

ISSN:

[2957-5052(on line)]

Volume - I, ISSUE – II (2022)

# UAP LAW REVIEW



University of Asia Pacific

## **Advisers**

Professor Dr. Qumrul Ahsan, Vice Chancellor, UAP

Dr. Chowdhury Ishrak Ahmed Siddiky, Associate Professor & Head of Department, Law & HR, UAP

## **Editor-in-chief**

Mr. Md. Asaduzzaman, Associated Professor, Department of Law and Human Rights, UAP

## **Assistant Editor**

Ms. Farzana Akther , Lecturer, Department of Law and Human Rights, UAP

## **Editorial Board**

Mr. Md. Abdur Rahim, Assistant Professor, Department of Law and Human Rights, UAP

Ms. Nazia Wahab, Assistant Professor, Department of Law and Human Rights, UAP

Mr. Md. Saleh Akram, Assistant Professor, Department of Law and Human Rights, UAP

Ms. Alida Binte Saqi , Lecturer, Department of Law and Human Rights, UAP

Ms. Noor-E-Medina Suraiya Jesmin, Lecturer, Department of Law and Human Rights, UAP

Mr. Faran Md. Araf , Lecturer, Department of Law and Human Rights, UAP

## **Scope**

The UAP Law Review (UAPLR) is the official journal of the Department of Law and Human Rights of the University of Asia Pacific. It is a peer reviewed journal providing an objective, multi-disciplinary analysis of significant national and international law issues. The journal publishes articles that combine academic excellence with professional relevance. The journal is targeted to invite exclusive submissions of original articles, book reviews, and case commentaries from undergraduate, graduate, and Ph.D. students as well as early-career researchers, and academics.

## **Disclaimer**

Statements of fact and opinion contained in the UAPLR are those of the individual authors and contributors and are not necessarily those of the Department of Law and Human Rights of the University of Asia Pacific, the editor or the institutions with which the authors and contributors are affiliated. Authors and contributors are responsible for the integrity and accuracy of their material, content and references. The UAPLR, the editorial Board or the University of Asia Pacific do not make any representations, express or implied with respect to the accuracy of the material in the UAPLR and expressly disclaim any responsibility or liability of such material and shall not accept any legal responsibility for any errors or omissions that may have been made.

UNIVERSITY OF ASIA PACIFIC

**UAP LAW  
REVIEW**

Volume-I, ISSUE-II (2022)  
(ISSN: 2957-5052)

## CONTENTS

Page No.

- 
- |  |           |
|--|-----------|
| <b>01. The Role of Laws of Forest in Forest Conservation of Chittagong Hill Tracts</b><br>Ishraque Labib and Soeb Aktar                                | <b>01</b> |
| <b>02. Socio-Legal Analysis of Maintenance of Parents in Bangladesh</b><br>S.M Amanullalal Aman  | <b>21</b> |
| <b>03. Health Care for Male Prisoners in Bangladesh: Law and Practice</b><br>Shahariar Islam Sovon   | <b>39</b> |
| <b>04. A Legal Appraisal of the Protection and Opportunities of Geographical Indication (GI) in Bangladesh</b><br>Dewan Alif Ovi and Abdul Hakim Noyon | <b>57</b> |
| <b>05. Factors facilitating Gender Based Violence in Bangladesh and Difficulties in Accessing Justice: A Legal Analysis</b><br>Protyasha Ahmed Mim     | <b>73</b> |

01

## The Role of Laws of Forest in Forest Conservation of Chittagong Hill Tracts

\*Ishraque Labib

\*\*Soeb Aktar

### **Abstract:**

*Environmental justice rejuvenates the rights of the environment. It is a key element of Bangladesh's fundamental principles of state policy. For implementing environmental rule of law, it is incumbent upon the government to protect the forestry of Chittagong Hill Tracts (CHT) as this region functions as a revitalizing powerhouse for Bangladesh. Unfortunately, day by day, the climate math is getting harder. The environment of Chittagong Hill Tracts is degrading due to human activities and civilization. This article encapsulates the legal framework of protecting CHT forests from destruction. While discussing the legal framework, the authors considered national laws, special laws applicable in CHT, international instruments and customary measures of CHT tribal people. However, in spite of the country's robust environmental legislation, the lack of efficient execution has created gaps that have allowed forest degradation in this region. The Ministry of Chittagong Hill Tracts and the Ministry of Environment and Forest should work together for the betterment of the environment of CHT, as per the provisions of the Rules of Business and Allocation of Business made under the mandate of the Constitution. If the problems with the laws and regulations are solved and proper management of CHT is ensured, forests of CHT can be saved from deforestation.*

**Keywords:** forest, conservation, hill tracts, biodiversity etc.

### **Introduction:**

The Chittagong Hill Tracts (CHT) are indeed the 'lung' of Bangladesh as it absorbs carbon dioxide from the atmosphere and generates oxygen as the repository of forests.<sup>1</sup> From the biocentric point of view, it has significance in and of itself, which gives it the right to exist.<sup>2</sup> It has an important role in regulating our

---

\*,\*\*Students of LL.M., Department of Law, University of Dhaka.

<sup>1</sup> Michael Fleshman, "Saving Africa's Forests, the 'Lungs of the World'" (United Nations January 2008) <<https://www.un.org/africarenewal/magazine/january-2008/saving-africa%E2%80%99s-forests-%E2%80%98lungs-world%E2%80%99&gt;>; accessed July 19, 2022

<sup>2</sup> Roderick Frazier Nash, *The Rights of Nature: A History of Environmental Ethics* (University of Wisconsin Press 1990)

country's temperature, precipitation patterns, watersheds and protecting land-based biodiversity. The problem arises as the postmodern mind has forgotten its sensory orientations, its roots, and its connections to the natural world of processes that it is a part of.<sup>3</sup> As a result, the environmental woes of the Chittagong Hill Tracts are worsening day by day. About 80,000 hectares of forest land have been deforested in the last five years.<sup>4</sup> On the list of climate-vulnerable countries, Bangladesh comes in eighth place. Ten Bangladeshi districts have been classified as climate change "hotspots," with CHT's three districts of Bandarban (second), Rangamati (fourth), and Khagrachari (seventh) all being included in that list.<sup>5</sup> The climate math is getting harder. The former vice president of the United States, Al Gore, considers that humanity must be organized around saving the environment, otherwise they have to face extinction.<sup>6</sup>

The government has enacted certain laws for the forest governance of the Chittagong Hill Tracts but the implementation of it has been a real challenge as Bangladesh fails to concentrate on the crucial aspects of environmental rule of law while enacting and enforcing environmental legislation.<sup>7</sup> It is true that Bangladesh has many laws addressing environmental issues. However, the issue of how effective those laws and policies are at safeguarding CHT's forestry arises. The authors of this article looked for any empirical studies that addressed this specific issue. Although there are studies and researches on the historical and political issues pertaining to the CHT, the authors managed to learn during the course of the study that there is no such focused research on the overall protection mechanism of the CHT forestry. Therefore, the main goal of this article is to discover the available measures for the protection of forestry of CHT while also determining possible ways to reduce deficiencies and fill in the gaps. The method used for this research article is qualitative in nature. The authors managed to draw on a variety of primary and secondary sources, including Acts, Orders, Ordinances, Rules, and Regulations, as well as writings, thesis papers, research articles, and books by national and international scholars. Analyses, reports, and surveys from concerned government, semi-government, non-government organizations, and international organizations were extremely helpful in data collection.

---

<sup>3</sup> Gregory Cajete, 'Native Science and Sustaining Indigenous Communities' in Melissa K Nelson, and Dan Shilling (eds), *Traditional Ecological Knowledge: Learning from Indigenous Practices for Environmental Sustainability* (Cambridge University Press 2018)

<sup>4</sup> Partha Pratim Bhattacharjee and Mostofa Yousuf, "Water Woes Worsen in CHT" *The Daily Star* (November 4, 2021) <<https://www.thedailystar.net/environment/climate-crisis/news/water-woes-worsen-cht-2221496>> accessed July 19, 2022

<sup>5</sup> A K M Azad Rahman and Meer Ahsan Habib, "Saving the Chittagong Hill Tracts Is A National Responsibility: United Nations Development Programme" (UNDP January 28, 2022) <<https://www.undp.org/bangladesh/news/saving-chittagong-hill-tracts-national-responsibility>> accessed July 13, 2022

<sup>6</sup> Albert Gore, *Earth in the Balance* (Houghton Mifflin 1992)

<sup>7</sup> Mohammad Golam Sarwar, "Making a Case for Environmental Rule of Law in Bangladesh" *The Daily Star* (June 8, 2021)

### **Current Environmental Status in the Three Hill Districts:**

The forest wilderness chases our minds, clears our thoughts, and amuses us with its beauty. Both the environment and mankind depend on forests for their survival.<sup>8</sup> The earth's balance is maintained by its hilly terrain.<sup>9</sup> The country's hill forest covers over 13,77,000 hectares, or 9.33 percent of its total area.<sup>10</sup> Of the nations' total forest cover, the CHT area accounts for more than 40%. Although the region's forest resources have traditionally been crucial for the welfare of the local populace and the national economy, managing and using them sustainably is still a difficult task. Despite the fact that trees and plants are the primary constituents of the hill forest ecosystem and represent a variety of economic, social, and environmental values, the CHT forest was, regrettably, historically managed for timber production, and this tendency has transformed the species-rich forest into a secondary one that is species-poor.<sup>11</sup> Deforestation is the core reason for this environmental destruction and is a severe problem for the forested areas. Soil erosion, landslides, and river overflow are all effects of deforestation. The destruction of forests has also resulted in a decline in biodiversity and worsened air quality.<sup>12</sup> Deforestation has invariably devastated the greenery.<sup>13</sup> According to estimates, Bangladesh lost 3.7% of its total natural forests between 2002 and 2020. This percentage surpasses 9% in Chattogram and the Hill Tracts.<sup>14</sup> Also, water shortages are among the major issues in rural regions right now. It is asserted that the piece of land that served as the common outlet for the hilly region's streams and rainfall has vanished, causing streams and springs to dry up as a result of the ecosystem's deterioration.<sup>15</sup> Furthermore, the ecological variety of the forest is being negatively impacted by unrestricted stone extraction in at least 200 streambeds

---

<sup>8</sup> "Why Forests Are Key to Climate, Water, Health, and Livelihoods" (World Bank March 20, 2016) <<https://www.worldbank.org/en/news/feature/2016/03/18/why-forests-are-key-to-climate-water-health-and-livelihoods>> accessed July 21, 2022

<sup>9</sup> Mohamed Akhiruddin Ibrahim, "Mountains as Stabilizers for Earth from the Quranic and Modern Science Perspectives" (2019) 5 vol 5 issue 15 1287

<sup>10</sup> Abu Siddique, "How Deforestation Damaged Water Sources in CHT" Dhaka Tribune (January 8, 2017)

<sup>11</sup> Saiful Islam, "Vanishing CHT Forests: Some Management Suggestions" The Daily Star (February 20, 2010) <<https://www.thedailystar.net/news-detail-127027>> accessed July 19, 2022

<sup>12</sup> Stefan Priesner, "Greening Bangladesh: Celebrating the World Environment Day" The Daily Star (June 5, 2011)

<sup>13</sup> Ronju Ahammad and Natasha Stacey, 'Forest and Agrarian Change in the Chittagong Hill Tracts Region of Bangladesh' in Liz Deakin, Mrigesh Kshatriya and Terry Sunderland (eds), *Agrarian Change in Tropical Landscapes* (Center for International Forestry Research 2016)

<sup>14</sup> Iftekhar Mahmud and Sadhon Bikash Chakma *Orchards Replace Forests in Chittagong Hill Tracts* (March 22, 2022) <<https://en.prothomalo.com/environment/gardens-replace-forests-in-chattogram-hill-tracts>> accessed July 19, 2022

<sup>15</sup> Saiful (n 11)

scattered over the hills of Bandarban.<sup>16</sup> Since the sources are being disrupted by massive stone mining, thousands of people living in the Chittagong Hill Tracts are experiencing a severe shortage of clean drinking water.<sup>17</sup> This increases the likelihood of landslides, worsens the suffering of wildlife, and disrupts the natural balance.<sup>18</sup> Thus, the individuals and ethnic communities living in the hills endure the harshest impact of climate change.<sup>19</sup> Additionally, brick kilns established in CHT in violation of the Brick Kiln Establishment and Brick Manufacturing (Control) Act are endangering the natural life in hill districts which becomes quite clear from the order of the High Court Division to demolish 130 brick kilns and establishments.<sup>20</sup> Addressing these critical issues before the Honorable High Court Division, a writ<sup>21</sup> was filed for protection and conservation of river, mouza forest ecosystem, biodiversity, forest and environment of the three districts of Chittagong Hill Tracts. The High Court Division issued a rule nisi calling upon the respondents in the aforementioned writ petition to show cause as to why appropriate measures shall not be taken for sustainable forest management, ecosystem, biodiversity conservation (floral and faunal diversity), the flow of natural watercourse and water source management (river, stream, spring and lake) and the village common forest or mouza forest under the Chittagong Hill Tracts Regulation and Rules made thereunder.

