge backlog of pending cases. The backlog of cases causes the adjudication process to be delayed. The current case disposal rate is concerning for justice. Its detriments rule of law, which consequently endangers the national economic growth. Ligation has become promisingly expensive, delayed disposal and a huge backlog has diminished people's confidence in the Judicial System. Alternative Dispute Resolution (ADR) specially in Civil and Family suits is eminently essential to reduce the tremendous backlogs of cases in our country. Though the ADR system has already been proved in the most developed countries such as the UK, USA, Japan, and Australia as effective tools to reduce the backlog of cases, it is also introduced in Bangladesh. My study will definitely help stakeholder to gain some legal expertise on this issue. It is pertinent to mention here that I would also especially emphasize resolving family disputes using the technique of Negotiation and Mediation. Mediation is the method of settling a dispute without going to court. In the Adversarial Justice System, the litigant people have to spend money on lawyers and go through a complex legal procedure and time-consuming system, which is especially a major concern for the downtrodden and backward marginalized section of our society. Through the implementation of Civil and Family Mediation within the judicial system of Bangladesh, it will definitely help to identify the reason behind the huge backlogs of cases, firstly, and then architect methods of combating such problems. This research is expected to demonstrate that effective implementation of court-annexed ADR, particularly mediation, can meaningfully reduce case backlogs and delays in justice delivery system in Bangladesh. It will also recommend

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practical legal and institutional policy reforms to promote access to justice and strengthen the judicial system.

Keywords: *Alternative Disputes Resolution (ADR), Mechanisms, Civil Suits, Family Suits, Comparative Study, Bangladesh.*

1. Prelude

The Bangladesh Judicial System is overloaded by tremendous backlog of pending cases. The backlog of cases results in delay of adjudicative process. Delay in the justice delivery system is comprehended to be an impediment in guaranteeing access to justice to mass people and also a violation of human rights.[1] Currently, the percentage[2] of case disposal is alarming for justice.[3]According to the reports of the Justice Audit Bangladesh in 2021, the judiciary in Bangladesh currently faces an enormous backlog of over 3.7 million in court proceedings, creating enormous hardship for those seeking justice.[4] The recent official figures provided by the Law Minister in Parliament, the judicial backlog in Bangladesh has risen to over 4.63 million pending cases, creating ongoing hardships for citizens seeking timely justice.[5]

It detriments rule of law which consequently endangers the national economic growth. Ligation has become promisingly expensive, delayed disposal and huge backlog has diminished the confidence of people of the Judicial System.[6] The research aim is 'Alternative Dispute

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1 A.B.M Asrafuzaman, and Md. Golam Mostofa Hasan, Causes and Redresses of Delays in Disposal of Civil Suits in Dhaka District Judge Court: An Empirical Study (June 17, 2020). Available at SSRN: https://ssrn.com/abstract=5018389 or http://dx.doi.org/10.2139/ssrn.5018389

2 https://www.thedailystar.net/news/bangladesh/crime-justice/news/appellate-division-sees-surge-case-disposal-4133916 (Accessed on 27 July 2026)

3 M Shah Alam, ' A Possible Way out of Backlog in Judiciary', The Daily Star, Dhaka, 16 April 2000.

4 https://www.thedailystar.net/country/news/judiciary-suffering-backlog-34-lakh-cases-1735606 (Accessed on 7 June 2021)

5 https://thefinancialexpress.com.bd/national/over-463m-cases-pending-with-courts (Accessed on 27 July 2026)

6 See the Bangladesh Law Commission Report, http://www.lc.gov.bd/reports.htm (Accessed on 7 July 2021)

Resolution' which is eminently essential to reduce the huge backlogs of cases in our country. Though ADR system has already been proved in the most developed countries such as UK, USA, Japan and Australia as effective tools to lessen the backlog of the cases, in Bangladesh it is also introduced. This study will definitely help me to gain some legal expertise on this issue.

Alternative Dispute Resolution (ADR) is the technique of settling dispute without going to court. ADR procedures are considered a consensual way to conflict resolution, not following the stringent formalities of the adversary system.[7]

In the Adversarial Justice System, the litigant people have to spend money on lawyers, have to go through a complex legal procedure and time consuming system which is especially a major concern for the downtrodden and backward marginalized section of our society. Through the implementation of ADR within the judicial system of Bangladesh, it will help identify the reason behind the huge backlogs of cases firstly, and then architect methods of combating such problems. Further, it would convey attained knowledge among the concerned stakeholders responsible for providing justice to the common mass of the country.

1.1 Adversarial System

The adversarial system is a common law system where two counsels plead the case or position of their party before an impartial person or group of individuals, generally a judge or jury, who strive to uncover truth or to judge suitably.[8] Adjudication is an adversarial procedure, when a judge (or jury) rules in a court for the advantage of a party in line with the law after hearing all sides.[9]

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[7] Mohammad Saidul Islam ,Efficiency and Effectiveness of Alternative Dispute Resolution Schemes Towards the Promotion of Access to Justice in Bangladesh, IIUC STUDIES ISSN 1813-7733 Vol.- 8, December 2011 (p 95-112)

[8] Sandra Beatriz Hale (July 2004). The Discourse of Court Interpreting: Discourse Practices of the Law, the Witness and the Interpreter. *John Benjamins. p. 31.*

[9] PH Gulliver. Disputes and Negotiations: 4 Cross-cultural Perspectoc. New York Academic Press. (. 1976). Cited H Dcsmond Ellis & Noreen Stuckless. 11), Ale diating and Acotiaruig Ma rita? Conflicts. Sage Publications 1996). p.3.

According to Professor Hazel Genn[10], in many areas of the globe he may attribute current interest in ADR to four main concerns:

i. Avoiding the cost and delay of court proceedings and coping with court overcrowding.

ii. improving access to justice,

iii. offering more efficient methods of dispute resolution, and

iv. Offering the public more chance to be involved in dispute resolution.[11]

1.2 Inquisitorial System

An inquisitorial system is characterized by a legal framework where the court or a part thereof, takes an active role in examining the facts of the case. Inquisitorial systems are mainly employed in nations having civil law, such as Japan, France and Italy.[12]

1.3 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) signifies any approach that takes place beyond the courtroom.ADR usually involves early impartial assessment, negotiation, mediation, arbitration and conciliation.[13] These procedures also encompass a wide variety of courts-based efforts aimed at making justice more efficient and at overcoming delays through normal court procedure.[14]

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10 Haze Genn, *Mediation in Action: Resolving Court Disputes without Trail.* Calousie Gulbenkian Foundation. London (1999). p. 17.

11 *Ibid.*

12 Harry R. Dammer and Albanese Jay S.; *Comparative Criminal Justice Systems*, p. 149

13 https://www.law.cornell.edu/wex/alternative_dispute_resolution (accessed on 5 June 2021)

14 In 1998 the US Congress passed the Alternative Dispute Resolution Act. Under this Act all district court now require the litigants in civil cases to consider the use of an ADR process at an appropriate stage in the litigation and it is also a responsibility of each district court to provide litigants in all civil cases with at least one ADR process.

1.4 Different Forms of Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) encompasses a range of techniques employed to settle conflicts without engaging in legal proceedings. The different forms of ADR are mentioned below.

1.4.1 Mediation

Mediation consists of an impartial third-party mediator who promotes communication between the contending parties to enable them to arrive at a consensual accord. The mediator does not impose a decision but assists in clarifying issues and exploring solutions.[15] Mediation is a systematic, interactive procedure in which a neutral third party aids parties to resolve conflicts by using technical communication and negotiating methods. One of the characteristics of mediation is the absolute confidentiality of the procedure and it is widely practiced in common law jurisdiction not essential in the civil laws.[16] A trained and experienced mediator can play a vital role to settle a dispute more peacefully and amicably. The qualities of good mediators need more than process. They need knowledge, commitment, creativity, strength, wisdom, strategic thinking, confrontation, patience, encouragement, humor, bravery, and a lot of other characteristics, which are not just processes or substances.[17]In the UK, the Code of Conduct for Mediators describes the position as a "neutral negotiating facilitator".[18]

1.4.2 Arbitration

Arbitration represents a more official mechanism wherein an impartial arbitrator assesses the evidence and delivers a binding resolution. It is

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[15] Moore, C. W. (2014). The Mediation Process: Practical Strategies for Resolving Conflict. John Wiley & Sons.

[16] https://en.wikipedia.org/wiki/Mediation (accessed on 9 June 2021)

[17] Mayer 2004, p. 146

[18] Palmer, Michael & Simon Roheus, Dispute Processes: ADR and the Primary Forms of Decision making Butter worths (1998). p. 07.

often used in commercial disputes and can offer a quicker resolution than traditional court proceedings.[19]

1.4.3 Conciliation and Reconciliation

Conciliation and Reconciliation is parallel to mediation but involves a third party who may take a further dynamic role in proposing solutions. The conciliator helps the parties communicate and can suggest terms for settlement.[20]

1.4.4 Settlement Conferences

Settlement conferences are informal sessions conducted by a disinterested third party to support disputants in achieving a settlement prior to trial. This process can save time and resources.[21]

1.4.5 Neutral Evaluation

In impartial evaluation, a knowledgeable professional in the relevant area analyzes the strengths and weaknesses of both parties' cases and renders a non-binding decision. This can guide parties toward a resolution.[22]

1.4.6 Mini-Trials

Mini-trials are a shortened version of a trial, where each party presents a brief case to a neutral third party who then provides an opinion on the probable result of the case went to trial. This can lead to settlement discussions.[23]

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19 G. B. Born, (2020). International Commercial Arbitration. Kluwer Law International.

20 L. L. Riskin, (2003). The Dispute Resolution Landscape: A Framework for a New Approach to Conflict Resolution. Harvard Negotiation Law Review.

21 T. A. Stipanowich, (2004). The International Evolution of Mediation: The Challenges of a New Paradigm. Harvard Negotiation Law Review.

22 D. A. Hyman, (2005). The Role of Neutral Evaluation in Alternative Dispute Resolution. Dispute Resolution Journal.

23 D. K. Gifford, (1998). Mini-Trials: An Alternative to Litigation. American Bar Association.

1.4.7 Negotiation

Negotiation constitutes the most unstructured technique of ADR, since parties interact directly to attain a settlement, without any third-party involvement. This process emphasizes collaboration and mutual agreement.[24] Negotiations are the two parties having differences that must be resolved, attempting to achieve agreement by searching for alternatives and exchanging proposals.[25]

1.4.8 Expert Determination

Expert determination involves the appointment of an expert to make a binding decision on a specific issue, often used in technical or specialized disputes, such as construction or engineering matters.[26]

The several types of ADR offer adaptable and effective ways to settle conflicts, enabling parties to select the approach that best meets their requirements. By fostering communication and collaboration, these methods often lead to more satisfactory outcomes than traditional litigation.

1.5 Court Based ADR

If the ADR proceedings are related to the lawsuit or court case, it is designated ADR based on the court. After the court case is presented, a judge or court officer shall reconnoiter the dispute and suggest or order, naturally the parties should seek to reconcile their disputes through alternative settlement of dispute in the form of mediation, conciliation etc. Bangladesh is still experiencing the development phase, and more than 3.7 million backlogs of cases can be effectively encountered by Alternative Dispute Resolution (ADR).[27]

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[24] R.Fisher, W.Ury, & B. Patton, (2011). Getting to Yes: Negotiating Agreement Without Giving In. Penguin Books.

[25] Commissioner Jack, Gregor WAIRC and AIRC, Associate Professor Ray Fells Graduate School of Management, UWA, 'Negotiation and Conciliation Skills 'http://forms.wairc.wa.gov.au › (Accessed on 9 June 2021)

[26] S. McIlwrath, (2010). The Role of Expert Determination in International Arbitration. International Journal of Arbitration, Mediation and Dispute Management.

[27] https://unb.com.bd/category/Bangladesh/nearly-37-mln-cases-pending/54740 (Accessed on 29 July 2021)

1.6 E-Mediation

In e-mediation, a mediator offers mediation services to parties who are geographically separated or whose disagreement is so intense that they cannot bear to be in the same space.[28] E-mediation can be an online conflict resolution process that is entirely automated and requires no involvement from a third party. However, remote e-mediation is more likely to resemble conventional facilitative mediation.[29]

2 . Research Objective

i. To improve the Court system of Bangladesh taking practical experiences from Japan and the USA.

ii. Using ADR to reduce the huge backlog of cases in Bangladesh..

3. Research Questions

i. What are the perceptions on ADR of litigant people of Bangladesh, Japan and the USA?

ii. What are the problems and challenges faced by the Judges and Stakeholders to implement ADR effectively?

iii. What can be the suggestive policy to implement ADR effectively and mandatorily in Bangladesh comparing with the USA and Japan's Judicial Experiences?

To meet the demand of aforementioned research questions, the study adopted a qualitative research approach. Different graphs were used to comprehend the present condition. Data have been collected mostly from the different courts of Bangladesh, the official website of the supreme court of Japan, various articles, journal and websites.

4. Research Methodology

Overall, the study adopted a qualitative research approach. Several methods have been used to collect the necessary data and information for the study.

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[28] Jennifer Parlamis, Noam Ebner, and Lorianne Mitchell , Advancing Workplace Mediation Through Integration of Theory and Practice, https://www.pon.harvard.edu/daily/mediation/types-mediation-choose-type-best-suited-conflict/=

[29] *Ibid.*

Firstly, the data gathered on the backlog of cases for the past two decades from primary and secondary sources. The primary sources include respondents, case laws, judgment, statutes, opinions of experts, etc. Secondary data includes, extensive literature survey extracted from books, journals, articles, documents of different government and non-government institutions.

Secondly, interviewing the litigant through the use of phone, social media and personally i.e. face to face.

Thirdly, questionnaire by modulating a set of questions directed towards the litigants, advocates, judges, government and non-government officials, experts, etc.

5. Limitations of the Study

ADR is not widely practices in Bangladesh. Most of the litigant people do not understand the value of ADR properly. Most of the lawyers in Bangladesh are not interested in disposing suits through ADR in apprehension of reduction of their fees. Apart from that, research reports and book regarding this study are very in adequate in Bangladesh. Some courts do not maintain the statistics and do not forward it to the higher authority properly.

6. Alternative Dispute Resolution in Bangladesh

ADR is now a popular system in Bangladesh and it helps to reduce backlog of the cases in our judiciary. The historical background, the essence and importance of ADR, and the various ADR mechanisms provided under different statutory laws in Bangladesh are discussed below.

6.1 Historical Background of ADR in Bangladesh

Panchayet or Salish (informal mediation) at the village level has long been used in Bangladesh to settle disputes. To ensure a quick and amicable resolution of conflicts, certain family-related laws have included both the formal court system and the conventional informal conflict resolution techniques.[30] Shalish-a customary is bucolic Dispute

[30] Md. Sefat Ullah , Application of ADR in Family Court: A Critical Analysis Under Legal

Resolution System in Bangladesh[31]. In Bangladesh, it is a customary and indigenous method of resolving disputes. It describes a community-based, mostly unofficial procedure whereby small panels of influential local individuals assist in resolving conflicts among community members.[32]Under British rule the modern adversarial court system was imposed, but informal mediation/conciliation continued in practice.[33] After 1947 ADR remained largely informal, but certain statutory forums (e.g., family tribunals, labour / industrial conciliation mechanisms) began to include non-court settlement options.[34] Following independence (1971), Bangladesh retained and adapted many existing statutes. Over time sectoral laws (family law ordinances, labour/industrial laws and certain recovery laws) provided for mediation/conciliation or encouraged settlement. Courts continued to recognise informal settlement practices.[35]

6.2 The Essence for ADR in Bangladesh

ADR or Mediation may allow parties to resolve disputes faster and it saves time and money. The best solution to a problem is typically one that the parties create. Mediation allows parties to create a design that suits their needs. Many people find mediation more satisfying than trial because they are actively involved in solving their problems rather than being resolved by a judge. The mediation should be casual and completely confidential. Mediation parties may speak more freely than they can in court. Many people find mediation more convenient and efficient than a trial.[36] The compulsory mediation program sends cases to mediation before the litigation process, so that parties may resolve

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Framework and Practice in Bangladesh Green University Review of Social Sciences, Volume 04, Issue 01, June-2018

31 Muhammad Rafiqul Hoque, Traditional Shalish system for rural dispute resolution in Bangladesh: An analytical study of its structure and operational mechanism, *IIUC Studies* 16 DOI: https://doi.org/10.3329/iiucs.v16i0.50136

32 *Ibid.*

33 <https://www.scribd.com/presentation/476507331/Lec-3-ADR-Legal-Aid?utm_source>

34 <https://weinsteininternational.org/bangladesh/bangladesh-bio/?utm_source>

35 *Ibid.*

36 https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/fact_sheet_mandatory_mediation.ht ml (Accessed on 6 July 2021)

the disputed issues.[37] The Compulsory Mediation Program (CMP) seeks to help civil litigants and property settle problems early in the processes in order to save time and money.[38] With the help of a competent mediator, parties may explore settlement options and avoid pre-trial and pre-trial processes.[39] A significant backlog of cases is weighing down Bangladesh's judicial system. The adjudication process is significantly delayed by the backlog of cases.[40] Although backlogs are caused by delays in the legal system, growing backlogs significantly impact the current case disposal rate. For justice, the current case disposal rate is startling. It undermines the rule of law and hinders the nation's economic development.[41] Due to inordinate delays in court proceedings, the people of Bangladesh currently believe that they will never be able to have their issues addressed by the court in their lifetime.

6.3 The Crux of Importance of ADR in the Bangladesh

It was observed by Mr. Chief Justice Syed JR Mudassir Husain-"*In our current legal system, litigation costs are raising. Delay in cases disposal and large backlogs have practically shattered people's faith in the court. In this context we cannot but reflect on the device such as ADR that is possibly beneficial for decreasing backlogs and delays in certain instances in our courts.*"[42]He adds that "ADR" is cheaper and quicker than the judicial system, and may significantly reduce the suffering of underprivileged litigants.[43] In the case of Food ***of*** *Corporation of India v. Toginder Pal Mohinder Pal* the Indian Supreme court observed that, "*ADR is seen as a part of a package system designed to meet the needs of consumers of justice*".[44]

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37 The Legal Aid (Amendment) Act, 2026

38 *Ibid.*

39https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/fact_sheet_mandatory_mediation ml

40 M Shah Alam., 'A Possible Way out of Backlog in Our Judiciary ', *The Daily Star.* Dhaka. 16 April, 2000.

41 *Ibid.*

42 Chief Justice of Bangladesh speech given in the concluding session of the South Asian Regional workshop on ADR organized by the British Council, Bangladesh on 7-8th March 2004.

43 *Ibid.*

44 Md. Akhtaruzzaman, *Concept and laws on Alternative Dispute Resolution and Legal Aid, 4th ed.* (Dhaka; Razia Khatun, *2011),* p. 31.

The following table shows the number of pending civil cases, cases disposed of and cases filed in the subordinate judiciary.[45]

Table-1: Cases Pending in the Subordinate Civil Courts

Year	Number of pending cases	Number of cases filed	Total	Number of cases disposed of	Number of cases pending for the following year
2011	639218	108689	747907	46111	701789
2012	701789	226754	928543	58923	869614
2013	869614	436196	1305741	236220	1018623
2014	1018623	433210	1451833	322461	112015

Source: Statement Department, High Court Division, Bangladesh Supreme Court, Dhaka

The present scenario of pending cases[46] in Bangladesh as follows

Date/Year	Pending Civil Cases in Lower Courts	Source
31 Dec 2025	1,690,443 (civil)	Law Minister's Statement in Parliament in 2026
31 Mar 2026	1,690,443 (civil) pending in lower courts (part of 4,078,432 total lower court cases)	Law Minister's Statement in Parliament in 2026

The underlying meaning of the aforementioned observation is that ADR has paramount importance in Bangladesh to reduce the huge backlog of cases. ADR, like any other creative endeavor, needs

[45] http://www.supremecourt.gov.bd/web/?page=legal_aid.php&menu=10 (Accessed on 5 July 2021)

[46] Supreme Court of Bangladesh, *Annual Reports* (2015–2024); Statement of the Hon'ble Minister for Law, Justice and Parliamentary Affairs in the JatiyaSangsad regarding pending cases (2025–2026).

a motivator or battalion of drivers around the country, according to a statement made by Bangladesh's Former Chief Justice Mustafa Kamal.[47]

6.4 ADR Mechanisms under Different Statutory Laws in Bangladesh

In our country, various methods have been used in order to lessen the pressure of the Court included in different statutory laws. Most of them are given in below:

i. Code of Civil Procedure, 1908 (as amended)

- Section 89A – Mediation in suits (court-annexed mediation).
- Section 89B – Mediation/negotiation by parties outside court.
- Section 89C – Arbitration/settlement at any stage of the suit.

ii. Arbitration Act, 2001

- Entire Act governs arbitration; key provisions include
  - Section 3 – Application of the Act to domestic & international arbitration.
  - Sections 7–10 – Arbitration agreement, reference, and appointment of arbitrators.
  - Section 21 – Settlement before award.

iii. Family Court Act, 2023

- Section 11 – Duty of the Family Court to make efforts for reconciliation/mediation before proceeding.

iv. Muslim Family Laws Ordinance, 1961

- Section 7(4) – Arbitration Council for reconciliation in *talaq* matters.

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[47] J. Mustafa Kamal, (Former CJ of Bangladesh).'Judicial Settlement and Mediation in Bangladesh, paper read at the Third Working Session of the Conference oil Dispute Resolution held wider the joint auspices of the International Centre for Alternative Dispute Resolution. New Delhi and Bombay High Court on 20-21 November. 2004.

v. Village Court Act, 2006

- Sections 4–7, 9 – Formation of village courts and settlement of minor civil and criminal disputes through local mediation.

vi. Artha Rin Adalat Ain, 2003

- Section 22 – Court may refer matters for compromise/settlement.
- Section 24 – Decree based on compromise.
- Section 38- Mediation in Execution case.
- Section 44A-Mediation in Appellate stage.

vii. Labour Act, 2006 (Amended in 2013)

- Sections 210–213 – Negotiation, conciliation, and arbitration for industrial disputes.

viii. Industrial Relations (Alternative)

- Incorporated into Labour Act above; conciliation officer and arbitrator provisions.

ix. Conciliation of Disputes (Municipal/Local)

- Local Government (Union Parishad) Act, 2009 – Sections 53–57 allow for village mediation of minor disputes.

x. Children Act, 2013

- Sections 33–35 – Diversion and restorative justice measures encouraging mediation between offender and victim.

xi. Nari o Shisu Nirjaton Daman Ain(Women and Children Torture Prevention Act), 2000

- Section 25 – Permits compromise in certain compoundable offences with court approval.

xii. Probation of Offenders Ordinance, 1960

- Sections 5–6 – Encourages reconciliation/settlement and supervision instead of conviction in minor offences.

xiii. Environment Court Act, 2010

- Section 6(2) – Settlement through mediation before full trial (where appropriate).

xiv. Legal Aid Services Act, 2000

- Sections 7–8 – Authorizes mediation/settlement through legal aid committees.

xv. Mobile Court Act, 2009

- Section 9(1) – Allows disposal through compromise for specified petty offences.

xvi. Consumer Rights Protection Act, 2009

- Section 70 – Settlement of consumer disputes through mediation before filing a case.

xvii. Real Estate Development and Management Act, 2010

- Section 41 – Dispute settlement through arbitration.

xviii. The Conciliation of Disputes (Municipal Areas) Board Act, 2004

Section 3 (establishment/recognition of conciliation boards in municipal areas) and Sections 5–9 (composition, jurisdiction and procedural aspects of conciliation/settlement).

xix. Income Tax Ordinance, 1984

ADR provisions are located in the ADR chapter (often cited as Sections 152II, 152J–152M etc.), covering: application for ADR, eligibility, appointment and duties of facilitator, rights/duties of the assesse, and effect of agreement.

xx. The Customs Act, 1969

Contains a dedicated ADR chapter (Chapter XVIII-A). Key sections begin at Section 192A (Alternative Dispute Resolution — scope and application), with follow-on provisions (e.g., 192B, 192I, 192J etc.) setting out commencement, facilitator duties, effect of agreements and limitation consequences.

7. Alternative Dispute Resolution in Japan

As a popular form of dispute resolution, ADR is now widely practiced in Japan. Apart from **t**he historical background, the practices of mediation and arbitration in Japan are mentioned below.

7.1 Historical Background of ADR in Japan

Japan is an appropriate comparative jurisdiction for this research because it has a long-established and highly successful ADR system, supported by both cultural traditions of consensus and a modern legal framework, which has effectively reduced litigation and promoted timely dispute resolution. Its experience provides valuable lessons for Bangladesh in strengthening court-annexed mediation, reducing judicial backlog, and improving access to justice.

Alternative dispute resolution (ADR) processes have seen tremendous growth in the last decade in the USA, Germany, Japan, and other countries.[48]These include Negotiation, Mediation and Arbitration. On the basis of the Kawashima[49] study, traditionalist theory claims that the acceptance in Japanese culture of the ancient Confucian ideas led to a reluctance to litigate.[50]JO Haley, as a revisionist theory advocate, rejects conventional explanation and deems institutional litigation barriers responsible for a low lawsuit rate.[51]

ADR is being utilized more and more to settle many kinds of disputes: economic, civil, familial, national and international. The reason is that

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48 The ADR movement in the United States, however, emerged as early as in the 1980s, see Duve C, 'Alternative Dispute Resolution (ADR) - die aussergerichtlicheStreitbeilegung in den USA', (1998) *Betriebs-Berater*, Beilage 10, at 10

49 Kawashima T, 'Dispute Resolution in Contemporary Japan', in: von Mehren A (ed), *Law in Japan: The Legal Order in a Changing Society*, 1963, reprinted in Dean M, *Japanese Legal System: Text and Materials*, Cavendish, London, 1997 at 452; Kawashima, *Nihonjin no ho ishiki (Legal Consciousness of the Japanese*), Iwanami Publishing Co, Tokyo, 1967, partially translated under the title 'The Legal Consciousness of Contract in Japan' in (1974) *Law in Japan* 1

50 Noda Y, op cit at 181-182; Stevens C, 'Modern Japanese Law as an Instrument of Comparison' (1979) 19 *American Journal of Comparative Law* 665.

51 Haley JO, 'The Myth of the Reluctant Litigant' (1978) 4 *Journal of Japanese Studies* 359.

ADR deals with many legal issues. It is generally quicker, cheaper, simpler and more convenient. Instead of a lawsuit, Japan has an ADR legacy.[52]

7.2 Mediation in Japanese : Chotei

i) Chotei is a Japanese term for mediation that primarily relies on a settlement between the parties without the participation of the court.[53] Mediation includes an impartial third party to enable the dispute process and support the parties reach the best resolution.[54]

Article 1 of the *Civil Conciliation Act*[55], characterizing the nature of "*chotei*", provides: "*This Act aims at effecting a settlement of dispute consistent with reason and befitting actual circumstances by mutual concession of the parties concerned, with respect to disputes relating to civil affairs.*"

7.2.1 The term "Wakai"

"Wakai" denotes "compromise" or "settlement," neither of which the court is required to participate in. This is a mutually agreed upon consensual resolution of a conflict. This contract's contents and the approach taken are unrestricted. Since it's voluntary, if one party doesn't want to resolve in this modus, there can be no compromise.[56]

7.2.2 Kisozen no wakai

There are three different forms of *wakai*. The first, *kisozen no wakai*, consists solelyof judicial recognition of a compromise reached between the parties.[57] In recent years a variation of *wakai* has been developed by

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52 Funken, Katja, Alternative Dispute Resolution in Japan (June 2003). Univ. of Munich School of Law Working Paper No. 24, Available at SSRN: https://ssrn.com/abstract=458001 or http://dx.doi.org/10.2139/ssrn.458001

53 *Ibid.*

54 DIEDRICH, F. 2015. Myth and Legal Reality of Alternative Dispute Resolution in Japan: a
Comparative Analysis. Hitotsubasi Journal of Law and Politics 43.

55 Article 1 of the Civil Conciliation Act

56 Code of Civil Procedure, Art. 136.

57 Code of Civil Procedure, Art. 356

judges in the Tokyo and Osaka District Courts called "*benron-ken wakai*" or "pleading-and-settlement".[58]

7.2.3 Soshojo no wakai

*Soshojo no wakai*is a compromise reached during litigation.[59] This has the effect of an ultimate and compulsory judgment.[60] The court may *suasponte* recommend compromise before the court at any time during the formal judicial proceedings, including appeals, as a part of the court's judicial discretion.[61]

7.3 The Japanese System of Arbitration

Arbitration in Japan is very much like the system in Australia, Germany, and the United States.[62] The Japanese arbitration system is a contemporary arbitration system quite comparable to that in Australia, Germany or the United States. Japanese (chusai) arbitration does not differentiate the arbitration between two Japanese parties and the arbitration between Japanese and a foreign party. Arbitration is provided for under Chapter 8 (Arts. 786 to 805) of the Code of Civil Procedure.[63]

7.3.1 Commercial Arbitration

The Japan Commercial Arbitration Association (JCAA) and the Japan Shipping Exchange, commonly known as the Tokyo Maritime Arbitration Commission, are mainly responsible for the international maritime arbitration.[64]

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58 Iwai N, 'Alternative Dispute Resolution in Court: The Japanese Experience', op cit at 464

59 Port KL, Law and the Legal Process in Japan *op cit* at 457

60 Code of Civil Procedure, Art. 203.

61 Kusano Y, ' A Discussion of Compromise Techniques', (1991) 24 Law in Japan 138, reprinted in Dean M, *op cit* at 484.

62 9FUNKEN, K. 2003. Alternative Dispute Resolution in Japan [Online]. University of Munich. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=458001 (Accessed on 24 October 2016)

63 Law No 29, 1890.

64 Sawada T, 'International Commercial Arbitration: Practice of Arbitral Institutions in Japan', The Japanese Annual of International Law, No. 30, 1987 at 69 ff.