### **Historical Development of Laws and Policies Applicable in the Chittagong Hill Tracts:**

#### *Administrative History:*

The Chittagong Hill Tracts have always been the hotspot mainly due to its tropical evergreen and semi evergreen forests and encompassing biological and cultural diversity. Historically, the Chittagong Hill Tracts Forest ecosystem is important considering the adverse effects of climate change on the people of Bangladesh as a whole, including the hill tribes. Once it was a part of Chittagong district but later on it was separated from Chittagong by Act XXII of 1860 and appeared as an individual district. Captain Magrath, the first Superintendent of CHT, was assigned charge over the new district who was subordinate to the Division Commissioner of Chittagong. In 1867, the Superintendent's responsibilities were enhanced and he was titled as Deputy Commissioner. Captain Thomas Herbert Lewin was named the first Deputy

---

<sup>16</sup> “Chittagong Hills Tracts: Intensive Mining Threatens Environment and Indigenous Livelihood” (UNPO May 24, 2018) <<https://unpo.org/article/20814>> accessed July 20, 2022

<sup>17</sup> “Indiscriminate Stone Lifting Posing Great Threat to Water Sources” Dhaka Tribune (February 25, 2015) <<https://archive.dhakatribune.com/uncategorized/2015/02/25/indiscriminate-stone-lifting-posing-great-threat-to-water-sources>> accessed July 20, 2022

<sup>18</sup> Sanjoy Kumar Barua and Andrew Eagle, “Streambed in Peril for Stone Extraction” The Daily Star (March 17, 2017) <<https://www.thedailystar.net/backpage/streambed-peril-stone-extraction-1381861>> accessed July 20, 2022

<sup>19</sup> “Indigenous People Worst Sufferers of Climate Change” The Daily Star (May 23, 2021)

<sup>20</sup> “Shut 130 Illegal Brick Kilns in 3 Hill Districts: HC” Business Insider (March 14, 2022)

<sup>21</sup> Writ Petition No. 11622 of 2021

Commissioner of Chittagong Hill Tracts. The Lushai Hills were acquired by the British between 1871 and 1889.<sup>22</sup> After Kukis' incursions ended, Hill Tracts' political significance waned. It was relegated to a subdivision with an Assistant Commissioner as its head. He used to report to the Divisional Commissioner. In 1900, the Chittagong Hill Tracts Regulation was passed, allowing the area to restore its former status. The Superintendent was given the new title of "Officer-in-Charge." Under the aforementioned Regulation, rules were introduced for the effective administration of the Chittagong Hill Tracts. The Hill Tracts were entrusted to the Bohmang, Chakma, and Mong circles, each commanded by a chief. The circles were split into mouzas headed by headmen. Prior to F. D. Ascoli's 1918 proposal to deputize the district's revenue administration, the chiefs administered and collected taxes for the three circles. He advised that headmen under the Chiefs continue to collect taxes, while Deputy Commissioners handle land settlements, alienation, and subletting.<sup>23</sup>

*Legislative history of forest protection:*

Prior to 1947, India, Pakistan, and Bangladesh shared the same legislative history. Most of the states in India had no specific rules for forest management before 1865. The punitive laws were largely centered on stealing and mischief. No attempt was made in Bengal to develop forest laws.<sup>24</sup> Lord Dalhousie established the first forest conservation scheme in 1858.<sup>25</sup> The Forest Act was initially enacted in 1865 based on Rules suggested by the Chief Commissioner for Burma. The Indian Forest Act of 1878 replaced the Act of 1865 with a larger framework. The Chittagong Hill Tracts Regulation, 1900 was promulgated on 17 July 1900. Subsequently, a set of regulations was formed under section 18 of the Chittagong Hill Tracts Regulation, 1900, combining the rules and parent regulation. In 1927, the Indian Forest Act was passed. The Dalhousie Charter turned wasteland into government property and recognized preserved forests. In 1894, the Forest Policy was updated. Forests' role in protecting soil, climate, watersheds, and avoiding erosion, siltation, floods, cyclones, etc. was the focus of this approach. The preference for farming over forests hasn't changed. As a result, even after the policy was implemented, forest removal for agricultural use of land continued unabated and unmodified.<sup>26</sup> Pakistan rewrote the forest policy in 1955 and 1962. After that, the Ministry of Environment & Forest adopted the National Forest Policy,

---

<sup>22</sup> Thomas Herbert Lewin, *A Fly on the Wheel, or How I Helped to Govern India* (WH Allen & Co, 13 Waterloo Place, Pall Mall SW 1998)

<sup>23</sup> Muhammad Ishaq, *Bangladesh District Gazetteers: Chittagong Hill Tracts* (Bangladesh Govt Press 1971)

<sup>24</sup> Mohiuddin Farooque, *Law and Custom on Forests in Bangladesh: Issues & Remedies* (Bangladesh Environmental Lawyers Association 1997)

<sup>25</sup> Mohammad Jashimuddin, "Forest Conservation in Bangladesh: Legal Measures and Policy Support in Relation to Landscapes and Land Use Issues"

<sup>26</sup> Mir Muhammad Hassan, "The Declining Forest and Causes of Deforestation in Bangladesh" (The Declining Forest and Causes of Deforestation in Bangladesh May 6, 2001) <[https://ruchichowdhury.tripod.com/declining\\_forest\\_and\\_causes\\_of\\_deforestation.htm](https://ruchichowdhury.tripod.com/declining_forest_and_causes_of_deforestation.htm)> accessed July 20, 2022

1994. The National Forest Policy, 1994 has crucial features. These include (i) raising the amount of land covered by forests to 20% by 2015, (ii) guaranteeing that the Forest Department, non-governmental organizations, and private persons participate in forestry-related activities, (iii) boosting the efficacy of the Forest Department and the Bangladesh Forest Research Institute (BFRI), (iv) fostering entrepreneurship in the use of forest resources in research, and (v) rejuvenating the Forest Department. Recent National Forest Policy (2016) includes ecosystem services in its goal to provide different ecological benefits for present and future generations.

### **The Environmental Philosophy of Hill Tribes:**

Hill areas are inhabited by tribal and non-tribal people. They've adapted to the environment and protected it for years as guardians of biodiversity. They own, manage, and inhabit land in their traditional way and are interwoven with the environment, natural resources, and ecosystems.<sup>27</sup> An important component of most ethnic peoples' identity is rooted in their spiritual attachment to their cultural history, and environmental heritage is of no exception.<sup>28</sup> They have certain rights including jhuming, forest and water rights, which are reinforced by judicial rulings.<sup>29</sup> The hill people cherish nature and regard themselves as part of it, believing it must be conserved for future generations. Few hill tribes comprehend the phrase 'climate change,' and many are still unaware of it. However, they witnessed changes in weather patterns.<sup>30</sup> The Chittagong Hill Tracts (CHT) in Bangladesh have the highest percentage of forest coverage, measuring about 43%.<sup>31</sup> The ownership of all water resources is shared. As water shortage is a major problem, they prioritize protecting the local waterfalls and jhiris. They are so concerned about the environment that they don't cut down shrubs and trees near fountains, jhiris, and rivers even while jhuming. It's conceivable for river banks to collapse and filth to enter once-pure streams. They uproot bushes and place them in waterways to offer shelter for fish and other species.<sup>32</sup> Rivers are crucial to their identity, ancestry, and relationship to nature. The Sangu River is vital to local communities since

---

<sup>27</sup> "Indigenous Peoples and the Nature They Protect" (UNEP) <<https://www.unep.org/news-and-stories/story/indigenous-peoples-and-nature-they-protect>> accessed July 13, 2022

<sup>28</sup> Ranjan Datta, "Implementation of Indigenous Environmental Heritage Rights: An Experience with Laitu Khyeng Indigenous Community, Chittagong Hill Tracts, Bangladesh" (2019) 15 *AlterNative: An International Journal of Indigenous Peoples* 309

<sup>29</sup> Raja Devasish Roy, "Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh" 21 *Arizona Journal of International & Comparative Law* <<http://arizonajournal.org/wp-content/uploads/2015/11/Royarticle.pdf>> accessed July 18, 2022

<sup>30</sup> Md Habibur Rahman and Khurshed Alam, "How Are Indigenous Forest-Dependent Communities in Bangladesh Drawing on Local Knowledge to Adapt to Climate Change?" (South Asia@LSE July 1, 2016) <<https://blogs.lse.ac.uk/southasia/2016/07/01/how-are-indigenous-forest-dependent-communities-in-bangladesh-drawing-on-local-knowledge-to-adapt-to-climate-change/>> accessed July 18, 2022

<sup>31</sup> A K M (n 5)

<sup>32</sup> পার্বত্য চট্টগ্রামের ভূমি সংক্রান্ত প্রথা ও রীতি (Chittagong Hill Tract Regional Council May 2013)

inhabitants in adjacent upazilas rely on it to move and convey their supplies.<sup>33</sup> Hutchinson describes the scenery throughout the district as picturesque.”<sup>34</sup> Undoubtedly, it has majestic natural beauty.<sup>35</sup>

### **Forest Protection in International Law:**

The world's forests, like other natural resources, are threatened. Deforestation and environmental destruction have refocused global attention on forest protection. Forest preservation illustrates the interplay between economic and industrial interests and environmental concerns.<sup>36</sup> In the 20th century, multilateral or global environmental agreements developed significantly. Yet, there is no legally binding international agreement on forest management, conservation, and preservation. The 1972 Stockholm Conference on the Human Environment of the United Nations and the 1992 Rio Declaration on Environment and Development marked a fundamental change in international environmental law. International law includes the most comprehensive regulations for water, soil, atmosphere, and biodiversity.<sup>37</sup> The international legal and regulatory structures scarcely cover forest conservation. A convention to stop the loss of world forests has not yet been adopted.<sup>38</sup> At the 1992 Rio Earth Summit, one of the first documents to particularly address forest conservation was adopted. The principles reflect a first global consensus on forests. Principle 3 states that national policies and programs should serve as a foundation for enhanced efforts to manage, conserve, and sustainably utilize forests and forest regions. Principle 8 requires every nation to take constructive and transparent action toward reforestation, afforestation, and forest protection, if needed.

Agenda 21 is a non-binding plan to implement the Rio Declaration. Agenda 21's Chapter 11 addresses deforestation. Four program regions are set up to preserve forests by conserving their roles and functions, strengthening conservation and sustainable management of forests, supporting effective resource use and evaluation, and developing the ability to plan and evaluate forests and their surroundings.

UNFF is another legal weapon for forest conservation. Its goals are to increase political commitment and action at all levels to implement effective sustainable management of all types of forests and to achieve shared global objectives on forests; to increase the contribution of forests to internationally agreed development goals, particularly poverty eradication and environmental sustainability; and to provide a

---

<sup>33</sup> “Chittagong Hills Tracts: Intensive Mining Threatens Environment and Indigenous Livelihood” (UNPO May 14, 2018) <<https://unpo.org/article/20814>> accessed July 13, 2022

<sup>34</sup> R H Sneyd and Hutchinson, *Eastern Bengal and Assam District Gazetteers: Chittagong Hill Tracts* (Pioneer Press 1909)

<sup>35</sup> Willem van Schendel, Wolfong Mey and Aditya Kumar Dewan, *Chittagong Hill Tracts: Living in a Borderland* (The University Press Ltd 2001)

<sup>36</sup> Aurelija Pūraitė, “Impact of International Legal Instruments on Forests' Protection”

<sup>37</sup> Richard BurnetHall and Brian Jones, *Burnett-Hall on Environmental Law* (2nd edn Sweet & Maxwell 2009)

<sup>38</sup> Aurelija (n 35)

framework for incentivizing forest management. As with the 1992 Forest Principles, the instrument is non-justiciable.

Traditional international law emphasizes sovereign equality and non-interference. State sovereignty is a powerful but not unbreakable or impregnable right. Sovereign equality is reciprocal.<sup>39</sup> "Sic utere tuo ut alienum non laedas" is a Latin proverb that implies one shouldn't use one's possessions to injure others. This idea is the cornerstone of global environmental law. In the Trail Smelter Arbitration, this aphorism was affirmed. The Court also concluded that the legality of the threat or use of Nuclear weapons instilled culpability for transboundary harm. According to the ICJ, the environment is not a solely philosophical construct; it symbolizes people's living conditions, standard of living, and physical health, including that of future generations. International environmental law acknowledges the necessity for governments to ensure their operations to protect the environment of other countries or areas.<sup>40</sup> In the Gabcikovo-Nagymaros Project, the International Court of Justice reaffirmed the precautionary principle.<sup>41</sup> Most forest preservation treaties are non-binding. Forest protection is one of the least regulated non-internationally protected ecosystem aspects. While "soft law" procedures are important in international environmental law, notions agreed at conferences, summits, etc. may not be recognized as customary international law. "Soft law" helps establish agreements or emphasize future legal requirements in international environmental lawmaking.<sup>42</sup> In the Glasgow Leaders' Declaration on Forests and Land Use, world leaders stressed the need to protect critical and interrelated forest functions, safeguard biodiversity, and use land responsibly. Bangladesh was one of 145 countries that signed it.<sup>43</sup>

### **Constitutional Protection:**

Considering the urgency and importance of environmental protection and the negative effects of climate change, deforestation, and biodegradation, the Parliament of Bangladesh has included a provision for protecting and improving the environment and preserving natural resources and biodiversity in Article 18A of the Constitution by the Fifteenth Amendment Act of 2011.<sup>44</sup> Again, cultural traditions and local knowledge of the tribal people have contributed to biodiversity preservation and the sustainable use of

---

<sup>39</sup> Sean Patrick O'Reilly (International Law's Role in the Prevention of Mass Deforestation) <<https://www.toaep.org/pbs-pdf/99-deforestation/>> accessed July 20, 2022

<sup>40</sup> Corfu Channel Case (UK v Albania) (Merits) [1949] ICJ Rep 4

<sup>41</sup> Gabcikovo-Nagymaros Project case (Hungary vs Slovakia) <<https://www.icj-cij.org/public/files/case-related/92/092-19970925-JUD-01-00-EN.pdf>> accessed 17 July 2022

<sup>42</sup> Aurelija (n 35)

<sup>43</sup> "Glasgow Leaders' Declaration on Forests and Land Use" (UN Climate Change Conference (COP26) at the SEC – Glasgow 2021 July 19, 2022) <<https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>> accessed July 20, 2022

<sup>44</sup> Surendra Kumar Sinha, "Contribution of the Judiciary of Bangladesh in Strengthening Rule of Law and Democracy" (October 5, 2015)

habitats.<sup>45</sup> Their use of traditional knowledge to maintain biodiversity would ensure biological heterogeneity and increase their participation in protected areas' administration and operation.<sup>46</sup> Article 23A of the Constitution protects and develops the culture and traditions of ethnic groups and minor races. As the CHT area is vital to the country's natural and environmental balance, its degradation would disrupt the balance of people's lives. A person's constitutional right to life also includes the need for clean air and a healthy environment, as stipulated by Article 32.<sup>47</sup>

### **Special Conservation Measures:**

All prevailing laws in the nation are not applicable to these hill districts, and only those provisions not conflicting with the Regulation and the rules enacted under section 18 of the Chittagong Hill Tracts Regulations, 1900 for the time being shall be deemed to apply in this region.<sup>48</sup> The Chittagong Hill Tracts region is specially governed by the Hill Tracts Manual consisting of the Chittagong Hill Tracts Regulation, 1900 and the rules made thereunder. The Chittagong Hill Tracts Regulation, 1900 strives to offer tribal people special advantages and preserve their culture, traditions, and customs.<sup>49</sup> The CHT Forest Transit Rules 1973, made under the Forest Act, 1927, restrict the removal of timber and forest produce from hilly terrains. Forest products cannot be taken from reserved or protected forests without Forest Directorate's authorization. When dealing with other government-owned areas, the Divisional Forest Officer or another approved person must be contacted for consent.<sup>50</sup> This rule regulates, controls, and supervises saw-pits and timber depots. Whoever owns or proposes to set up a saw-pit or timber depot must seek a license from the Divisional Forest Officer and produce his accounts upon demand. Failure to present an account may result in blacklisting, business forfeiture, and license termination.<sup>51</sup> Obstructing rivers, streams, or canals for timber transport is illegal.<sup>52</sup> Chittagong Hill Tracts Regulation prohibits the same.<sup>53</sup> The CHT Peace Accord of 1997 recommended adding preservation and development of the Chittagong Hill Tracts' environment to the Regional Councils' responsibilities and functions.<sup>54</sup> This was reflected in all three District Councils Acts of 1989 which are under the supervision and coordination of

---

<sup>45</sup> Goutam Dewan, "Conservation and Its Impact on the Rights of Indigenous Peoples"

<sup>46</sup> Claudia Sobrevila, *The Role of Indigenous Peoples in Biodiversity Conservation* (The World Bank 2008) <<https://documents1.worldbank.org/curated/en/995271468177530126/pdf/443000WP0BOX321onservation01PUBLIC1.pdf>> accessed July 18, 2022

<sup>47</sup> *Dr Mohiuddin Farooque vs Bangladesh* (1997) 17 BLD (AD) 1

<sup>48</sup> *Wagachara Tea Estate vs Md Abu Taher* (2017) 69 DLR (AD) 381

<sup>49</sup> *Bangladesh vs Rangamati Food Products* (2017) 69 DLR (AD) 432

<sup>50</sup> Chittagong Hill Tracts Forest Transit Rules, 1973, r 3.

<sup>51</sup> Chittagong Hill Tracts Forest Transit Rules, 1973, r 4(1)

<sup>52</sup> Chittagong Hill Tracts Forest Transit Rules, 1973, r 7(1)

<sup>53</sup> Rules Made Under section 18 of the Chittagong Hill Tracts Regulation, 1900, r 34A.

<sup>54</sup> Chittagong Hill Tracts Peace Accord, 1997, r 34

the CHT Regional Council formed under the Regional Councils Act, 1998. Karbari, Headman, and Deputy Commissioner are also tasked with safeguarding the natural ecology.

### **Headman's Responsibility:**

Rule 48 of the Rules made under the Chittagong Hill Tracts Regulations, 1900, requires the Deputy Commissioner to communicate with the Chief before recruiting the headman. He leads the mouza, the lower administrative echelon.<sup>55</sup> He's responsible for ensuring environmental preservation and sustainability for present and future generations. The headman preserves his mouza's natural resources. He conserves and nurtures the VCF's natural resources, including ensuring water flows in small streams and rivers.<sup>56</sup> He can exclude any area from the concerned mouza in jhuming territory to retain it as a bamboo, lumber, and other forest product reserve.<sup>57</sup> Rule 54(6) allows him to detain anyone with opium or opium plants. The opium poppy business destroys forests and trees.<sup>58</sup> So, the headman can stop environmental degradation under his statutory jurisdiction.

### **Responsibilities of the Deputy Commissioner:**

Opium damages soil and harms the ecosystem. The Deputy Commissioner has been empowered to deal with cultivation of poppy opium.<sup>59</sup> He has the authority to keep an eye on the free flow of water in the rivers and streams. Stoppage or diversion is absolutely banned without approval from the Deputy Commissioner.<sup>60</sup> He can outlaw jhuming and farming near riverbanks. This rule aims to prevent downstream floods caused by river silt. This rule's violation has been designated a criminal offense.<sup>61</sup> Rule 41 of CHT Regulations, 1900 allows the Deputy Commissioner to restrict jhuming if he finds it unsustainable for the environment. He can declare any location off-limits for jhuming.

### **National Laws to Combat Forest Degradation:**

A few laws and regulations particularly deal with forestry. The key legislation addressing the issue of deforestation includes, but is not limited to, the Forest Act of 1927, the Bangladesh Biodiversity Act of 2017, the Brick Manufacturing and Brick Kilns Establishment (Control) Act of 2013, the Bangladesh

---

<sup>55</sup> Rokeya Chowdhury, 'Land Dispute Resolution in the Chittagong Hill Tracts Caught between Liberalism and Legal Pluralism' (LLM thesis, McGill University 2012)

<sup>56</sup> USAID's Chittagong Hill Tracts Watershed Co-Management Activity: Assessment of Floral and Faunal Diversity in the Village Common Forests of the Chittagong Hill Tracts (August SID-CHT Project, UNDP 2021)

<sup>57</sup> Rules Made Under section 18 of the Chittagong Hill Tracts Regulation, 1900, r 41A(b).

<sup>58</sup> UNODC, 'Coca Cultivation in the Andean Region: A Survey of Bolivia, Colombia and Peru' (June 2006)

<sup>59</sup> Rules Made Under section 18 of the Chittagong Hill Tracts Regulation, 1900, r 13(1).

<sup>60</sup> Rules Made Under section 18 of the Chittagong Hill Tracts Regulation, 1900, r 34A.

<sup>61</sup> Rules Made Under section 18 of the Chittagong Hill Tracts Regulation, 1900, r 34B.

Environment Conservation Act of 1995, the Mines Act of 1923, the Mines and Mineral Resources (Control and Development) Act of 1992, the Mines and Minerals Rules of 2012, the Bangladesh Environment Conservation Rules of 1997, the Rules made under the Chittagong Hill Tracts Regulation of 1900, the Chittagong Hill Tracts Forest Transit Rules of 1973 and the Saw-mill (License) Rules of 2012.

The Forest Act of 1927 is Bangladesh's principal forest-protection law (Act XVI of 1927). The Act was enacted to safeguard and maintain both public and private forests. In 1930, it underwent its first amendment. After 1947's partition of India, it was revised in 1949 and 1962. Following Bangladesh's independence in 1974, the Act was revised multiple times, but in 1989 major changes were made. In 1989, it was updated to strengthen forest preservation by increasing fines for offenders and restricting magistrates' flexibility. The Forest Act of 1927 regulates reserve, protected, and village common woods. Forest crimes and sanctions are outlined, as is the transportation and transit of forest goods. The Forest Department must give permission for every activity that takes place within a reserve forest.<sup>62</sup>

The Environmental Conservation Act of 1995 covers a wide range of environmental issues. The principal purpose of this Act is to safeguard the country's forests and other natural resources. The creation of the Department of Environment was motivated by the need to effectively address environmental issues. The Director General of the Department of Environment, who currently has vast responsibility, is in charge of protecting the environment and biodiversity. Hill cutting is expressly prohibited by this Act if not authorized beforehand and for the necessary justifications.<sup>63</sup> By identifying these sites as ecocritical, endangered flora and animals can be protected.<sup>64</sup>

The Bangladesh Biodiversity Act, 2017 governs biodiversity conservation and fair benefit-sharing of biological resources. The Act includes provisions related with designation of selected regions as national heritage sites, limitations on activities that may impair biodiversity, an investigation into offenses impacting biodiversity, and direct punishment for relevant defaults.<sup>65</sup>

The Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013 prohibits building brick kilns in residential, protected, commercial, public or private woods, sanctuaries, gardens, or wetlands. Wood as fuel in brick kilns is strictly forbidden by law. Brickmakers can only utilize coal that meets

---

<sup>62</sup> Abu Mustafa Kamal Uddin, 'Forest Management in Bangladesh: A Critical Analysis' (PhD thesis, University of Dhaka 2019)

<sup>63</sup> Environment Conservation Act, 1995, s 6B.

<sup>64</sup> Environment Conservation Act, 1995, s 5.

<sup>65</sup> Bangladesh Biodiversity Act, 2017, s 33.

certain standards of sulfur, ash, mercury, etc.<sup>66</sup> The maximum sentence for using wood as fuel is three years in prison, a fine up to three lakhs, or both.<sup>67</sup> So, this Act protects forests by making it illegal to use it as fuel for brick kilns.

In order to prohibit illegal wood trade and wood consumption, the Saw-mill (License) Rules, 2012 were made, which have the Forest Act of 1927 as its parent Act. As per the Forest Act of 1927, it is illegal to build a sawmill within ten kilometers of any protected forest.<sup>68</sup> Owners of sawmills are obligated to keep a record of the wood and other forest products they buy and sell. There are repercussions for breaching these rules.<sup>69</sup> Given that these sawmills get the majority of the wood harvested from the forests, this rule is a keystone for the preservation of forest resources.

Although mining is not necessarily the main causative factor of deforestation and forest degradation, its cumulative and indirect effects on the forest can be substantial.<sup>70</sup> Due to the expected demand for iron ore, copper, gold, nickel, cobalt, and bauxite, these commodities are often found in crucial forest habitats, and mining there harms the forest. Bangladesh's mining sector is governed by the Mines Act of 1923, the Mines and Minerals Resources (Control and Development) Act of 1992, and the Mines and Minerals Rules of 2012. Chief Inspector and Inspector of Mines supervise Mines Act of 1923's rules, and regulations.<sup>71</sup> According to the Mines and Mineral Resources (Control and Development) Act of 1992, mining and related operations are illegal unless they are authorized by a license issued by the Act.<sup>72</sup> The Mines Rule made under this Act prohibits illegal labor and monitors unlicensed mining, quarrying, and disposal of minerals.<sup>73</sup> For sustainable mining and pollution reduction, the license holder must follow the Environment Conservation Act of 1995, try to contribute to afforestation, and focus on tree plantation around the mining or quarry.<sup>74</sup>

---

<sup>66</sup> Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013, s 6.

<sup>67</sup> Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013, s 16.

<sup>68</sup> Saw Mills (License) Rules, 2012, r 7.

<sup>69</sup> Saw Mills (License) Rules, 2012, r 12.

<sup>70</sup> Siân Bradley, "Mining's Impacts on Forests Aligning Policy and Finance for Climate and Biodiversity Goals" (Chatham House – International Affairs Think Tank October 14, 2020) <<https://www.chathamhouse.org/2020/10/minings-impacts-forests-aligning-policy-and-finance-climate-and-biodiversity-goals/1>> accessed July 21, 2022

<sup>71</sup> Mines Act 1923, s 6

<sup>72</sup> Mines and Minerals Resources (Control and Development) Act, 1992, s 3.

<sup>73</sup> Mines and Minerals Rules 2012, r 67.

<sup>74</sup> Mines and Minerals Rules 2012, r 42.

The Wildlife Conservation Act, 2012 safeguards wildlife and designated floras against exploitation.<sup>75</sup> It asserts in section 9 to release wildlife and not cage them unless required, which is essential for conserving the environment. Section 14 allows the government to declare any place a sanctuary, in which case neither tree cutting nor altering a natural watercourse is permitted. Violation of the provisions of this law has been stated to be a punishable offense.

### **Problems and Loopholes:**

- Rule 34A of the Rules made under section 18 of the Chittagong Hill Tracts stipulates that the Deputy Commissioner can permit changing or diverting the flow of the natural watercourse but does not specify the grounds on which the Deputy Commissioner shall allow the change. In the case of mining, the Mines and Mineral Rules, 2012 specify the grounds of satisfaction for licensing but do not provide any specific ground for relicensing in Rule 65. There is no set of standards for how and when the Director or Deputy Commissioner will be satisfied. This paves the way to arbitrariness and the scope for corruption.
- Section 65A of the Forest Act creates a passage for appointing Deputy Rangers as the prosecution to lead the case. A Deputy Forest Ranger generally does not possess a legal mind and hence he may have certain shortcomings and inefficiency. This may create havoc by disrupting environmental justice resulting in lack of transparency and accountability.<sup>76</sup>
- There is no specialized environment court in the three hill districts.<sup>77</sup> This is a clear violation of access to justice and an impediment in establishing the rule of law under Article 31 of the Constitution of Bangladesh.
- Environment courts only deal with offenses recognized in the Environment Conservation Act.<sup>78</sup> So, offenses under the other acts e.g. the Forest Act have to be dealt with separately. This indicates the scattered and inharmonious environmental legislations of Bangladesh. Almost 200 laws exist separately to deal with environmental issues but there is a serious lack of coherence between them.
- The punishment and penalties for forest infractions are frequently out of proportion to the gravity of the offense. The sentence and fine are relatively nominal but the offense's severity and the profit margin are high. With such low strictness, the offenders continue to commit the same offense.