7.3.2 Turnaround (ADR) (Japanese Jigyo Saisei ADR)

Turnaround (ADR), often called the revitalization of business ADR is a method which businesses in Japan are increasingly using to modify the bankruptcy procedure.[65] In 2007, Japan adopted the special measures law for the industrial revitalization and restoration of Japan.[66] Besides these, a broad range of problems in the Japanese family, for example divorce, parental authority conflicts or child custody, adoption permits and child abuse protection are subject to ADR.[67]

8. Alternative Dispute Resolution in the USA

Historically, a strong and independent court has been engaged in resolving legal disputes, preserving individual, corporate and societal interest rights. An efficient and well-organized judicial system is important for every law-abiding country.[68] The United States is a relevant comparative jurisdiction because it pioneered the modern institutionalization of ADR through court-annexed mediation, arbitration, and the multi-door courthouse model, significantly improving judicial efficiency and access to justice. Its well-established legal and institutional framework provides valuable guidance for strengthening ADR and reducing case backlogs in Bangladesh

8.1 Background of ADR in the USA

American society saw a boom in interest in alternative conflict resolution in the late 1960s. ADR was a response to the civil rights movement. Congress created the Justice Department's Community Relations Service in the 1964 Civil Rights Act to help courts settle intractable racial and communal conflicts. Both the Research Methods

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65 T*he Sumitomo Trust and Banking Co., Ltd. (September 18, 2009).* "Preparation for Turnaround ADR Procedure by a debtor of The Sumitomo Trust and Banking Co., Ltd

66 *Yusuke Miyazawa; Shannon D. Harrington; Abigail Moses (November 11, 2009).* "Japan Credit-Default Swaps Seen Unraveling on Aiful's Bad Debts". *Bloomberg*.

67 https://www.courts.go.jp/app/search_en/list?keyword=mediation+statistics GUIDE TO THE FAMILY COURT OF JAPAN,

68 http://courts.state.de.us/Courts/Superior%20Court/ADR/ADR/adr_history.htm

of Conflict Resolution Institute and the National Center for Conflict Resolution were established by the Ford Foundation.[69]

However, the late 1970s marked the beginning of ADR's history in the US. The history of ADR in America is innovative in terms of its modernization.[70] Courts have also become involved. At the 1976 Pound Conference[71], it has been said that the current judicial system of the USA creating uncertainty, delay and expense, and above all, the injustice of deciding cases upon points of practice.[72]" Professor Frank Sander's vision of a court with a conflict resolution centre, in which the parties were led to the most appropriate proceedings in a particular case, was intrigued by the workforce that emerged from the conference.[73] The task group proposed public financing of a pilot program including mediation and arbitration and urged the establishment of three '*multidoor courthouses*' models by the new American Bar Association's dispute resolution committee.[74] Since then the alternative procedures in the sections of the procedural reform have become an integral part of the American legal system.

8.2 Pound Conference

The World Pound Conference (WPC) was a series of Alternative Dispute Resolution (ADR) conferences held across several nations in 2016/2017. The series focused on "*Shaping the future of dispute resolution*

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69 See Frank E.A. Sander. Alternative Methods of Dispute Resolution: An Overview. 37 FLA. L. REv. I (1985).

70 *Supra Note*, 59

71 The Conference was named after Professor and Dean Roscoe Pound. honored on the seventieth anniversary of his famous presentation before the members of the American Bar Association in 1906.

72 Farkas, Brian and Traum, Lara, The History and Legacy of the Pound Conferences (May 15, 2017). Cardozo Journal of Conflict Resolution Vol. 18:67 (2017), Available at SSRN: https://ssrn.com/abstract=2968653

73 Burger, Chief Justice W (1983). Annual Report on the State of the Judiciary, A.BA J69,
442. University of Baltimore School of Law, & Sayra and Neil Meyerhoff Center

74 See STEPHEN B. GOLDBERG ET AL., DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES 8 (3d ed. 1999)

and enhancing access to justice".[75] The International Mediation Institute developed this endeavor. IMI coordinated the effort. In 1976, Harvard law professor Roscoe Pound inspired the participation of mediators at a conference in the US, sparking the series.[76] The Pound Conference series offers all parties a unique chance to engage in conflict resolution discussions and how dispute resolution may be used effectively.[77]

9. Findings of the Research

The present study has found many elements which are responsible for ineffective implementation of ADR in Bangladesh. One of the major causes is lack of proper initiatives by the stakeholders who are concerned with implementation of the law like lack of adequate organizational infrastructure of the ADR, lack of proper awareness building programs, lack of strong will of the authorities and activities of the concerned committees. Another cause is there are no strategic implementation plans of Government. This research has found that for inclusive implementation of ADR in Bangladesh, the Government needs to increase the infrastructure and manpower in every district legal aid office in Bangladesh.

In order to derive a precise understanding of the research, the key findings are reproduced hereunder:

i. The present provisions of ADR under the Code of Civil Procedure[78] are not suitable for smooth functioning of ADR.

ii. In the family cases of Bangladesh, the Mediation procedure is not mandatory.

iii. The Family Court Act[79] does not have the provision relating to ADR or Mediation at the appellate stage.

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[75] Shaping the Future of Dispute Resolution and Improving Access to Justice". *Global Pound Conference Series 2016-17*. (Accessed on 7 July, 2021)

[76] *Levin, Diane*. "30 years after the historic Pound Conference, a reflection on ADR and justice in the 21st century". *Online Guide to Mediation*. (Accessed on 9 May 2021)

[77] https://hsfnotes.com/asiadisputes/2017/02/20/the-global-pound-conference-series-and-its-importance/ (Accessed on 6 July 2021)

[78] The Code of Civil Procedure, 1908, Sec- 89A-89E

[79] The Family Court Act, 2023

iv. There is a tremendous lack of institutional shape of ADR in Bangladesh.

v. In CPC[80], there is no provision of law for post-Trial Mediation.

vi. The Litigants and Lawyers are very much reluctant to resolve dispute by using the mechanism of ADR.

vii. The courts and Judges are overburdened by the huge number of pending cases.

viii. There is a lack of experienced and well-trained Professional Mediator in our country.

10. Suggestions

While conducting this research, the researcher has learned a few things. In light of the facts and results, the researcher would like to suggest a few alternatives that can be immediately implemented into Bangladesh's legal system or that may be modified or customized. The following are the suggestions:

i. Without going through the Compulsory or Mandatory Mediation Process (CMP/MMP) of selected cases no filing in regular court should be granted. A certificate should be required from Mediator for filing a case or suit in court when the mediation process will not be successful. It will work as check and balance parameter. If the filing is checked through this process, the huge backlog of cases in our country will be reduced drastically. The all-Family Cases, Civil suits in Bangladesh, Cheque Dishonour cases, Dowry cases, the Compoundable Criminal Cases[81] should be made mandatorily mediationable through the District Legal Aid Office before the filing of the cases in regular court or police station.

ii. ADR specially Mediation should be primarily mandatory for the all sorts of Family Cases and Civil suits in Bangladesh.

iii. Pre-Trial Mediation as to the small causes cases, Civil Cases and petty commercial disputes should be mandatory.

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[80] *The Code of Civil Procedure, 1908*, Sec- 89A-89E.

[81] *The Code of Criminal Procedure, 1898*. Sec-345.

iv. The great barrier in the way of resolving dispute by using ADR/ mediation in Bangladesh is that pre case mediation or ADR is not compulsory.[82] The Government should take immediate steps to ensure mandatory ADR for family suits, civil cases and small commercial disputes.

v. National Policy for Judiciary should be declared mentioning specific target and strategy of deducing backlog of cases using ADR method.

vi. To make the ADR system popular among the litigants in Bangladesh, print and electronic media can play an important role.

vii. This study suggests that Bangladesh develop a context-specific ADR framework by selectively incorporating proven practices from the Japanese and U.S. ADR models. A customized approach is likely to improve judicial efficiency, reduce case backlog, and ensure greater access to justice without compromising the country's legal traditions.

viii. This research has found that for inclusive implementation of ADR in Bangladesh, the Government needs to increase the infrastructure and manpower in every District Legal Aid Office in Bangladesh and requirements to enact an inclusive ***"The Mediation Act"*** for the comprehensive application of ADR or Mediation Process in Bangladesh.

11. Conclusion

The way ADR procedures are used in the US and Japan may be adopted by the Bangladeshi courts. Prior examples from the USA and Japan show how court orders can effectively encourage the use of ADR. This might provide significant direction to Bangladeshi courts. The monetary fines levied by American and Japanese courts for non-use of alternative dispute resolution (ADR) or unwarranted reluctance to use ADR could set a precedent for Bangladeshi courts. In Bangladesh, a mandatory mediation process including the court based

[82] Bangladesh Law Commission Report on, "Enforcing Court-sponsored ADR in Bangladesh: Need for Strengthening Legislative, Administrative and Institutional Measures" http://www.lc.gov.bd/reports.htm , (Accessed on 7 June 2021)

Mediation could be effective because of the massive backlog in the country's judicial system.[83] As an optional novelty, ADR has arrived in Bangladesh. Although it has not completely evolved, it is emerging.[84] This may happen if the court, the government, the legal community, and ADR service providers work together. Bangladesh should adopt the ADR Act or Mediation Act, as seen in the USA and Japan. The general public should be made aware of the availability of various ADR procedures. Jurisprudence must be established that reflects the significance of ADR. ADR must become a cornerstone for the legal culture. The Bar and Bench may play a key role in this aspect. It must also be ensured that ADR procedures are equally accessible and treated by all sectors of society. We have started a new adventure and set out to witness the new dawn in Bangladesh to resolve conflicts in a more peaceful way using ADR or Mediation Mechanisms.

[83] SK. Golam Mahbub, Alternative Dispute Resolution in Commercial Disputes: The UK and Bangladesh Perspective, First Published April 2005 p.89

[84] *Ibid.*

The Politics of Minority Rights in Nepal: Narratives of Exclusion in the Name of Inclusion

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Abstract

Nepal is culturally, linguistically and ethnically diverse country. Despite, the principle of universal and greater brotherhood and sisterhood is enshrined in multiple documents; most of communities have not felt of it. The inclusion has been a debate since liberal policies were adopted and chanting of equality, equity, non-discrimination, justice became a subject matter of public opinion. There is an asymmetrical relation in Nepalese diverse ethnic communities and these facts are proven with multiple incidence but the policy in name of inclusion was adopted is horizontal in nature hence most of the 'indigent' and 'marginalized communities' are still in periphery in the government. The politics or narration of inclusion seems more exclusionary than realizing justice to people. The minority discourse are illustrated in a very peripheral manner in Nepal and its impact was seen in multiple layered. The constitutional narration of inclusion was also built on very wrong premises in Nepal and that has resulted into exclusion than the inclusion in every sectors. Most accessible group, established caste/ethnicity is comparatively having more advantage in the name of inclusionary aspects of policy of the government. The inclusion policy in name of social justice is comparatively new discourse in Nepal hence not well adopted in each and every sector. The rhetoric of forceful inclusion was also seen resulting into negative outcome and people are becoming much more vulnerable in the entire process. This paper has examined the various construct on the issues of minority politics in Nepal as matters of inclusion and exclusion. This paper has followed the doctrinal methods of research analyzing both primary and secondary resources of authorities.

***Key words**: Minority Rights, Inclusion, Exclusion, Social Justice, Equity.*

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1. Perspectives

The narratives of minority and majority despite primarily built on algebraic science is not only confined to its original discipline rather has impacted on all other sciences where number is considered as significant for deserving the benefit or denial of benefit's.[1] The diversity and division socially accepted in the Nepalese society was also one of reason for the minority and majority debate in Nepal. The minority has to have more subordination in the discourse of the majority which have eventually made more unrealistic legislation for the government'.[2] The character and formation of state determines the construct of minority versus majority in the state politics and also comprehend the narratives in the global politics.[3] The rights at normative level are not manifestation of number rather equally spells the 'entitlement' and 'enjoyment' and due facilitation by the stakeholders and furthermore this right is also expressed in international law. [4] The contested discourse on minority rights in field of law is as long as discipline is and hence most of the law polices, rules or any legal infrastructure were primordially considering the rule of numbers or were co-existed with numeric values of it. The state considered law as also a manifestation of number hence utilitarian notion were seen at maximum in old/classical jurisprudence.[4] The state by nature sometime plays role of some other agencies which prioritizes the matters relating to exclusion and inclusion.

The issues of minority have lower protection even in the international instruments which have primarily failed to consider what extent the debate can impact the lives of these people across several jurisdictions'.[5] The issue of collective identity was always questioned in the way minority discourse are perceived and analyzed in the

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1 Rittstieg, Helmut. "Minority Rights or Human Rights?" *PERCEPTIONS: Journal of International Affairs* 2.1 (1997).

2 Langford, Malcolm, and Ananda Mohan Bhattarai. "Constitutional rights and social exclusion in Nepal." *International Journal on Minority and Group Rights* 18.3 (2011): 387-411

3 Macklem, Patrick. "Minority rights in international law." *International Journal of constitutional law* 6.3-4 (2008): 531-552.

4 Berting, Jan, and Netherlands Nationale UNESCO-Commissie. "Human rights in a pluralist world: individuals and collectivities." *(No Title)* (1990).

5 Dinstein, Yoram. "Collective human rights of peoples and minorities." *International & Comparative Law Quarterly* 25.1 (1976): 102-120.

literature of minority in Asian context.[6] The issue like self-determination is the most familiar example; today it is particularly the right to a healthy environment that comes to the fore.[7] The minority rights have nothing to correspondence with the other's rights. These are merely numbers and it had been a ground of injustice, exclusion and also further meaningful subjugation and exploitation and further became a legitimate ground for lawful consideration of different treatment by state politics.[8] The basic considerations and impact on the reflection of the state authorities are also seen in the way, the narratives of exclusion and inclusion are seen in the functioning of state is one of core phenomenon of every developmental phase.

A numerous literature is poured to describe the persistent oppression to these communities by other either inside or an external or outsider in mainstream of politics.[9] The discourse of minority rights are reflection of legitimate concerns of historical unanswered narratives of access, justice, equality, benefit and many more phrases and concerns.[10] This denial of benefit in state has been reflected in the language of protest and revolution. The none-acceptance leads to rejection to system. This was also seen in the soil of Nepal and was appeared as the long insurgency was a reflection of suppressive culture of state politics.[11] The numerical inferiority is not an adequate criterion for establishing what constitutes a minority in a legally normative sense. As Mohamed Salih has said the multiple issues in the minority protection which required as most promising measures of state institution so that inclusion cant' be reason for the exclusion and vice versa.[12]

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6 Donders, Yvonne. "Towards a Right to Cultural Identity?= Naar een recht op culturele identiteit?." (2002).

7 Fortman, Bas de Gaay. "'Adventurous' Judgments: A Comparative Exploration into Human Rights as a Moral-Political Force in Judicial Law Development." *Utrecht L. Rev.* 2 (2006): 22.

8 Packer, John. "On the content of minority rights." *Do We Need Minority Rights?*. Brill Nijhoff, 1997. 121-178.

9 Nightingale, Andrea. "Nature–society and development: social, cultural and ecological change in Nepal." *Geoforum* 34.4 (2003): 525-540.

10 Salih, Mohamed. "Minorities and the political in the human rights Deficit." *Responding to the Human Rights Deficit*. Brill Nijhoff, 2003. 105-132.

11 *Ibid.*

12 *Sørensen and Rasmussen v. Denmark [GC]* - 52620/99 and 52562/99 Judgment 11.01.2006

The state of political system is not only for the protection and promotion of majority rule rather has comprehended in framework for the recognition and development of minority jurisprudence. The political system is very important to extent for dealing with the issues of majority and minority. The well applied system is the rule of majority as seen in the democratic setup. The way democracy deals with the conflicting interest of society is also reflection of majority versus minority discourse.[13] A balance must be achieved which ensures fair and proper treatment of minorities and avoids any abuse of dominant position.[14] This is considered as one of most problematic aspects of the democracy when minority people are required to be protected and preserved and when the decision are to be taken for the minority people. Nepal although has a long history of democratic practice and values is pictured as a state of failure in case of protection and recognition of minority rights as part of the whole system. The rule of majority in a democratic set up, ignoring the minority rights or their concern is becoming myth and many more protective devices are seen in practice.[15]

Nepal has passed through multiple flooded problems not during insurgency only but even after the post insurgency. It is law and legal structure which will provide adequate recognition and stability of governance than merely a political talk.[16] Long years of insurgency were witnessed by various causes and perspectives as appeared in the literature. Ten years of civil war and signing of Comprehensive Peace Accord has brought a scope for hope and development in Nepalese society.[17] This line was also reflection of listening the minority rights and their community's voice. The narration of minority rights is more

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13 Kristine Eck, 'Recruiting Rebels: Indoctrination and Political Education in Nepal,' paper given at the 36th Annual Conference on South Asia and the 2nd Annual Himalayan Policy Research Conference, Madison, WI, October 10-14, 2007, p. 9.

14 Central Bureau of Statistics of Nepal CBS/N, 'Poverty Trends in Nepal (1995-96 and 2003-04),' (Kathmandu: CBS, 2005) and Acharya and others in Gurung, 'Social Exclusion and Maoist Insurgency,' 2005

15 Thapa, Deepak. "Day of the Maoist' Himal South Asian 14 (5). 2002." *The Maobadi of Nepal'in Dixit and Ramachandaran (eds)* (2001).

16 Galtung, Johan. "Peace: Research, education, action." *(No Title)* (1975).

17 Kössler, Reinhart. "Violence, legitimacy and dynamics of genocide–Notions of mass violence examined." *Revisiting the heart of darkness–Explorations into genocide and other forms of mass violence* (2007): 33.

reflection of past and existing reparative mechanism to listen and reflect their concern in state building process.[18] The state sponsored discrimination on multiple facets is perceived as one of factor for social inequalities and exclusion from the mainstream of development. The dialects of periphery and mainstream was strongly projected and built in Nepalese political community. The notion of peripheral communities is reflection of minority rights and their access to state system. Most of people are excluded from the political power, low level of representation of ethnic minorities communities which constitutes thirty-five percent of the population, have longstanding grievances based on their historical exclusion from power, access, denial, injustices.[19] This denial has further resulted into the incidence of poverty at the national level; there are wide variations between different parts of the country, from three percent in urban Kathmandu and thirteen percent in other urban areas, to forty-five percent in the Mid-Western region.[20] The level of exclusion and inclusion is not either horizontally or vertically built and were or are in same level hence a blanket approach for redressed seems insufficient or none-scientific in nature. The categorization of exclusion or denial need to be a ground for well representation and participation as said in the book called, in praise of exclusion.[21]

It is often cited in literature that, Nepal nation building process is inherently a mistake and strategically a common 'one' identity is being imposed on larger section of society. The act of imposition was done either through recognition in the basic legal structure of the state and was also seen in the conduct of larger section of society.[22] The national building process primarily need to be more cohesive based on social fabric and more inclusive in nature. The none-inclusive character of state/nation was resulted into disparities in Nepali society and it's

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18 Aiken, Nevin T. "Post-conflict peacebuilding and the politics of identity: Insights for restoration and reconciliation in transitional justice." *Peace Research* (2008): 9-38.

19 *Ibid.*

20 Muvingi, Ismael. "Sitting on powder kegs: Socioeconomic rights in transitional societies." *International Journal of Transitional Justice* 3, no. 2 (2009): 163-182.

21 Dovi, Suzanne. "In praise of exclusion." *The Journal of Politics* 71, no. 3 (2009): 1172-1186.

22 Tamanaha, Brian Z. *A general jurisprudence of law and society*. Oxford Socio-Legal Studies, 2001.

often due to social exclusion and structural violence.[23] The structural violence's are further compounded with historical violence by state machineries which are under exclusive control of few people representing few groups. Nepal has suffered from extremely high levels of what scholar like *Johan Galtung* describes as "structural violence." In his view, the notion of "structural violence"[24] is meant to encompass different forms of domination, exploitation, deprivation, and humiliation that emanate from societal structures, and not necessarily forms of violence that are a "manifest exertion of physical force."[25] The deep rooted culture of alienation and denial for years and years in state apparatus was also a reflection of structural violence. The minority representation and their concerns were also seen in the forms of structural violence.[26]

Nepal is not merely structurally divided on basis of case, religion and occupations rather has equally divided on basis of ethnicity, class and access to power. This structural division is emerged as due to state and state institutions unable to provide "equal rights and opportunities" to the larger segment of ignored population and socio-cultural violence (i.e. regional, caste, ethnic, and gender based discrimination) carried out by the state.[27] Nepalese society is both vertically (income, education, professional skills) and horizontally (language, caste, ethnicity) stratified.[28] Nevertheless, each ethnic group or caste, while possessing its own cultural identity, is ultimately viewed and understood on the basis of class.[20] The language of stratification in society is also a projection of minority versus majority discourse. The

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23 Dahal, Pranab, Sunil Kumar Joshi, and Katarina Swahnberg. "A qualitative study on gender inequality and gender-based violence in Nepal." *BMC public health* 22, no. 1 (2022): 2005.

24 Dilts, Andrew, Yves Winter, Thomas Biebricher, Eric Vance Johnson, Antonio Y. Vázquez-Arroyo, and Joan Cocks. "Revisiting Johan Galtung's concept of structural violence." *New political science* 34, no. 2 (2012): e191-e227.

25 Cocks, Joan. "The violence of structures and the violence of foundings." *New Political Science* 34, no. 2 (2012): 221-227.

26 Friedman, Lindsay. "The conflict in Nepal: a simplified account." *(No Title)* (2005).

27 Dahal, Madhav Prasad. "Effect of gender gap in education on district level GDP per capital of Nepal." *Economic Journal of Development Issues* (2011): 65-74. And also see at UNDP/Nepal, *Nepal Human Development Report 2004* - Empowerment and Poverty Reduction (Kathmandu: UNDP, 2004).

28 Pradhan, Rajendra, and Ava Shrestha. "Ethnic and caste diversity: Implications for development." (2005).

minority in stratified society is considered as more susceptible and vulnerable in nature as in compare to majority in such vertical set up. The majority and minority debate in terms of stratifying society is also a day to day reality of social settings hence the more vulnerable in structure needs a strong political support and protection with due recognition of them. The state approach for dealing with such complex issues merely based on participation and inclusion is not a reflective notion. Nepali society is not only stratified but has able to see the conduct distinctively based on such classification. Most of the state institutions have only reflected the specific group of people who have access to power, resources and creating ideas and quoting Nepali anthropologist *Pitamber Sharma* perceives "Nepal's case as quite unique because it is basically a country of minorities where the single largest ethnic/caste group makes up barely sixteen percent of the total population".[29] This is one narrative of minority ruling other minority and projecting as like majoritarian in number.

The relative majority dynamics is more relevant in Nepalese political community. A country of minority is still struggling for equal recognition and access as in compare to other minority in state and this is a complete reflection of status of minority in Nepalese community. The discourse of minority is also built on specific grounds of accessibility to state power and power determines rest of stories of these communities. The question of minority and related alienation was also narrating for suspecting the Maoist insurgency and it's legacy and it is often asked, how could a Maoist insurgency come to pass, in a land until recently viewed by the world as an idyllic mountain paradise, "a Himalayan Shangri-La good for trekking and mountaineering and budget mysticism?"[30] The geographical projection of this land was not seen as linking with social reality. The state badly failed to recognize and endorse the geo-political narratives linking with the normative construct. The long existence of social inequalities, social division and injustice will definitely burst out even to a state beautifully organized and known for their civilization and peace.[31] The reality of this created

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[29] Sharma, Pitamber. "Unravelling the Mosaic: Spatial aspects of ethnicity in Nepal." *(No Title)* (2008).

[30] Sharma, Pitamber. "Unravelling the Mosaic: Spatial aspects of ethnicity in Nepal." *(No Title)* (2008).

[31] Thapa, Manjushree. "Forget Kathmandu: An elegy for democracy." *(No Title)* (2005).

picture of Nepal was an illusion. A longer practice of illusionary construct will be a strong weapon of protest and revolution. The narrative of exclusion was also a suppression of minority rights. Nepal's state has not internalized the outcome of state injustice and denial.[32]

Generally, the illusions are created by falsifying the evidences and real pictures of social dynamics. It is recorded fact that, Nepal since unification has been an oppressive regime, divided, exploitative and even legal instruments were favoring this highly positioned people, no secular laws and as defined "a monolithic, feudal, autocratic, centralized and closed state for centuries" which was also one of reason for consideration of Nepal's failed development legacies[33] which is against the defining features of this nation. Even after restoration of democracy in 1990's, the Chettris, the priestly Bahun (Brahmins), and the Newars, the ethnic group indigenous to the Kathmandu valley have practically controlled to all key administrative positions.[34]The democracy became only political, chant for larger section of population. The vast majority of the population, comprising the "lower castes" of the Hindu system and the thirty-six ethnic sub-groups in Nepal, were entirely marginalized and had no voice in the political system.[35] This division and low level of representation was also seen in Republic state. People are fighting for their constitutional guarantees, basic rights, establishing rule of law, democratic spirits, values, justice and many more virtues. These social fabrics of Nepalese societies are not only a reality rather has been seen in many state practices. This further resulted into the reflection of state conduct.[36]

The poverty and social exclusion have provided a legitimizing discourse for violence, while the conflict itself has led to deepening

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32 Robins, Simon. "Transitional justice as an elite discourse: Human rights practice where the global meets the local in post-conflict Nepal." *Critical Asian Studies* 44, no. 1 (2012): 3-30.

33 Panday, Devendra Raj. "The legacy of Nepal's failed development." *Nepal in transition: From people's war to fragile peace* 81 (2012).

34 Rose, Leo E. "The national political culture and institutions in Nepal." In *The Post-Colonial States of South Asia: Democracy, Development and Identity*, pp. 114-138. New York: Palgrave Macmillan US, 2001.

35 *Ibid.*

36 Shrestha, Bal Gopal. "Ethnic nationalism in Nepal and the Newars." *Contentious politics and democratization in Nepal* (2007): 199-224.

backwardness in heartland areas.[37] These are the material factor which will unite and incite the larger section of population who are not under the benefit of development or are under circle of poorness.[38] Most of scholars have agreed that, the social exclusion and degeneration of the system of redistribution of resources based on equity principle, elite dominance in decision-making processes and political power, and "continued development failure have fuelled discontent and provided space for radical politics based on the universal ideology of communism was reason for long years of civil war."[39] Scholar like, *Upreti* have observed that conflict in Nepal was a manifestation of complex social and economic demands, intertwined with ideology and a history of discrimination on which the Maoists were able to capitalize.[40] The reasons are sufficient to look the issues of Maoist insurgency, structural division and post insurgency legal instrument.[41]

2. Narratives of Minority Rights in International Legal Framework

The minority rights are considered as cross-cutting issues in the international legal framework.[42] The hybrid culture of minority rights means the reflection of both civil, political and economic, social and cultural perspectives are also seen in most of the signatories of UN Declaration of Minorities, 1992.[43] The strong pledge of the government towards the protection and promotion of minority rights are also a discourse of conflict between the priorities of civil, political or economic, social rights. Generally, it is said that a welfare government is defined on basis of 'what extent ESCR' obligations are depicted in their plans

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37 Chettri, Mona, Tina Harris, and Willem van Schendel. "Ethnicity and democracy in the Eastern Himalayan Borderland: Constructing democracy." (2017): 1-178.

38 Durning, Alan B. *Poverty and the Environment: Reversing the Downward Spiral. Worldwatch Paper 92*. Worldwatch Institute, 1776 Massachusetts Avenue, NW, Washington, DC 20036, 1989.

39 Upreti, Bishnu Raj. "Armed conflict and peace process in Nepal." *&* 46 (2006): 37.

40 *Ibid.*

41 Pathak, Bishnu. *Politics of people's war and human rights in Nepal*. Kathmandu: Bimipa Publications, 2005.

42 Henrard, Kristin, and Robert Dunbar, eds. *Synergies in minority protection: European and international law perspectives*. Cambridge University Press, 2008.

43 Baldwin, Clive, Chris Chapman, and Zoë Gray. *Minority rights: the key to conflict prevention*. Minority Rights Group, 2007.

and policies.[44] The notion of welfarism as part of national policies of the government is also a true narration of commitment towards the socially deprived, excluded and alienated communities of the political system. A classical jural narrative are strongly developed while dealing with the issues of economic, social and cultural rights in a domain historically contested in a different political set up.[45] This means, the country with community ideology were traditionally perceived giving much more references to economic, social and cultural rights as compare to others. But this narratives are slowly deleting from jurisprudence of economic, social and cultural rights, a country with strong liberal ideologies are been seen more concentrated on economic, social benefit rather than opposite to it.[46] The question of participation and also recognition are seen more prominent in the issues related to minority rights.[47]

Article *27* of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities is considered as cardinal grounds for UN Declaration on Minorities Rights, 1992. The UN Declaration has specifically dealt about broader three forms of minority like nationality, religious and linguistics groups as part of their broader scheme.[48] This is further related to observation of ESCRS rights related to article *27* of ICCPR. The relation of CPR with ESCR is also well narrated in the international jurisprudence. In 1992, UN Declaration on Minority Rights has given multiple perspectives of the rights associated with these communities.[49]

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44 *Ibid.*

45 Peters, Julie Stone. "Literature, the rights of man, and narratives of atrocity: Historical backgrounds to the culture of testimony." *Yale JL & human.* 17 (2005): 253.

46 Storper, Michael. "Society, community, and economic development." *Studies in comparative international development* 39, no. 4 (2005): 30-57.

47 Pejic, Jelena. "Minority rights in international law." *Human Rights Quarterly* 19, no. 3 (1997): 666-685.

48 Azeez, Yumna. "Protecting Socio-Economic Rights: An Analysis of Obligation of State in a Crisis Situation." *Sri Lanka J. Hum. Rts.* 5 (2023): 1.

49 Jabareen, Yousef T. "Redefining minority rights: Successes and shortcomings of the UN Declaration on the Rights of Indigenous Peoples." *UC Davis J. Int'l L. & Pol'y* 18 (2011): 119.