---

<sup>75</sup> Wildlife Conservation Act, 2012, s 6(1).

<sup>76</sup> Md Sanaul Islam Tipu and Ashif Islam Shaon *Why We Need an Independent Public Prosecution Service* (July 6, 2017) <<https://archive.dhakatribune.com/bangladesh/2017/07/06/need-independent-public-prosecution-service>> accessed July 22, 2022

<sup>77</sup> Md Zakir Hossain, "Environmental Justice through Special Magistrate Court" *The Daily Sun* (February 24, 2021)

<sup>78</sup> Environment Courts Act, 2010, s 7(1).

- Lack of strict adherence to Chittagong Hill Tracts Forest Transit Rules, 1973 and its shortcomings are liable for widespread deforestation in the CHT and the transportation of the woods to other regions of the country. The illegal transporters have to bribe numerous offices and checkpoints, according to the report of Transparency International Bangladesh.<sup>79</sup> Strong allegations state that law enforcement agencies are accused of conspiring with them in unlawful trafficking.<sup>80</sup> It creates more scope for organized crime.
- Conservation of the environment in the Chittagong Hill Districts encompasses the jurisdiction of both the Ministry of Environment as well as the Ministry of Chittagong Hill Tracts but there is a lack of coordination and cooperation between the two ministries which results in more environmental exploitation and destruction of wildlife.
- The Forest Act is a colonial act designed for revenue generation from the forests and not for the purpose of protecting the environment. This act has been archaic and is not able to fulfill the demand of the century.

### **Prospects:**

#### *Societal Participatory Actions:*

Forest and watershed management within a tribe are seen as part of their sociocultural traditions. The community has made use of their shared water system. Their societal variety allows them to live idiosyncratically. Customarily the tribal community deems para forests and mouza forests to be naturally conserved forests and protects them. The karbari and the headman serve as the leaders of the village and mouza respectively. They guide tribes in protecting and managing the forests. These are home to several species that are endangered worldwide.<sup>81</sup> Separate spaces are managed for livestock. Collectively, they are the owners of these areas.<sup>82</sup> Additionally, tribal people continue to be extremely vigilant to prevent noise and sound pollution.<sup>83</sup> Tribal people use this knowledge to monitor their natural resource use and management and to build their own cultural values, traditions, and worldviews. This is why the Appellate Division recognizes their contribution and clearly states that the object of promulgating the Chittagong Hill Tracts Regulation, 1900 is for giving special privilege to the tribal people of the three hill districts

---

<sup>79</sup> M S Siddiqui, "Seeking Amendment to The Chittagong Hill Tracts Transit Rules" *Daily Asian Age* (February 16, 2020) <<https://dailyasianage.com/news/218868/seeking-amendment-to-the-chittagong-hill-tracts-transit-rules>> accessed July 22, 2022

<sup>80</sup> Ibid

<sup>81</sup> Jeremy Hance, "Tiger Country? Scientists Uncover Wild Surprises in Tribal Bangladesh" *The Guardian* (May 1, 2016)

<sup>82</sup> পার্বত্য (n 32)

<sup>83</sup> Thomas Herbert Lewin, *The Hill Tracts of Chittagong and the Dwellers Therein; with Comparative Vocabularies of the Hill Dialects* (Bengal Print Co 1869)

and to preserve and protect their culture, traditional practices, and customs.<sup>84</sup> These folks adopt a range of coping techniques to deal with environmental deterioration.<sup>85</sup> This traditional ecological knowledge is employed for resource management, as well as for the mitigation of natural disasters. Three hill tract regions currently contribute 15% of the nation's total fruit production.<sup>86</sup> Even after all of this, these communities contribute significantly in production of tobacco in the hill districts which are typically found next to running water sources since tobacco cultivation requires a lot of water.<sup>87</sup> It degrades the fertility of the soil, pollutes the water, and threatens the environment and human life.<sup>88</sup>

*Conserving Mouza Forests:*

Village common forests, also known as mouza forests, are natural woodlands maintained and managed by surrounding communities. It serves a significant role in biodiversity protection and sustaining the hill tribes. Environmental activists consider local communities to be the locust of environmental conservation, which is largely dependent upon VCF in this scenario.<sup>89</sup> Residents of the concerned mouza are allowed to use those only for personal purposes, but non-residents are not allowed to use them for any reason at all.<sup>90</sup> The VCF region has a ban on all fireworks.<sup>91</sup> In the hilly regions of Bangladesh, VCFs sustainably support ethnic people's demands for biomass for livelihoods, food production, and other purposes.<sup>92</sup> For both forest products and the services provided by the forest ecosystem, humans have been incredibly reliant on the forests. It includes soil fertility and water yield.<sup>93</sup> VCFs serve as a sustainable source of

---

<sup>84</sup> Bangladesh vs Rangamati Food Products (2017) 69 DLR (AD) citing Wagachara Tea Estate vs Md Abu Taher (2017) 69 DLR (AD) 394

<sup>85</sup> Joydeb Garai, Hok Bun Ku and Yang Zhan, "Climate Change and Cultural Responses of Indigenous People: A Case from Bangladesh" (2022) 4 Current Research in Environmental Sustainability 100130

<sup>86</sup> Buddhajoti Chakma, Sadhon Bikash Chakma and Joyanti Dewan, "Chittagong Hill Tracts Is the New Fruit Hub" Prothom Alo (July 3, 2022)

<sup>87</sup> Nazmin Nahar Sultana and others, "Environmental Damage and Land Use Change from Tobacco Farming: A Spatio-Temporal Study in Bandarban, Bangladesh" 11 Bangladesh Journal of Environmental Research

<sup>88</sup> Shantimoy Chakma, "Tobacco Cultivation Poses Threat to Environment in CHT" The Daily Star (Rangamati May 21, 2009)

<sup>89</sup> Arun Agrawal and Clark Gibson, "Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation" (1999) 27 World Development 629

<sup>90</sup> Rules Made Under section 18 of the Chittagong Hill Tracts Regulation, 1900, r 41A(a).

<sup>91</sup> Mohammed Abdul Baten and others, "Village Common Forests in Chittagong Hill Tracts, Bangladesh: Balance between Conservation and Exploitation" (India Environment Portal)

<<http://www.environmentportal.in/files/Village%20Common%20Forests.pdf>> accessed July 14, 2022

<sup>92</sup> Kamrul Islam, Jashimuddin and Nuralam Hossain, "Tree Diversity and Management of Village Common Forests in Bandarban" (2017) 1 Environment, Earth and Ecology 39

<sup>93</sup> USAID's (n 55)

energy for the concerned community at large.<sup>94</sup> The law does not permit the Forest Department to encroach into the domain of VCF, which is managed by community people as per the Chittagong Hill Tracts Regulations 1900 and Rules made thereunder. The said management of the mouza forest by the community people is a part of culture and tradition protected by article 23A read with Article 28(4) of the Constitution of the People's Republic of Bangladesh.

*Role of Jhum Cultivation:*

The tribal communities of the Chittagong Hill Tracts primarily depend on jhum cultivation.<sup>95</sup> Their cultural identity is centered around jhuming. Farmers from ethnic minorities cultivate a number of swidden fields in cycles using a practice called jhuming. These are done on collectively owned land.<sup>96</sup> They locate a nice slope in the hills in April and after a few days, they burn it down and remove the unwanted trees leading to deforestation and biodiversity loss. The ashes work as fertilizer.<sup>97</sup> After the entire jhum region has been burned, traditional food crops are planted alongside wood and other trees. This is a true example of reforestation. Whether jhuming really has an adverse impact on the environment is a debatable concern. Research shows that in jhum cultivation, degradation of the environment is caused by haphazard forest fires.<sup>98</sup> Jhum, according to research, is a significant contributor to the CHT's deforestation, which speeds up soil erosion.<sup>99</sup> Setting fire and burning have a significant negative impact on soil quality. Following burning, the quantity of microorganisms initially declines.<sup>100</sup> However, other experts contend that jhuming agriculture is not primarily to blame for deforestation, soil erosion, fertility loss, or the decline in biodiversity as previously believed.<sup>101</sup> Tax on jhums is a source of revenue for the

---

<sup>94</sup> Mohamed Jashimuddin and Makoto Inoue, "Management of Village Common Forests in the Chittagong Hill Tracts of Bangladesh: Historical Background and Current Issues in Terms of Sustainability" (2012) 02 Open Journal of Forestry 121

<sup>95</sup> Pierre Bessaignet, *Tribesmen of the Chittagong Hill Tracts* (Bangla Academy 1977)

<sup>96</sup> পার্বত্য (n 31)

<sup>97</sup> Rajkumari Chandra Kalindi Roy, *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts*, Bangladesh (IWGIA, International Work Group for Indigenous Affairs 2000)

<sup>98</sup> A S Chakma and B S Nahar, "Jhum Cultivation Influence the Degradation of Hilly Environment" (2013) 5 *Journal of Environmental Science and Natural Resources* 339

<sup>99</sup> Ole Borggaard, Abdul Gafur and Leif Petersen, "Sustainability Appraisal of Shifting Cultivation in the Chittagong Hill Tracts of Bangladesh" (2003) 32 *AMBIO: A Journal of the Human Environment* 118

<sup>100</sup> Isabel F Ahlgren and Clifford E Ahlgren, "Effects of Prescribed Burning on Soil Microorganisms in a Minnesota Jack Pine Forest" (1965) 46 *Ecology* 304

<sup>101</sup> Tapan Kumar Nath, M Inoue and S Chakma, "Shifting Cultivation (Jhum) in the Chittagong Hill Tracts, Bangladesh: Examining Its Sustainability, Rural Livelihood and Policy Implications" (2005) 3 *International Journal of Agricultural Sustainability* 130

government.<sup>102</sup> Currently, jhum is allegedly no longer a viable land use strategy considering the environmental aspect, according to researchers and policymakers.<sup>103</sup>

### **UNDP's Implications in Environmental Protection of CHT:**

For a considerable length of time, the Chittagong Hill Tracts have been the focus of UNDP's efforts to safeguard residents against environmental disasters.<sup>104</sup> In addition to many other activities, they support CHT's development, policy making, biodiversity preservation, and natural resource management.<sup>105</sup> They've participated in a variety of projects in Bangladesh and contributed by organizing meetings and producing research and reports on environmental and other concerns. UNDP runs the CHT Climate Resilience Initiative (CCRP) alongside DANIDA as part of the "Strengthening Inclusive Development in CHT (SID-CHT)" project.<sup>106</sup> They have discovered the richness of flora and fauna in the Chittagong Hill Tracts and conducted extensive studies on how to manage, conserve, and preserve them. They have been working at the local level to help the Chittagong Hill Tracts and Bangladesh grow in a way that is sustainable.

### **Way Forward:**

- Natural forest should remain as it is and no foreign trees should be planted.
- A high part administrative committee must be formed consisting of Forest, Environment and Climate Change, Land and the Chittagong Hill Tracts Minister including the Chief Conservator of Forest, the DG of Environment Directorate, renowned professors of environment department, concerned three Circle Chiefs, the Chairman of three Hill District Councils and the Chairman of the Regional Council thereof.
- A district level committee should be formed including communities of tribal people and concerned officials of the government.
- A special parliamentary standing committee ought to be formed to oversee and ensure accountability and transparency.<sup>107</sup>

---

<sup>102</sup> Rules Made Under section 18 of the Chittagong Hill Tracts Regulation, 1900, r 42(1).

<sup>103</sup> Tapan (n 102)

<sup>104</sup> 'UNDP to Support Environmental Action Plan for CHT' The Daily Star (29 June 2000)

<<https://www.thedailystar.net/news/undp-to-support-environmental-action-plan-for-cht>> accessed 17 July 2022

<sup>105</sup> "Chittagong Hill Tracts: UN Development Program to Improve Indigenous Quality of Life" (UNPO October 29, 2018) <<https://unpo.org/article/21190>> accessed July 17, 2022

<sup>106</sup> UNDP, 'Climate Resilience and Sustainable Energy Programme under Denmark's Bangladesh Country Programme 2016-2021' (December 2020)

<sup>107</sup> Constitution of the People's Republic of Bangladesh,( A-76).

- Certain attempts should be made to reduce the impact of environmental deterioration, conserve the environment, and protect it from undesired adverse impacts.
- Nature should exist in its own way and should not be manipulated. Only in the case of severe national emergencies may alteration of the natural flows of a watercourse be allowed. This too shall be subjected to objective satisfaction. Standards of satisfaction must be incorporated in the environmental legal provisions.
- The amount of fine as penalty is a very minimal amount which shall have to be increased.
- Provisions for afforestation have to be incorporated into the environmental legislations as reformatory justice. A mere penalty can't deter a human being from committing a crime. The penalties would be of no use to the environment, but afforestation would be.
- Additionally, the public prosecutor in cases under the Forest Act should be efficient. He must be a legal expert rather than a non-legal person.
- Proper monitoring must be ensured to establish transparency and accountability.
- Environment courts shall have to be established in the hill districts for the purpose of serving environmental justice. It must be established in such a manner so as to address the other laws regarding forest and environment applicable to the hill tracts along with the Environment Conservation Act.
- The codification of environmental laws in a harmonious pattern has been a crucial need. The government must harmoniously amend and codify environmental legislations.
- Fortifying the checks and balances of the Department of Forest is a must.
- In stark contrast to the traditional scientific paradigm, traditional knowledge gives an exegesis of empirical knowledge.<sup>108</sup> Hence, the knowledge of the tribal community must be combined with the scientific knowledge of forestry.<sup>109</sup>
- The government should raise awareness and make the ethnic minority aware of the traditional-modern forestry.
- The government of Bangladesh already has its vision in empowering ethnic communities by recognizing and supporting their customs and knowledge.<sup>110</sup> As the mere making of laws is not sufficient, it is the governmental responsibility to ensure proper implementation of these provisions.

---

<sup>108</sup> Gregory (n 3)

<sup>109</sup> Arne Kalland, 'Indigenous Knowledge: Prospects and Limitations' in Roy Ellen, Peter Parkes and Alan Bicker (eds), *Indigenous Environmental Knowledge and Its Transformations: Critical Anthropological Perspectives* (Harwood Academic 2000)

<sup>110</sup> Naba Bikram Kishore Tripura, *Chittagong Hill Tracts: Long Walk to Peace & Development* (Ministry of Chittagong Hill Tracts Affairs, Bangladesh Secretariat 2016)

- The government must work to attain sustainable development in the CHT as is already envisaged in their vision.<sup>111</sup>
- Sustainable and more modern forms of cultivation shall be introduced to reduce the adverse impacts of jhuming.
- The Chittagong Hill Tracts Forest Transit Rules have to be revised in a more balanced way to protect forests, timbers and trees from illegal extraction.
- As per clause 10 of the Rules of Business promulgated under Article 55(6) of the Constitution, if any situation arises when a particular subject concerns more than one ministry, ministers of both the ministries shall discuss and come to an agreement. Clauses 9 and 10 of Schedule 1 of the Rules of Business (Allocation of Business) state that the Ministry of Chittagong Hill Tracts Affairs is responsible for maintaining socioeconomic development, protecting tribal and non-tribal people's culture and customs, and protecting the unique topography and environment of Chittagong Hill Tracts. Environment, ecology, and pollution control are the Ministry of Environment and Forest's acknowledged affairs under clauses 1 and 2 of Allocation of Business. So, the two ministries must cooperatively handle the situation and tackle environmental degradation concerns in the Chittagong Hill Tracts region.

### **Conclusion:**

For the sustainable development of CHT, which is a dominant theme in the international dialogue, simultaneous economic and environmental growth is a must.<sup>112</sup> It requires environmental life support systems to be respected and the self-renewing capabilities to be unimpaired, as Professor Lynton Caldwell asserted.<sup>113</sup> The preservation of forests is a crucial strategy for preserving ecological equilibrium. Some estimates place the yearly economic value of ecosystem services given by the world's forests at up to US\$16.2 trillion.<sup>114</sup> Chittagong Hill Tracts is no exception to it. It is imperative that CHT maintain its biodiversity in order to ensure its long-term viability while also safeguarding its unique cultural traditions. The Appellate Division of the Supreme Court of Bangladesh declared that the customary laws of ethnic minorities cannot be unduly interfered with.<sup>115</sup> The government is under enormous pressure to protect

---

<sup>111</sup> Ibid

<sup>112</sup> Abdullah Al Faruque, *Environmental Law: Global and Bangladesh Context* (New Warsi Book Corporation 2017)

<sup>113</sup> Lynton Keith Caldwell, *International Environmental Policy* (Duke University Press 1990)

<sup>114</sup> "Forests – a Lifeline for People and Planet | UN Desa Department of Economic and Social Affairs" (United Nations March 15, 2020) <<https://www.un.org/development/desa/en/news/forest/forests-a-lifeline-for-people-and-planet.html>> accessed July 19, 2022

<sup>115</sup> *Aung Shwe Prue Chowdhury vs Kyaw Sain Prue Chowdhury and Others* (1998) 18 BLD (AD) 41

their cultures and customs because their cultures are deeply intertwined with conservation of the local environment. When it comes to Mother Nature, it's best to leave her alone and not to put her in unnecessary havoc. It is quite praiseworthy that Bangladesh has strong legislative actions for conserving the forests. Proper implementation of these laws can revitalize CHT and protect the people of Bangladesh as well as the entire planet from extinction.

## Socio-Legal Analysis of Maintenance of Parents in Bangladesh

*\*<sup>1</sup>S.M. Amanullahal Aman*

### **Abstract**

*The whole world including Bangladesh is facing an aging problem. Elderly people are being neglected in and out of the family. Senior citizens spent all their entire life building a better future for their children. Most importantly, they left their heirs in such a position that the children do not suffer the way they suffered. On the other hand, they expect nothing but good behavior from their child. The contribution of parents in one's life is immense but the parents desire nothing. It is not possible to pay back one's parents. However, the reality is different; children do not take care of their parents when the need becomes incapable of working. In this situation, the law, as well as society and religion should come forward to enforce children maintaining their parents. In this article, the author illustrates how lack of proper maintenance can make various detriments against aged parents. Endeavor has been made to scrutinize the prescribed laws including the Maintenance of Parents Act, 2013 and the Family Courts Ordinance, 1985 etc. Further, since the senior citizens are one of the most valuable assets of the country, the author discusses the duty of the State towards its' senior citizen as prescribed in the Constitution of the People's Republic of Bangladesh. Moreover, the researcher tries to make a bridge between the legal, religious, and social aspects in regard to parents' maintenance.*

**Key Words:** *children, parents, maintenance, care, society, religion, law etc.*

---

<sup>1</sup> \*Former student of regular LLM program of Department of Law and Human Rights, University of Asia Pacific in partnership with UNESCO Madanjeet Singh South Asian Institute of Advanced Legal and Human Rights Studies(UMSAILS)

## **Introduction**

It is to be said that “*no love is greater than mothers love and no care is greater than fathers care*”. Parents spent every single penny for the betterment of their children and expect nothing but a good behavior and a little in their old age. However, if we look around, we would find people who do not behave well with their parents. The children have to be very prompt in taking care of their parents as they are morally obligated to do so. If they do not, then the government should intervene through the law as the old parents are considered as the senior citizens of the country and the state has duty to look after its senior citizens.

The government of Bangladesh has exclusively promulgated Maintenance of Parents Act, 2013<sup>2</sup> (herein after referred as MPA, 2013) to enforce the children to take a good care of the parents in their old age. The MPA, 2013 is the exclusive law for ensuring the rights of the parents when they become unable to earn or manage their livelihood. It has (nine) provisions to meet the purpose of this very Act. Earlier to MPA, 2013, there was Family Court Ordinance, 1985<sup>3</sup> (herein after referred as the FCO, 1985) as a safeguard for the parents’ maintenance at their old age.

In this research effort, the author will analyze the laws relating to maintenance of parents and try to find loopholes if any. Further, the applicability of both the laws and case laws relating to parents maintenance will be followed in the subsequent chapters. Lastly, people belong to a society and it is indispensable to value the societal norms. Hence, the author will enlighten the societal value considering the religious perspective towards parent’s maintenance.

## **Existing Legal Framework regarding Parents’ Maintenance:**

### *Maintenance of Parents Act, 2013*

Firstly, MPA, 2013 has defined the word “maintenance” in a very comprehensive manner in the provision of section 2(b). According to this provision, maintenance means not only to provide food, cloths, treatment and accommodation but also to accompany<sup>4</sup>. The aim of the lawmakers in regard with MPA has correctly reflected by the definition of ‘maintenance’. The underlying rationale behind this definition is to ensure adequate company for the parents in their old age<sup>5</sup>. Nowadays, people leave their parents behind, move to abroad or big cities for a better lifestyle, and send a lump sum for their parent’s livelihood. Hardly, they get to manage their time to talk to them. This is the harsh reality for the parents at their old

---

<sup>2</sup> Maintenance of Parents Act, 2013 (Act no. 49 of 2013).

<sup>3</sup> Family Court Ordinance, 1985 (Act no. 18 of 1985).

<sup>4</sup> Maintenance of Parents Act, 2013; sec 2(b).

<sup>5</sup> Ibid

age. Therefore, according to the definition of the word ‘maintenance’, it is necessary to accompany the parents at the very old age.

The provision of section 3 of MPA, 2013 specifically prescribes how to maintain parents<sup>6</sup>. According to section 3(1), it is the duty of each child to ensure their parents maintenance<sup>7</sup>. There is a tendency in our society that the elder son of the family would look after his parents only or the daughter does not bear any responsibility of their parents after their marriage. However, the law prescribes otherwise. According to sub-section 3 of section 2 of the Act, if there is more than one child in the family, they will discuss among themselves and ensure their parent’s maintenance<sup>8</sup>. This prescribed provision does not waive any child’s duty towards their parents.

There is another propensity in our society that- if there are two sons in a family; one looks after his father and another takes care of her mother in a separate place. However, the discussion among the son for their parent’s maintenance as prescribed in sec 3(2) does not allow separating their parents<sup>9</sup>. Whatever the situation could be, children cannot separate by any means. Recently, a national daily of Bangladesh named featured news on a widow who is in her deathbed<sup>10</sup>. She has two sons and one daughter. The eldest one who is happen to be a teacher and earns the least amongst her other children takes care of her. At the time of price hike, it has become so difficult for him to arrange necessary treatments for her mother. On the other hand, the other son and daughter are busy with their own life in Khulna. They do not support their elder brother for their mother’s treatment at all.

In these circumstances, the victim filed a suit before the honorable Chief Metropolitan Magistrate (CMM) Court, Barishal by her elder son asking for treatment and proper maintenance from her younger son and daughter. After filing the suit, the CMM Court ordered the Additional CMM to inspect the matter in person. After the proper inspection, the Court takes cognizance on the application, summons her son and daughter and give a date on December 1, 2021 for first hearing. The Court also funded fifty thousand taka for her treatment from the government’s treatment fund<sup>11</sup>. It is to be noted that the provision of section 3(5) ensures treatment for the parents.

---

<sup>6</sup> MPA, 2013; Sec 3.

<sup>7</sup> MPA, 2013; Sec 3(1).

<sup>8</sup> MPA, 2013; Sec 3(2)

<sup>9</sup> Ibid

<sup>10</sup> Barishal Correspondent, শম্যাশায়ী মায়ের অভিযোগ তদন্ত করতে বিচারক নিজেই গেলেন বাড়িতে, *The Daily Prothom Alo* (Dhaka, 28 October, 2021)

<sup>11</sup> Ibid

Moreover, sec 3(3) of MPA, 2013 expresses that for ensuring maintenance of parents, they (son/daughter) shall guarantee the accommodation for their parents together<sup>12</sup>. It is to be highlighted that duty to keep parents together is on the all the sons and daughters. However, one dilemma may arise here- if the number of son is more than one, then where should the parents live? At this point, son shall discuss on where to keep their parents together for the resident. Nonetheless, that does not refer that they duty of any child is waived. They need to discuss the best possible care for their parents.

Under the Ministry of Social Welfare, the number of old age homes is six in Bangladesh (Dhaka, Chattogram, Sylhet, Rajshai, Barishal and Bagerhat)<sup>13</sup>. Moreover, there are 85 shelter homes all around Bangladesh to facilitate the old aged people<sup>14</sup>. Nonetheless, the number of old aged people is increasing every year<sup>15</sup>. An old age home is not a place where people would like to stay willingly. Most of the time, the old people are forced to live there for various factors. However, son/ daughter cannot forcefully send their parents to the old age home or elsewhere or to a separate place according to the provision of section 3(4) of the MPA, 2013.

MPA, 2013 also provides solutions when children are unable to live with their parents. According to the provision of section 3(6), when father or mother or both lives separately each child shall pay a visit to their parents on a regular basis<sup>16</sup>. Again, if the children are unable to stay together with the parents, they shall provide a “reasonable amount” to their parents as prescribed in the provision of section 3(7)<sup>17</sup>. “Reasonable amount” depends on the earnings of the children; whatever the amount could be, certainly, it needs to be paid to the parents on a regular basis. Ambiguity may arise in this section that children can live apart from their parents or children can send their parents to any old age home and their duty is just to provide them money in a monthly or yearly basis. However, the provision of section 3(4) specifically mentions the word “forcefully”<sup>18</sup>. According to this provision, no child can force its parents to leave in a separate place or in an old age home<sup>19</sup>. Therefore, there is no ambiguity in regard with parent’s accommodation.

Grandparents are as considered as a Banyan of a family. The way a Banyan tree provides shadows in a hot sunny day and save lives from storm for many years, grandparents play the role to protect the family

---

<sup>12</sup> MPA, 2013; sec. 3(3)

<sup>13</sup> Tawsia Tajmim, ‘Are old-age homes a need of the hour?’ The Business Standard (Dhaka, 1 October, 2019) <<https://www.tbsnews.net/feature/are-old-age-homes-need-hour>> accessed 1 October 2021.

<sup>14</sup> Sheikh Iraj, ‘Old age homes: Remove the stigma’ The Independent (Dhaka, 9 November 2019) <<https://m.theindependentbd.com/post/223035>> accessed 1 August 2021.

<sup>15</sup> Supra Note, n.12.

<sup>16</sup> MPA, 2013, sec. 3(6).

<sup>17</sup> MPA, 2013, sec. 3(7).

<sup>18</sup> MPA, 2013, sec. 3(4).