According to the fact sheet of *OHCHR*, ESCRs are those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.[50] The ESCRs are guaranteed by many international instruments; most important is the Internat*ional Covenant on Economic, Social and Cultural Rights, 1966* which has been ratified by 164 states to date.[51] The Preamble of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes, inter alia, that economic, social and cultural rights derive from the "inherent dignity of the human person" and that "[52] the ideal of free human beings enjoying freedom of fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights." Furthermore, the Covenant was formulated on the principle of equality and non-discrimination in regard to the enjoyment of all the rights set forth in therein. The Covenant further obligates States to take steps towards the full realization of these rights, and the CESCR has itself stated that these must be "deliberate, concrete and targeted as clearly as possible towards meeting the obligations."[53]

These all aspects of rights are reflected in the UN Declaration of Minorities. The Convention based on Article *27* of ICCPR provides that a person belonging to ethnic, religious or linguistic minorities shall not be denied with the rights. The individual character of minorities group is also recognized for the protection.[54]

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50 Carey, Henry, and Stacey M. Mitchell. "Limits to the Legalization of Economic, Social, and Cultural Rights: Ambiguous Obligation and Imprecision with Varying Implementation." In *Legalization of International Law and Politics: Multi-Level Governance of Human Rights and Aggression*, pp. 127-164. Cham: Springer International Publishing, 2023.

51 *Ibid.*

52 Leckie, Scott, and Anne Gallagher, eds. *Economic, social, and cultural rights: a legal resource guide*. University of Pennsylvania Press, 2011.

53 Griffey, Brian. "The 'reasonableness' test: Assessing violations of state obligations under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights." *Human Rights Law Review* 11, no. 2 (2011): 275-327.

54 Suksi, Markku. "Personal autonomy as institutional form–focus on Europe against the background of Article 27 of the ICCPR." *International Journal on Minority and Group Rights* 15, no. 2-3 (2008): 157-178.

The right to clean and healthy environment has also been recognized by United Nations through its resolution dated 14 December 1990, as: *All individuals are entitled to live in an environment adequate for their health and well-being*.[55] In this way, process of interpretation and further recognition of ESCRs is ongoing. There are so many nations whose Constitutions have provisions regarding ESCR although the content of the rights are varied from country to country. Some countries have ESCR prior to Universal Declaration of Human Rights (UDHR)[56] whereas some nations had issued their Constitutions stipulating ESCR after the UDHR. The influence of the UDHR has been substantial because its principles have been incorporated into the Constitutions of more than 193 nations Member to the UN.[57]

Nepal promulgated present Constitution in 2015, and is expected to address problems of disadvantaged, marginalized and minority groups by ensuring their voices and their interests in the new federal and legal structures.[58] The present Constitution offers a unique opportunity for Nepal to demonstrate commitment to realize the rights of all Nepalese citizens, by addressing poverty and social exclusion, through incorporating ESC rights in the Constitution. Nepal is a state party to a number of international treaties containing obligations aimed towards the realization of ESC rights. It is an opportunity and compulsion due to signatories to such treaties for Nepal to adopt provisions and measures to realize ESC rights under national legal instruments which is duly reflected in the Nepal's Constitution. The chapter on fundamental rights contains proposed rights provisions including a variety of articles that are directly related economic, social and cultural rights.[59] There are many provisions regarding ESCR and seems better

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55 McClymonds, James T. "Human right to a healthy environment: an international legal perspective, the." *NYL Sch. L. Rev.* 37 (1992): 583.

56 Eichenhofer, Eberhard. "Rights and Principles of the Economic, Social and Cultural Order." In *Writing Constitutions: Volume 2: Fundamental Rights*, pp. 393-466. Cham: Springer International Publishing, 2024.

57 Brown, Gordon. *The Universal Declaration of Human Rights in the 21st century: A living document in a changing world*. Open Book Publishers, 2016.

58 Leckie, Scott, and Anne Gallagher, eds. *Economic, social, and cultural rights: a legal resource guide*. University of Pennsylvania Press, 2011.

59 Young, Katharine G., and Katharine G. Young. *Constituting economic and social rights*. Vol. 14. Oxford: Oxford University Press, 2012.

legal protection than the past.

3. Judicial Approach to Minority Rights: A Contested Discourse

Judiciary is one of sensitive organ of government and is always uses against the government hence the other two organs of government is more political than the judiciary. The government inserting something as right in the constitution is stand as yardstick at all moment to them and denial to it leads to conflict and tensions. Hence, the judicial interpretation and recognition to the ESCR is much more important task. The judicial intervention is not a deniable fact for making economic, social and cultural rights as justiciable in court of law.[60] The orthodox judicial setting may not work in developing jurisprudence of the ESCR in the developing nations so that the sustainable and futuristic vision of judicial institution is much needed while dealing with the content of ESCR in the court room. State will always be silent or will be looking for exemption from obligations. The longstanding battle of state and judiciary is a well narrated story in living democracies and it can be seen while judiciary giving favorable judgment to cleverly kept word like 'tail' in the constitutional Articles.[61] The Indian and Nepalese Constitution is vision as one of '*Transformative Constitution*' as similar to South African Constitution which was in forth to change whole political, social, economic landscape. Some of drafter of Indian Constitution like Munshi, Ambedkar, K T Shah and B N Rau were important figure in order to provide the position of ESC rights in Constitution while in Nepal's drafter has also thought to keep places of ESC in DPSPs along with some in Part III of Constitution.

The both Supreme Court (India and Nepal) has been reaffirming that both the FRs and the DPSPs must be interpreted harmoniously hence laying the foundations for the principle, ESC rights are complimentary, interdependent and indivisible with CPR form any perspective and for which whole philosophy of Constitutionalism do exist in a democratic state. There is no disharmony between the DPSPs and FRs because they supplement each other aiming to bring social revolution and changes in society through legitimate means for lawful ends. Quoting one of

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[60] Langford, Malcolm. "The justiciability of social rights: From practice to theory." *Social rights jurisprudence: emerging trends in international and comparative law* 3 (2008): 32.

[61] *Ibid.*

known Indian Justice *Jeevan Reddy* once said : *'The Provisions of part III and IV are supplementary and complementary to each other and not exclusionary of each other and that the FRs are but a means to achieve the goal indicated in Part IV*.[62] This illustration was seen in number of cases of Indian judiciary starting from 1970s *Maneka Gandhi* case where SC said that Article 21 includes whole gamut of social rights.[63] Nepal and India's SC has applied the pro-active judicial strategy in order to realize wide range of ESC rights. Some of landmark cases in reflection of interpretation of ESC rights in terms of CP Rights are like, case of *Bandhua Mukti Morcha*[64] the SC has given new forms of remedies which has crossed conventional mode of constitutional remedies such as giving order for identifying, releasing and rehabilitating bonded labourers, ensuring minimum wage payments, observance of labour laws, providing wholesome drinking water and setting up dust-sucking machines in the stone quarries. Similarly, in case of *Mohini Jain V State of Karnataka*[65] the principle of interdependence was established in the judgment.

4. Conclusion

The discourse on minority rights also need to be understood in very different setup. The necessity to empower these communities needs to be done substantially and also effectively. The existing law, policies and structure seems very ineffective and has failed to give proper response to the people. The vulnerable position of these communities can't be ground for justification hence there is need to bring a change admirable and also appreciative for these communities. The proper allocation of budget and resources need to be directly accessible to these people and their voice need to more strong and representative. The number need not be a reason for exploitation and marginalization.

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62 Dansana, Prayas. "Contour of Modern Republicanism and Indian Constitutional Structure." *Available at SSRN 2634929* (2015).

63 Das, Piyasha. "Critical Analysis on Interpretation of Article 21 of the Indian Constitution." *Issue 5 Int'l JL Mgmt. & Human.* 3 (2020): 424.

64 NITHYASRI, S. "CASE COMMENTARY: THE ISSUE OF BONDED LABOUR DEALT UNDER THE CASE OF-BANDHUA MUKTI MORCHA V/S. UNION OF INDIA." *White Black Legal Law Journal* 3, no. 1 (2024).

65 Singh, Ranbir. "Right to Education-A Review of Mohini Jain." *Student Advoc.* 5 (1993): 79.

Role of Participation Committee in Ensuring Labor Standards in Ready-Made Garment Industry of Bangladesh: An Empirical Study

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Abstract

The Ready Made Garment (RMG) sector is one of the most relevant export oriented sectors in the Bangladeshi economy. The RMG sector in Bangladesh has faced challenges, including the Rana Plaza collapse and Tazrin fashion fire, which raised questions about the roles and efficiencies of Trade Unions in protecting workers' rights and interests and the Bangladesh government reviewed, and amended the BLA 2006 in 2013 with the provision of mandatory formation of Participation Committee (PC) in the Industry. This study is to explore the actuality of role of PC practicing for setting labour standards in RMG industry of Bangladesh. The research method for the present study was cross sectional study with quantitative approach, a total of 260 respondents were obtained from various stakeholders such as employees, managers, labor officers, trade union leaders, factory owners and foreign buyers, followed by the analysis of the data using the method of Structural Equation Modeling. The result shows that PC has been significantly contributing to improving labor standards issues in the RMG industry in Bangladesh. The situation of management and workers is good in the present, as PC has played an active role in the sector under study. Furthermore, it has played a vital role in advancing the fair treatment, non-discrimination and equal opportunities of employees, and adherence to national labor and employment laws. However, the findings of the study might not yield the same problems within the same industry in different economy. Cross cultural studies of PC may be carried out in the future.

Keyword: *Participation Committee, Labor Standards, Ready-Made Garment Industry*

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1. Introduction

Bangladesh's economy is heavily reliant on agriculture, industry, and services. The Ready Made Garment (RMG) industry is regarded as the strength of the economy of Bangladesh. The industry sector has a considerable influence on the economy of the country. Bangladesh emerges as a major exporter for the Ready-Made Garment (RMG) manufacturing sector, exporting its goods all over the world. This industry makes an exceptional contribution in terms of export earnings, job creation, and women's empowerment. The contribution of the industry sector is continuously rising, and it is hoped that this trend will continue in the future. Despite major advances in technology and computerization that facilitate production, the Ready Made Garments (RMG) business remains the most labor-intensive. [1] It becomes the lifeline of the country's economy because it contributes to export clothing, job creation, poverty reduction, and an overall multiplier impact.[2]

In light of the economic strength of the RMG sector in Bangladesh and the world economy in terms of job creation and GDP contribution, it is critical to guarantee that RMG factories are sustainable.[3] Nonetheless, several studies reveal that the majority of garment companies fail to succeed due to their refusal to improve workers' working conditions.[4] Bad working conditions, unskilled labor, political instability, poor wages, and insufficient infrastructure have been identified as factors contributing to RMG instability, resulting in significant losses for

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1 Paras, M. K., &Curteza, A. (2018). Revisiting upcycling phenomena: A concept in clothing industry. *Research Journal of Textile and Apparel, 22*(1), 46–58. https://doi.org/10.1108/RJTA-03-2017-0011

2 Sharif, P. A., Islam, M. E., &Kabir, R. A. (2015). A study on occupational health & safety practices in RMG factories of Bangladesh in accordance with compliance after Rana Plaza incident. *The International Journal of Business & Management, 3*(5), 214–226.

3 Ahamed, F. (2013). Could monitoring and surveillance be useful to establish social compliance in the ready-made garment (RMG) industry of Bangladesh? *International Journal of Management and Business Studies, 3*(3), 88–100.

4 Absar, N., Nimalathasan, B., & Mahmood, M. (2012). HRM–market performance relationship: Evidence from Bangladeshi organizations. *South Asian Journal of Global Business Research, 1*(2), 238–255.https://doi.org/10.1108/20454451211252750

owners as well as the government exchequer.[5] The inadequate work environment of garments in Bangladesh was demonstrated by two massive industrial tragedies in two years. The fire at Tazreen Fashion in 2012 and the collapse of Rana Plaza in 2013, both of which lost about 1200 lives, graphically demonstrated the reality of working conditions in the country's RMG zone.[6]

However, these unexpected fatal incidents raised concerns about things like insufficient security, outdated fire extinguishers, blocked exits, etc. In response to the sad frequent events the foreign buyers started to decline work orders and demanded to restructure their factory premises to make sure maximum security of the workers and employees. Besides, the EU Sustainability Compact has demanded that the government should take action to increase the safety measures in the RMG industry. However, over the years the garments owners spent millions of dollars and worked relentlessly and rigorously together with the Accord and Alliance standard bodies and pull this sector to an acceptable level to the buyers' requirements regarding safety measures. Consequently, the RMG sector of Bangladesh achieved reputations in the foreign market in terms of working environment, building safety and health related compliances. Moreover, Bangladesh contains the highest number of green garments factories in the globe.[7] However, despite having tremendous improvement in the RMG sector, there still remain concerns about many issues in many RMG industries in Bangladesh. For example, poor working conditions, an unskilled workforce, political instability, low wages, excessive workload and overtime imposition, absence of residential facilities, inability to

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[5] Sarker, M. A. R., &Afroze, R. (2014). Can HRM practices improve job satisfaction of ready-made garment (RMG) workers in Bangladesh? An alternative solution to recent unrest. *International Journal of Business and Management, 9*(10), 185–194. https://doi.org/10.5539/ijbm.v9n10p185

[6] Kurpad, M. R. (2014). Made in Bangladesh: Challenges to the ready-made garment industry. *Journal of International Trade Law and Policy, 13*(1), 80–96. https://doi.org/10.1108/JITLP-06-2013-0019

[7] Sarkar, A., Qian, L., & Peau, A. K. (2020). Overview of green business practices within the Bangladeshi RMG industry: Competitiveness and sustainable development perspective. *Environmental Science and Pollution Research, 27*(18), 22888–22901. https://doi.org/10.1007/s11356-020-08816-y

negotiation, short shipment duration, seasonal impacts etc. have been identified as the potential concerning issues in the RMG industries in the recent years.

The Bangladesh Labor Act, of 2006 was amended by the government, and the factory inspection agency's capabilities were increased. Despite these good advances, labor-related issues have persisted in five institutional features: the function of the union, minimum wages, compensation for accidents, the Participation Committee, and the Department of Inspection for Factories and Establishment (DIFE) inspection process.[8] Stakeholders of the industry request for a better regulatory framework on working conditions led to the creation of a comprehensive labor rights law commonly known as the Bangladesh Labor Act (BLA, 2006). In the absence of a trade union (TUs) in the factory, a Participation committee will act as a substitute and must be elected by both the employees and management. The compulsory provision of participation committee (PC) in the RMG industries and its functions significantly influence the workers, employees and the management of the garments industries. However, it is still unknown how the PC contributes to the labor standards in the RMG due to limited existing literature. Hence, this study provides scope to investigate the role of PC empirically in the RMG industries in Bangladesh.

2. Literature Review

The review of literature on worker participation related to labor standard in the RMG industries undertake in this study. This can be justified by the core proportion of the literature, which suggests a constructive relationship with Participation Committee and Labor Standard, which are conducive to institutionalization. The employee participation in the last few decades raises the question of why the increase in the employee participation fails to bring about healthy Industrial Relations (IRS) as well as sound work environment through developing labor standard. In the study, the demand is a requirement,

[8] Karanikas, N., & Hasan, S. M. T. (2022). Occupational health & safety and other worker wellbeing areas: Results from labour inspections in the Bangladesh textile industry. *Safety Science, 146*, 105533. https://doi.org/10.1016/j.ssci.2021.105533

and the control is the empowerment given to all stakeholders in modern working life, in the context of changing employer employee relationship. The RMG industry is the driven force of the economic growth of Bangladesh. Additionally, the badge of "made in Bangladesh" improved the reputation of our nation as well as made it the well-known brand all over the world. Once affectionately consider, Bangladesh is a "bottomless basket" and now it's become a "basket full of wonders".[9]

The RMG industries play a significant role to achieved Bangladesh as a middle-income status by 2021.[10] In this sector, the lack of a suitable action to ensure the enforce ability of existing laws protecting employees' rights and sustaining workplace safety continues to be a source of concern.[11] This sector contributes significantly to foreign exchange earnings of the country. The working conditions of the RMG sector frequently are in violation of international labor norms and Codes of Conduct.[12] Despite the RMG sector's amazing success, inadequate work environment and a lack of social conformity are important concerns, contributing to labor unrest and impairment to institutions and property. Most of the international buyers are more concern about social compliance which is must RMG industry. It safeguards workers' rights, sets the rules of the game, provides a code of conduct and practices it properly.[13] There is a child labor issue in

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9 Maiful, K. B. (2025). International trade and trade policy challenges in Bangladesh. *The Chittagong University Journal of Business Administration*.

10 Anner, M. (2021). Squeezing workers' rights in global supply chains: Purchasing practices in the Bangladesh garment export sector in comparative perspective. Review of international political economy, 27(2), 320-347.

11 Ansary, M. A., &Barua, U. (2015). Workplace safety compliance of RMG industry in Bangladesh: Structural assessment of RMG factory buildings. International Journal of Disaster Risk Reduction, 14, 424-437.

12 Alamgir, F., & Banerjee, S. B. (2019). Contested compliance regimes in global production networks: Insights from the Bangladesh garment industry. Human Relations, 72(2), 272-297.

13 Sarkar, A., Qian, L., &Peau, A. K. (2020). Structural equation modeling for three aspects of green business practices: a case study of Bangladeshi RMG's industry. Environmental Science and Pollution Research, 27(28), 35750-35768.

Bangladesh, especially in the RMG industry. Children often start work at a young age and are likely to suffer serious injuries and even death in the workplace.[14] The Bangladeshi RMG manufacturers often breach the 1965 labor law, such as appointment letter, working hours, breaks, leave, minimum salary, fringe benefits etc.[15]

Today, the question of labor standards remains a topic of debate for economists, decision makers, international institutions and non-profit groups. In recent years, both the International Labor Organization (ILO) and the World Trade Organization (WTO) have agreed that labor standards should not be used for protectionist ends. Meanwhile, they have agreed that it is best to avoid ignorance of and deliberate abuses of fundamental labor rules in order to gain a comparative advantage. Member states of these two organizations have also made clear commitments to adherence to core labor standards (as evidenced).[16] Several authors have argued that the CLS is a failure of the rights of the worker, in that it focuses on a narrower set of rights as opposed to the conventions' far more extensive set of worker rights. This is a major change from the position that all human rights are created equal. In the modern world, Buyers have been known to pressure their suppliers to implement labor standards.[17] Customers and other stakeholders make buyers accountable for labor rights violations and exploitative working conditions, such as child labor and forced or slave labor.

Labor standards have multiple dimensions and may vary from country to country depending on institutional, political, social and cultural

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[14] Rahman, S. (2021). *The Bangladesh garment industry and the global supply chain: Choices and constraints of management*. Routledge. https://doi.org/10.4324/9781003153238

[15] Islam, M. S., &Rakib, M. A. (2019). Labour laws in the garment sector of Bangladesh: A workers' view. *Yuridika, 34*(3), 467–482. https://doi.org/10.20473/ydk.v34i3.14945

[16] ILO Declaration on Fundamental Principles and Rights at Work (Declaration)," Declaration on Fundamental Principles and Rights at Work (DECLARATION). (Accessed on 20 November 2022) https://www.ilo.org/declaration/lang--en/index.htm

[17] Gold, s. et al.,. (2020). "Diffusion of Labor Standards through Supplier–Subcontractor Networks: An Agent-Based Model," *Journal of Industrial Ecology* 24, no. 6 1274–1286, https://doi.org/10.1111/jiec.13041.

contexts, income per capita, development stage and other factors.[18] Ideally, core labor standards should be applied to everyone. For example, core labor standards, as indicated by OECD (1996, p. 26), are defined as non-existence of forced labor, freedom of association, the right to organize and bargain collectively, the non-exploitation of child labor and non-discrimination in employment. On the other hand, scholars contend that such committees have failed to adequately represent workers' interests, weaken the efforts of trade unions and prevent the formation of new ones.[19] The most basic explanation of the power imbalance between TUs and PCs is legal. Due to the union activity or membership, the PCs are usually not contracted the rights to collective bargaining and striking, nor can they be legally safeguarded against discrimination. Consequently, labor legislation is not effectively enforced, there are restrictions on the ability of demonstrators to demonstrate and members are faced difficulties. Moreover, the PCs may not have independence in regard to the factory management, democracy, funding or communication with the management.

2.1 Bangladesh Accord: Labor Safety Standards

The RMG industry of Bangladesh ensured a safe and healthy workplace followed by the Bangladesh Accord. A number of industry buildings collapsed in the early 2000's. Following the Rana Plaza collapse in 2013, which sued the lives of 1100 and injured many thousands, few enterprises from around the world and all key stakeholders of Bangladesh signed the Bangladesh Accord. This agreement is legally binding and is different from other agreements which include independent factory checkups and remediation as a signed mark.[20]A transition agreement has been drawn up after 5 years to prepare the Bangladeshi government to assume the according

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[18] Brown, D. K., Deardorff, A. V., & Stern, R. M. (1997). *Trade and labor standards* (Research Seminar in International Economics Working Paper No. 394). University of Michigan.

[19] Gómez-Paredes, j. et al., (2016). "Consuming childhoods: An assessment of child labor's role in Indian production and global consumption,"*Journal of Industrial Ecology* 20, no. 3 611-622.

[20] Miedema, C. (2020). Preserving the legacy of the Rana Plaza wake-up call. *International Union Rights*, *27*(4), 22-24

responsibilities and activities. The Bangladeshi government, on the other hand, is unwilling to sign the revised agreement. This agreement has since appealed to the High Court, but has been postponed time and again, and for the moment the future of the agreement remains guaranteed.[21]

2.2 Trade Union

Trade unions can be described as an associations of employees who come together to participate in collective bargaining to enhance the work environment of their fellow members. Collective bargaining is a way of negotiation with various labor relations to reach agreement that is accepted by all parties involved in the negotiation to improve the conditions of labor. The methods and forms of influence of different unions are different. These are affected by the economic and political circumstances in the country. Following the Second World War, the value of trade unions was recognized and embraced by the Global North and they began to grow in strength and authority. No-a-days, unions are comparatively autonomous, democratic in which workers can discuss issues collectively without punishment. In contrast, trade unions are weak in the Global South. The laws governing this issue are often inadequate and not observed.[22]

2.3 Worker Participation Committees

These committees are interring factory committees, which are made of workers and management, to give voice to workers. PC is believed to lead to increased worker satisfaction and productivity.[23] It should inspire exchange of ideas between these two groups to address problems with workers in the production. It was in Europe that PCs, like trade unions, started its life, but it is now used throughout the world, mainly as a replacement for trade unions. PC's are different

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[21] Clean Clothes Campaign. (2018). *Stakeholder submission concerning the People's Republic of Bangladesh*. UN Committee on Economic, Social and Cultural Rights.

[22] Tapia, M., Ibsen, C. L., &Kochan, T. A. (2015). Mapping the frontier of theory in industrial relations: the contested role of worker representation. Socio-Economic Review, 13(1), 157-184

[23] Shamsher, S., &Åkerblom, A. (2018). *Power of the voice: Perspectives from workers and buyers on social dialogue within the Bangladeshi garment sector* (Report No. 90). Swedwatch.

from country to country regarding law, function and structure. To promote democracy and voice on the factory floor, PCs were set up in Europe. The PC was initiated by the state administration in Asia, especially in Bangladesh, to restore peace and to mitigate the power of labor unions.[24] In countries where there are no trade unions, like China,[25] the only way to allow workers a voice in the workplace is through committees.

According to BLA 2006, the constitution stated every PC must be 50 (fifty) or more workers are ordinarily employed shall establish a participatory committee in his establishment through involving the workers of that establishment directly in accordance with the rule. This committee should consist of both representatives of the employees and employers. Such committee shall have at least the same number of workers as employer's representatives. The Trade union of the establishment shall be nominated workers for the appointed the representatives of the workers. The number of workers' representatives nominated by the trade union (except the CB agent for that establishment) shall be equal and the number of workers' representatives nominated and shall be one more than the total number of representatives nominated by other trade unions. If there is no trade union in the establishment, the workers' representatives in the PC shall be selected according to the rules from a group of workers in the establishment.

The representatives of workers in PC perform such activities which are related to the interest of workers until the Trade union form. A unit PC will be constituted in a unit within an establishment where at least 50 (fifty) workers are employed in that unit as recommended by the PC according to the rules. Such a unit PC will include the representatives of the employers as well as the representatives of the workers who are

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[24] Kim, D. O., & Kim, H. K. (2004). A comparison of the effectiveness of unions and non-union works councils in Korea: can non-union employee representation substitute for trade unionism? The International Journal of Human Resource Management, 15(6), 1069-1093.

[25] Anner, M. (2021). Squeezing workers' rights in global supply chains: Purchasing practices in the Bangladesh garment export sector in comparative perspective. Review of international political economy, 27(2), 320-347.

working within the organization or unit. An employer cannot move an elected or nominated officer or a member of the workers' side of the participatory committee to a different position during the committee's operation without the elected or nominated officer's or the worker's approval. The employers are prohibited from objecting to or take any retaliatory step against the representatives of the workers for carrying out any activity in good faith.

To the extent that it is feasible, the unit PC will be subject to the same provisions of this section that apply to the PC. The PC's main responsibilities include fostering a sense of mutual trust and faith, ensuring that labour laws are enforced, fostering cooperation and understanding between employers and workers, educating and training workers and providing welfare for their families, maintaining safety, occupational health, and working conditions, introducing vocational training, taking action to improve welfare services for workers and their families, fulfilling production targets, preventing waste and raising product quality, increasing productivity, and lowering production costs. The functions mentioned in sub-section 1 shall be carried out by a committee on a unit, under the supervision of the principal PC, as practicable.

Participatory committees can be an alternative to job based unions if they are similar to job based trade unions. If they are helpful to employees and employers relationship, they may be considered to be more satisfactory substitutes for the workers and factory owners. Policy and NGO programs can be directed towards implementation and enhancement of PC s in factories, instead of trying to establish trade unions, which could require more time and effort.[26]If they do not work well as a worker representation, or if they don't lead to a more positive employees and employers relationship, then PC s should not be used instead of trade unions. Unionization should be encouraged by

[26] Kim, D. O., & Kim, H. K. (2004). A comparison of the effectiveness of unions and non-union works councils in Korea: can non-union employee representation substitute for trade unionism? The International Journal of Human Resource Management, 15(6), 1069-1093.

policies that facilitate unionization, or speed it up or both.[27] The two platforms need to be evaluated and compared for their functionality to determine if they can be substituted. Till now, only a few academic researches have conducted such study in Bangladesh. Based on the ideas and research mentioned above, the way PC or industrial trade unions work depends on the particular context in which they are active.

It was emphasized how vulnerable factory employees and their advocates are in the worldwide garment value chain's power dynamics. Inadequate negotiating power, which is a crucial function of worker representation, frequently coexists with weak worker authority in the chain.[28] International norms and governance instruments exist which seek to reduce the negative consequences of power imbalance. [29] The consequences of governmental pressures for strengthening effective worker representation and social movements on the platforms' functioning can be explained by the fact that labor policies of a state influence Freedom of Association and determine the laws and activities of worker representation platforms. Thus, the alternate assessment should take into account the law and power.

3. Objectives of the Study

The aim of this study is to find out the actual situation of the role of the PC practicing in the context of setting up labor standards in the RMG industry in Bangladesh. The specific objectives are: to know the function of the role of the PC for setting up the labor standard in the RMG industry in Bangladesh and to explore the facts of the role of PC practicing to set labor standards in RMG industry in Bangladesh.

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[27] Kim, D. O., & Kim, H. K. (2004). A comparison of the effectiveness of unions and non-union works councils in Korea: can non-union employee representation substitute for trade unionism? The International Journal of Human Resource Management, 15(6), 1069-1093.

[28] Tapia, M., Ibsen, C. L., &Kochan, T. A. (2015). Mapping the frontier of theory in industrial relations: the contested role of worker representation. Socio-Economic Review, 13(1), 157-184

[29] Anner, M. (2021). Squeezing workers' rights in global supply chains: Purchasing practices in the Bangladesh garment export sector in comparative perspective. Review of international political economy, 27(2), 320-347.

4. Methodology of the Study

This is a cross-sectional research work using quantitative approach guided by the positivism research philosophy.

4.1 Sample Design

This study employed convenience sampling for selecting the respondents. In the case of quantitative information, there are a few suggestions for the standard sample size to follow. For studies such this particular one, the sample size should be at least five times the number of questionnaire items.[30] On the other hand, ten respondents for each factor could be considered. Additionally, sample of 200 is considered fair and 300 is considered good according to standard and sophisticated statistical analysis, including structural equation modeling (SEM). Based on the above discussion, the researcher considers 260 respondents as a sample size.

4.2 Questionnaire Design

The primary data was collected through a questionnaire survey. The survey was conducted among employees, managers, concerned labor officers, trade union leaders and lawyers, factory owners, and representatives of foreign buyers. The questionnaire was explained in the language understood by them and answers were recorded. The first part of the questionnaire consisted of demographic and general factors like gender, age, experience, income level and job status etc. The second part was consisting of various factors that indicated the role of participation committee in ensuring labor standard.

4.3 Scaling Technique

The first part of the questionnaire was the optional type and the second part of the questionnaire was in statement type on Likert's 6-point scale which ranges as follows: 6 – Strongly Agree and 1 strongly disagree. The central error in the trend would arise from the respondents' decision to choose the middle response. Consequently, the neutral option to the 'Neither approve nor disagree' 7-point Likert scale question was left out to give a total of 6-point Likert scale.

[30] Hair, J. F., Black, W. C., Babin, B. J., & Anderson, R. E. (2019). *Multivariate data analysis* (8th ed.). Cengage.

4.4 Data Analysis Technique

To test the theoretical model of this study, the software used in this study was a partial least square method (PLS) path modeling software, smart PLS 4.0. PLS path modeling was chosen as the most appropriate technique for this research, and is similar to the traditional regression technique. It can be advantageous in that it is able to estimate relations between indicators and related latent constructs, structural model. Further, this method is particularly suitable for a complex model. Furthermore, descriptive can be performed with the use of other software such as Microsoft Excel and SPSS 25.0. SPSS and SEM with PLS are utilized for data analysis in order to test the study's hypotheses. Because of its popularity in both the academic and business setting, SPSS was chosen to be the most popular kit of its kind. In addition, SPSS is rather versatile and can be used for various analyses, data transformations and output formats.[31]

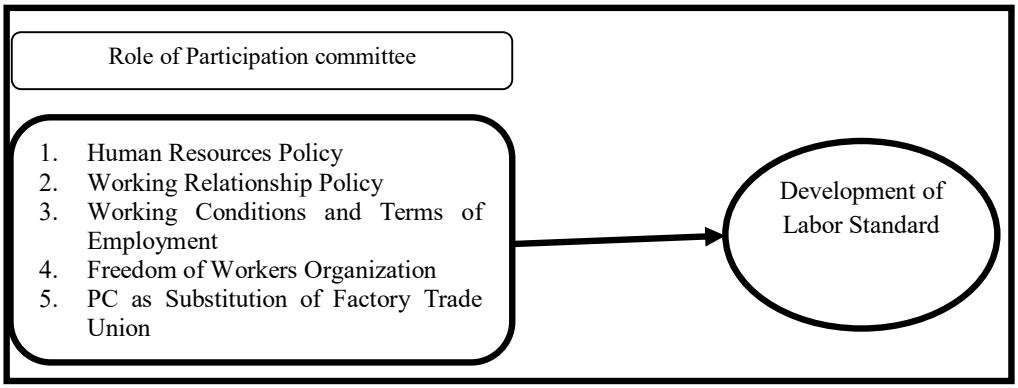
4.5 Conceptual Framework

The development of labor standards in the RMG industry in Bangladesh is dependent on the development of the workplace (infrastructural), lawfully and the standard of living of the number of workers who have been working in the RMG industry. Since RMG industry is a labor-intensive sector, it faces numerous challenges which are related to the labor. The workers in the RMG industry suffer from different types of diseases due to unhygienic working conditions and during industrial accidents; many of them lose their lives in panicked stampedes and fires. It has been stipulated that under the Bangladesh Labor Act, 2006 and the most recent Bangladesh Labor Rules, 2015, the safety committees must be established in factories that are already in operation within six months of the laws' effective date, and in factories that are newly founded after the regulations' enactment, within nine months of the start of production. Considering the previous literature, labor laws and workplace situation, the conceptual framework addresses various dimensions like wages, working hours, occupational

[31] Arkkelin, D. (2014). *Using SPSS to understand research and data analysis*. Valparaiso University. https://scholar.valpo.edu/psych_oer/1

safety, maternity benefit, childcare facility, workplace harassment, gender equality and leadership opportunities. These are some of the dimensions of workplace situations where labor standard implementation can be evaluated.

Figure-1: Conceptual Model



Developed By: Authors

From figure 1, a number of possible roles of participation committee in ensuring labor in the RMG industry of Bangladesh are drawn. Ten hypotheses are then generated accordingly.

H1: Human resources policy has a significant contribution on ensuring labor standard in RMG industry of Bangladesh.

H2: Working relationship policy has a significant role in ensuring labor standard in RMG industry of Bangladesh

H3: Working conditions and terms of employment have a significant contribution in ensuring labor standard in RMG industry of Bangladesh

H4: Freedom of workers organization has a significant contribution of in ensuring labor standard in RMG industry of Bangladesh

H5: Participation committee has been playing significant role as the substitute of trade union in ensuring labor standard in RMG industry of Bangladesh

5. Data Analysis

In the RMG industry, the lack of a suitable mechanism to ensure the enforce ability of the regulations in place to safeguard employees' rights and maintain workplace safety continues to be a pressing issue. International labor standards and codes of conduct are routinely broken in the RMG sector. The PC may advocate for the plant workers must receive training on fire safety, workers' rights, and occupational health and safety. The PC should suggest a child care facility, lunches, separate and adequate restrooms for all employees separately, clean drinking water, etc. for successful worker management.

Initially, SPSS version 25.0 was used to perform descriptive statistics and reliability analysis on the collected data in order to evaluate the demographic characteristics of the sample. Next, the research model was analyzed using a Partial Least Squares (PLS) analysis and software called Smart PLS 4.0. The two-stage analytical procedures recommended: the measurement model was tested (validity and reliability of the measures) and then the structural model was examined. A bootstrapping method (5000 resample) was used to test the significance of the path co-efficient and the loadings.[32] Normality of data was tested because it is assumed that the data must not violate the structural equation modeling (SEM). For that reason, PLS based Structural Equation Modeling was adopted for this study. The PLS method is a well-recognized approach for estimation of path coefficients and it has been widely adopted in a lot of different research studies. In the past decade, the PLS technique has gained popularity in marketing and management research in general because it can model latent constructs when the data are not normally distributed and when sample sizes are small to medium.[33]

5.1 Measurement Model

Initially, convergent validity has been through measurement model then Factor loadings, Composite Reliability (CR), and Average Variance Extracted (AVE) were used to evaluate this.

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[32] Hair, J. F., Hult, G. T. M., Ringle, C. M., &Sarstedt, M. (2013).*A primer on partial least squares structural equation modeling (PLS-SEM)*. Sage Publications.

[33] Hair, J. F., Hult, G. T. M., Ringle, C. M., &Sarstedt, M. (2013). *A primer on partial least squares structural equation modeling (PLS-SEM)*. Sage Publications.

Table 1: Results of Measurement Model

Construct	Measurement Items	Loading	AVE	CR
Human Resources Policy	The RMG industry enhances Skills through training that feel me confident.	0.770	0.596	0.815
	The RMG industry makes aware of our employees of the benefits of training and initiate fund for training to increase productivity.	0.748		
	I get various types of training in order to make myself in professionally developed which helps to produce quality product.	0.796		
Working Relationship Policy	I can discuss each other positively and make an effective solution.	0.881	0.769	0.909
	The RMG industry appreciates mutual trust for dispute resolution.	0.909		
	I get the feeling that this is my garments factory.	0.839		
Working Conditions and Terms of Employment	I get attentive workplace condition in my organization	0.917	0.762	0.906
	I feel satisfies in safety issues in RMG industry.	0.826		
	The RMG industry provides knowledge's about workers' welfare facilities and ensure it.	0.874		
Freedom of Workers Organization	I feel free to discuss about my demand issues with employer.	0.867	0.734	0.892
	I feel proud to part of decision-making in my organization.	0.920		

Construct	Measurement Items	Loading	AVE	CR
	The RMG industry provides peaceful working environment gives me psychological satisfaction, and makes me more committed to the organization	0.778		
PC as Substitution of Factory Trade Union	Effective participating committees can guarantee that the factory operates in such a way that the management can direct their clients to maintain their relationship	0.883	0.715	0.867
	Workers and management can resolve interest-based issues through participatory committees without the need for strikes.	0.751		
	Participating committees empower employees to identify, enforce and eliminate violations.	0.843		
Development of Labor Standard	Being a part of PC, I have play a significant role in reviewing the labor standards for our factory.	0.823	0.722	0.928
	I feel satisfied of labor law practices of by PC in the RMG industry	0.891		
	The RMG industry acknowledge freedom of workers' organizations	0.863		
	The RMG industry evaluated based on their capacity, skills, experiences and ability to handle the work.	0.844		

Construct	Measurement Items	Loading	AVE	CR
	I think PC and TU are two different dimensional associations who serve the workers, but they are not alike.	0.826		

Table 2: Discriminant validity (Fornell-Larcker Criterion)

	DLS	FWO	HRP	PSTU	WCTE	WRP
DLS	**0.877**					
FWO	0.850	**0.883**				
HRP	0.738	0.794	**0.835**			
PSTU	0.862	0.873	0.778	**0.900**		
WCTE	0.743	0.824	0.753	0.805	**0.873**	
WRP	0.842	0.857	0.772	0.828	0.855	**0.877**

Table 3: Discriminant Validity (Heterotrait-Monotrait Ratio)

	DLS	FWO	HRP	PSTU	WCTE	WRP
DLS						
FWO	0.387					
HRP	0.564	0.581				
PSTU	0.786	0.824	0.778			
WCTE	0.849	0.743	0.805	0.778		
WRP	0.569	0.805	0.842	0.842	0.738	

Table 1 show that all item loadings were greater than the recommended value of 0.6. Average variance extracted, which represents the total amount of variance in the indicators accounted for by the latent construct, exceeded the recommended value of 0.5, while composite reliability values, which show how much the construct indicators indicate the latent construct, exceeded the recommended

value of 0.7 with the exception of human resource policy (HRP).[34] Discriminant validity is the next step that had to be established as well because it's defined as how much these measures are not related to any other variables and is measured using low correlations between the measure of the construct under consideration and the measures of other constructs. The values, given in Table 2, clearly indicate that the square root of AVE (that is the diagonal values) for each construct is greater than the corresponding correlation co-efficient[35]. The criteria have been criticized in recent years for not always being able to detect lack of discriminant validity in typical research contexts[36].Several researchers have suggested an alternative approach, based on the multitrait-multimethod matrix, to assess discriminant validity the heterotrait-monotrait (HTMT) ratio of correlations. This new method was used to test for discriminant validity and results are presented in Table 3.If the HTMT value is above the HTMT 0.85 value (0.85) then there is discriminant validity problem[37].However, none of the values were lower than HTMT 0.85, as shown in Table 5.Four first order constructs are built: layout accessibility, facility ambiance and aesthetics, functionality and cleanliness. Table 6 presents the weights of the first order constructs of the given second order construct.

5.2 Structural Model

To assess the structural model, Hair et al. (2013) suggested looking at the R^2, beta, and corresponding t-values via boot- strapping procedure

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[34] Hair, J. F., Hult, G. T. M., Ringle, C. M., &Sarstedt, M. (2013).*A primer on partial least squares structural equation modeling (PLS-SEM)*. Sage Publications.

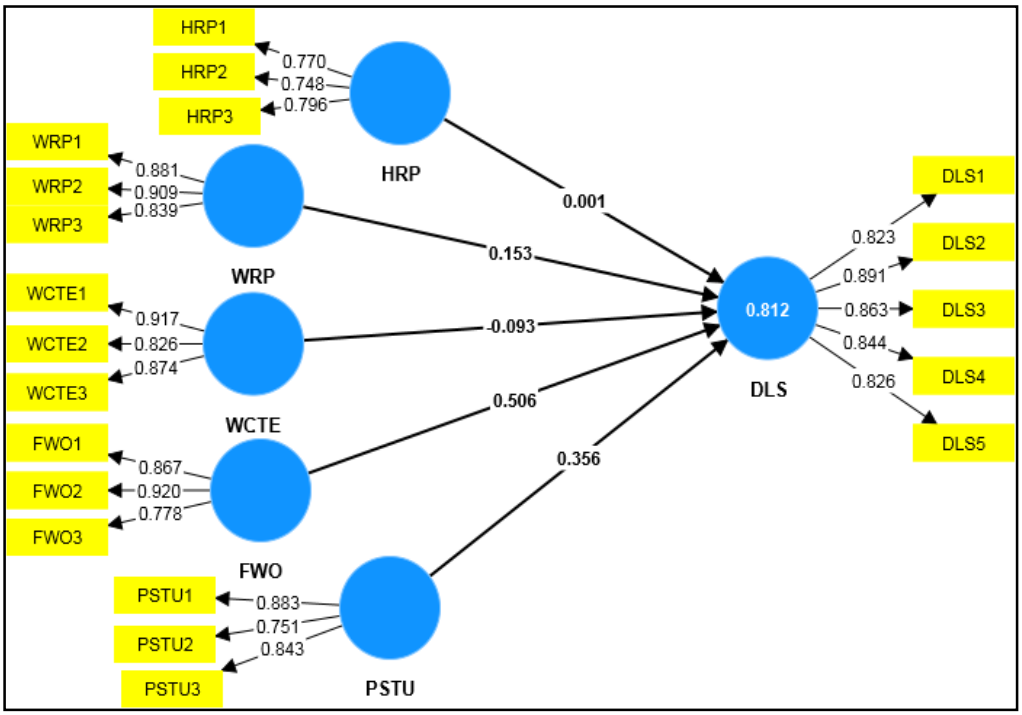
[35] Fornell, C., &Larcker, D. F. (1981). Evaluating structural equation models with unobservable variables and measurement error. *Journal of Marketing Research, 18*(1), 39–50. https://doi.org/10.1177/002224378101800104

[36] Henseler, J., Ringle, C. M., &Sarstedt, M. (2015). A new criterion for assessing discriminant validity in variance-based structural equation modeling. *Journal of the Academy of Marketing Science, 43*(1), 115–135. https://doi.org/10.1007/s11747-014-0403-8

[37] Henseler, J., Ringle, C. M., &Sarstedt, M. (2015). A new criterion for assessing discriminant validity in variance-based structural equation modeling. *Journal of the Academy of Marketing Science, 43*(1), 115–135. https://doi.org/10.1007/s11747-014-0403-8

with a resample of 5000.[38] They also recommended that besides these basic measures, the predictive relevance (Q^2) and effect sizes (f^2) should also be reported. Firstly, the relationships between the variables were explored. Effect sizes (f^2) were assessed. In results, p value shows significance of the relationships but it does not show the size of an effect. Thus, readers are unable to interpret data and results. Therefore, it is necessary to indicate both statistical significance (p) and substantive significance (f2). Analysing the variations in the R2 value is also necessary. We utilized the following guidelines to determine the effect size: 0.02 for tiny effects, 0.15 for medium effects, and 0.35 for large effects.[39]

Figure-2: Structural Model



Developed through SEM-PLS

Table 4: Structural estimates (Hypothesis Testing)

[38] Hair, J. F., Hult, G. T. M., Ringle, C. M., & Sarstedt, M. (2013). *A primer on partial least squares structural equation modeling (PLS-SEM)*. Sage Publications.

[39] Cohen, J. (1988). *Statistical power analysis for the behavioral sciences* (2nd ed.) Lawrence Erlbaum Associates.

Hypothesis	Direct Path	Beta	Standard deviation	T-statistics	P values	f-square	Decision
H1	HRP -> DLS	0.023	0.177	2.007	0.000	0.200	Accepted
H2	WRP -> DLS	0.153	0.249	2.613	0.040	0.314	Accepted
H3	WCTE -> DLS	0.093	0.212	3.438	0.000	0.211	Accepted
H4	FWO -> DLS	0.056	0.210	2.405	0.016	0.234	Accepted
H5	PSTU -> DLS	0.122	0.259	3.374	0.017	0.209	Accepted

Note: p<0.05, (Based on Two-tail test with 50000 bootstrapping)

This study hypothesized human resources policy, working relationship policy, working conditions and terms of employment, freedom of workers organization, pc as substitution of factory trade union have a significant contribution on ensuring labor standard in RMG industry of Bangladesh which assessed by applying PLS product-indicator approach. As Table 4 shows, the estimated standardized path coefficients for the contribution of human resources policy, working relationship policy, working conditions and terms of employment, freedom of workers organization, pc as substitution of factory trade union on the labor standard (**β** 0.023; $p < 0.01$), (**β** 0.153; $p < 0.01$), (**β** 0.093; $p < 0.01$), (**β** 0.056; $p < 0.01$), (**β** 0.122; $p < 0.01$) were significant.. Hence, H1, H2, H3, H4 and H5 were accepted.

6. Conclusion

RMG sector is the most significant contributor of the economy of Bangladesh. The Tazrin Garments and Rana Plaza incident have created problems for the RMG industries in Bangladesh. The world's deadliest disaster sent shockwaves across the world, causing the government to devise some innovative and successful methods to worker safety, launching a new regime that will last from mid-2013 to the present. The working conditions in the RMG sector, violation of labor rights and inadequate implementation of laws remain a concern

in Bangladesh. Therefore, according to BLA 2006 and amendment 2013, enterprises and factories will be active PC. If there are no unions in the factory, a PC will be elected by the factory's workers and will act as a TU. PCs have played significant role in improving the labor standards in the RMG sector in Bangladesh. In addition, it has played a significant role in promoting worker's fairness, non-discrimination and equal opportunity, as well as meeting national labor and employment laws. It always acts promptly and decisively on issues relating to safety and health. It was established in compliance with the Bangladesh Labor Act and is allowed to operate in the Bangladesh garment industry. The study is conducted on an existing research on a specific sector of PC that is RMG industry. Therefore, the findings of the present study are not applicable in other industries of the country as the distinctiveness and environment of the PC in the RMG industry could be different from that of the PC in other industries. To have a holistic picture, it is necessary to perform future research on the PC of various sectors of the country. Some limitations of this study are that the sample size is small and the sampling method used is non-probability sampling, which can limit the potential for generalization. Therefore, further study can be conducted with large number of samples and random sampling. The researchers used a qualitative method in collecting, analyzing and exploring the data. The next study could be quantitative or mixed methods to establish the credibility of the overall study. The results of this study might not touch the same problem, but from a different perspective, even in the same sector in a different economy. As a result, in the future, research may analyze diverse industries to gain a more comprehensive view. Furthermore, a cross-cultural research of PC might be done in the future.

Right to Fair and Effective Investigation in Pre-trial Stage: A Study under the Bangladesh Criminal Justice System

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Abstract

The Right to Fair and Effective Investigation in the Pre-trial Stage refers to several aspects of the criminal justice system designed to protect the innocent from harassment of not only by the judiciary but also by the executive. An accused person should be treated as innocent of the offense until the court proves guilt. Every person has the right to be treated justly, fairly, reasonably, and effectively before the court, which reassures the audience of the integrity of legal protections. The court and authorities must follow just, reasonable, and fair procedures in conducting their investigative duty. They must do their duties in accordance with the law. The United Nations has contributed significantly to the implementation of declarations, conventions, and principles that guarantee the rights of the accused person to a fair trial in a court of law. An accused person of the trial stage of Bangladesh is equipped with several constitutional rights and statutory rights, such as the right to protect against arbitrary arrest and detention; right to protection against unlawful search and seizure; right against self-incrimination; right to legal counsel; right to fair and public trial, and right to an expedited trial.

Key Words: *Right, Fair, Effective, and Investigation.*

1. Introduction

A trial must be fair to both the prosecution and the accused, emphasizing the core principle of justice that underpins the legal system. To ensure fairness in the trial, the Code of Criminal Procedure recognizes certain rights of the accused. Law enforcement agencies in Bangladesh are responsible for more than just maintaining law and

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order. They are also involved in preventing crime and enforcing the law in some crimes. Detecting and investigating crimes, apprehending the accused, and gathering evidence are delicate duties. In the absence of a separate investigating agency, the police force members who are busy with a lot of issues tend to investigate criminal offenses casually.

In many cases, the investigating officers are alleged to be inefficient, negligent, and biased in their performance of duties. Due to the heavy workload and poor working conditions, members of law enforcement agencies, especially elite forces like the RAB (Rapid Action Battalion), at times deserve commendation for detecting serious and organized crime. The establishment of a separate judicial system about eight years ago is one of the main stumbling blocks that plague our crippled criminal justice system. Colonial rules, corruption, over-reliance on confession of the accused, instead of an evidence-oriented approach to investigation, and the alleged discourteous treatment of the public are also cited as significant reasons for a lack of trust in the police force system. This article provides an overview of the current criminal investigation process and practice in Bangladesh, drawing on both primary sources, such as legislation, rules, and regulations, and secondary sources, including books, journals, legal reports, periodicals, and other internet-based sources. The primary focus of the article is to evaluate the challenges in the current criminal investigation practice in Bangladesh.

Additionally, several recommendations are included to encourage policy change, emphasizing that the Government should initiate criminal justice reforms at the investigation stage. In this research Dissertation, entitled 'Right to Fair and Effective Investigation in Pre-trial: Bangladesh Criminal Justice Systems,' the researcher discusses and analyzes the rights of the accused to fair and effective investigation in the pre-trial stage. The research aims to explore concepts such as the fair, just, reasonable, and non-arbitrary nature of procedures or rules prescribed by existing laws, as well as methods for implementing these procedures effectively. This focus underscores the dissertation's relevance for informing policy reforms and improving investigative practices.

2. Methodology of the Study

The research is qualitative in nature, and the methodology of the study is exploratory, drawing on primary and secondary data and document analysis. To illustrate the current status of the right to a fair investigation at the pre-trial stage under the CrPC in Bangladesh, several cases were examined. Quantitative approaches were also applied in this study. This study is written primarily by drawing on primary and secondary sources, such as existing laws, acts, books, journals, and other published works, as well as NGOs' reports and features of national daily newspapers. Additionally, available published research reports and articles are taken into consideration while developing arguments and analysis of different dimensions of the right to fair investigation in the pre-trial stage under the Code of Criminal Procedure in Bangladeshi society

3. Objectives of the Study

To review the implications of the doctrine of the accused for fair and effective investigation in Bangladesh's criminal justice system, including Constitutional Rights, especially the rights of the accused before criminal proceedings in a court, as well as aspects of the Criminal Procedure Code regarding the pre-trial investigation phases of an offense.

- To explore the fundamental importance of human rights of the accused in fair and effective investigation in criminal justice, and respectively in the pre-trial stage.
- To discover how the right to fair and effective investigation applies in Bangladeshi criminal justice systems, to accused persons, such as arrest and detention of the accused, right to legal counsel, speedy trial, police custody environment, and order to detention by a Magistrate.

4. Significance of the Study

A Critical examination of the Constitutional provisions and existing legislation in force in Bangladesh will go a long way toward exposing any pitfalls in the Bangladeshi criminal justice system. Secondly, the extended essay will bring to the fore (by way of reappraisal) the

successes and failures recorded so far in the enforcement of the respective criminal laws, as well as the procedures Bangladesh and other countries have adopted to enact legislation. Ultimately, when we consider that the most oversized room remains the room for improvement, the look at will cause the identification of various measures that, if followed, will serve the cause of justice in attempting to find the truth and trial of the accused and better safeguard the human rights of the respective accused and all involved parties.

5. Research Questions

i. For the sake of a fair trial and the defense of the indicted parties' moral rights in criminal proceedings, why is the right to a fair and efficient investigation crucial during the pre-trial phases of the Bangladeshi criminal justice system?

ii. How does the pre-trial phase of Bangladesh's criminal justice system implement the theory of the right to a fair and efficient investigation?

iii. To guarantee the right of the accused to a fair and efficient inquiry before the criminal justice processes, especially the pre-trial stage, what rights should be granted or protected by the indigenous provisions?

6. Constitutional and Legal Basis

The right to a fair and effective investigation is not explicitly stated in the Constitution, but it is implied through several core provisions. Take Article 35(3). It guarantees that anyone accused of a crime receives a speedy and public trial before an independent and impartial court. However, that guarantee means little if the investigation leading up to the trial is not fair. Article 31 promises everyone will be treated "in accordance with law, and only in accordance with law." That covers every step of the criminal justice process, including the investigation. The law and proper procedures are mandatory, not optional. Article 32 protects life and personal liberty. No one can be deprived of these arbitrarily, so any arrest or detention—key components of a pre-trial investigation—must be lawful and justified. Article 35(5) goes further, banning torture and cruel, inhuman, or degrading treatment. Investigators cannot use abusive tactics; they have to respect the dignity of anyone accused. The Code of Criminal Procedure, 1898

(CrPC) sets out the nuts and bolts. Chapters XII and XIV outline the procedures for investigating both cognizable and non-cognizable offenses, including rules governing the gathering of information and the summoning of witnesses (Sections 154-173).

7. Essential Components of an Effective Investigation

A reasonable investigation is not just about following steps; it is about quality and integrity. In Bangladesh, the law expects a few things.

First, speed matters. As soon as an offense is reported—via a First Information Report—the investigation should commence immediately and proceed diligently. Section 157 of the Cr PC says the officer-in-charge must send a report to the Magistrate without delay.

Second, the process must be impartial. Police cannot play favorites or bow to pressure. They must look for evidence that helps or hurts the accused with equal energy. The presumption of innocence depends on this.

Third, strict legal procedures govern every move—from arrest and searches to recording statements and sending evidence for forensic testing. There are crucial safeguards: the right to know why he is being arrested (Article 33(1)), being brought before a Magistrate within 24 hours (Article 33(2); (Section 61, CrPC), protection against forced confessions (Article 35(4)), and a rule that confessions only count if made before a Magistrate (Section 164, CrPC).

Fourth, the Magistrate must keep a close eye on the process. They decide on remand (extra custody for investigation under Section 167 of the CrPC), review the case diary, and ensure that the accused is not being mistreated or held without good reason.

8. Purpose of Criminal Investigation

The primary purpose of a criminal investigation is to find, collect, and store evidence. A criminal investigation is a process of gathering witnesses and evidence to prove, beyond a reasonable doubt, in court that the accused committed the crime. To be more precise, criminal investigation is a scientific discipline that deals with the study of facts. It involves the investigation of facts to prove the guilt of the accused. It necessarily involves searching, interviews, inquisitive questioning, the

collection and storage of evidence, and various investigative methods. Our Supreme Court has rightly held that the law enjoins a police officer to investigate a crime. Recognizing this duty helps the audience appreciate the police's vital role in the justice system. Upon discharge of that statutory duty, the police officer must go on a quest for the truth. In fact, investigation is the official duty to reveal information about a criminal offense. In a criminal case, the judge uses the evidence presented to determine how the crime was committed and whether the accused is guilty.

9. Investigation of Crimes

A complaint may also be filed with a judicial magistrate. A police officer can investigate any criminal offense without the magistrate's approval. The officers are required by law to record information about a cognizable offense in the FIR and conduct an investigation. This process is commonly known as a GR case or police case. Anyone may file an FIR, as its purpose is to initiate legal proceedings...[1] The police officer is legally obligated to reduce the information of the cognizable offense in the FIR and to investigate the case.[2] If a police officer decides not to investigate a case, he must inform the informant of the reasons. The Code of Criminal Procedure defines an investigation as any proceeding in which evidence is collected by a police officer or any other person, except a Magistrate.[3] Actions by police officials or individuals authorized by a Magistrate to collect evidence regarding a cognizable offense are considered part of an investigation. An investigation occurs after an offense has been committed, whereas an inquiry may be conducted by anyone, not limited to law enforcement. Only law enforcement officials conduct investigations.

10. Definition of Investigation

According to the Code of Criminal Procedure, 'investigation includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a

1 *Shah Alamv State (1990)* 42 DLR (AD) 446.
2 *Yasmin Sultana v Bangladesh (2002)* 54 DLR269.
3 *Ibid*.

Magistrate) who a Magistrate authorizes'.[4] Any action by a police officer or a person authorized by a Magistrate to collect evidence related to an offense is considered part of an investigation.[5] An investigation occurs after the commission of such an offense, rather than before it.[6]Investigation and inquiry are not the same: anyone can carry out an inquiry, but only law enforcement officers are tasked with conducting investigations.

11. Who Can Investigate?

Typically, only police officers ranked Sub Inspector or higher lead investigations into cognizable offenses. Police are empowered by law to investigate these offenses, regardless of whether anyone reports them or who makes the report.[7] Members of the Detective Branch (DB), the Criminal Investigation Department (CID), and the Rapid Action Battalion (RAB) all hold the authority to investigate crimes. In addition, the Metropolitan Police actively pursues criminal investigations within its own city. The recently established Police Bureau of Investigation (PBI) also takes responsibility of investigating criminal cases.

12. Fairness of a Police Officer Required in an Investigation

The testimony of official police witnesses should not be dismissed solely because they are members of the police force or have an interest in the investigation. However, their evidence must be carefully scrutinized, and corroboration on key points should be sought whenever possible. Given their vested interest in the outcome, their statements require particular caution. In this case, the police did not involve any truly independent local witnesses; instead, they presented P.W. 2 and P.W. 5 as independent despite knowing that P.W. 2 was under their influence and had participated in previous raids, and that P.W. 5 was closely associated with P.W. 2. Their friendship developed during gambling activities, which the police had not previously

4 *The Code of Criminal Procedure* (V of 1898),s.4(1)(*l*).
5 *Sajedul Hossain Chowdhury v State* 7BLC635.
6 *Ghulam Abbas v State (1968)* 20 DLR(WP) 48.
7 *Md. Hayat v. Chief Settlement Officer(1971)*23 DLR (Lah.) 34

investigated. The inclusion of P.W. 2 and P.W. 5 in the raid raises concerns about the impartiality of the investigation.[8]

13. Basic Laws on Investigation

Investigative officers must uphold the Constitution of Bangladesh,[9] the Code of Criminal Procedure (Cr PC), 1898, relevant special laws,[10] the Evidence Act,[11] Torture and Custodial Death (Prevention) Act,[12] Criminal Rules and Orders,[13] the Police Regulations of Bengal (PRB),[14] the Convention against Torture and other cruel, inhuman, or degrading treatment or punishment,[15] and judicial precedents**.**

14. Supervised by the Court

The Judicial Magistrate and other special tribunals or courts established for specific purposes serve as supervising courts to monitor investigations. Investigators have broad discretion in conducting investigations, and interference is not permitted except under specific legal direction from the supervising court.[16] It is well established that the findings of an investigation report do not bind a court.

15. Investigation Steps

The Supreme Court of Bangladesh has outlined the key steps that form the backbone of a criminal investigation:[17] Arriving swiftly at the scene; Uncovering the facts and circumstances surrounding the case; Tracking down and apprehending suspected offenders; Gathering crucial

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8 *Prodeed Narayan Madgaonkar v. State of Maharashtra*, (1995) AIR SC 1930

9 Constitution was adopted on 4 November 1971and came into force on 16 December 1972.

10 For example, *The Nari O Shishu Nirjaton Domon Ain* (Act VIII of 2000).

11 *The Evidence Act of 1872*

12 *Torture and Custodial Death (Prevention) Act, 2013 (Act No. 50 of 2013)*

13 Criminal Rules and Orders (Practice and Procedure of Subordinate Court) 2009.

14 Police Regulation of Bengal 1943

15 UN Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984

16 *Abdul Salik v State (1983)*35 DLR 425; *Bangladesh v Tan Kheng Hock (1979)*31 DLR (SC) 69; 1PLD(Lah.) 87.