<sup>19</sup> Ibid.

with their knowledge and experiences. They lived our age and experienced a lot over the years. They know how to face any obstacles and how to get back in life. Further, grandparents would like to spend their leisure with their grandchild. Like the maintenance of parents is protected under MPA, 2013, maintenance of grandparents is also protected as per the provision of section 4 of the said Act<sup>20</sup>. They shall provide maintenance to their grandparents the way they are entitled to provide maintenance to their parents<sup>21</sup>. According to this provision, in the absence of father or mother, son/daughter shall maintain their parental grandparents and maternal grandparents accordingly<sup>22</sup>.

The MPA, 2013 also has penal provisions for those who do not provide maintenance to their parent/grandparent (in absence of their parents) or look after them. Similarly, this Act includes penal provisions for those who instigate others not to look after their old aged parents or grandparents or force them to live in a separate place. As per the provision of section 5(1) of the MPA, 2013, if any child violates any of the provision of section 3 and section 4, that would be considered as a crime under this Act and they shall be punished with not more than one lac taka or three months of imprisonment<sup>23</sup>. However, the type of imprisonment is not prescribed here (whether rigorous imprisonment or simple imprisonment).

If in any case, the wife, husband, son-daughter, or other close relatives force not to provide maintenance or create any obstacles to maintain the parents and grandparents according to section 2(a) and (b) accordingly, they shall be punished as per the provision of section 5(1) as mentioned earlier. This is a very comprehensive provision because this includes all family members to support the parents or grandparents. Sometimes, wife pressurizes her husband to live in a separate place or set conditions before the marriage that they would live separately otherwise she would not marry the person. Gradually, they become blessed with a baby; and their priority keeps changing. They think about their baby's schooling and all. At a certain period, they hardly manage time to visit their parents. At the same time, they have in laws as well who inspire them to be highly ambitious and the ambitions cannot be fulfilled if they stay with their parents. While chasing the ambitions, people neglect their parents which are very pathetic.

The Court after getting a complaint under MPA, 2013 may send it to the concerned Chairman of the Union Parishad or the Member of the Union Parishad, in case of City Corporation or Municipality, the complaint may be sent to the Mayor or the Councilor, or any person the deems fit to resolve the dispute according to the provision of section 8(1)<sup>24</sup>. Further, the concerned persons as prescribed in section 8(1) shall hear from both the sides and act accordingly; any decision taken by the authorized people shall

---

<sup>20</sup> MPA, 2013, sec. 4.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> MPA, 2013, sec. 5(1).

<sup>24</sup> MPA, 2013, sec. 8(1).

consider as the decision of the Court<sup>25</sup>. Although family disputes are to be dealt in the Family Courts, any dispute under this Act shall be dealt with the First Class Judicial Magistrate Courts or Metropolitan Magistrate Courts according to section 7(1) of the MPA. Moreover, any offences under the MPA, 2013 are cognizable, bailable and compoundable as prescribed in the provision of section 6.

### **Drawbacks in the Maintenance of Parents Act, 2013**

The MPA, 2013 is considered as a very progressive law in Bangladesh<sup>26</sup>. This law has only nine sections but a comprehensive one. Similarly, this law has broken the myth that the elder son is obligated to provide maintenance to the parents only. However, according to MPA, 2013, every child (both daughters and sons) are obligated to provide proper maintenance to their parents. Another important aspect the law covers is that- if any son or daughter fails to provide maintenance, they shall be punished in accordance with the law but the punishment has been made fixed and the type of imprisonment is not clearly mentioned in the MPA, 2013. However, in India the Court has the discretion to determine the amount of maintenance considering financial stability and other circumstances of the children<sup>27</sup>. Moreover, the MPA, 2013 includes provision for the maintenance of the grandparents that is highly appreciated.

Nevertheless, this law has some limitations too. This law ensures maintenance for the biological parents only as it defines ‘father’ as the biological father and ‘mother’ as the biological mother in accordance with the provision of section of 2(a) and (c) respectively. In Bangladesh, there are situations like parents abandoned their newborn baby<sup>28</sup> and other people adopt them. In this case, those people adopt the newborn becomes their parents and when the newborn becomes an adult, a responsibility to take care of his parents (though not given birth, maintained in the childhood) come to their shoulders. Nevertheless, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 of India defines ‘parents’ as ‘father and mother whether biological or step’<sup>29</sup>. Despite of having such loopholes, though no much, this law is very progressive, contemporary and exclusive in nature.

However, the number of disputes for parents’ maintenance is very poor. The first case under MPA, 2013 was filed in November 2013 in Chandpur Magistrate Court<sup>30</sup>. Since then until date, a very few number of

---

<sup>25</sup> MPA, 2013, sec. 8(2).

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Tribune Desk, ‘Newborn found abandoned in Chittagong hospital toilet’ Dhaka Tribune (Dhaka, 2 November 2021) <<https://www.dhakatribune.com/bangladesh/nation/2021/11/02/newborn-found-abandoned-in-chittagong-hospital-toilet>> accessed 3 November 2021.

<sup>29</sup> Ibid

<sup>30</sup> Nazia Wahab, ‘Maintenance to the parents’ The Daily Star (Dhaka, 28 February 2017) <<https://www.thedailystar.net/law-our-rights/maintenance-the-parents-1368307>> accessed 10 September 2021.

cases have been filed under this Act<sup>31</sup>. The reasons might be the unwillingness, unawareness and the limitations in the prescribed law itself.

### **Maintenance of Parents under Family Court Ordinance, 1985**

Another law that deals with the maintenance of parents is the FCO, 1985. Subject to the provision of the Muslim Family Laws Ordinance, 1961 (herein after referred as MFLO, 1961), the provision of section 5 of the FCO, 1985 sets the jurisdiction of the Family Court<sup>32</sup>. Maintenance is one of the subject matters of the Family Court under the FCO, 1985<sup>33</sup>. The provisions of maintenance under this Act cover maintenance of wife or wives, maintenance of children and maintenance of parents and grandparents. Maintenance under this Act includes accommodation, food, medical care and cloths for the above-mentioned people<sup>34</sup>. For the purpose of this research, the author only focuses on parent's maintenance. In the *Jamila Khatun vs Rustom Ali* case, the Court held that the poor parents can also file a suit under the FCO from their opulent children<sup>35</sup>.

The FCO, 1985 is more of a procedural law than a substantive one. The Act prescribes the procedures of a Family Court. It starts from filling a suit to the final decree. However, this law does have so much provisions for ensuring parents maintenance but the jurisdiction to file a suit for maintenance in the Family Court. This Act neither provides any guideline on how to look after the parent nor the penal provisions if anyone fails to provide any. On the other hand, there was a debate on the jurisdiction of the court under the FCO, 1985 since the enactment of the Act was subject to the MFLO, 1961. Nonetheless, the FCO, 1985 provides the territorial jurisdiction as prescribed in section 1(2)<sup>36</sup>. According to the said provision, the Act is in force all around the country except three-hill tract district<sup>37</sup>. Nowhere in this Act says that, it has reservations to any particular religious group of people. Moreover, in *Pochon Rikssi Das vs Khuku Rani Dasi and others* case the Court established that, the FCO, 1985 is applicable for all irrespective of any religion<sup>38</sup>.

---

<sup>31</sup> Ibid.

<sup>32</sup> FCO, 1985; sec. 5.

<sup>33</sup> FCO, 1985; sec. 5(d).

<sup>34</sup> Banglapedia, 'Family Court Ordinance, 1985' (2021) National Encyclopedia in Bangladesh. <[https://en.banglapedia.org/index.php?title=Family\\_Court\\_Ordinance,\\_1985#:~:text=A%20father%20is%20bound%20to,mother%20will%20shoulder%20the%20responsibility.](https://en.banglapedia.org/index.php?title=Family_Court_Ordinance,_1985#:~:text=A%20father%20is%20bound%20to,mother%20will%20shoulder%20the%20responsibility.)> accessed 21 October 2021.

<sup>35</sup> *Jamila Khatun vs Rustom Ali* (1996) 48 DLR 110.

<sup>36</sup> FCO, 1985; sec. 1(2)

<sup>37</sup> Ibid.

<sup>38</sup> *Pochon Rikssi Das vs Khuku Rani Dasi and other* (1998) 50 DLR 47.

## **Applicability of the Laws**

The FCO, 1985 contradicts the jurisdiction of the Court with the MPA, 2013. All the subject matter under the FCO, 1985 shall be dealt in the Assistant Judge Court, which is also known as the Family Court<sup>39</sup>. On the other hand, as per the provision of MPA, 2013, if any dispute arises under this Act (whatever prescribes in the Code of Civil Procedure, 1908), it shall be sent to the First Class Magistrate Court or Chief Metropolitan Court<sup>40</sup>. Again, special law always prevails over the general laws. Hence, there is no place for any contradiction on the jurisdiction of the Court. Therefore, for any disputes relating to maintenance of parents, the jurisdiction of the Court would prevail as prescribed in the MPA, 2013. Before enacting the MPA, 2013, all the maintenance related disputes were taken place under the FCO, 1985.

## **Maintenance of Elderly People under Constitution**

This part focuses on the sociological aspect of the maintenance of parents in regard with the social security as prescribed in article 15(d) of the Constitution of People's Republic of Bangladesh. However, article 15 falls under fundamental principles of State policy, which is happened not to be enforced by the law as mentioned in the Constitution. However, fundamental principles of State policy as prescribed in part II of the Constitution would help to analyze the interpretation of the laws of the land. Nonetheless, the fundamental rights as mentioned in part III of the constitution is enforceable.

Moreover, from the independence of Bangladesh, along with the government, non-governmental organizations (NGOs) have played a vital role for building the nation. Children, women and old aged people are considered as the marginalized group in Bangladesh. Often, it is very much visible that the private organizations are working on the development of the children and women welfare. However, the private organizations take on the old aged people's welfare is not as visible as women and children. Again, there are people who do not have any children or got abandoned by their children at their old age. Of course, there is a law to ensure rights to those parents who have children, but the law is silent for those who do not have any children. In this situation, a society itself can play a vital role to protect its own people.

---

<sup>39</sup> FCO, 1985; sec. 4.

<sup>40</sup> MPA, 2013; sec. 7.

*Social Security of the Old Aged people as per the Constitution*

Constitution is the core of every law of the land and any law or any provision of any particular law is inconsistent with the Constitution is considered as void<sup>41</sup>. Again, the wording of the Constitution in its Preamble starts with “we, the people of Bangladesh” which indicates that Constitution is solely formed keeping the people’s right irrespective of any differences, to be very precise the fundamental rights of the people in mind<sup>42</sup>. Moreover, it provides some guidelines to run a country in such a way to make people feel very dutiful towards its country. Further, it has created constitutional posts to conduct the government mechanism in a very effective manner so that people can get their work done without being harassed.

It is the old people who serve their entire career for the development of a nation. They contribute in country’s economy either in passive or active manner. In return, the country has responsibilities towards its old people when they need it the most. Along with women and children, old aged people are also counted as the most vulnerable group in a society<sup>43</sup>. Hence, they need special care and protection at their old age. It is not like providing them an extra care would burden the government or other group of people would be discriminated, it is their very fundamental right that they deserve.

Government’s duty towards its senior citizen when they require it the most is very immense. The government implements laws and regulations ensuring such protections. To begin with, the provisions of basic necessities as prescribed in article 15 of the Constitution which is also considered as the social security to its citizen<sup>44</sup>. According to the article 15(d), social security is considered as one of the fundamental principles of the state policy as of for the unemployed, disable, ill, widow, orphan and the particularly the old age people of Bangladesh<sup>45</sup>.

Fundamental principles as prescribed in second part of the Constitution interpret into phrases the socialist society intended by the legislatures in the preamble and set political, economy and social goals that the government may oblige to endeavor for Art. 8<sup>46</sup>. Originally, the said article prescribed the principles of secularism, nationalism, democracy and socialism along with the principles resulting in part II. It shall establish the fundamental principles of the state policy which shall play a vital role in making laws and interpret those laws, guiding to interpret the provision of the Constitution and conducting the business of

---

<sup>41</sup> Constitution of the People’s Republic of Bangladesh; (art.7)

<sup>42</sup> Constitution- Preamble.

<sup>43</sup> ILO in Bangladesh, ‘Social protection in Bangladesh’ International Labour Organization <<https://www.ilo.org/dhaka/Areasofwork/social-protection/lang--en/index.htm>> accessed 17 October 2021.

<sup>44</sup> The Constitution; art. 15.

<sup>45</sup> The Constitution; art. 15(d).

<sup>46</sup> The Constitution; art. 8

the country<sup>47</sup>. However, the above mentioned part of the Constitution is not enforceable in the court of law.

### **Enforceability of the Fundamental Principles of State Policy**

As mentioned in Art. 8(2) of the Constitution that the principle discussed in part II shall be deemed as one of the fundamentals to the Bangladesh's governance and state shall apply it while making any laws, this put an obligation on the government to maximize the elementary value of one's life and to achieve the social welfare<sup>48</sup>. In the case named *Kudrat-e-Elahi vs Bangladesh*<sup>49</sup>, the Appellant in reference with art. 7(2) sought the enforcement of art 8. *M Kamal J* in this petition held that the word "principles" is distinguished with the word "law" and therefore, the applicability of art.7 in regard with art.8 is void.