17 *Mosharraf Hossain v State (1978)*30 DLR (SC) 112.

evidence related to the alleged offense, which may require examining various persons, including the accused, and recording their statements if the officer deems fit, may require examination of various persons, including the accused, and there education of their statements into writing if the officer thinks fit, Searching locations or seizing items deemed vital for the investigation and to be produced at the trial. Weighing the evidence to decide whether there is a case to place the accused before a court for trial, and if so, take the necessary steps for the same by filing of a police report under section 173; Keep a thorough case diary that captures each fact discovered and every step taken, always noting exact dates and times. Once the case is recorded, the officer-in-charge can choose to investigate personally or delegate the investigation to a police officer below sub-inspector rank.[18] In practice, the investigating officer carefully surveys the scene, draws a detailed sketch map with an index, and gathers statements from witnesses familiar with the facts and circumstances.[19] Carefully collects the seized articles (*alamat*) and meticulously prepares detailed seizure lists, all under the watchful eyes of witnesses,[20] Apprehends or attempts to arrest the accused or suspects, and presents them to the nearest Magistrate within twenty-four (24) hours of arrest.[21] Detains and interrogates the individuals in custody, and requests their continued detention (remand).[22] Produces the accused or victim before the Magistrate to record their confession or statement,[23] at times, leads the solemn inquest into the fate of the deceased victim,[24] meticulously organizes Test Identification Parades, ensures the deceased undergoes autopsy, gathers medical certificates and expert reports, and diligently records every step in the investigation diary,[25] and finally submits the police report.[26]

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18 *Code of Criminal Procedure* (V of 1898), s. 156.
19 *Ibid.* s.161
20 *Ibid.* s 103
21 *Ibid.* s 61, *The Constitution of the People's Republic of Bangladesh*, Art. 33
22 *The Code of Criminal Procedure* (V of 1898), s.167
23 *Ibid.* 164; *Nari o Shishu Nirjatan Daman Ain* ((VIIIof2000), s. 22
24 *The Code of Criminal Procedure* (V of 1898), s. 174
25 *Ibid.* s.172
26 *Ibid.* s 173

The following points will highlight the investigation procedure in detail:

- Maintaining case diary
- Inspecting the spot and preparing the sketch map
- Recording of the statements of the witnesses
- Arrest of the accused
- Search and seizure
- Reports of experts
- Inquest
- Autopsy
- Exhume
- Dying declaration
- Remand and examination of the accused
- Test Identification Parade (TIP)

15.1 Maintaining Case Diary

The investigating officer must follow the rules of Section 172 of the Criminal Procedure Code. We need rules for document retention and a process to prevent errors and ensure the case diary is ready for use in court. This is really important to ensure the investigation is fair. The investigating officer will keep a case diary as per Section 172 of the Criminal Procedure Code 1898. The case diary contains all the details of the investigation, such as what happened, when it happened, and why it happened. The case diary records the date, time, and reason for each stage of the investigation. The investigating officer must keep this diary to show what they did during the investigation. The Criminal Procedure Code is important for the investigating officer to follow, so they do what it requires, such as keeping a case diary, as per Section 172 of the Criminal Procedure Code. This is important to emphasize to the audience that they can trust the investigative process, which gives them a sense of transparency and accountability.

15.2 Examining the Spot and Creating the Sketch Map

A spot exam is an important first step to figuring out what really happened during the offense. The Investigation Officer will create a map with an index showing where all the important things are relative to one another. This spot exam and the sketch map it produces are very helpful to the court. They also serve as a visual aid during the trial. The spot exam is something that the Investigation Officer has to do. It is a big help to the court during the trial of the offense.

15.3 Documenting Witness Statements

IO documents contain statements of the witnesses as per Section 161 of the 161 CrPC. These are not evidence statements but can be made for contradiction under Sec 145 of the Evidence Act 1872. When the situation is serious, a magistrate can record statements under Section 164 of the CrPC, thereby providing judicial oversight and adding credibility.

15.4 Arrestee's Arrest

The arrest of a person must be in accordance with the constitutional protections provided in Articles 31, 32, 33 of the Bangladeshi Constitution and the legislative protections provided in Sections 46, 54, 167 of the CrPC. As in *BLAST v Bangladesh*, courts in Bangladesh have decided that arbitrary arrest is a violation of fundamental rights.

15.5 Seizure and Search

The provisions relating to search and seizure are provided in Sections 94 to 103 of the CrPC. Searches can be done with or without a warrant; if done without a warrant, reasonable grounds must be present. Witnesses must sign and properly seal seizure lists. Chain of custody is of critical importance to the integrity of evidence.

15.6 Reports of Experts

Courts have the power to rely on expert opinion, including medical, ballistic, forensic, and DNA experts, under Section 45 of the Evidence Act, 1872. Expert Reports help in answering the questions of cause of death, weapon involvement, substance analysis, and identification.

15.7 Inquest

In case of unnatural or suspicious death, an inquest is to be held under ss 174-176 CrPC. The inquest report documents the injuries that were made apparent, the condition of the body, and the initial findings of the cause of death. It is not a post-mortem; it's just a preliminary investigation.

15.8 Autopsy

The post-mortem examination by the certified medical officer determines the cause of death, manner of death, and time of death. The autopsy report is considered expert testimony and a significant medical-legal document under Section 45 of the Evidence Act of 1872. Section 174 (3). Exhumation (Exhume) Exhumation is carried out at the order of a magistrate when a buried body needs to be re-examined. It must be carried out in the presence of a magistrate and a medical officer. Courts emphasize strict adherence to protocol to maintain forensic value. Section 176(2).

15.9 Dying Declaration

Section 32(1) of the Evidence Act of 1872 permits the admission of a dying declaration. Ideally, it should be documented by a magistrate, but may be recorded by a doctor or an IO in exigencies. The Supreme Court has ruled that a truthful and voluntary dying declaration can serve as the sole basis of conviction.

15.10 Remand and Examination of the Accused

Section 167 Cr PC permits a request for police remand, but only after the magistrate has conducted a judicial review. Courts in Bangladesh have consistently advised against detention torture, emphasizing strict compliance with the Supreme Court instructions in State v BLAST.

15.11 TIP or Test Identification Parade

When there is uncertainty about the identity of the accused, TIP is carried out. To avoid suggestive identification, it is overseen by a magistrate. Although TIP is not substantive evidence, it corroborates the witness testimony at trial.

16. Police Report

The police report is the foundation of a criminal prosecution. It summarizes the "heart of the charge" and the "heart of the facts" that will determine whether the Court proceeds. An investigating officer submits a charge sheet or final report when the investigation is completed. Section 173 of the Code includes the terms "final report" and "charge-sheet," which are essentially identical, and both are secret. This section gives the police the power to make a report, which could result in prosecution or the release of the accused.[27] The investigating officer has the full powers under the law to file a charge-sheet or final report in a case without court directions.[28] The report must be carefully prepared using the prescribed PRB format. It should clearly list the names of the informant, accused, suspects, the nature of the accusation, and anyone familiar with the case details. Once the investigation concludes, its outcome is shared with the informant through the BP Form.[29] A police report should be filed with a designated superior officer, as outlined in the Code, ensuring proper oversight and adherence to procedure.[30]

17. Loopholes in Criminal Investigation

This section examines the functional discrepancies present in crime investigation processes. In Bangladesh, crime investigations are frequently hindered by several significant challenges:

i. Duration of investigation: While the Code of Criminal Procedure sets no fixed deadline for wrapping up an investigation, section 167(1) requires that it be completed within 24 hours. Police Regulations go further, insisting that even the most complex cases, if pursued without interruption, should be resolved within 15 days.[31] Justice *Md. Azizul Hoque* stated that if an investigation cannot be completed within the time set by the Magistrate, the investigating officer should formally request an extension. The

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27 *Abdus Salam Master v State* (1964) 16 DLR (AD) 58; *Md. Zillur Rahim v Nazmul Karim (1972)* 28 DLR

28 *Khorshed Alamv State (1975)* 27 DLR 111

29 *Police Regulations of Bengal 1943*, BP Form 40,40A

30 *Code of Criminal Procedure* (V of 1898), s.158

31 *Police Regulation of Bengal, 1943*, Regulation 261

Code also requires that every investigation be completed without unnecessary delay.[32] As outlined by PRB, the investigating officer is expected to conduct the investigation seamlessly, ensuring no interruptions affect the process.[33]Moreover, recent laws often set clear deadlines for wrapping up investigations. Yet, these deadlines are rarely enforced, and delays remain a stubborn obstacle that steadily erodes the hope and determination of those seeking justice.

ii. Delay in starting the investigation: It is often claimed that investigation officers face intense pressure from the accused, which results in significant delays before investigations even begin. Acknowledging their pivotal role highlights how such delays can cause vital evidence to vanish and witnesses to forget or disappear, ultimately threatening the very foundation of justice.

iii. Non-recording of information on cognizable offenses: In Bangladesh, crime rates are soaring to unprecedented heights. Yet the official statistics barely scratch the surface, concealing a vast sea of unreported offenses beneath the surface. Even though the rate of offenses relating to violence against women has risen consistently, such incidents largely remain unreported or substantially underreported.[34]

iv. Lazy recording of statement of witnesses: Inadequate documentation of witness statements remains a concern. Investigators often fail to record verbatim statements during witness interrogations, instead summarizing them later, sometimes in their spare time. This practice leads to the omission of important details. Additionally, many coroners seem unaware of the importance of statements made under section 161 of the Code. As a result, minor discrepancies between pre-trial and trial witness statements frequently contribute to defendants' acquittals.

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[32] *The Code of Criminal Procedure* (V of 1898), s.173(1).

[33] *The Police Regulation of Bengal 1943*, Regulation 261(a).

[34] Sharmin Jahan Tania, "Special Criminal Legislation for Violence against Women and Children: A Critical Examination", *Bangladesh Journal of Law*, Bangladesh Institute of Law and International Affairs, Special Issue, 2007, p. 201.

v. Hazy sketch map of the spot: All too often, a rough and imprecise sketch of the scene is drawn up, lacking clear details. The guidelines set out in Regulation 273 of the Bengal Police Rules, 1943, are frequently ignored. As a result, the trial court may struggle to piece together the facts and circumstances of the event.

vi. Faulty search and seizure: Too often, *alamat* is collected at the police station long after the incident is reported, rather than promptly at the scene or in a hospital, as required. Delays and the collection of evidence from the wrong location cast immediate doubt on the investigation. Sometimes, witnesses listed on the seizure record were never present, defying Section 103 of the Code. There have even been cases where police officers had witnesses sign blank pages, only to fill in the details later at the station. Such practices undermine the credibility of the prosecution. In serious cases like murder, grievous harm, or sexual violence, it is crucial to seize key evidence, such as blood-stained clothing or objects. If these vital items are missing, the Investigator must clearly explain their absence.

vii. Delay in collecting expert report: Every criminal investigation is a race against time, piecing together the story of what happened before, during, and after a crime. The dedication of investigators, forensic experts, and laboratory analysts forms the backbone of justice and deserves recognition. When medical certificates and expert reports are delayed, the entire investigation can stall, underscoring how critical swift, efficient evidence collection is.

viii. Less-explored forensic science: Criminal investigators today often use modern scientific techniques known as forensic science. Recognizing its importance can inspire professionals and students to appreciate its potential in criminal investigation. Criminal investigation involves researching, gathering, and analyzing evidence for a specific case. Investigators use various scientific techniques to collect the necessary evidence. However, this field remains largely unexplored in Bangladesh.

ix. Remand: In many cases, investigators did not submit a case diary with requests for pretrial detention. This oversight

highlights the importance of proper detention procedures, which affect the integrity of the process and public trust. Accordingly, the defendant was detained pending trial and asked to reschedule for another date. During this time, the defendant became acquainted with hardened criminals in prison and deliberately evaded investigators, even after later detention. Furthermore, there is widespread speculation that many police officers routinely use third-degree methods to elicit facts and allegations from defendants.[35] The Supreme Court found that the system itself reveals that pre-trial detention of defendants for interrogation and extortion of information by force is entirely contrary to the spirit and explicit provisions of the Constitution.[36]

x. Confession: Holding the accused for a long time before sending them to the Magistrate to record their confession under Section 164 of the Code clearly weakens the trustworthiness of that confession. In this case, the Supreme Court's guidelines must be carefully followed.[37] A skilled investigator has the intuition to sense when someone is ready to reveal the truth, gently coaxing confessions from even the most guarded souls.

xi. Plea of alibi: At times, investigators present a final report regarding the defendant's alibi. Yet, section 169 of the Code makes it clear that police lack the authority to judge witness credibility or determine the validity of an alibi.[38]

xii. Investigation by informant: When the same officer acts as both informant and investigator, it can seriously undermine the prosecution's case unless a clear and convincing explanation is provided.

xiii. Lack of legal understanding about the offense: For a successful investigation, investigators must be familiar with the essential

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35 Shahdeen Malik, "Arrest and Remand: Judicial Interpretation and Police Practice", Bangladesh Journal of Law, Bangladesh Institute of Law and International Affairs (BILIA), Dhaka, Special Issue, 2007, pp.259--292.

36 *BLAST v State* (2003) 55 DLR 363.

37 *Statev Lalu Mia (1978)* 30 DLR (AD) 117.

38 *Abdur Rouf v Jalal Uddin (1999)*51DLR(AD) 22

elements of the specific crime(s) they are investigating. Otherwise, they will not know what evidence to look for to support each element.

xiv. Using a third-degree method and relying too much on confession: Many believe investigators frequently use the "third degree method" as an investigative technique. They also tend to coerce the accused into confessions that implicate them in the alleged event. In doing so, investigators sometimes ignore the human rights and fundamental freedoms of the accused.

xv. Media parade: Presenting accused or suspected individuals with intimidating cards in front of media personnel to elicit confessions can create serious prejudice against the defendant. This practice risks undermining the right to a fair trial and compromising the integrity of the justice system.

xvi. No effective conference of prosecutors and witnesses: There are no pre-trial meetings between investigators and prosecutors, which could help them, feel more engaged and responsible for their roles. Most investigators lack knowledge of evidence law, which may leave them feeling undervalued or unsupported. Investigators were also reluctant to testify at trial, even when the court provided every possible form of guidance, potentially leaving them feeling overlooked or unprepared. Sometimes during the trial, there is no record of the investigator's transfer. Furthermore, the victim and other prosecution witnesses did not know what their statements were written during the investigation, because these statements were never read to them. The investigators seemed indifferent to the weight of statements recorded under Section 161 of the Code. Without any meaningful pre-trial discussion between the prosecutor and prosecution witnesses, the witnesses entered the trial feeling isolated and unsupported.

xvii. Plight of the victims of crimes: Our criminal justice system often ignores the concerns of crime victims. Understanding the experiences and suffering of victims can foster compassion and a shared purpose among justice stakeholders. The restorative justice model requires justice sector agencies to address the needs of

those involved with sincerity and empathy. It is imperative that criminal justice professionals working with victims of crime fully understand the devastating impact of crime on their victims.[39]

xviii. Lack of modern equipment*:* Police face many difficulties in conducting effective investigations because they lack modern tools such as cameras and audiovisual surveillance equipment. The very mention of forensic labs sends a chill down the spine.

xix. Illegible writing: In reality, witness statements, First Information Reports, seizure lists, and Police Reports often emerge as a maze of indecipherable marks, crafted by commercial scribes known as *Munshi*.

xx. Wrong quotation of laws: Wrong quotations of titles and sections of offense in the police reports can confuse.

xxi. Lack of efficient officers: Our investigative agency faces significant challenges due to a shortage of effective and dedicated agents. The police force also lacks forensic and cyber security experts. Criminal investigation is a specialized field that demands patience, expertise, training, and a thorough understanding of legal and socio-economic factors. Our institutions have not fully recognized this level of specialization and professionalism.[40]

xxii. Lack of proper supervision: Lack of effective supervision by senior police officers also contributed to the lax investigation.[41]

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[39] See, Abdullah-Al Faruque et al.,"Victim Protection in Bangladesh: A Critical Appraisal of Legal and Institutional Framework", Bangladesh Journal of Law, Bangladesh Institute of Law and International Affairs (BILIA), Volume 13, Nos. 1 & 2, 2013, pp. 33-- 48. See, Hussain M. F. Bari, "Plight of Victims of Crimes", *The Daily Star*, 6 May 2014, available at: http://www.the daily star.net/print_post/plights-of-the-victims-of-crimes-22877; (Accessed on 01 November 2025)

[40] Ehsanul Haque Shomaji, *Final Report on Proposed Amendments for the Code of Criminal Procedure 1898, unpublished paper*, Dhaka, p.8

[41] *The Code of Criminal Procedure (V of 1898), s. 158, a superior police officer, may be appointed to instruct the investigation through the officer-in-charge.*

18. Challenges and Judicial Intervention

Despite all these legal protections, the reality on the ground is often more complicated. Political influence can still shape investigations, with agencies sometimes yielding to pressure, turning cases into tools for political gain instead of seeking the truth. Unfortunately, custodial torture remains a problem. Reports of abuse to extract confessions continue to surface, clearly violating constitutional rights. Investigators may cut corners—sometimes skipping important steps when making arrests, detaining people, or collecting evidence. There is also a gap in skills and resources. Many investigators lack the training or tools needed to gather evidence properly and scientifically. Meanwhile, cases pile up, stretching an already burdened justice system even thinner. The Supreme Court of Bangladesh has played an active role in providing judicial oversight, issuing directives and rulings to protect rights before trial. These actions, including recent judicial reforms, have made a real difference. The Court has tightened the rules for arrest. Police now require 'reasonable suspicion' and must follow proper procedures, making arbitrary arrests less likely. Remand orders receive much closer scrutiny. Magistrates cannot simply approve them automatically; instead, they must review the facts carefully, weigh the need, and ensure that accused individuals are treated with dignity and kept safe. The Court's consistent message is clear: from the very first step, the justice system must treat every person with humanity.

19. Suggestions

To address the challenges inherent in criminal investigations, Judicial Magistrates should adopt an active and engaged role. Close involvement with investigating officers promotes fairness, accountability, and a consistent commitment to upholding justice for all parties.

(a) Judicial Magistrates should periodically request the case diary to review the progress and status of the investigation, as necessary.

(b) Colonial enactments, such as the Police Act, PRB, and the Code of Criminal Procedure and Evidence Act, should be reviewed to ensure that their provisions regarding investigation, evidence, and trial are consistent with contemporary legal standards and best practices.

(c) Investigating officers should promptly record witness statements personally, either manually or through technological means, thereby reinforcing their responsibility and demonstrating proficiency in efficient evidence management.

(d) Introducing audio recordings of witness statements, stored on compact discs or similar media, will add a new layer of authenticity and become an integral part of the police report.

(e) Suggestion for appending the signatures of the witnesses in the recorded statements may be under consideration. Accordingly, relevant provisions of the law may be amended.

(f) Embracing forensic science techniques and scientific crime analysis, instead of depending only on potentially unreliable oral testimony, will greatly enhance the accuracy and reliability of investigations.

(g) In case of investigation of heinous crimes, the investigating officer may place the star prosecution witnesses before the concerned Magistrate to have their statements recorded.

(h) Placing victims' rights at the forefront of criminal justice reforms is essential. Informants and victims should be made aware of their rights and responsibilities, nurturing a culture of justice and respect for all involved.

(i) Deliberately, the practice of publicly parading the accused in the media needs careful reconsideration, as it is important to distinguish between responsible media activism and prejudicial media trials. An effective pre-trial conference of the public prosecutor and prosecution witnesses is a must so that witnesses are well-supervised as to what exactly they will depose during the trial. A regular Police-Magistracy conference, as contemplated in the Criminal Rules & Orders, is a must.[42]

[42] *Criminal Rules and Orders (Practice and Procedure of Subordinate Courts) 2009*

(j) An effective pre-trial conference of the public prosecutor and prosecution witnesses is a must so that witnesses are well-supervised as to what exactly they will depose during the trial. Regular Police- Magistracy conference, as contemplated in Criminal Rules & Orders, is a must

(j) Initiating a national dialogue on the plausibility of creating an autonomous investigating agency will demonstrate respect for the audience's expertise and encourage their active participation in shaping future reforms.

(k) Establishing a permanent, well-equipped prosecution office will inspire greater trust in the justice system and assure stakeholders of its enduring stability, while also elevating the professionalism and quality of criminal justice over time.

(l) The development of the infrastructure of criminal courts, with the harnessing of innovative modern technology, is essential for delivering effective and fair criminal justice.

(m) Investigating officers who fall short should face consequences, while those who excel deserve recognition and rewards.

(n) The judges, investigators, and prosecutors should be well versed in modern practice, procedure, and techniques of the investigation. Accordingly, they require training and education at home and abroad.[43]

(o) During the recording of a confessional statement, a digital device should be used, and there should also be a provision for the presence of the accused's lawyer.[44]

20. Conclusion

At the core of any investigation is the essential objective of identifying those responsible for the crime. I firmly believe that reforming the investigative process can restore public trust and motivate

[43] *National Center on Forensics Training, National Institute of Justice, 2024*

[44] *Mandatory Electronic Recording of Custodial Interrogations: Laws, 2026*

professionals to achieve higher standards. The investigating officer's responsibility in collecting evidence for trial remains fundamental.[45] When investigations falter, justice is derailed, and the innocent may suffer. Investigation forms the very bedrock of a criminal trial. Unsolved crimes, failed prosecutions, unpunished wrongdoers, and wrongful convictions all point to the persistent flaws plaguing our criminal justice system. I strongly believe that meaningful reform must begin at the investigation stage. I want to quote the observations of the Honorable High Court Division: We have come across many cases in which, due to faulty investigation, the accused gets the benefit of reasonable doubt despite consistent and uniform evidence of prosecution witnesses about the occurrence. As a result, people of our country have been losing faith in the present system of administration of justice, mainly due to the failure of the police to investigate the case and collect the evidence properly. It is high time that the system of police-alone investigation of criminal cases should either be abandoned or completely reformed.[46]

[45] *Mandatory Electronic Recording of Custodial Interrogations: Laws, 2026*

[46] *Ali Akbar v State* 4 MLR 87

Constitutionalism in Islamic Politico-Legal Thought with Reference to Pre-modern Al-Māwardīan Sketch

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Abstract

In what follows, this paper tries to locate constitutionalism in the events of classical and postclassical Islamic intellectual history generally, while being restricted to the placement of specific treatment however, only on the theorization and analysis of a prominent Muslim jurist, constitutional theorist, and chief justice hailing from the great Abbasid era: Abū al-Hassan Alī b. Muhammad b. habīb Al-Basrī Al-Māwardī in particular. In order to complicate his articulation of constitutional theories generated from within internal Shar'i discourses, coupled with historical conditions stemming from contested theological doctrines, this study will occasionally critique some of the orientalist conclusions reached so hastily compared to the study of the origins of Islamic law, which they treated more generously, if sometimes at the price of ignoring developed Islamic substantive laws. The paper then turns to the excavation of constitutional theories scattered throughout various classical texts, ranging from purely substantive laws, legal theories, and political advice collections to the constitutional works the above-mentioned jurist had worked on. To intimate the development and evolution of constitutional theories explicated by this jurist in different political events, however, one must reflect on various legal and political technologies invented out of the complex and pragmatic interplay of law and politics throughout different time and space.

Keywords: *Islamic Constitutionalism, Islamic Political Thought, Pre-modern Al-Māwardīan Intervention.*

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1. Introduction

While trying to avoid the danger of anachronism here, the task of locating traces of constitutionalism in Islamic legal and political history appears to be an undertaking associated with a diachronic analysis of complicated politico-legal history deserving more of an interdisciplinary reading of classical sources than of any distinct treatments thereof. In recent decades, a bulk of scholarship has been produced in the field of Islamic legal and political thought. If carefully read, it cannot be ignored that there exists some sort of obsession adjacent to both Islamic legal and political studies, where special care and attention are employed in a purely modernistic manner on any assumed specific genre of classical texts at the expense of investigating the offshoots of their intricacies born of several complicated intellectual currents.

Another crisis in modern Islamic legal and political studies lies in the identification of the nature of law and politics in Islamic intellectual tradition as well as practice. While extracting legal and political elements from the ocean of pre-modern texts, modern scholars inadvertently or not end up explicating them based more or less on their modern presupposition of what defines law and politics, thereby sometimes producing, *inter alia*, the likes of the "Secularization" discourse in Islamic legal and political history. Consequently, they hardly find any trace of concrete constitutionalism in Islamic tradition. Even if it comes to their scholarly cognizance, albeit not without disappointments with modernist expectations, it receives way less attention than it ought to deserve, thus amounting to either outright omission or neglectful assertion thereof.

Given the spatial restraints, in what follows, this paper will try to locate constitutionalism in the events of classical and postclassical Islamic intellectual history generally, while being restricted to the placement of specific treatment however, only on the theorization and analysis of a prominent Muslim jurist, constitutional theorist, and chief justice hailing from the great Abbasid era: Abū al-Hassan Alī b. Muhammad b. Habīb Al-Basrī Al-Māwardī in particular. In order to complicate his articulation of constitutional theories generated from within internal Shar'i discourses, coupled with historical conditions

stemming from contested theological doctrines, this study will occasionally critique some of the orientalist conclusions reached so hastily compared to the study of the origins of Islamic law, which they treated more generously, if sometimes at the price of ignoring developed Islamic substantive laws. The paper then turns to the excavation of constitutional theories scattered throughout various classical texts, ranging from purely substantive laws, legal theories, and political advice collections to the constitutional works the above-mentioned jurist had worked on. To intimate the development and evolution of constitutional theories explicated by this jurist in different political events, however, one must reflect on various legal and political technologies invented out of the complex and pragmatic interplay of law and politics throughout different time and space. These various governmental and legal tools, in turn, took on some forms of constitutional shape, which will soon be explored.

2. The Problem of Locating Constitutionalism

Reflecting on Islamic constitutionalism requires an intimate comprehension of where the notion of law resides in Islamic intellectual imagination on the one hand and the nature of politics constantly interacting with the former on the other. Despite the continuity of contesting tensions, the symbiotic relationship between law and politics existed throughout Islamic history. Because, the centrality of law in Shariah made it incumbent upon Muslims to establish a government to give it the full effect of actualizing Shariah.

When speaking of law, politics, and state in the context of Islamic history, one must be careful not to fall prey to anachronism, as modern connotations may cloud our real understanding when analyzing those pre-modern historical conditions. The same is the case with constitutionalism. Then, it is left with, at least, the kind of approach regarding Islamic legal and political historiography that, however, will take into account with much caution the endeavors of the actual participants in that tradition.

Unlike modern legal tradition, where coercion, punishment, and discipline are the defining features, Islamic law, centered on the ultimate salvation in the hereafter upon fulfilling what Allah swt ordains through His Book revealed upon His final messenger, tries to

find its way inasmuch as almost every human quotidian activity, be it internal or external, is concerned. Along with interpreting Allah swt the Almighty's words, the Prophet Muhammad [pbuh], licensed by Allah the Almighty in the Quran, established himself as a moral, legal, and political authority evinced through his sayings, actions, and tacit approval as being the massive corpus of Prophetic tradition. As the Quran took some twenty-three years to reach its finality, it can be convincingly deduced that the Quranic law, accompanied by prophetic intervention, reflected the natural human constitution, to the extent that human behavior, both internal and external, needs to be corrected and perfected. That Prophet Muhammad, while being reveled upon, directly interacted with both his nascent Muslim and non-Muslim communities' gives us the impression that the law was being generated among his communities and with his communities. Therefore, Islamic law had developed through the intimate participation of his companions through interactive reasoning and sometimes constant questioning in the event of obscurity. Even some of his companions were directly involved in legal interpretive mechanisms during his lifetime.[1]

It is not until after migrating to Medina that the question of politics came into play, as the Prophet Muhammad [pbuh] through sustaining his full-blown divine authority and uniting politically three non-Muslim communities did establish a state, unlike indeed any modern nation state. But this question of politics should not, however, be construed as saying that his political life started afresh right after migration. As the prophetic mission, equally reinforced by the numbers of growing Muslim communities, were on the rise, the prophet Muhammad, while in Mecca, had already started integrating communities into the Islamic fraternity under the rubric of pledging faith declaration, religious observance, obedience to the prophet, refraining from wrongdoings, maintaining community, helping when in need, protecting in the face of danger, and so on.[2] This sort of initiative of collective engagement with the newly embraced Muslims

[1] Hallaq, Wael B. *The Origins and Evolution of Islamic Law*. London: Cambridge University Press, 2005.

[2] al-ʻUmarī, Akram Diyāʾ. *al-Sīrah al-Nabawiyyah al-Ṣaḥīḥah*. Riyadh: Maktabat al-ʻUbaykān, 1996.

of the prophet did play an important catalyst, further indicating the coming-soon future of politico-legal expression of Islam. However, with this nascent state, yet unprecedented historically in terms of its formation, giving it a politico-legal shape, came what has been celebrated by both Muslim and non-Muslim scholars alike as the Constitution of Medina.[3] Constitutionally speaking, in the strict sense of the term, such as limiting the government, this document was a sort of coherent, well-crafted truce. But the extent of emphasis placed on it by so-called Islamic Democrats conceiving of it as the charter of equal citizenship,[4] which, however, is a modern recent construction, is equally misleading, at once undermining the real contextual value underlying the most pragmatic prophetic intervention against the backdrop of then brutal hostility. Pre-modern Muslim jurists and traditionists treated this document as nothing more than a prophetic corpus, placing it under rigorous scrutiny deployed more often than not to verify the authenticity of the prophetic texts. Even some of it was abrogated by the upcoming Quranic revelation.[5] Clothing this historic yet powerful prophetic political undertaking anachronistic attire provides us nothing but a decontextualized reading.[6]

Modern approaches to studying law and politics in a somewhat isolated fashion, assigning special treatment to each, to the exclusion of delving into complex interplay at formative periods in the Islamic Caliphate, however, lead some orientalist scholars to some overlapping contradictories and, at once, confusing conclusions. In addition, given the colonialist onslaught on much of the Islamic lands, giving rise to "legal orientalism", it is hardly surprising that orientalist scholars of Islam did their job out of genuine scholarly rigor, except for what they

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[3] Hamidullah, Muhammad. *The First Written Constitution in the World*. 3rd ed. Lahore: Sh. Muhammad Ashraf Publishers, 1975.

[4] March, Andrew. *The Caliphate of Man*. Cambridge, MA: Harvard University Press, 2019.P-212.

[5] Ibn al-Qayyim. *Aḥkām Ahl al-Dhimmah*. Dammam: Ramādī lil-Nashr. n.d., 1:90–91

[6] Anjum, Ovamir. The "Constitution" of Medina: Translation, Commentary, and Meaning Today. Yaqeen Institute for Islamic Research, 2021. https://yaqeeninstitute.org/read/paper/the-constitution-of-medina-translation-commentary-and-meaning-today

had been assigned to administratively as a colonial project.[7] In the sections to come, this paper starts exploring the constitutional theories developed by the aforementioned medieval Muslim jurist Al-Māwardī, coupled with some occasional critique of how some orientalist superficial and inadequate reading of classical texts ignored the nuances, intricacies, and sophistication of deep Islamic legal production evidenced in legal theories, substantive laws, fatwa literature, the mirror of princes [Scholarly advises of religious nature to the governments] and constitutional works.

3. The Contractual Theory of Government

Encountered with al-Māwardī (d. 1058), modern scholarship fell into triangular predicaments: failure to locate some necessary connection through the historical chain of events depicting contextualized political pragmatism grounded in the Quran, Prophetic tradition and Righty Guided Caliph's immediate intervention in regard to the ascendancy to power down to al-Mawardi's time; excessive emphasis put on the context at the expense of the text's inherent coherency, along with ignoring al-Māwardī's other works relevant to his constitutional theories, among other things; production of hasty judgements sitting on the lap of modernity regarding the pre-modern complicated historical exigencies.

To begin with, however, Al-Māwardī starts the first chapter of his celebrated work on constitutional laws by breaking down the contractual nature of the theory of the Caliphate.[8] Ironically, nowhere in his entire paper devoted to Al-Māwardī's theory of caliphate did Gibb even try to bring to our attention of how Al-Māwardī endeavored to articulate his constitutional theories by invoking contractual obligation in appointing the Caliph, further corroborated by the conceptualization of the relationship between the Caliph and people with determining the former as an agent and the latter as the principle, which will later be clarified in detail. The least he did is that, however, he couldn't afford more than only two sentences, thus reminding us of

[7] Hallaq, Wael. *Sharīʿa: Theory, Practice, Transformations*. New York: Cambridge University Press, 2009

[8] al-Māwardī, Abū al-Ḥasan ʿAlī b. Muḥammad b. Ḥabīb. *al-Aḥkām al-Sulṭāniyyah*. Kuwait: Dār Ibn Qutaybah, 1989.

the indispensability of the election of the Caliph despite even having only a single qualified candidate.[9] That Al-Māwardī remained a bit reluctant in delving into further details of the actual nature of the Caliphal contract by explicating the terms and conditions related thereto may lie in the fact that almost every classical legal textbook of Islamic substantive laws, having contained distinct chapters on laws of contract, already dealt with the matter with greater detail. This explanation gains strength when we see that he starts engaging himself in the indispensability of a contract when appointing a caliph. He explains that a vast majority of jurists are of the opinion that the contract of the Caliphate cannot be effective except on the basis of substantive election and consent.[10] Even he goes further by comparing the case of electing a caliph while being the only candidate to a hypothetical situation where a judge is to be given authority to adjudicate on the basis of a contract when he is the only candidate for that judicial office (9). This contractual characteristic of Al-Māwardī's theory of caliphate, however, is not a novel invention in Islamic understanding of governance per se. But Al-Māwardī can, however, never be deprived of being entitled to a unique contribution for being the first Muslim jurist who shifted the treatment of Caliphate discourse from the Theo-philosophical regime to the legal realm. By the time he was writing, the institution of the Caliphate had already started declining against the backdrop of serious external threats. Ultimately, he had to not let this happen, even at the expense of legalizing the usurpers contingent upon complying with the Sharia restraints. This is how the theory of the Caliphate was incorporated into legal construction to protect the sanctity of the office of Caliphate as the normative constitutional expression of Islam.[11] As laws occupied a central position in Sharia, so was the office of Caliphate resultant from the same legality that Al-Māwardī had stressed much in his constitutional works, as securing the Caliphate implicated the maintenance of rule of law.[12]

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[9] Gibb, H. A. R. *Studies on the Civilization of Islam*. Princeton, NJ: Princeton University Press, 1962.P.156

[10] al-Māwardī, Abū al-Ḥasan ʿAlī b. Muḥammad b. Ḥabīb. *al-Aḥkām al-Sulṭāniyyah*. Kuwait: Dār Ibn Qutaybah, 1989.p-9

[11] al-Sayyid, Ridwan. *al-Jamāʿah wa-l-Mujtamaʿ wa-l-Dawlah*. Beirut: Dār al-Kitāb al-ʿArabī, 1997.

[12] Crone, Patricia. *God's Rule: Six Centuries of Medieval Islamic Political Thought*. New

It was only after the demise of the prophet Muhammad (pbuh) that the origins of what we refer to as the post-prophetic moment of Islamic constitutionalism came into existence. It appears that the prophet intentionally left the question of succession to the Muslim community, thus paving the way for a revelation-reason-based constitutionalism, yet to be developed with diachronic evolution within the Muslim communities through time and space but firmly rooted in Quranic moral and legal orders, colored with prophetic authority, and interpreted by the prophet's companion's intervention. With this entire contextual and textual picture in mind, the next generations of jurists propounded the constitutional theories, which in turn spoke of various languages at different intervals of human history.

Some necessary implications follow from what Al-Māwardī formulated in his theory of the Caliphate, however, in two-dimensional ways. First, the Caliphal intervention is contingent upon furthering public welfare within the constraints of Shariah and protecting religion, as he uttered that at the very outset of the first chapter. And this caliphal responsibility stems from the people's delegation of their power to the caliph. By virtue of delegating, a Caliph is therefore given conditional jurisdiction, and thereby he can exercise his jurisdiction exclusively through accomplishing the tasks mentioned earlier. Second, once delegation is delivered, the fiduciary character of a caliph is crystallized in the form of a principal-agent relationship. Pursuant to this whole process, the Caliph's governmental intervention is reduced to what can be viewed as a constitutional restraint limited only to the extent to which the people as a principal may give sanction to the former as an agent of them, on behalf of the divine authority evinced in the Quran and prophetic tradition.[13] This principal-agent relationship, indicated by Al-Māwardī further attains much clarity when we look at how the prominent Hanafi jurist Abu Bakr b. Mas'ud al-Kasānī theorizes judicial legitimacy in regard to the office of Caliphate. According to his theory, although a judge is appointed by the caliph, the actual power inherent in caliphal exercise of appointing resides in

York: Columbia University Press, 2004.

[13] al-Māwardī, Abū al-Ḥasan ʿAlī b. Muḥammad b. Ḥabīb. *al-Aḥkām al-Sulṭāniyyah*. Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000.

the genuine authority of the people.[14] Thus, the fruition of that inherent authority is to be manifested in the event of the death of the caliph, thereby not terminating the judicial office of a judge.

4. The Doctrine of Rebellion

Another aspect of Al-Māwardī's constitutional limit is his doctrine of rebellion. Beginning with the Abbasid period, some rebellion did take place against the Abbasid's systematic destruction of the Shura [consultation in statecraft] system. As Shariah law was the ultimate source of constitutional legitimacy, luminaries like Abu Hanifa and Malik bin Anas, upon whose theorization the most prominent and widely practiced legal schools were established, did support the rebellion against Abbasid legitimacy by basing their legal arguments on Shariah law.[15] Malik b. Anas is reported to have even formulated his legal ruling that the contract of the Caliphate had been terminated due to the fact that its investiture was held under duress, thus justifying the rebellion against the unconstitutional ascendancy of the Abbasid Caliphate.[16] This sort of thrilling historical episode constantly reminds us that Sharia law was the only arbiter whenever a constitutional question arose. Therefore, the outrage of Gibb regarding the assessment of Al-Māwardī's capitulation to the brute force of the Abbasid might, however, be justified on the grounds of subjective theoretical exposition.[17] But the real picture of the grounds prompted Al-Māwardī to theorize the doctrine of rebellion in a much more systematic and coherent fashion at his time. Because, his concession was for the sake of protecting the rule of law instead of opening the doors for uncertainties, which can lead to chaotic rebellion *ad infinitum.*

It is to be noted once again that it was none other than Al-Māwardī who, for the first time, incorporated the discourse of the Caliphate into

[14] al-Kāsānī, Abū Bakr b. Masʿūd. *Badāʾiʿ al-Ṣanāʾiʿ*. 2nd ed. 7 vols. Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986.

[15] al-Iṣfahānī, Abū al-Faraj. *Maqātil al-Ṭālibiyyīn*. Edited by Aḥmad Ṣaqr. Beirut: Dār al-Maʿrifah, n.d. n.d., 283, 361, 364–65.

[16] Ibn al-Jawzī, Abū al-Faraj ʿAbd al-Raḥmān b. Muḥammad al-Baghdādī. *al-Muntaẓam fī Tārīkh al-Umam wa-l-Mulūk*. Edited by Muḥammad ʿAbd al-Qādir ʿAṭā and Muṣṭafā ʿAbd al-Qādir ʿAṭā. Beirut: Dār al-Kutub al-ʿIlmiyyah, 1992.

[17] Gibb, H. A. R. *Studies on the Civilization of Islam*. Princeton, NJ: Princeton University Press, 1962.

legal tradition. Before him, the theory of the Caliphate did occupy its place in speculative theological texts (*'ilmal kalam*). The reason, however, was obvious in that, because of chronic disruption in the political atmosphere, he understood well that there was no greater alternative except placing much stress on strengthening the legality of the Caliphate and institutionalizing administration. The reason why this is so is that the Caliphate is the only institution that can assign legitimacy to both politics and law. Upon careful analysis of at least his *Ahkam*, it is evident that he did internalize that politics is a prisoner of the law; legality precedes the game of thrones.

While reading his doctrine of rebellion, three aspects can be discerned. First, like general Islamic constitutional theory, the right of the Muslim community to depose the Caliph is to be substantiated if he fails to comply with caliphal principles and duties stipulated under the theory of the Caliphate, viz., demonstrating evident disbelief, thereby forfeiting his right.[18] Discussing along this line of reasoning, he incorporated the topic under the rubric of "commanding the right, forbidding the evil" by focusing his orientation towards the Muslim communities in general, as every individual, in his reasonable capacity, is under an obligation to command what is right and forbid what is wrong in the eyes of Shariah. [19] Here is a point to be noted: whereas in *Nasihat al-Muluk* he advises the ruler on how to deal with rebels, in *Adab al-dunyawa 'l-din* hepays greater attention to the Muslim communities, as mentioned earlier. Second, Al-Māwardī tried to criminalize the act of rebellion as enmity against the government and as a felony.[20] Subsequently, he proceeds to rationalize why it is imperative for a ruler to fight against the rebels in order to unify the community. Because they were violating the moral and legal order of society by collapsing the order of things.[21] Third, Al-Māwardī gives a typology of rebellion by making a subtle distinction: whereas the one renouncing the law of the land and disassociating from the fealty of the

[18] al-Māwardī, Abū al-Ḥasan ʿAlī b. Muḥammad b. Ḥabīb. *Adab al-Dunyā wa-l-Dīn*. Beirut, 1978.P.139.

[19] al-Māwardī, Abū al-Ḥasan ʿAlī b. Muḥammad b. Ḥabīb. *Adab al-Dunyā wa-l-Dīn*. Beirut, 1978.PP.101-103.

[20] al-Baghdādī, Ahmad Mubārak. *Political Thought of Abū al-Ḥasan al-Māwardī*. PhD diss., University of Edinburgh, 1981.PP.204-13.

[21] *Ibid.*

just Caliph for the sake of outright victory by force for any reason, the other one doing the same but on the basis of religious misinterpretation prompting them to rebel. In this vein, regarding the latter, Al-Māwardī forbids the Caliph not to fight due to the fact that they are not rebels from the perspective of Islamic hermeneutics.[22]

Given these three modes of reasoning, it appears that Al-Māwardī tried hard to afford some sort of compensation to each of his theories by speaking in different contexts. The events of previous rebellion, whether they failed or not, might, however, have provided him with an impetus to regulate the uncertainties by incorporating them into legal discourse.

5. Conclusion

Apart from the juristic intervention outlined above, there is another Al-Māwardī, who devoted himself to the sociological interpretation of his political timelines by providing the complex dynamics of actual power structure and economic exigency and whom modern scholarship has largely been dismissive of.[23] Following in the footsteps of Gibb, Rosenthal also blamed Al-Māwardī for legalizing usurpation and failing to theorize a coherent constitutional theory.[24] None of them put in any adequate effort to read Al-Māwardī with a holistic approach. They read him without evaluating his other works or taking Islamic substantive laws into consideration. Rather than assessing laws and politics from an Islamic internal perspective and then putting them into historical context, they employed an essentialist reading of Islamic classical legal and constitutional texts by affording a separation thesis characteristic of an essentially modernist nature. With this presumption, both Gibb and Rosenthal reached the conclusion that Al-Māwardī and the likes were not political philosophers, as if in the 11th century, there had been some full-fledged disciplines of law and politics just as in modern universities. Even though sometimes they did recognize some rational theories, the resultant of which ends up

[22] *Ibid.*

[23] Hamid, Eltigani Abdulqadir. "Al-Māwardī's Theory of State: Some Ignored Dimensions." *The American Journal of Islamic Social Sciences* 18, no. 4 (2001): 1–18.

[24] Rosenthal, Erwin I. J. *Political Thought in Medieval Islam*. London: Cambridge University Press, 1958.

finding a contradiction between theory and practice. For instance, Coulson acknowledged the fact that Islamic law was based on a comprehensive system of rules.[25] And eight years later, he complained about Islamic law's rigidity and immutability.[26]

The central theme of rereading Al-Māwardī's works was to locate the rise of post-prophetic Islamic constitutionalism, where this study tried to complicate the ongoing wrestling between law and politics by further explicating law's primacy, sometimes at the price of politics. Put in this vein, without investigating the law's sociological fabric imprinted in the daily quotidian activities of the Muslim communities, it is an obvious impossibility to sketch an imagination of pre-modern Islamic constitutional development.[27]

[25] Coulson, Noel. "Doctrine and Practice in Islamic Law." *Bulletin of the School of Oriental and African Studies* 18, no. 2 (1956): 223

[26] Noel Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 77

[27] Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (London: Cambridge University Press, 2005)

Permissible Objectives in NPM Provisions in Bangladeshi BITs: A Host State Responsibility

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Abstract

This article provides the first-ever systematic and comprehensive study of the permissible objectives embodied in the Non-Precluded Measures (NPM) provisions of all stand-alone Bilateral Investment Treaties (BITs) concluded by Bangladesh. It studies 31 Bangladeshi BITs in order to map the permissible objectives in NPM provisions in them. It makes a legal analysis of the consequences of not having permissible objectives in NPM provisions in Bangladeshi BITs. The first bilateral investment treaty (BIT) was signed between Germany and Pakistan in 1959, which entered into force in 1962. Germany decided to enter into BITs to protect the investments made by its citizens in foreign countries that included newly independent nation States. Since 1959 till date more than 3000 such treaties have been signed. A central characteristic of these treaties is that they allow private foreign investors to bring treaty-based claims against the host State's sovereign actions. This is known as Investor-State dispute settlement (ISDS). A Non-Precluded Measures (NPM) provision, also known as the general exception provision, is one of the key provisions of BITs due to it has the probable content to make a practical nullity other provision of the BIT. An NPM provision has two aspects, such as the permissible objectives and the nexus requirements. The first aspect, permissible objectives, means those objectives mentioned in the NPM provision for which the host State can deviate from its BIT obligations and responsibility. For instance, USA-Bangladesh BIT, Article- X provides NPM provisions where 'public order' and 'essential security interest' shall be taken as permissible objectives. It is necessary to mention that a host State shall be able to deviate from its BIT obligations and responsibility, relying on the NPM provision, only for those objectives that are mentioned in the NPM provision and not for other objectives. The second aspect, nexus requirement, is an NPM provision is a link between adopted measures and the permissible objective to be

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achieved through that measure. For instance, USA-Bangladesh BIT, where 'necessary', is the nexus requirement that acts as a link between the measures adopted to be achieved the permissible objective. So a State can adopt only those measures that are 'necessary' to achieve 'essential security interest.' A measure that falls within an NPM provision shall be lawful, even though it's inconsistent with every other provision of the BIT. NPM provision limits the applicability of investor protections under BIT in exceptional circumstances. These NPM provisions allow host States to take actions otherwise inconsistent with the treaty when, for instance, the actions are necessary for the protection of essential security, the maintenance of public order, or to respond to a public health emergency. NPM provisions successfully 'permit host State impairment of covered investment' and, in rotate, weaken the BIT; as an instrument of regulating host State governments'. This is followed by suggestions and conclusions, where the article holds that permissible objectives in NPM provisions are not sufficiently used in the Bangladeshi BITs and Bangladesh should incorporate permissible objectives in each NPM provision more frequently in order to ensure some much-needed regulatory latitude to Bangladesh.

Keywords: *Non-Precluded Measures (NPM), Bilateral Investment Treaties (BITs), Permissible Objectives, General Agreement on Tariffs and Trade (GATT), Host State Responsibility*

1. Introduction

Bilateral Investment Treaties (BITs) constitute a fundamental component of the international investment law regime, serving as a principal legal framework for regulating and protecting cross-border investments between contracting States.[1] BITs, as their term specifies, exclusively regulate investment relations between two contracting States[2] with the objectives of providing protection to investments made by investors of both States.[3] A BIT creates investment protection

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1 Rodolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (Oxford University Press 2012) 13; Prabhash Ranjan, *India and Bilateral Investment Treaties: Acceptance, Refusal, Backlash* (Oxford University Press 2019)

2 Jeswald W. Salacuse, *The Law of Investment Treaties* (Oxford University Press 2013)

3 Prabhash Ranjan, *India and Bilateral Investment Treaties: Acceptance, Refusal, Backlash* (Oxford University Press 2019) 1; A. Newcombe and L. Paradell, *Law and Practice*

standards and grants foreign investors rights while imposing corresponding obligations on host States, thus limiting unnecessary State interference with foreign investments.[4] These provisions commonly restrict the host State from exporting foreign investments except for a public purpose, subject to due process, and adequate compensation and also necessitate fair and equitable treatment and non-discrimination, while allowing the transfer or repatriation of profits and capital in accordance with the terms agreed upon by the States.[5]

ANPM provision, also well-known as a general exception provision, is a significant BIT provision because it may effectively limit or even nullify other treaty obligations.[6] NPM or general exception clause starts with words like *"nothing in this agreement precludes…..'* allows States to leave from substantive investment obligations in specified circumstances, by this means listing legitimate non-investment policy objectives over investment protection.[7]

An NPM provision comprises two principal elements: the permissible objectives and the requisite nexus between the measure and those objectives.[8] The first aspect, permissible objectives, means those objectives mentioned in the NPM provision for which the host State can deviate from its BIT obligations.[9] For instance, USA-Bangladesh BIT, Article- X provides NPM provision where 'public order' and

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of Investment Treaties (Kluwer Law International 2009)1; Jeswald W. Salacuse, *The Law of Investment Treaties* (Oxford University Press 2013)

4 RodolfDolzer and Christoph Schreuer, *Principles of International Investment Law* (Oxford University Press 2012) 13; Prabhash Ranjan, *India and Bilateral Investment Treaties: Acceptance, Refusal, Backlash* (Oxford University Press 2019)

5 See the Bangladesh- others States BITs' Provisions which shall be found in annexure-IV,V, VI, VII; See also Prabhash Ranjan, *India and Bilateral Investment Treaties: Acceptance, Refusal, Backlash* (Oxford University Press 2019)

6 Kenneth J. Vandevelde, *Bilateral Investment Treaties: History, Policy, and Interpretation* (Oxford University Press 2010) 178; Prabhash Ranjan, *India and Bilateral Investment Treaties: Refusal, Acceptance, Backlash* (Oxford University Press 2019) 109.

7 Prabhash Ranjan, *India and Bilateral Investment Treaties: Refusal, Acceptance, Backlash* (Oxford University Press 2019) 197.

8 *Ibid.* 198

9 *Ibid.*

'essential security interest' shall be taken as permissible objectives.[10] It is necessary to mention that a host State shall be able to deviate from its BIT obligations, relying on the NPM provision, only for those objectives that are mentioned in the NPM provision and not for other objectives.[11]

The second aspect, nexus requirement, is an NPM provision is a link between adopted measures and the permissible objective to be achieved through that measure.[12] For instance, USA-Bangladesh BIT, where 'necessary', is the nexus requirement that acts as a link between the measures adopted to be achieved the permissible objective.[13] So a State can adopt only those measures that are 'necessary' to achieve 'essential security interest.'

A measure that falls within an NPMprovision shall be lawful, even though its inconsistency with every other provision of the BIT.[14] NPM provision limits the applicability of investor protections under BIT in exceptional circumstances.[15] These NPM provisions allow host States to take actions else varying with the treaty when, for example, the

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10 See BIT Between USA-Bangladesh, Art. X.

11 For a detailed examination of this issue, see William Burke-White and Andreas von Staden, 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non-Precluded Measures Provisions in Bilateral Investment Treaties' (2008) 48 *Virginia Journal of International Law* 307; Prabhash Ranjan, 'Non-Precluded Measures in Indian International Investment Agreements and India's Regulatory Power as a Host Nation' (2012) 2 *Asian Journal of International Law* 21; Amit Kumar Sinha, 'Non-Precluded Measures Provisions in Bilateral Investment Treaties of South Asian Countries' (2017) 7 *Asian Journal of International Law* 227. For a contrasting perspective concerning the incorporation of general exceptions in bilateral investment treaties, see A New combe, 'The Use of General Exceptions in IIAs: Increasing Legitimacy or Uncertainty?' in *Improving International Investment Agreements* (Routledge 2013)

12 Ranjan, *India and Bilateral Investment Treaties: Refusal, Acceptance, Backlash* (n 1) 197.

13 See BIT Between USA-Bangladesh, Art. X.

14 Prabhash Ranjan, 'Non-Precluded Measures in Indian International Agreements and India's Regulatory Power as a Host Nation' (2012) 2 *Asian Journal of International Law* 21; Kenneth J Vandevelde, *Bilateral Investment Treaties: History, Policy, and Interpretation* (Oxford University Press 2010) 178

15 William W. Burke-White and Andreas Von Staden, 'Investment Protection in Extraordinary Times: Interpreting and Applying Non-Precluded Measures Provisions in Bilateral Investment Treaties' (2008) 48 *Virginia Journal of International Law* 307.

actions are necessary for the protection of essential security, the maintenance of public order, or to retort to a public health emergency.[16]

This article will discuss 31 Bangladeshi BITs since the inception of its BIT programme in order to map the permissible objectives in NPM provisions in them as well as to make a legal analysis of the consequences of not having permissible objectives in NPM provisions in Bangladeshi BITs. The analytical guidance applied in this article to analyze the permissible objectives in NPM provisions of Bangladeshi 31 BITs are the same as the guidance by 'William W. Burke-White and Andreas Von Staden',[17] and 'Prabhash Ranjan for USA and India respectively.'[18]

2. Placement of NPM provisions in Bangladeshi BITs

BITs generally contain three important documents, namely-the main treaty text, the protocol, and the exchange of notes between the contracting parties.[19] The main treaty text contains the principle of substantive and procedural provisions such as expropriation, fair and equitable treatment, monetary transfer provisions, and dispute settlement,and so on.[20] Where protocol is enclosed to the treaty and every so often presents mainly the explanatory matters that are proposed to elucidate the meaning and scope of the treaty's

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16 *Ibid.*

17 William W. Burke-White and Andreas von Staden, "Investment Protection in Extraordinary Times: The Interpretation and Application of Non-Precluded Measures Provisions in Bilateral Investment Treaties" (2008) 48 *Virginia Journal of International Law* 307. The author expresses his profound gratitude to the authors for their valuable scholarly contribution to the field of international investment law.

18 Prabhash Ranjan, 'Non- Precluded Measures in Indian International Agreements and India's Regulatory Power as a Host Nation' (2012) Asain Journal of International Law 21.

19 White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 327; Sinha, 'Non-Precluded Measures Provisions in Bilateral Investment Treaties of South Asian Countries' (n 11) 10

20 White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 327

fundamental substantive protection provisions.[21] In exchange notes, where any enduring matters not yet adequately provided in these two documents may be taken up between the negotiating governments.[22] Hence, NPM provisions may be found either in the main treaty text or the Protocol, but generally almost all NPM provisions are found in the main body of the treaty itself. On the other hand, 'NPM-like provisions' have been found in the Protocol[23] and the Notes of Exchange[24] between the Contracting Parties.

In Bangladeshi BITs NPM provisions are placed in the main body of the treaty text. For instance, Agreement between the Republic of India and the Government of the People's Republic of Bangladesh for the Promotion and Protection of Investments- Article-12 (2) provides,

"[..] nothing in this agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis".

3. Containing NPM Provisions in Bangladeshi BITs

A study of 31 Bangladeshi BITs finds that only five (5)[25] Bangladeshi BITs contain the NPM provision, whereas twenty-six (26) of

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21 The choice to present such interpretive matters in the protocol rather than in the main treaty text will often be guided by considerations of linguistic economy and does not as such give rise to any normative hierarchy; rather, a protocol, considered as a document in its own right and regardless of its specific title, is an international treaty just like the BIT to which it relates; White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 327

22 *Treaty between the United States of America and the Argentine Republic concerning the Reciprocal Encouragement and Protection of Investment* (signed 14 November 1991) art XI, 31 ILM 124 (1992). The Treaty was transmitted to the US Senate together with its Protocol and subsequent amendment effected through an exchange of notes.

23 See Afghanistan- Germany BIT (Protocol, Art. 2); Pakistan-Germany (Protocol, Art. 2)

24 For detailed discussion, see, the Exchange of letters between Nepal and France BIT, which qualifies Article-3's fair and equitable treatment obligation by providing exceptions for public morality and public order.

25 Among Bangladesh's bilateral investment treaties (BITs), 31 treaties incorporate Non-Precluded Measures (NPM) provisions, which preserve the host State's

Bangladeshi BITs did not mention the NPM provision [See Table-1]. It is important to note that the NPM provisions in these 5 (five) BITs are differently worded.[26] Tribunal therefore interprets them according to their specific language, which determines the scope of State discretion in exceptional circumstances and the protections available during a crisis.[27]

Table-1: NPM provisions in Bangladeshi BITs

NPM Provision	Number of BITs
Present	5
Absent	26

Source: Author's study of 31 Bangladeshi BITs

4. Permissible Objectives

NPM provisions always pursue to protect host state autonomy of measures or arrangements in certain non-investment policy objectives

regulatory authority to adopt measures in pursuit of specified public-policy objectives, subject to the conditions stipulated in the respective treaties. Notably, the following five BITs contain express NPM provisions: (i) the Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh for the Promotion and Protection of Investments, art 12(2); (ii) the Agreement between the Government of the People's Republic of Bangladesh and the Government of the State of Kuwait for the Promotion and Reciprocal Protection of Investments, art 6; (iii) the Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh concerning the Reciprocal Promotion and Protection of Investments, art 6; (iv) the Treaty between the United States of America and the Government of the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment, art X; and (v) the Agreement between the People's Republic of Bangladesh and the Government of the Republic of Uzbekistan on the Reciprocal Protection and Promotion of Investments, art 11(2). These provisions are significant because they expressly recognise, to varying degrees, the State's right to pursue legitimate public interests while maintaining its international investment obligations.

[26] Burke-White and Von Staden, 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 18) 324; Ranjan, 'Non- Precluded Measures in Indian International Agreements and India's Regulatory Power as a Host Nation' (n 1) 33.

[27] Burke-White and Von Staden, 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 324.

from the restrictions or limitations that will be compulsory requirements made by the BIT.[28] These measures would be treated as a 'permissible objective.' More precisely, permissible objectives propose those non-investment objectives that are listed in the NPM provisions and host state can deviate from BITs obligations to achieve certain policy objectives for the welfare of the country. In brief, NPM provisions of BIT specify the measures those objectives be considered as permissible objectives. These objectives vary BIT to BIT. Where the host State's measures follow a permissible objective particularly recognized under the NPM provision, they do not constitute a treaty breach and, therefore, entail no liability under the BIT.

5. Permissible objectives under NPM provisions in Bangladeshi BITs

Table-2: Different Permissible Objectives under NPM provisions in Bangladeshi BITs

Permissible Objectives	How many NPM provisions contain these objectives?
Essential Security Interests	4[29]
Circumstances of Extreme Emergency	1[30]
Public Order	1[31]

[28] Ranjan, 'Non- Precluded Measures in Indian International Agreements and India's Regulatory Power as a Host Nation' (n 18) 35; Sinha, 'Non-Precluded Measures Provisions in Bilateral Investment Treaties of South Asian Countries'(n 11) 13; White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 332.

[29] Four Bangladesh BITs contain essential security interest clauses within their non-precluded measures (NPM) provisions: The India–Bangladesh BIT 2009, art 12(2); the US–Bangladesh BIT 1986, art X(1); the Uzbekistan–Bangladesh BIT 2000, art 11(2); and the Turkey–Bangladesh BIT 2012, Art. 5(2)(a).