However, in *Wahab vs. Secretary Ministry of Land* case the Court held that the principles as mention in Part II, though not judicially enforceable, put an obligation to act on them<sup>50</sup>. Further, for the sack of justice and equity the honorable High Court Division overlooked the obligation of article 8(2) in some other cases. In *Major-General KM Safiullah vs Bangladesh*<sup>51</sup> case the honorable Court, despite of the non-enforcement of fundamental principles judicially, held the government to ascertain the particular areas in *Suhrawardy Uddyan* that contains historical importance in relation with the independence of Bangladesh and to find the mass graves took place during 1971 and to build apposite memorials in those areas.

Since part II of the Constitution has a special value in case of the interpretation of the laws and the Constitution itself, the court must interpret the articles of the Constitution and the provisions of the laws in accordance with these principles. In interpreting the provisions of Article 59, the Apex Court shall take into account the prevalent representation set out in Articles 9 and 11 and held not to form local governments outside the scope of Article 59 or to those who do not get elected<sup>52</sup>. These principles bestowed the criteria for examining the adequacy of legal provision disputed for the infringement of basic rights<sup>53</sup>. When there is any ambiguity in meaning or in interpretation of any legal provision or in the constitution arises, the Court shall consider the meaning as prescribed in Part II for the confirmation of such ambiguity<sup>54</sup>.

---

<sup>47</sup> Mahmudul Islam, Constitutional Law of Bangladesh, (3<sup>rd</sup> Edition, Mullick Brothers, 2016) 70-77.

<sup>48</sup> Saleemullah vs Justice M.A Quddus Chowdhury (1994) 44 DLR 691; Aftabuddin vs. Bangladesh (1996) 48 DLR

<sup>49</sup> Kudrat-e-Elahi vs Bangladesh (1992) 44 DLR (AD) 319.

<sup>50</sup> Wahab vs. Secretary Ministry of Land. (1996) 01 MLR 338.

<sup>51</sup> Major-General KM Safiullah vs Bangladesh (2010) 18 BLT (Special Issue no.1); Human Rights for Peace for Bangladesh vs Bangladesh (2011) 19 BLT 107.

<sup>52</sup> Supra Note, n.9.

<sup>53</sup> Kasturi Lal vs. J & K, (1980) AIR SC 1992, 2000.

<sup>54</sup> Mumbhia vs Abdulbhai (1976) AIR SC 1455; Bhim vs. India (1981) AIR SC 234.

The concept of social security to address the need of the old aged parents can be the guideline to protect their rights. The provisions as mentioned in the Maintenance of Parents Act, 2013 needs to be interpreted in such a way that respect the principle of social security as per the provision of article 15(d).

If any provision of the Constitution appears to be contrary to the principles of state policy, then an attempt shall be made to interpret the provision in accordance with the principles of state policy. However, based on these principles, the wording of any provision of the Constitution cannot be given an unbearable meaning unless the language is indistinct<sup>55</sup>. Given the other provisions of the Constitution, these principles were treated as the basis to the governance of the State, so a clear formulation of the provisions of the Constitution is not clearly visible if it contradicts the provisions of Part II. There is a possibility to facilitate and unobstructed the purpose of the objectives set out in Part II<sup>56</sup>.

Indian case law raises the question of whether the provisions prescribed for the fundamental rights take precedence in the event of a conflict with the principles of national policy. Primarily, Indian Supreme Court directed that the laws comprising the fundamental rights shall prevail over the principles of national policy<sup>57</sup>. However, the Court subsequently held that it did not find any contradiction altogether between the fundamental rights and principles<sup>58</sup>. Again, in *Unni Krisnan vs. A.P.* case the Court held that the principles of state policy should not be overlooked, but should relate the principle of harmonious erection and try to create efficiency for both principles and rights as much as possible<sup>59</sup>. The provisions of fundamental rights are nothing but to accomplish the goals directed in the principles of State policy<sup>60</sup>. Hence, Fundamental principles and rights are complementary and supplementary to each other; the fundamental rights shall be enforced in view of the principles of state policy.

The structure of the Constitution of Bangladesh in regard with rights and principles is similar as prescribed in the Constitution of India; the similar position would carry our constitutional exemption. However, the Constitution's drafters were conscious of the probable conflict amid the provisions of Part II and Part III. They foresaw that the provisions of Part III of the Constitution may impede the welfare measures of the state and they precisely mentioned in art. 47(1) that if the Parliament pronounces that this law was enacted to implement one of the basic principles of state policy, the enacted law will not be affected by the objection to the inconsistency with Part III<sup>61</sup>. Therefore, in accordance with the principles

---

<sup>55</sup> *Excel Wear vs. India* (1979) AIR SC 25.

<sup>56</sup> *Supra Note*, n.7.

<sup>57</sup> *Madras vs Champakam Dorairajan* (1951) AIR SC 226.

<sup>58</sup> *Re Kerala Education Bill* (1958) AIR SC 995.

<sup>59</sup> *Unni Krisnan vs. A.P* (1993) AIR SC 2178.

<sup>60</sup> *Supra Note*, n.7.

<sup>61</sup> The Constitution, art. 47(1).

of state policy the court shall interpret the statutory provisions as mandated by article 8(2) of the Constitution.

From the above discussion, it is very clear that the social security of the parents is a constitutional, though not fundamental, right of the parents. Any prescribed laws in regard with the maintenance of parents needs to be interpreted with the principle of social security as of the fundamental principles of the state policy. It is also noted that the fundamental principles cannot be challenged in the court of law. Hence, it may not be enforced but the application of this provision is connected with the fundamental rights and it is the discretion of the court to take this principle in account for the sack of justice and equality.

### **Fundamental Rights of the Parents as Prescribed in the Constitution**

#### *Equality before law*

The provision of Art.27 provides that “all citizens are equal before the law and are entitled to the equal protection of law<sup>62</sup>”. It is a combination of both English and American concept of equality before law and equal protection of law respectively<sup>63</sup>. By the phrase “equality before the law”, it refers that everyone is equal in the eyes of the law and shall be treated equally. No special privilege shall be provided to any person irrespective of their status (birth, sex, race, religion, economic condition etc.). Another important phrase in art 27 is the “equal protection of law” which means every person is entitled to have equal protection of law without any discrimination. While the first part of this article has a negative connotation- the execution of law, the second part provides a positive approach- the legitimacy of a law<sup>64</sup>. However, the application of these concepts is inseparable and convergence with each other<sup>65</sup>.

The establishment of this article more than others duly represents the notion of the rule of law, which is one of the major aims of the Constitution. However, the law itself is not equal for all because of certain differences. Everyone does not born in the same place or get equal treatment at the initial phase of their life or in their old age. The law has categorized people under different umbrella amid them old aged people are considered as one of the most vulnerable groups based on their physical and economic condition because they become dependent on others like a child. Therefore, they should be entitled to have special treatment as per the doctrine of reasonable classifications under the provision of equal protection of law.

---

<sup>62</sup> The Constitution; art. 7.

<sup>63</sup> Supra Note, n.7.

<sup>64</sup> Ibid.

<sup>65</sup> Dr. Nurul Islam vs. Bangladesh (1981) 33 DLR (AD) 201.

*Doctrine of classification*

The concept of equality is integrated within the Constitution. However, it includes the concept of classification for special treatment based on the equitable principles. To deal with the anomaly, the law does not abandon the need for equality or deny the power of the state to classify<sup>66</sup>. It followed a process of mediation, reconciling the conflicting requirements of specialized law with the general equality of the principle of reasonable classification<sup>67</sup>. The provision of article 27 does not assure ultimate impartiality for all people to treat in a similar manner. In *Jibendra Kishore vs. East Pakistan* case, it was held that the principle of equality does not mean to apply to all citizens in the application of law equally<sup>68</sup>.

People have many differences, as they are not born at the same place with the same race, colour and sex. Hence, it would be a massive inequality to ensure equality to the unequal<sup>69</sup>. It is very prominent that not every person holds equal position. Some people require special privileges to have a dignified life. The narrative of any legislation needs to be kind enough to treat different people in a different manner<sup>70</sup>. Equal rights enshrined in layman's expressions means that people in similar conditions and circumstances should be treated alike in both the granting of advantages and the obligation of responsibilities.

People spend their whole life, if not for building the nation directly, to ensure a stable life for their next generation. At a certain point of life, one needs to be retired from his/ her job. They start acting like a kid and happen to forget things. At this very particular point, they cannot be treated as equal as forty years old person. They must need more care than a young man needs. However, the special care should be reasonable after getting through the constitutionality test.

*Reasonable classification*

Reasonableness of classification needs to be determined considering the realities not the abstract<sup>71</sup>. When the classification is based on substantial and factual differences with a reasonable relation between persons or objects are being dealt with and the legislative purpose requires to be accomplished by the statute in question is considered as a reasonable classification<sup>72</sup>. Further, the classification is valid if the purpose of the enactment of any law is fulfilled<sup>73</sup>. To pass the reasonableness or constitutionality test, it is required to meet two conditions. First, it needs to be arguably correct i.e. should be based on some

---

<sup>66</sup> Supra Note, n.7.

<sup>67</sup> *Quaker City Cab Co. vs Pennsylvania* (1928) 277 US 389, 406.

<sup>68</sup> *Jibendra Kishore vs. East Pakistan* (1957) 9 DLR (SC) 21, 41; *S.A Sabur vs. Returning officer* (1989) 41 DLR (AD) 30.

<sup>69</sup> *Dennis vs. US* (1951) 339 US 162; *All Indian Sainik School Asscn vs Sainik School Society* (1989) AIR SC 88; *Delwar Hossain vs. Bangladesh* (2007) 15 BLT (AD) 124.

<sup>70</sup> *Trimble vs Gordon* (1997) 430 US 762, 779.

<sup>71</sup> *Kerala Hotel & Restaurant Association vs kerala* (1990) AIR SC 913.

<sup>72</sup> *Trimble vs Gordon* (1977) 430 US 762; *Carington vs. Rash* (1965) 380 US 89.

<sup>73</sup> *Massachusetts Board of Retirement vs. Murgia* (1976) 427 US 307.

comprehensive differences that distinguish a grouped person or thing with others outside the group. Second, the distinction must be or be reasonably linked to the goal that the statute seeks to achieve<sup>74</sup>.

If we consider the law, it should protect all citizens and if a special care needs to ensure the protection of the old aged people, it would be not discriminatory to others at all. Therefore, the reasonableness of classification is justifiable for the old aged people as per the law.

#### *Right to Protection of law*

The provision of article 31 of the Constitution ensures the protection of law. This article consists of two different part- (i) all the citizens and inhabitants of Bangladesh irrespective of any difference are entitled to get the treatment as the prescribed<sup>75</sup> and (ii) Except as required by law, no action shall be taken to harm the life, freedom, body, reputation or property of Bangladeshi citizens or residents<sup>76</sup>. The latter part illustrates the first one. Like any other citizen of the country, old parent are also entitled to the protection of law. Before enjoying the protection, they need to be aware of such protection. Senior citizens are also entitled of such protection whether they are aware of it or not. The Constitution provides rights to protect their life, liberty, body and reputation.

#### **States' Duty towards Old Aged People without heirs**

The core responsibility of maintaining parents is upon the children. However, the government also has the obligation to take care its senior citizens. The very first initiative the government took for the senior citizen was to provide them allowance (elderly allowance or *Boishko Bhata* in Bangla) in monthly basis in 1998 where only 10 people in every ward, nearly 5 lakh senior citizens in Bangladesh were benefited<sup>77</sup>. However, the number of elderly people above 60 years of age in Bangladesh is 15 million or approximately 9% of the total population and it is expected to be 36 million by 2050<sup>78</sup>. Hence, the elderly allowance programs cover a very limited number of people.

Generally, the social security of elderly people is inserted in the National Security Strategy (2015)<sup>79</sup> and Action Plan (2018) to introduce National Social Insurance Scheme which covers unemployment benefits,

---

<sup>74</sup> S.A Sabur vs Returning Officer (1989) 41 DLR (AD) 30.

<sup>75</sup> Iftexhar Hossain vs. State (2007) 59 DLR (AD) 36.

<sup>76</sup> Ibid.

<sup>77</sup> Md. Ismail Hossain, et al, 'The Elderly Care Services and their Current Situation in Bangladesh: An Understanding from Theoretical Perspective' (2006) 10.3923/jms.2006.131.138 <<https://scialert.net/fulltext/?doi=jms.2006.131.138>> accessed 12 November 2021.

<sup>78</sup> Atiqur Rahman, 'The increasing 'burden' of the elderly in Bangladesh' The Daily Star (Dhaka, 1 October 2020) <<https://www.thedailystar.net/opinion/news/the-increasing-burden-the-elderly-bangladesh-1970349>> 19 July 2021.

<sup>79</sup> National Social Security Strategy (NSSS) of Bangladesh (2015) <<https://www.social-protection.org/gimi/gess/RessourcePDF.action;jsessionid=iTgnQx4BEMFHZba7fSjO7QRSUoQRDAUgiLdN4EcGBi2qIod-KFoV!-1491252213?id=55817>> accessed 18 November 2021.

sickness, maternity benefits, sickness, and pensions for the old age<sup>80</sup>. However, in practical, the very poor people get maternity benefit only and government provides pensions to the government retired employees or if the employee dies then, his wife or after his wife dies, if there is any differently abled child, if alive, get pensions under the Social Security Policy Program<sup>81</sup>.

Further, the government established six homes for the senior citizens in Dhaka, Chattogram, Sylhet, Barishal, Rajshahi and Bagerhat, which can capacitate only 50 people in each house under the Social Welfare Ministry (SWM)<sup>82</sup>. Moreover, the childcare centers or the *Shishu Paribars* have 10 reserved seats in each district for the old aged people who got abandoned from his family or do not have any children under the SWM. Whatever facilities the government is providing for the senior citizens is highly appreciable but not adequate. The government should take measures to minimize or subsidize expenses of their basic needs including health services, clothing, transportation, food, etc.