[30] India–Bangladesh BIT (2009), Art. 12(2):Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh on the Promotion and Protection of Investments (2009) Art. 12(2)

[31] USA–Bangladesh BIT (1986), art X(1):Treaty between the United States of America and the Government of the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment (1986) Art. X(1)

Permissible Objectives	How many NPM provisions contain these objectives?
War or other forms of conflict	1[32]
Public Health As a sub-category-protection of human, animal, plant life, or health.	1[33]
Protect Environment As a subcategory- conserve of living and non-living exhaustible natural resources	2[34]
International peace and security	2[35]

Source: Author's Study 31 Bangladeshi BITs

According to Table-2, Bangladeshi BITs can move their liabilities relying on these permissible objectives to achieve certain non-investment policy objectives in NPM provisions. Bangladeshi permissible objectives can be divided into two categories, such as,

[32] Turkey–Bangladesh BIT (2012), Art. 5(2)(a):Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh concerning the Reciprocal Promotion and Protection of Investments (2012) Art. 5(2)(a)

[33] Turkey–Bangladesh BIT (2012), Art. 5(1) (a): Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh concerning the Reciprocal Promotion and Protection of Investments (2012) Art. 5(1)(a); Kuwait–Bangladesh BIT (2016), Art. 13: Agreement between the Government of the People's Republic of Bangladesh and the Government of the State of Kuwait for the Promotion and Reciprocal Protection of Investments (2016) Art. 13

[34] Kuwait–Bangladesh BIT (2016), Art.13: Agreement between the Government of the People's Republic of Bangladesh and the Government of the State of Kuwait for the Promotion and Reciprocal Protection of Investments (2016) Art. 13; Turkey–Bangladesh BIT (2012), Art. 5(2)(a): Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh concerning the Reciprocal Promotion and Protection of Investments (2012) Art. 5(2)(a)

[35] Turkey–Bangladesh BIT (2012), Art. 5(2)(c): Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh concerning the Reciprocal Promotion and Protection of Investments (2012) Art. 5(2)(c); USA–Bangladesh BIT (1986), Art. X (2): Treaty between the United States of America and the Government of the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment (1986) Art. X(2)

'security' and 'non- security' related objectives. Security related permissible objectives include such as protection from 'War' or 'Armed Conflict', on the other hand, 'non- security' related permissible objectives include adopting measures for public health, human, animal, public order, etc.

If we examine Bangladesh's NPM provision of BITs, we can see 'essential security interest' has been placed in 4 NPM provisions of BITs. It shows that how important are permissible objectives in Bangladeshi BITs. Other important objectives have also been found in the NPM provisions of Bangladeshi BITs such as public health, human, animal, public order, of living and non-living exhaustible natural resources, international peace and security, etc.

6. Self- judging and non- self-judging provisions in NPM

Self-judging provisions allows the State invoking the derogation to exercise subjective discretion in assessing its applicability. A self-judging provision is a means for the State invoking its action to reserve the power of interpretation of the treaty provision, in full or in part.[36]

Non-Self-Judging Provisions

In BITs, non- self-judging provisions apply where the treaty does not expressly or implicitly define the level of deference to be accorded to a Party's innovation of an NPM provision.[37] More precisely, arbitral tribunals have the authority to dictate the differences to be given to the State's determination. This approach does not allow States to evaluate their discretion; rather, it leaves to the tribunals. These approaches are available in almost all BITs.

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[36] Stephan Schill and Robyn Briese, '"If the State Considers": Self-Judging Clauses in International Dispute Settlement' (2009) 13 *Max Planck Yearbook of United Nations Law* 61, 68.

[37] Sinha, 'Non-Precluded Measures Provisions in Bilateral Investment Treaties of South Asian Countries' (n 11) 17; White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 370.

7. Self- judging and non- self-judging provisions in Bangladeshi BITs

Table-3: Self -Judging and Non-Self-Judging provisions in Bangladeshi BITs

Type	Number of BITs
Self –Judging Provision	1
Non-Self-Judging Provisions	4

Source: Author's Study of 31 Bangladeshi BITs

Self-Judging provisions have a greater scope for the host State to determine the legality of taken measures. Practically, self-judging provisions afford a State a considerable degree of discretion to justify its measures without incurring international responsibility, as the determination of whether the conditions for invoking the provision have been met is largely left to the State itself. In contrast, non-self-judging provisions do not confer such discretion, as the legality of the State's measures remains subject to objective review and assessment by an arbitral tribunal or other adjudicatory body. From the Table-3 we see only one NPM provision is holding self-judging provision, i.e. Kuwait-Bangladesh BIT (2016)[Article-13][38] ; on the other hand, non-self-judging provisions contain four Bangladeshi BITs such as-

India-Bangladesh (2009) [Article-12(2)], Turkey-Bangladesh (2012) [Article-5(1)(2)]; USA-Bangladesh (1986) [Article-X (1)(2)]; Uzbekistan-Bangladesh (2000) [Article-11(2)]. As a host State, Bangladesh would have limited discretion in justifying measures alleged to violate treaty provisions.

[38] Agreement between the Government of the People's Republic of Bangladesh and the Government of the State of Kuwait for the Promotion and Reciprocal Protection of Investments, Art. 13; Treaty between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment (1999), Art. 14

8. Interpretation of Permissible Objectives under NPM Provisions in Bangladesh BITs

This section examines the permissible objective contained in the NPM provisions of Bangladesh's BITs:

I) Essential Security Interest

The terms 'essential security interest' appears in an extensive variety of NPM provisions among the most significant permissible objectives.[39] If we see the list of permissible objectives of NPM provisions of Bangladeshi BITs, and then we may consider how important is 'essential security interest' terms. Out of the 5NPM provisions of Bangladesh BITs, 4 NPM provisions have an 'essential security interest'[40] and it has been treated as key permissible objective. Host States always try to use these terms in their NPM provisions to deviate from BIT obligations.

In BITs, 'essential security interest' comes as different formulations including 'vital security interest', 'public security', etc.[41]Nevertheless, the formulation is expressed in individual BIT, the significant interpretative question is how a State's 'essential security interest' or 'vital security interest' or 'security' is well-defined.[42] Essential security interest assumes importance as a permissible objective that can potentially be used for 'security' and 'non-security' measures.[43] Therefore, essential security has broad ample to cover many objectives. The presence of words like 'essential' or 'vital' or 'extreme emergency'

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[39] White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 349.

[40] See Table-2.

[41] White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 349

[42] *Ibid.*

[43] Ranjan, 'Non- Precluded Measures in Indian International Agreements and India's Regulatory Power as a Host Nation' (n 18) 37.

entails that the threshold should be considerably higher for Bangladesh to successfully invoke the NPM provisions.[44]

A good example of essential security interest as permissible objective found in *Devas v India*[45] under India-Mauritius BIT, where essential security interests was affirmed by an Investor–State Dispute Settlement (ISDS) tribunal relying on its BIT's Article- 11(3) which provides-

"the provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action which is directed to the protection of its essential security interests…"

The arbitral tribunal held that 'essential security interest' provision is not self-judging (discussed later).[46] Further, the arbitral tribunal held that 'essential security interest' denotes only security interests of vital or fundamental importance, rather than security interests generally.[47] The arbitral tribunal legitimates the view of the investors that prefixing 'security interests' with 'essential' means that the security interest must be vital or necessary or extremely important. More precisely, the threshold to satisfy the requirement of 'essential security interest' is reasonably high.

Relied on the above-mentioned cases, Bangladesh's 5 NPM provisions of BIT show that except for Kuwait-Bangladesh BIT[48] (2016)[Art.13],

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44 PrabhashRanjan, 'Non Precluded Measures in Indian International Investment Agreements and India's Regulatory Power as a Host Nation' (2012) Asian Journal of International Law 2, No.1 21-58.

45 *CC/Devas (Mauritius) Ltd, Devas Employees Mauritius Private Limited and Telecom Devas Mauritius Limited v Republic of India*, PCA Case No 2013-09; see UNCTAD, 'Devas v India', *Investment Dispute Settlement Navigator* (Investment Policy Hub,<https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/484/devas-v-india> (Accessed on 14 September 2025); see also it a law, 'Devas v India' (Accessed on 14 September 2025)

46 *Devas v India*, paras- 218-219.

47 *Devas v India*, paras- 228-243.

48 Agreement between the Government of the People's Republic of Bangladesh and the Government of the State of Kuwait for the Promotion and Reciprocal Protection of Investments , (Kuwait-Bangladesh BIT- 2016) [Art.13]

rest of the 4 NPM provisions contain non-self-judging approach which suggests that Bangladesh cannot decide unilaterally what constitutes essential security interest or unilaterally cannot decide on the measures adopted to achieve essential security interest. Therefore, Bangladesh's determination of essential security interests in these 4 NPM provisions can be reviewed by the arbitral body. Instead, Kuwait-Bangladesh BIT gives authority to Bangladesh as a host state to determine the measures on relying on essential security interests as a permissible objective. Kuwait-Bangladesh BIT considers as a self-judging provision in Bangladesh BITs.

II) Circumstances of Extreme Emergency

Before analyzing circumstances of extreme emergency, it is worth to note that circumstances of extreme emergency are not as usually permissible objectives like public health, essential security interest, etc. though Bangladesh has incorporated in NPM provisions of BIT as permissible objective to deviate from BITs obligations. To define circumstances of extreme emergency as a permissible objective in Bangladeshi BITs. It needs extreme situations, not ordinary situations. It is very difficult to determine what exactly will be extreme situations; some scholars argued that it depends on countries' situations, and countries will have the right to decide what exactly extreme situations if it is mentioned in the treaty. In the absence of such treaty provisions, the issue should be left to the arbitral tribunal. Arbitral tribunal should decide on the basis of country's perspective because all the countries' situations will not be same; it varies from country to country.

Circumstances of extreme emergency present in one NPM provisions in Bangladeshi BITs as a self-regulating permissible objective (see table-2).[49] India-Bangladesh BIT (2009) provides *"nothing in this agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme*

[49] Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh for the Promotion and protection of Investments [Art. 12 (2)] (India-Bangladesh BIT- 2009);

emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis." [50] It means the host State may take any action on the ground of '*in circumstances of extreme emergency*'in keeping with its laws. Although it is not a self-judging provision even though Bangladesh might be a possibility to decide their extreme situations relying on the country's laws, but it should be reasonably applied on a non-discriminatory basis.

In India-Bangladesh BIT and Uzbekistan-Bangladesh BIT's formulations, it is very important to note that India-Bangladesh BIT imposes the highest threshold degree by the use of term 'extreme' on the other hand, Uzbekistan-Bangladesh BIT imposes lower threshold of degree by the use of the term only 'emergency' and did not use the term 'extreme' before emergency.

III) Public Order

Often, the term 'Public order' comes together with the term 'security' as permissible objectives in NPM provisions BITs.[51] For instance, USA-Bangladesh BIT (1986) Article-XX (1) provides

'*This treaty shall not preclude the application by either Party of any and all measures necessary for the maintenance of public order, the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.*'[52]

The meaning of public order remains contested because it varies across domestic legal systems and traditions.[53] The explanation of the term public order cannot simply be presented from national law.

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[50] *Ibid*.

[51] White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n17) 357.

[52] Treaty between the United States of America and the Government of the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment (signed 12 March 1986, entered into force 25 July 1989) Art. X(1).

[53] White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n17) 357.

Consequently, the common law and the civil law systems have very different considerations of the phrase.[54] The defining of the term in national law might be appropriate as indicative of either a special meaning assigned by the parties or as evidence of the broader context in which the treaty functions.[55] That such conceptual differences may matter in investment arbitration that has become evident — for example, *Enron Corp. Ponderosa Asset, L.P. vs Argentine Republic,*[56] arbitration before International Centre for Settlement of Investment Disputes (ICSID), where the claimant's essentially common law informed the interpretation of public order clashed Argentina's civil law notion of '*order publico.*'

Now turn to Bangladeshi NPM provisions. USA-Bangladesh BIT poses a high threshold for the use of exception as it is qualified by the word 'necessary', which means that only in situations of essential can be the public order exception invoked. In a nutshell, Bangladesh needs a high threshold necessity test to be passed in order to justify state measures to invoke public order exception.

IV) Public Health Including Animal, Plant Life, Health

Health is wealth. 'Public health' is the most important permissible objective in BITs. World Trade Organization (WTO) has recognized its

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[54] Ignaz Seidl-Hohenveldern, 'Ordre Public (Public Order)' in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law* vol. III (North-Holland 1997) 788, 789 (observing that parties to an international agreement containing a public-order exception may attach different meanings to the concept); George H Dession, 'Sanction, Law and Public Order' (1947–1948) 1 *Vanderbilt Law Review* 8 (conceptualising public order as the degree of social peace and adherence to fundamental societal values necessary for the pursuit of legitimate interests, particularly through the operation of criminal law); White and Staden, 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non-Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 357.

[55] *Ibid.*

[56] *Enron Corporation and Ponderosa Assets, LP v Argentine Republic*, ICSID Case No ARB/01/3, Award, 22 May 2007, para 335.

importance to the highest degree. Article-XX (b) of the General Agreement on Tariffs and Trade (GATT) permits States, subject to the requirements of the chapeau of Article-XX, to adopt and enforce measures otherwise inconsistent with the GATT's substantive provisions if "necessary *to protect human, animal, or plant life or health."* This provision similar to Turkey-Bangladesh BIT (2012) where Article-5 (1) (a) provides subject to the requirements of the chapeau- "*Nothing in this agreement shall be construed to prevent a Contracting Party from adopting, maintain, or enforcing any non-discriminatory legal measures:*

(a) designed and applied for the protection of human, animal or plant life or health…"

Bangladesh's NPM provisions have been categorized based on Article-XX of GATT and non-Article-XX of GATT due to the absence of Bangladeshi Model BIT (see table-1). From Table-2, we cansee that only one NPM provision contains public health, including animal, plant life, health with Turkey.[57] So, Public health including animal, plant life, and health, will be treated as Article-XX of the GATT NPM BIT type.

V) Environmental Protection as a Subcategory-Conservation of Exhaustible Living and Non-Living Natural Resources

'Environment' permissible objective allows the host State to take measures necessary to protect the environment or to conserve living or non-living exhaustible natural resources. Article-XX (g) of the GATT permits states, dependent on the requirements of the chapeau of Article-XX, to adopt and enforce measures else inconsistent with the GATT's substantive provisions if "relating *to the conservation of exhaustible natural resources……"*

[57] Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh concerning the Reciprocal Promotion and Protection of Investments (Turkey–Bangladesh BIT, 2012), Art. 5(1)(a).

This provision similar to Turkey-Bangladesh BIT (2012), where Article-5 (1) (b) provides subject to the requirements of the chapeau- *"related to conservation of living or non-living exhaustible natural resources."*

Bangladesh's NPM provisions have been considered based on Art.-XX of GATT and non-Art.-XX of GATT due to the absence of Bangladeshi Model BIT (see table-1).

From Table-2, we can see that only two[58] NPM provision contain Protect Environment as a subcategory- conserve of living and non-living exhaustible natural resources.[59]

Studied all 5 the NPM provisions of Bangladesh BITs contain two NPM provisions are bearing environment exception as permissible objective; from these two, only one NPM provision is similar to GATT Art.-XX (g) of GATT, i.e. Turkey-Bangladesh BIT (2012), on the other hand, Kuwait-Bangladesh BIT (2016) BIT does not provide similar languages on its NPM provision but with subject to conditions given the authority to Contracting Party to determine the measures in accordance with its (host State) environmental laws. If we interpret this textual, we easily understand that Kuwait-Bangladesh BIT's measures have to be undertaken in accordance with the environmental laws of the Contracting Party. Relying on the categories of Bangladeshi NPM provisions, Turkey-Bangladesh BIT comes within the category of Art.-XX of GATT; on the other hand, Kuwait-Bangladesh BIT comes within the category of non-Art.-XX of GATT.

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[58] *Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh Concerning the Reciprocal Promotion and Protection of Investments* (signed 12 April 2012) Art. 5(1)(b); *Agreement between the Government of the People's Republic of Bangladesh and the Government of the State of Kuwait for the Promotion and Reciprocal Protection of Investments* (signed 4 May 2016) Art. 13

[59] Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh concerning the Reciprocal Promotion and protection of Investments, (Turkey-Bangladesh BIT- 2012) –Art. 5 (1) (a);

VI) International Peace and Security

The permissible objective of 'International peace and security' often emerges in NPM provisions of BITs. In essence, the host state shall not be held responsible for a breach of their obligations under their BITs if they were working under obligations created by the United Nations (UN).[60] Bangladesh's NPM provisions have been categorized based on Article-XX of GATT and non-Article-XX of GATT due to the absence of Bangladeshi Model BIT (see table-1).

From Table-2 See that only two NPM provision contain international peace and security as permissible objectives.[61] Turkey-Bangladesh BIT (2016)[Art.5(2) (c)] provides, "*to prevent any Contracting Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security" and* USA-Bangladesh BIT (1986)[Article-X (1)] provides, "*This treaty shall not preclude the application by either Party of any and all measures necessary for the maintenance of public order, the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.*"

It means Bangladesh as UN member State is required to "accept and carry out the decisions of the Security Council," the provisions ensure that Bangladesh will not be liable for breach of responsibilities under a BIT if Bangladesh is working under obligations created by the UN.

Two NPM provisions of Bangladeshi BITs reveal international peace and security as permissible objective to deviate from BIT obligations, and these two provisions have not fallen in the category of Art.-XX of

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[60] Sinha, 'Non-Precluded Measures Provisions in Bilateral Investment Treaties of South Asian Countries' (n 11) 31

[61] Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh concerning the Reciprocal Promotion and protection of Investments, (Turkey-Bangladesh BIT- 2012) –Art. 5(2)(c); Treaty between the United States of America and the Government of the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment(USA-Bangladesh BIT- 1986) [Art.X(1)]

GATT NPM BIT type; these two have been fallen category of non-Art.XX of GATT NPM BIT type.

9. Nexus Requirement

The nexus requirement links the adopted measures to the permissible objectives they seek to achieve.[62] Textual of NPM provisions of BITs differ from BIT to another BIT.[63] There is no common textual pattern in NPM provisions of BITs. The wording of this 'nexus' requirements contrast from one NPM provisions to another and reflecting dissimilar provisions of risk between states to a BIT and investors.[64] For example, US-Bangladesh BIT (1986) Art.- X (1) provides all measures have to be "necessary" for the attainment of one of the permissible objectives.[65] Other NPM provisions define the nexus requirement by specifying that State measures must be 'required,' 'directed to'[66] 'for,' 'relating to'[67] etc. in furtherance of a permissible objective. The importance of the nexus requirement is in establishing the degree of connection between the adopted measures and the permissible objective required to be achieved. It is very worth to note that stricter nexus requirement will always prevail to establish the degree of connection between the measure adopted and permissible objective sought to be achieved. For

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62 Ranjan, Ranjan, 'Non- Precluded Measures in Indian International Agreements and India's Regulatory Power as a Host Nation' (n 18) 35; Sinha, 'Non-Precluded Measures Provisions in Bilateral Investment Treaties of South Asian Countries'(n 11) 13 & 15.

63 Sinha, 'Non-Precluded Measures Provisions in Bilateral Investment Treaties of South Asian Countries' (n 11) 15; White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 330.

64 White and Staden 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non- Precluded Measures Provisions in Bilateral Investment Treaties' (n 17) 330.

65 Treaty between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment (signed 12 March 1986, entered into force 25 July 1989) Art. X(1).

66 India-Mauritius BIT.

67 Under Article 5(2)(b)(i) of the Turkey–Bangladesh BIT 2012, investments must be accorded fair and equitable treatment and protected against arbitrary or discriminatory measures.

instance, to examine stricter nexus requirement like between 'necessary' and 'related to,' and then nexus requirement 'necessary' will be stricter than a nexus requirement 'related to.' In brief, the nexus requirement governs how closely connected host State measures among the permissible objectives.

10. Nexus requirement in NPM Provisions under Bangladesh's BITs

Table-4: Nexus requirement of NPM provisions in Bangladeshi BITs

Nexus Requirement	How many NPM provisions contain these objectives?
Necessary for	2[68]
For	1[69]
Apply Measure "To"	2[70]
"Relating to"	1[71]

Source: Author's Study of 31 Bangladeshi BITs

From the above table-3, we can see that different nexus requirement link has been applied in NPM provisions of Bangladeshi BITs. Sometimes, one NPM provision employs more nexus links through different sub-provisions in the NPM provisions. Table-3 has shown that a total number of nexus requirements is six, while the number of BITs of NPM provisions counts five, which technically means there should have been only 5 nexus requirements.

A study of the NPM provisions of the Turkey-Bangladesh BIT (2012) reveals that the NPM provisions employ two nexus requirements through several of its sub- provisions.[72]

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[68] Turkey–Bangladesh BIT, Art. 5(2)(b); USA–Bangladesh BIT, Art. X(1).

[69] Art.12(2) of the India–Bangladesh BIT 2009 recognises circumstances in which a Contracting Party may adopt measures in pursuit of specified public or security interests, while remaining subject to the framework and requirements of the Agreement.

[70] See Bangladesh–Uzbekistan BIT (2000), Art. 11(2); Bangladesh–Kuwait BIT (2016), Art. 13

[71] Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh Concerning the Reciprocal Promotion and Protection of Investments (signed 2 February 2012) Art. 5(2)(a)

11. Conclusion

The Non-Precluded Measure (NPM) provision plays a significant role in giving host States with regulatory flexibility to deviate from BIT obligations. The article has demonstrated that the permissible objectives on NPM provisions in Bangladeshi BITs are formulated in a narrow manner that will not be enough to safeguard Bangladesh's regulatory power by balancing with investment protection. The nexus requirement has been incorporated into Bangladeshi BITs and is weak.

NPM provision displays that only 5 Bangladeshi BITs provide regulatory give to deviate from its BIT obligations.[73] Out of 5 Bangladeshi NPM provisions, as many as 4 NPM provisions contain 'non-self-judging' nature method and only 1 NPM Bangladeshi BIT provisions contain 'self-judging' nature method where Bangladesh will have discretionary power to interpret the NPM provision. These 5 NPM, Bangladeshi BITs provision, allow deviating from its treaty obligations to pursue a wide range of permissible policy objectives like public order, public health, and the environment as well as limited permissible objectives like essential security interests, circumstances of extreme emergency. Therefore, Bangladesh should reconsider its NPM provisions in BITs to strike an appropriate balance between the host State's regulatory autonomy and protection of foreign investments.

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[72] *Agreement between the Government of the Republic of Turkey and the Government of the People's Republic of Bangladesh Concerning the Reciprocal Promotion and Protection of Investments* (signed 12 April 2012) Art. 5

Expansion of Online Business: An Analysis of Legal Frameworks on Consumer Rights Protection in Bangladesh

Mohammad Abdul Hannan*

Abstract

The global pandemic Covid-19 has highlighted the importance of online business. Bangladesh has also kept up with global trends. Over the last three decades, the country has experienced consistent industrialization. Bangladesh must adopt higher levels of mechanization, industrialization, and modern technology as it strives to become an upper-middle-income country (UMIC) by 2031 and a developed economy by 2041. In essence, the seller had control over some aspects of the customer when forming an e-contract, such as the price, the condition of the items, the delivery conditions, and so on. Sometimes there will be transportation issues and production delays, making it impossible to complete contracts on time or at all where the rights of e-consumers are hampered widely. Additionally, safeguarding consumers' rights in online transactions has become a burning concern in the post COVID-19 growing situation of e-commerce with the importance of developing legal mechanisms in Bangladesh. Hence, this article will set out the legal safeguards for purchasing goods online and will focus on the overview of existing legal frameworks of Bangladesh for evaluating rights of the consumers emphasizing the obligations of the parties in electronic purchases. The paper also makes several suggestions to address the issues that have been emerged as a consequence of the online shopping to ameliorate consumer rights stipulated in electronic consumer agreements for the purchase of products. At the same time, the paper analyzes the state of consumer protection in Bangladesh and the legislations regarding interest of consumers. In this study a descriptive, thematic, and doctrinal legal research method has been followed with integrative literature review on legal mechanisms for protecting rights of consumers in online business.

Key Words: *Post Covid-19, Online Business, Legal Frameworks, Protecting Consumer Rights.*

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1. Introduction

E-commerce refers to any type of business or commercial transaction that takes place through the internet. It's currently one of the most crucial new developments in internet culture. The rate of global change is faster than we realize. In today's society, technological progress is occurring at a lightning pace. Never before in human history have so many changes occurred in such a short period of time. In a nutshell, digitalization has become ubiquitous. Many previously inconceivable processes have been converted to digital form. The global spread of the Covid-19 epidemic has also highlighted the value of digitization. Ahi and others state that since the advent of globalization, businesses have increasingly relied on electronic commerce as a means of swiftly expanding their reach into new markets.[1] Whether measured in breadth or depth, the impact of electronic commerce on businesses and societies is substantial.[2] Mohiuddin asserts that the development of electronic commerce in Bangladesh mirrors that seen globally. Currently, internet access is available throughout Bangladesh. The buyers of finished products and the suppliers of intermediate goods and services will determine whether or not Bangladeshi producers will use this medium for e-commerce in order to gain access to expert knowledge and necessary inputs.[3] In fact, business-to-consumer (B2C) e-commerce is still in its infancy in Bangladesh. However, a sizeable proportion of all online marketplaces are involved in consumer-to-consumer (C2C) e-commerce, sometimes known as online auctions. Bangladesh is still in its early stages of development in many other areas. It's only natural that a very small percentage of consumers be ready, willing, and able to shop online. Bangladesh's progress in this area may take some time, but there are promising indications that the country is on the right track.[4] Distributing, purchasing, selling, marketing, and servicing items or services via electronic systems like

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1 Alan A. Ahi and others (eds), E-commerce Policy and the Global Economy: A Path to More Inclusive Development?(2022), Management International Review (2023) 63:27–56. <https://doi.org/10.1007/s11575-022-00490-1> (Accessed on 3 November 2022)

2 *Ibid*., 33.

3 Md. Mohiuddin, Overview the E-Commerce in Bangladesh (2014), IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X, p-ISSN: 2319-7668. Volume 16, Issue 7. Ver. II (July. 2014), PP 01-06. <www.iosrjournals.org.>

4 *Ibid*., 3.

the Internet and other computer networks is the primary focus of electronic commerce. In the legal framework of Bangladesh, there are no rules and codes of conduct pertaining to e-businesses or online firms that would detail how such enterprises would pursue the contract with the consumer. In the context of Bangladesh, the establishment and operation of e-commerce or online-based marketplaces have commenced in the absence of a formal regulatory framework. A considerable segment of consumers express discontentment with the services provided in the realm of online buying. There have been numerous recorded cases of breach of contract pertaining to the sale of goods within the realm of internet business. Both buyers and sellers are experiencing difficulties related to contract breaches, leading to a significant number of payment irregularities inside the country. Despite the fact that individuals are displaying a significant level of interest in utilizing personal user profiles and engaging with various features offered by social media platforms more popularly face book and so on. The surge in popularity can sometimes have adverse effects on the interests of customers.

2. Background of the Study

The rapid expansion of online trade is a striking result of globalization. The adoption of online purchase in Bangladeshi market was first hindered by a gradual transition, primarily due to a limited number of internet users resulting from a lack of internet access and public awareness. Bangladesh, as one of the world's least developed countries, stands to benefit greatly from the widespread adoption of e-commerce. Since the advent of the internet, there has been a tremendous increase in the volume of business transacted online. Electronic funds transfer, supply chain management, internet marketing, online transaction processing, electronic data interchange, automated inventory management systems, and automated data collection systems are just some of the many types of commerce that benefit from and contribute to this method. Although e-mail and other forms of electronic communication may be included, the majority of today's electronic business takes place on the World Wide Web. Bangladesh is likewise making baby steps into the world of online shopping. Business to Business (B2B) e-commerce is becoming increasingly popular as the internet continues to spread throughout the

world. When the Internet opens up the world's markets to buyers and importers, everyone wins. Prices can be compared across regions, order fragmentation can be avoided, and new options can be discovered.[5] Therefore, it is important for sellers and exporters to have a positive online presence through websites and portals. Increased and more efficient access to the worldwide market via the internet is beneficial not just for buyers, but also for sellers. The government of Bangladesh is aiming for expansion through exports. The private sector, and export sectors in particular, need to be well-prepared to fulfill the demands of globalization so that they can attract the attention of importers and stand out from the rivalry of other exporters from across the world. Bangladesh's export sectors face a number of challenges as a result of this situation. **United Nations Conference on Trade and Development** (UNCTAD) has developed unique programmes to help developing nations make the switch to electronic trade. The World Trade Organization (WTO) has established regulations and standards for international online trade. Although Bangladesh is a developing nation, some sectors of the business community have successfully adopted technology. Kabir stated that online business fraud, also known as e-commerce fraud, occurs when a criminal deceives another party during an online commercial transaction for the fraudster's own financial or personal advantage.[6] The offender devises a plan involving one or more aspects of the Internet to deprive another person of property or any interest, estate, or right by making a materially false statement of fact, whether by omission or commission. More and more consumers are becoming aware of the need to protect themselves against being deceived or victimized by online firms.[7] Although COVID-19 has become a global epidemic, it has presented a favorable opportunity for entrepreneurs in the e-commerce industry. A growing number of small entrepreneurs and individuals have initiated their commercial ventures in the virtual realm, assuming the shape of e-commerce enterprises. The rise of

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5 *Ibid*., 6.

6 Adnan Kabir, A Legal Analysis on Resolving Recently Growing Online Business Frauds in Bangladesh (2022), Law Reform, 18(2), 2022, 264-281, Master of Law, Faculty of Law, Universitas Diponegoro. <DOI:10.14710/lr.v18i2.46636>

7 *Ibid*., 265.

ecommerce transactions has increased tenfold compared to normal circumstances as a consequence of the Covid-19 epidemic.[8]

3. Objectives of the Study

a) To identify necessity of developing legal protection mechanisms for consumers in conducting online transactions.

b) To analyze the application of relevant laws in Bangladesh in this specific arena.

c) To elucidate prospective dimensions of online business in protecting the interest of online customers.

4. Research Methodology

The approach used in this work is based on doctrinal or pure legal research, and as such, it is a content analysis-based research study prepared to fulfill the goal of analyzing the situation of increasing the trend online business and its impact on the consumers. In essence, an integrative literature review has been done to achieve the objectives of the study as per Torraco.[9] The doctrinal legal research approach entails, among other things, a careful reading and comparison of various documents to identify vagueness, expose inconsistencies between laws and principles, discover discrepancies and exercise the legal analysis. The doctrinal explanation and comments in this article give authoritative assertions of the meaning and extent of applicable substantive legal tests and requirements for the issues relevant to study.[10] According to Chatterjee, to evaluate and analyze the laws relating to the rights of consumers in the online business was used

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8 Abir Hasan, The growth of e-commerce during the pandemic in Bangladesh (2020), The New Age, <https://www.newagebd.net/article/114200/t he-growth-of-e-commerce-during-the pandemic-in-bangladesh>

9 Richard J. Torraco, Writing Integrative Literature Reviews: Guidelines and Examples (2005). Human Resource Development Review, 4(3), 356–367. Sage Publications. <https://doi.org/10.1177/1534484305278283>

10 Charles Chatterjee, Methods of Research in Law. Old Bailey Press.

carefully to assess the text of the legal documents.[11] This work employs descriptive, explanatory, analytical, and critical methods. Furthermore, an explanatory method was utilized to describe existing legal frameworks providing consumer rights protection mechanisms.

5. Literature Review

Online business success depends on a safe and welcoming working environment. As the quantity of digital transactions grows, both buyers and sellers need to feel more secure. Challenges in the internet market sector are becoming more and more of a concern as online transactions increase. The only method to do this is to inform the customer of his or her rights in relation to the matter. By assimilating into the digital culture of the Internet and facilitating consumer interactions with fellow customers and the firm itself, businesses can cultivate novel and more profound connections with their customers. Hence, the transaction virtually requires assurance of consumer's rights.[12] Consumer protection in Malaysia is implemented through a diverse range of strategies, including enforcing existing consumer protection laws, developing new legislation, and revising outdated regulations.[13] Privacy Impact Assessments (PIA) is a potential additional contribution to addressing consumer concerns.[14] Before establishing personal data practices, the PIA model is employed. It involves multiple stakeholders and attempts to learn from the past while imagining how new technologies and practices may bring about new problems.[15] The high rate of growth of online purchasing has

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11 Michael Salter and Julie Mason, Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research 2007. Pearson/Longman.

12 Arthur Armstrong and John Hagel III. 1996. "The Real Value of Online Communities." Harvard Business Review (May–June): 134–141.

13 Ahmad Masum and others (eds), Consumer Protection for Sale of Goods under the Malaysian Sale of Goods Act 1957 and the Consumer Protection Act 1999: With Special Reference to Quality and Fitness of Goods (2018), American Journal of Humanities and Social Sciences Research (AJHSSR) e-ISSN : 2378-703X Volume-02, Issue-06, pp-44-52.

14 *Ibid*., 03.

15 Stephen T. Margulis and Gary T. Marx, Caveat Emptor: A Perspective on Consumer Privacy Online (2012), Surveillance & Society 10(3):351-355, DOI:10.24908/ss.v10i3/4.4530.

persuaded numerous businesses to sell their products and services via the Internet, which is a crucial channel for expanding their markets. The marketing managers must comprehend the consumer decision-making process when purchasing online products or services. Cyber security is a global issue that must be resolved. Eventually, unreliable security systems make online purchasing hazardous for customers.[16] Connectivity to the Internet or online access is necessary for customers to engage in online purchasing.[17] In a number of nations, the absence of or lack of clarity in the regulatory framework governing the operations of online stores poses a number of risks and, as a result, significant problems for consumers and other parties contracting with such stores.[18] This is due to the fact that the scope of influence of the online store is significantly greater than the scope of transactions concluded with the physical store under free market conditions. They also necessitate Internet-connected devices.[19] One of the fundamental principles in the field of sales law is that a trader has a primary obligation to deliver the items to the buyer in accordance with the terms specified in the contract of sale. The buyer is obligated to accept and provide payment for the products in accordance with the related responsibility.[20] In the context of online purchases, it is customary for buyers to provide their credit card details at the time of placing an order. By the time sellers deliver the items, consumers typically have already made the payment. Consequently, the likelihood of non-payment is minimal.[21] Furthermore, it is imperative for the establishment of a prosperous business milieu that the government

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16 GadhaTaher, E-Commerce: Advantages and Limitations (2021), International Journal of Academic Research in Accounting Finance and Management Sciences, 11(1), 153-165.

17 Derar Al-Daboubi and Jalal Alqhaiwi, Legal and Regulatory Framework for Monitoring Online Stores (2022), UUM Journal of Legal Studies, 13, No. 1 (January) 2022, pp: 175–197.

18 *Ibid*., 192.

19 Mohammad Toufiqur Rahman, Customers' Attitude towards Online Shopping: The Case of Bangladesh (2016), <Customers' Attitude towards Online Shopping: The Case of Bangladesh (researchgate.net)> (Accessed on December 2016)

20 Mohd Norand Naemah Amin, E-Consumer Protection In Delivery Of Goods: A Malaysian Perspective (2016), Journal of Education and Social Sciences, Vol. 3, (Feb.) ISSN 2289-9855.

21 *Ibid*., 42.

rigorously upholds the Competition Act, 2012 so inhibiting dominant firms from displacing smaller enterprises through the utilization of reduced pricing strategies. According to Islam and Saeed, the e-commerce market in Bangladesh is projected to reach a value of around $3 billion by the year 2023.[22] A notably optimistic outlook characterizes this forecast. Moreover, a wealth of historical evidence exists, which convincingly demonstrates that individuals tend to allocate a greater portion of their financial resources towards clothing, food, and consumable goods during periods of increased disposable income.[23] The occurrence of fraudulent activities frequently initiated with the item description, and eBay consistently included the statement, "EBay does not verify these items; caveat emptor," on every listing page. The enforcement of rules and regulations at the site and the imposition of penalties on anyone who violated them were deemed essential. [24] Tukinah and others stated that transactions in the form of sales of goods via the internet or E-Commerce media have great potential if properly handled, but they are also prone to infringement of consumer rights, especially in developing countries like Indonesia.[25] In light of this, the authors conduct research into the most pressing questions, such as where the current legal protection arrangements for consumers in e-Commerce transactions in Indonesia fall short, and how the value of justice with dignity can inform the reconstruction of these protections.[26] The citizens of Bangladesh continue to exhibit apprehension towards utilizing debit or credit cards for internet buying. There exist a multitude of online retail establishments that lack the provision of online payment methods. The mechanism they depend

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22 Quazi Tafsirul Islam And Nur Ibna Saeed, E-Commerce In Bangladesh: Prospects And challenges (2021), The New Age, <https://www.newagebd.net/article/147734/e-commerce-in-bangladesh-prospects-and-challenges> (Accessed on 31 August 2021)

23 *Ibid*., 3.

24 David P. Baron, Private Ordering on the Internet: The EBay Community of Traders (2002), Standford University Journal" Business and Politics: Vol. 4: Iss. 3, Article 1.

25 UkieTukinah and others (eds), Reconstruction of Legal Protection Arrangements For Consumers In E-Commerce Transactions Based on Justice Value (2020), International Journal of Advanced Research, Article DOI: <10.21474/IJAR01/10652 DOI URL: http://dx.doi.org/10.21474/IJAR01/10652>

26 *Ibid*., 481.

on is 'Cash-on-delivery'. The majority of e-commerce websites in Bangladesh employ this particular approach.[27] The primary factor contributing to this phenomenon is the apprehension individuals experience while utilizing debit or credit cards due to concerns regarding fraudulent activities.[28] It is imperative for online retailers to eliminate client apprehension. It is imperative for the banks in Bangladesh to provide adequate security measures to ensure the safety of online shoppers.[29] Consumer protection is seen essential due to the prevalence of unethical conduct exhibited by dishonest producers, traders, media outlets, and other relevant entities. Consumer rights are being misused due to the pervasive corruption within the institutions responsible for upholding the law.[30] The limits on vehicles are also affecting the shipping process, which is delaying the delivery of products to clients and posing major difficulties in the routine operating of E-Commerce businesses. To facilitate the expansion of electronic commerce, the government should take the necessary steps to establish a suitable legislative environment.[31] According to Md. Abdul Wahed Tomal, the General Secretary of the e-Commerce Association of Bangladesh (e-CAB), it is his belief that around 5 lakh individuals will have the possibility to gain work over the next two years through the utilization of ecommerce in Bangladesh as evident by Chawdhury and others.[32] It is imperative for organizations

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27 Jubayer Suhan, Acceptance of Online Shopping in Bangladesh: Consumer's Perspective (2015), IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X, p-ISSN: 2319-7668. Volume 17, Issue 1.Ver. II (Jan. 2015), PP 14-24 <www.iosrjournals.org>.

28 *Ibid*., 22.

29 *Ibid*., 24.

30 Ghulam Safdar and others (eds), Violation of Consumer Rights by Electronic Media through Advertisements (2015), Journal of Business and Social Review in Emerging Economies ISSN: 2519-089X; (Online) 2519-0326 Volume 1: Issue 2, December 2015.

31 Nivethitha and others (eds), Impacts of Covid 19 On E-Commerce In India (2020), Volume XII, November/2020, ISSN NO:0886-9367, <Https://Www.Researchgate.Net/Publication/359185910_Impacts_Of_Covid_19_On_ECommerce_In_India>

32 Md. Shahnur Azad Chawdhury and others (eds), Is COVID-19 Blessing for Ecommerce: A View from Bangladesh (2020), International Journal of Advances in Management and Economics, ISSN: 2278-3369, www.managementjournal.info (Accessed on 20 October 2020)

involved in e-commerce to recognize that the elements of safety and security within the realm of electronic commerce are intricately tied to the reputation and standing of the enterprises.[33] It is imperative for the management of all businesses involved in e-commerce to have a proactive approach in addressing and minimizing potential hazards. In 2016, the Bangladesh Telecommunication Regulatory Commission (BTRC) reported an internet penetration rate of 13.2% and a total of 66.6 million internet users. As of June 2019, the total number of internet subscribers has reached 96.199 million. Based on the analysis conducted by market experts, it is projected that the e-commerce industry in Bangladesh would attain a market value of USD 20 billion by the year 2020. Based on the June 2019 statistics provided by BRTC, it is reported that there are around 90.4 million subscribers to mobile internet services, 0.06 million subscribers to WiMAX services, and 5.73 million subscribers to ISP + PSTN connections.[34] Consumer rights have grown in importance over the years as a means of protecting the interests of all consumers. Historically, the principle of "Caveat Emptor" (let the consumer beware) tended to relieve the seller of responsibility. Conversely, a competing internationally recognized principle known as "Caveat Venditor," which means "Let the Seller Beware," has emerged over the years. It is difficult for the buyer to inspect the products prior to every purchase.[35]In this regard, here the Consumer Rights Protection Act of 2009 is supposed to be for safeguarding the rights of online consumers.[36] Buyers can obtain redress through various means, such as exchanging defective items, receiving compensation for injuries, being reimbursed for the product's

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[33] Farjana Yeasmin, Determinants of Cybercrime and its Impact on e- Commerce Development in Bangladesh(2021), Journal of Management and Humanity Research, Vol.6, pp.19-45. <DOI:10.22457/jmhr.v06a02132>

[34] Sunera Saba Khan,E-commerce in Bangladesh: Where are we headed? (2020), The Financial Express, <https://thefinancialexpress.com.bd/views/views/e-commerce-in-bangladesh-where-are-we-headed-1578666791

[35] Upal Aditya Oikya, Protecting consumer rights (2017), The Daily Star, Law & Our Rights, <https://www.thedailystar.net/law-our-rights/protecting-consumer-rights-1434604> (Accessed on 18 July 2017)

[36] Arifa Afroz Smriti, Legal Remedies against Online Shopping Irregularities: Bangladesh Perspective, Bangladesh Journal of Legal Studies, <https://bdjls.org/legal-remedies-against-online-shopping-irregularities-bangladesh-perspective/>

purchase price, or facing fines. Section 40-51 of the aforementioned statute may be invoked to provide redress to the purchaser who has been adversely affected by the online purchasing system in Bangladesh. In this particular instance, a more expansive understanding of the legislation may encompass the concept of 'online purchasing'.[37] The concept of online purchasing has added a new dimension to our daily lives in Bangladesh. It is a novel concept, and since the government's e-commerce protocol, it has become much simpler and more widespread as evident by Srimiti.[38] Financial fraud has afflicted online businesses since their inception. Hackers make unauthorized transactions and wipe out the trail costing businesses significant amounts of losses.[39] The primary objectives of consumer protection legislation and policy involve safeguarding customers from substandard or defective goods and services and ensuring their entitlement to certain rights against producers and suppliers.[40] Consequently, it becomes imperative to adapt and enhance the existing legal framework to address the evolving business landscape and associated complexities effectively. The primary distinctions reside in the observation that prevailing legal frameworks may no longer suffice in addressing the challenges that have arisen in tandem with the advancement of electronic commerce.[41] The topic of consumer protection in the realm of electronic commerce has attracted significant interest from scholars and policymakers alike.[42] The nation of Bangladesh is currently seeing a significant shift towards e-commerce, as an increasing number of consumers are progressively adopting digital services. Nevertheless, it is imperative to consider that enhanced safeguards are required for both consumers and sellers in light of the increasing volume of transactions conducted in the digital

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37 *Ibid.*, 4.

38 *Ibid.*, 5.

39 Qureshi, Ecommerce Security and Protection Plan (2022), <https://www.cloudways.com/blog/ecommer ce-security-tips/> (Accessed on 10 March 2022)

40 Naemah Amin and Mohd Nor, Online shopping in Malaysia: Legal Protection for E-consumers (2013), European Journal of Business and Management www.iiste.org ISSN 2222-1905 (Paper) ISSN 2222-2839 (Online) Vol.5, No.24, 2013.

41 *Ibid.*, 79.

42 Dan Jerker and B. Svantesson, A best practice model for e-consumer protection (2010), <DOI:10.1016/j.clsr.2009.11.006>

realm. The e-commerce sector in Bangladesh lacks a comprehensive and standardized legal framework to regulate the rights of consumers and sellers.[43] The presence of information asymmetry is a contributing factor in this context. It is unreasonable to assume that consumers possess equivalent knowledge as a Mobile Financial Service (MFS) provider. For this reason consumer are misguided most of the cases.[44] The absence of financial literacy and awareness also leads to information asymmetry, hence diminishing consumer protection. The potential for growth and success in the field of e-commerce is highly promising. The monetary worth of transactions conducted in the realm of electronic commerce is experiencing an upward trajectory. However, the advancement achieved thus far could potentially be impeded by deceitful enterprises such as Evaly.[45] The e-Commerce Association of Bangladesh (e-CAB) has taken a significant step towards developing the e-commerce sector with the cabinet's approval of the National Digital Commerce Policy, 2018. Despite the presence of certain inconsistencies, this effort stands out as a positive and optimistic move by Bangladesh.[46] The existing legal framework in Bangladesh does not recognize such online transactions as contract for sale of goods. Moreover, The existing laws relevant to protection of online consumers' rights by its nature is obsolete, mostly superseded by other special laws, no amendment so far has been taken to make it fit for modern era. Paradoxically, the law is completely silent on online offers or descriptions or samples of a product or its similar acceptance.[47]

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43 Tanjina Rahman Priti, E-commerce and protecting the rights of consumers and sellers during pandemic (2020), The Business Standard, Thoughts Section, <https://www.tbsnews.net/thoughts/e-commerce-and-protecting-rights-consumers-and-sellers-during-pandemic-101581>

44 Dr Ahsan H Mansur, Bangladesh Consumer Protection in The Digital Age (2021), The Daily Star, Round Tables,<https://www.thedailystar.net/round-tables/news/bangladesh-consumer-protection-the-digital-age-2183966>

45 *Ibid.*, 1.

46 TyabaTasminTurag, 'Regulatory Framework of doing Online Business in Bangladesh: Problems and Prospects' (*Bangladesh Law Digest*, August 1, 2021) <https://bdlawdigest.org/regulatory-framework-of-doing-online-business-in-bangladesh-problems-and-prospects.html> (Accessed on 1 August 2021)

47 Dr. Sayeda Anju, E–Business in Bangladesh: Need for a Legal Framework (2021), The Daily Star, Law Watch, <https://www.thedailystar.net/law-our-rights/law-watch/news/e-business-bangladesh-the-need-legal-framework-2134561> (Accessed on 20 July 2021).

6. Bangladeshi Existing Laws in Ensuring Online Consumers' Rights

In Bangladesh the laws which cover the issue of e-consumers' rights have been analyzed as per the purpose of the study:

Constitution of Bangladesh: The Bangladeshi Constitution's Article 18 is the particular clause that established the nation's consumer protection laws. Raising the standard of nutrition and improving public health are among the state's main responsibilities. In particular, the state must take effective steps to prevent the consumption of alcohol and other intoxicating beverages, unless they are used for medical reasons or for other purposes that may be mandated by law. Rahman states that in addition, the state has a responsibility to offer education, including consumer education, in accordance with the UN Guidelines, as may be inferred from Article 15 of the Constitution, which deems the provision of basic necessities a fundamental responsibility of the state.[48]

The Penal Code, 1860: As per the Penal Code, 1860, sections 264-267, address violations with weights and measures. Any person who knowingly and dishonestly employs a weighing instrument that he knows to be inaccurate is subject to a fine or imprisonment for a term not to exceed one year, or both. The Penal Code of 1860 also makes it illegal to sell poisonous food or drink, to alter prescription medications, or to pass off one medicine as another. The Code also makes it illegal to use a trademark or logo that is obviously fake. In essence, weights and measurements are the only focus of the penal code.[49]Furthermore, this Act exclusively prioritizes the prevention of food, drink, and drug adulteration. Online buying is not a topic of discussion in this Code.

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[48] Mizanur Rahman, Consumer protection in Bangladesh: Law and practice (1994), Journal of Consumer Policy. 1994 Sep;17(3):349-62.

[49] Nazia Wahab, Online Shopping and Consumer Rights Protection within Bangladesh: A Review of Current Laws and Regulations (2018), Sep 15;4:263–71,<https://www.researchgate.net/publication/344247931_Online_Shopping_and_Consumer_Rights_Protection_within_Bangladesh_A_Review_of_Current_Laws_and_Regulations>

The Contract Act, 1872: The words "Agreement" and "Contract" are given their legal meanings in the Contract Act. Every promise and every combination of promises that constitute the consideration for each other is an agreement and a contract under this Act. The Act also includes a discussion of how to form a contract. The Act specifies the circumstances under which a contract or agreement is null and void. Hence, it is significant to mention that one of Bangladesh's well-drafted laws is the Contract Act. In Bangladesh, a buyer and seller must first reach an agreement before making an online purchase. The agreement, however, is purely digital in character. The Contract Act does not include this virtual means of contract formation anywhere.

The Sale of Goods Act, 1930: The Sale of Goods law in Bangladesh is both extensive. The Act defines various terms to make them clearer. "buyer" means a person who purchases or agrees to purchase goods; "delivery" means the voluntary transfer of possession from one party to another; "deliverable state" means the goods are in a condition where the buyer is obligated to take delivery of them under the terms of the contract; "fault" means an unlawful act or default; "goods" means all kinds of movable property other than actionable claims and money, and includes electricity, water, and other similar services; and "fault". The Act defines Sale and Agreement to sell in a way that is distinct from one another. Moreover, the Act most of the cases protects the seller's interests. Suppose the buyer refuses or fails to take delivery of the goods when the seller is ready and willing to do so and requests that the buyer do so. In that case, the buyer will be responsible for compensating the seller for any damages that result from the delay in delivery and will also have to pay a reasonable charge for the care and custody of the goods. Nothing in this section shall impact the seller's rights where the purchaser's failure or refusal to take delivery constitutes a rejection of the contract, as provided in the stipulation.[50]

To summarize the provision of the Act it is evident that online purchases are outside the scope of this law. A sales contract can be made in various methods, such as verbally, in writing, partially in

[50] TyabaTasminTurag, 'Regulatory Framework of doing Online Business in Bangladesh: Problems and Prospects' (*Bangladesh Law Digest*, August 1, 2021) <https://bdlawdigest.org/regulatory-framework-of-doing-online-business-in-bangladesh-problems-and-prospects.html>

writing and partially verbally, or by the parties' behaviour. Contract formation through the Internet is not available here. Sale by description or sample is addressed in the Act. Additionally, only prior examination is mentioned in the Act. Where exactly a web shopper will make an online acquisition is not specified. How can he or she check out the merchandise in advance? When making a purchase online, a customer is limited to viewing a picture and reading a description of the goods.

The Consumer Protection Act, 2009: For purposes of the Consumers' Right Protection Act of 2009, a "complainant" can be a consumer, a group of consumers with a common interest, a consumer association registered under any Act, the National Consumers' Right Protection Council, or an officer authorized to file a complaint on the Council's behalf, the Government, or an officer authorized by the Government in this regard, a wholesaler or retailer, or the Government itself. The term "complainant" is therefore broadly defined in the Act. The definition of "Fake" is defined by the Act. In this context, "Fake" refers to the unlicensed creation or manufacture of identical or similar items that mimic the look, feel, and function of legitimately advertised products. The act of deceiving individuals through the use of fraudulent ads in order to promote the sale of a product or service is considered a violation of a consumer's rights, as stipulated in Section 2(20)(d). However, when it comes to online transactions, it is frequently seen that the ads of products on platforms such as Face book or open online marketplaces are frequently associated with counterfeit goods. As per the stipulations outlined in section 2(20)(e), failing to deliver purchased goods after getting payment is regarded as an anti-consumer practice.[51]

After analyzing the basic provision, it is found that Complainant is defined broadly by the Act. Any consumer may file a complaint about a problem that occurs because of this law. A narrative definition of "consumer" is also provided under the Act. The anti-consumer practices of the Right are apparently adequately characterized. The Consumer Rights Protection Act of 2009 delegates the responsibility of

[51] Tanjina Rahman Priti, E-commerce and protecting the rights of consumers and sellers during pandemic (2020), The Business Standard, Thoughts Section, <https://www.tbsnews.net/thoughts/e-commerce-and-protecting-rights-consumers-and-sellers-during-pandemic-101581>

receiving and addressing consumer complaints to the Director General. The regulatory body receives a substantial volume of complaints. However, in addressing consumer complaints arising from online transactions, the complainant is often faced with limited opportunities for redress. The incorporation of the phrase "online service" into section 45 of the CRPA 2009 is hypothesized to streamline the process by which relevant authorities address complaints stemming from online business activities. In addition, the idea of "Online Shopping" is absent. Several provisions of the Act make references to deceptive advertising, but they do not provide any guidance on how to do so.

The Special Powers Act, 1974: The terms "black-market" and "hoarding" are defined more precisely in the Act. Infractions under this Act include stockpiling or dealing in contraband, smuggling, adulterating, or selling tainted food, drink, pharmaceuticals, or cosmetics. Consequently, it is evident that smuggling, storing, or selling food, drink, medications, or cosmetics that have been tampered with is prohibited. It would appear that the Act has put an emphasis on adulteration. Fraudulent online advertising practices are sidestepped throughout.

The Information and Communication Technology Act, 2006: It appears that just the means and methods of ICT and cybercrime are addressed in the Act. There is no mention of internet buying whatsoever. The national news and print media have harsh criticisms of it. The claim is that this area is never used for anything other than political evaluation. In addition, it lacks credible evidence. After having overview on the provision, it is important to know that the Act focuses solely on the means and methods of ICT and cybercrime.

On the other hand, it is worth noting that the Federal Trade Commission (FTC) assumes the principal role in the United States with regards to the regulation of electronic commerce operations.[52] In addition, Japan has enacted legislation to address electronic crimes, namely the Law about Electronic Signatures and Certification Services

[52] Adnan Kabir, A Legal Analysis on Resolving Recently Growing Online Business Frauds in Bangladesh (2022), Law Reform, 18(2), 2022, 264-281, Master of Law, Faculty of Law, Universitas Diponegoro. <DOI:10.14710/lr.v18i2.46636>

Law, 2000 and the Unauthorised Computer Access Law, 2013.[53] These laws serve to acknowledge and regulate the use of electronic signatures and certification services, as well as combat unauthorized computer access. The regulatory measures implemented by China in 2002 to administer the Online Banking business have significantly impacted the e-payment system, serving as a noteworthy example.[54] Conversely, it should be noted that even in these nations, there is a lack of dedicated legislation pertaining to the regulation of Internet company operations.

7. Findings of the Study

- The legislation known as the Consumer Rights Protection Act of 2009, was implemented with the primary objective of safeguarding customers' rights. Similar to the Sale of Goods Act, 1930, this Act similarly lacks explicit sections pertaining to e-business, thereby failing to handle internet services specifically.
- Federal Trade Commission (FTC) is the primary U.S. agency in charge of regulating online transactions. UNCITRAL established a model law on electronic commerce, and several of our neighbors, including India, have passed laws recognizing the convention. Countries like India, Japan, China, Indonesia, Malaysia, and many more in the region have already passed required rules in light of the predicted growth of e-commerce in the coming years.
- The Ministry of Commerce has implemented an initiative during the Digital Commerce Direction meeting. This effort involves the Bangladesh Bank acting as a third-party to retain funds until the products are delivered, specifically in cases when advance payment has been made. This development is highly significant, since it represents the initial stride towards enhancing the security of online buying inside Bangladesh's predominantly unregulated e-commerce landscape.

[53] TyabaTasminTurag, 'Regulatory Framework of doing Online Business in Bangladesh: Problems and Prospects' (*Bangladesh Law Digest*, August 1, 2021) <https://bdlawdigest.org/regulatory-framework-of-doing-online-business-in-bangladesh-problems-and-prospects.html>

[54] *Ibid*., 2.

- The appeal of online marketing lies in its ability to provide an equitable opportunity for major corporations and smaller competitors to succeed. Establishing mutual trust is considered to be a highly effective strategy for enhancing the success of e-commerce. Conversely, in the contemporary era, relying on emotional and ethical principles instead of legal norms and laws is not pragmatic. In an alternative perspective, it is imperative for these regulations to effectively safeguard the safety of both sellers and buyers engaged in online commercial transactions.
- The customers are being cheated by extreme inconsistency between exhibited and supplied products through online delivery systems. Furthermore, the exploitation of consumer rights is exacerbated by the presence of a protracted judicial procedure.
- The challenges that significantly impede e-commerce enterprises' smooth operation include delayed product delivery to clients and the adverse impact on shipping processes due to vehicle constraints.

8. Suggestions

- A secure and pleasant business environment is essential for the success of online commerce. The policy should provide customers with comprehensive information regarding delivery specifics, including but not limited to timeframes, costs, and associated terms. Besides, the provision of refunds plays a crucial role in establishing and maintaining trust with clients and it is imperative to have a well-defined refund policy in place.
- In addition to providing customers with accurate product descriptions, it is necessary to include terms and conditions that safeguard the personal interests of both parties. A uniform cancellation policy, a register of transactions, personal data protection, confidentiality maintenance, and an effective mechanism for resolving disputes are also essential.
- It is suggested that distinct sections pertaining to difficulties related to online shopping be incorporated into the current provisions of the Contract Act, 1872 and the Sale of Goods Act,

1930.The regulations pertaining to the rights of online consumers should be revised to align with the evolving landscape of virtual commerce. The implementation of consumer awareness programmes should be undertaken by governmental entities. Therefore, consumers must demonstrate the bravery to engage in peaceful protests and seek legal recourse through appropriate channels.

- Consumers ought to possess the entitlement to access information and be afforded robust legal safeguards in the event that they encounter any deceptive practices within the realm of online marketing. Advertisers and producers must be obligated to provide consumers with comprehensive information regarding the quantity, potency, purity, standard, and price of their products. In the event of non-compliance, advertising agencies should be held responsible for their actions.
- It is suggested that the government implement measures to establish a comprehensive legal framework in order to mitigate obstacles that impede the advancement of e-commerce to the lowest possible extent. Photographs have the potential to be manipulative on certain occasions. In this scenario, it is suggested that consumers are supposed to be provided with the choice to wear the item subsequent to its delivery.
- The phenomenon of online buying has experienced widespread global recognition and acceptance. The prevalence of online purchasing users in Bangladesh is experiencing a significant growth trajectory. To enhance the growth of this industry, it is imperative to augment customer knowledge across a broader spectrum, particularly regarding their rights. The legislature should enact a comprehensive law that guarantees the rights of internet shoppers and encompasses all necessary remedies.

9. Conclusion

The legal framework for commercial concerns is established by several key acts: the Contract Act of 1872, the Sale of Goods Act of 1930, the Consumer's Right Protection Act 2009, and the Competition Act of 2012. In fact, it is worth noting that these acts require updates to address e-commerce's diverse features effectively. In the context of e-

commerce, a contractual agreement is established between the buyer and seller before acquiring a product. The contractual nature in question is of a virtual character. The phenomenon of electronic contracting gives rise to several pertinent inquiries, including the legal enforceability of electronic contracts and the degree to which they can serve as admissible evidence in cases of contractual violation. Nevertheless, it should be noted that Bangladeshi contract law does not provide a specific remedy pertaining to this particular type of contract. Hence, there is a pressing need to build a legislative framework that governs the entire e-commerce industry in order to safeguard the interests of both buyers and merchants. Most importantly, the significance of "online marketing" is on the rise for businesses of all types due to the accessibility of a fast-developing Internet user population, cost-effectiveness, and straightforward strategies. The marketing mix can provide firms with the necessary tools to create leads, increase sales, improve customer retention, and significantly raise company profits, provided that there is a good balance between offline and online advertising strategies. Hence, Bangladeshi businesses need internationally recognized accreditation on quality control, competitive price, and timely delivery to take advantage of the new prospects presented by IT growth. In order to advance the e-commerce sector by overcoming all obstacles, it is imperative to establish a standardized regulatory framework for online business.