### **Parents' maintenance from societal aspect**

The majority of the populous in Bangladesh are Muslims (91.04%)<sup>83</sup>, the second largest belongs to the Hinduism ((8.54%)<sup>84</sup> and the remaining population belongs to the Christianity and Buddhist and others (0.42%)<sup>85</sup>. Hence, it is imperative to consider religious aspect while understanding the societal value of parent's maintenance. Due care to the old aged parents or grandparents have been made mandatory in every religion by their personal laws. Nonetheless, the general practice used to follow the religion in the society before the laws of the land were promulgated.

Again, the state religion of Bangladesh is Islam but people can practice other religion as well and state is obligated to ensure such right<sup>86</sup>. Hence, the prior focus of this chapter would be Muslim personal laws and give a brief on Hindu and Christian personal laws. Personal laws play a very vital role for ensuring parents maintenance; personal laws include Muslim personal laws for Muslims, Hindu personal laws for Hindus, Cristian personal laws for Christian and if there are other religious belief exists, they shall follow the same except the atheist. Atheist people do not follow any personal law but the law of the land.

---

<sup>80</sup> Public Financial Management (PMF) Action Plan 2018-2023 under Finance Division, Ministry of Finance. <<https://mof.gov.bd/site/notices/8d33dc63-e504-4d77-9886-3d4425ff5cd8/PMF-Action-Plan-2018-2023>> accessed 23 November 2021.

<sup>81</sup> Md. Azizul Alam, 'Civil Service Pensions in Bangladesh Current Reforms and Future Plan' World Bank <<https://thedocs.worldbank.org/en/doc/588071548878983052-0160022019/original/11.30amJan18PensionsAlamBangladeshreformconsiderations.pdf>> accessed 12 October 2021.

<sup>82</sup> Tawsia Tajmim, 'Are old-age homes a need of the hour?' The Business Standard (Dhaka, 1 October 2019)

<sup>83</sup> Star Online Report, 'জনশুমারি: দেশে মুসলিম জনসংখ্যা বেড়েছে অন্যান্য ধর্মের কমেছে,' The Daily Star, (Dhaka, 27 July 2022)

<sup>84</sup> Ibid

<sup>85</sup> Ibid

<sup>86</sup> Constitution of the People's Republic of Bangladesh; art. 2A

## Obligation towards parents under religions

The Holy Al-Quran is the core of Muslim personal laws. The Holy Book is very strict regarding parents' maintenance. The reflection of the aforementioned statement has been followed by several verses of the Holy Qur'an as it is mentioned in *Surah AL Isra* that

*"Allah has ordained for you, that you worship none but Him, and to be kind to our parents and if any one or both of them reach old age do not say a word of contempt or repel them but address them with honour, and speak to them with kindness, and lower your wing of humility and pray to Allah (SWT)- bless them as they have cherished me in childhood"<sup>87</sup>.*

By this verse, it is clearly understandable that, Allah has honored parents with the highest dignity. It is ordered to joyfully accept the sufferings embedded by parents, talk with the parents in a gentle manner, and not to loud your voice and raise hand on them. The above verse speaks of looking at them with kindness and compassion, always showing love, and meet their needs before their needs are related to rights over assets for them seeking Allah's mercy.

Again, in *Surah Al Nisa* it is said that, "one should respect his/her mother that gave one birth<sup>88</sup>". Further, it has mentioned, "Allah prohibits us not to worship anyone but Allah and not to connect him with any other partner and to behave well with parents<sup>89</sup>". Moreover, in *Surah Al A'nam*, it is stated "people should be kind towards their parent<sup>90</sup>". Same thing has been states in *Surah Al Luqman* that "Allah has instructed us to be kind enough towards our parents. Trouble after trouble, their mother held them in her womb and weaned them for two years<sup>91</sup>". A similar wording has been repeated again in *Surah Ahqaf*, Verse No.15<sup>92</sup>.

Therefore, the Holy Book directs us to show proper gratitude towards our parents with proper maintenance before the parents ask for. If one fails to do so, then *Jannah* (the Paradise is forbidden for them). Moreover, after the Holy Al-Qur'an, there are strong and established Hadiths (that is directly heard for the Prophet (PUBH)) prescribed in Islam.

---

<sup>87</sup> Surah AL Isra, Verse No.28-29.

<sup>88</sup> Surah Nisa, Verse No.1.

<sup>89</sup> Surah Nisa, Verse No.36.

<sup>90</sup> A'nam, Verse No.151.

<sup>91</sup> Surah Luqman, Verse No.14.

<sup>92</sup> Surah Ahqaf, Verse No.15.

Parents along with teachers and elder brother have been given the position of superiors in Hindu personal law<sup>93</sup>. Those who desires to gain wealth in life should respect the persons mentioned above by any means, even the cost is high<sup>94</sup>. Their prior concern is to ensure their care first and other task comes later on<sup>95</sup>. It is also directed in the *Taittiriya Upaniṣad* that-

*“May you be one for whom his mother is a Deva. May you be one for whom his father is a Deva. May you be one for whom a guest is a Deva. May you be one for whom his teacher is a Deva.”*<sup>96</sup>

Christian religion secures the right of parents based on their needs. Earlier, the church was primarily occupied in organizing care for the needy. A person who does not fulfill duties towards relatives, particularly older relatives, is considered to be on par with unbelievers. James opines, “Calling on widows and orphans in their distress implies a pure and unsullied religion before God<sup>97</sup>”. Christians were expected to fulfill the needs of necessitous family members. First Timothy advises one to honor widows. He further teaches that if children or grandchildren are present, they are to be dealt with kindly and parents are to be served some form of return. He states this to be gratifying to God<sup>98</sup>. Verse 8 ties “the care of relatives and providing for them to upholding of faith; comparing a person who practices otherwise to be worse than an unbeliever<sup>99</sup>”.

### **Role of the Society**

We live in a society and it is very hard to go beyond the norms of any society. No particular society teach us not to respect our parents. However, the concept of ideal small family which consists of 4(four) members (husband, wife, son and daughter) does not allow father and mother in the family<sup>100</sup>. Hence, our societal view on the family needs to be changed. We need to understand one thing, that parents and daughter in law or son in law are not rivals. Marriage is a bond between two families that help each other to understand themselves and to be supportive in their bad times. Both of them need each other and son or daughter should like bridge between them. A society can play a very vital role in this regard. They can arrange different programs where all the family members should participate accordingly which eventually create the bond between them and if anything happens otherwise, the society may impeach them socially.

---

<sup>93</sup> Kūrma Purāṇa 2.12.32.

<sup>94</sup> Kūrma Purāṇa 2.12.33.

<sup>95</sup> Kūrma Purāṇa 2.12.34.

<sup>96</sup> Taittiriya Upaniṣad 1.11.

<sup>97</sup> James 1:27.

<sup>98</sup> First Timothy 5:3–4.

<sup>99</sup> Ibid 8.

<sup>100</sup> MA Mannan, ‘Family, Society, Economy and Fertility in Bangladesh’ (1989) The Bangladesh Development Studies

Vol. 17, No. 3 (September 1989), pp. 67-99 <<https://www.jstor.org/stable/40795357>> accessed 1 July 2021.

From the birth of Bangladesh, Non-governmental Organizations (NGOs) played a very crucial role in the development of the nation and their contributions have been recognized and overwhelmed by the people. Hence, the duty of the NGOs towards the senior citizens cannot be forgotten. *Probin Hitoishi Sangha* a social organization established 80 (eighty) branches all around the country however; the seats are not for free<sup>101</sup>. Social organizations should come forward to take social experiments like laughter therapy to keep them mentally healthy<sup>102</sup>. This initiatives are not enough as a safeguard of the old aged parents.

Further, NGOs have a core responsibility to aware the old aged people about their rights as mentioned the laws. They also need to aware them about the possible legal remedy and the way to get it. They need to make people understand that old parents like any other citizens of the country have the fundamental rights as per the Constitution and if in any case, they fail to get their right by the Court, they could go for writ petition in the Supreme Court and the NGOs would help them all the way to the Court.

## **Conclusion**

Maintenance of parents or the old aged people is not the sole responsibility of the children or the grandchildren. However, the government should enforce the children to take care to their parent whether the parents claim it or not, and help the poor old aged people whether they have children or not through various social schemes. Then, the society has also a role to strengthen the family bond instead of breaking them by organizing different social activities. Finally, the social organizations or NGOs should play the most important role to provide them legal assistance when they need the most and engage them in various social activities so that they can make their last days enjoyable, although, the ultimate happiness of the parents lie in the children happiness. Hence, the law itself cannot ensure the maintenance of parent but the social aspects supplement the law to ensure a better care for the parent in their old age.

---

<sup>101</sup> Rafsan Jani, 'Probin Nibash: Elderly wait earnestly for visits during Eid' *Bangla Tribune* (Dhaka, 6 June 2019) <<https://en.banglatribune.com/national/news/51937/Probin-Nibash-Elderly-wait-earnestly-for-visits>> accessed 3 September 2021.

<sup>102</sup> Mohammed Sohel Hara, 'Laughter is the best medicine' *The Financial Express* (Dhaka, 10 December 2017) <<https://thefinancialexpress.com.bd/views/laughter-is-the-best-medicine-1512915127>> accessed 18 September 2021.

## Health Care for Male Prisoners in Bangladesh: Law and Practice

\*Shahariar Islam Sovon

### *Abstract*

*The purpose of this research is to explore the proper health care for male prisoners in Bangladesh, as defined by both Bangladesh legislations and international laws. The laws and regulations incorporated to ensure and protect the health-related rights of the male prisoner's in Bangladesh to achieve the best possible quality of health. Sixty male prisoners were each given a systematic and quantitative questionnaire. The primary objective of this research paper is to stimulate the reader's interest in the subject matter of the most legal rights that are accorded to them under the current interpretation of the law. There should also be a strong emphasis placed on the male prisoners' rights regarding their health. This paper looks at how the law is executed in Bangladesh and how male prisoners are treated in Bangladesh from a realistic point of view. it also include some recommendations to open up new potential for the health rights of male prisoners, and this paper will conclude with the expectation that it will diminish male prisoners' feelings of unfairness for not having adequate health treatment.*

**Key words:** *health care, male prisoner, law, practice*

### **Introduction:**

When it comes to legal rights, is described as an interest that is recognized and protected by rule of law. It may also be defined as any interest that is subject to a legal obligation and that is wrongfully neglected<sup>1</sup>. Unfortunately, the rules and regulations of the prison are difficult to understand and apply since they are unclear in their definitions and applicability. Consequently, convicts are utterly unaware of the nature of their rights and are unable to ensure that those rights are being administered equitably to them while they are in prison. All people who have been deprived of their liberty must be treated with compassion and

---

\*Former student of LLB Program, Department of Law and Human Rights, University of Asia Pacific

<sup>1</sup> Fazal Khan vs. State (1962) 14 DLR (SC) p235

respect for the inherent dignity of the human person, regardless of their circumstances<sup>2</sup>. It has been a long time since courts and experts came to differing conclusions on the nature and extent of inmates' constitutional protections. As of August 13, 2021, 79,353 people were held in custody, according to the Department of Prisons, which is a division of the Ministry of Home Affairs. 14,444 of the prisoners are convicted criminals, according to the statistics<sup>3</sup>. The remaining 64,909 prisoners are being investigated by the authorities. A total of 13,914 male prisoners are now incarcerated in prisons and jails around the country. Prisons and jails are distributed across the country, with a total capacity of 42,450 prisoners. There are 68 such facilities. A total of 40,521 male prisoners may be accommodated at the institution. The jail's entire land size is 1421 acres, which is also worth mentioning. In the central jail, 51.45% of the prison space is occupied, while in the district jail, it is 48.55. Our prisons have a capacity of 36,614, while the actual population is 86,433, according to Prison Population Statistics 2017. In 2021 the density of the prison is 216.9%<sup>4</sup>. Now 48.1% prison have responded yes that in the prison there have doctors but they provide a short time. 44.6 percent of prisoners said that the walls and floors are dirty and smelly, while 28.6 percent of inmates reported that the environment is unclean. The surviving convicts all agreed that it had been well cleaned and was suitable for habitation. In this regard, being in prison is quite tough simply owing to the filthy, repulsive, and unpleasant environment that prevails throughout the facility. As a consequence of this, they are subjected to an abnormally high number of health issues, which has a negative impact on the intellectual growth of these individuals. Health rights are guaranteed by Bangladesh Constitution and International mechanisms promotes the rights adequately. In this regards, male prisoners have enough rights to get proper care when they are imprisoned. The research question of this paper is how far the health care rights of the male prisoners are been ensured by Bangladeshi rules and legislations. In this paper the real scenario in the prison relating to health care is reflected properly. The author of this paper analyses the existing laws and regulations relating to health care for male prisoners and describe the compliance of existing laws and regulations relating to health care for male prisoners. The proper recommendations are given based on the problem which is observed by taking interviews from the victim.

---

<sup>2</sup> The International Covenant on Civil and Political Rights 1976, art 10 <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 11 May 2022

<sup>3</sup> "Prisons in Bangladesh Housing Double the Number of Inmates" (*The Financial Express*, August 13, 2021) <<https://thefinancialexpress.com.bd/national/prisons-in-bangladesh-housing-double-the-number-of-inmates-1628848558>> accessed May 11, 2022

<sup>4</sup> "Bangladesh: Prisons in 2020" (*Prison Insider*, October 5, 2021) <<https://www.prison-insider.com/en/countryprofile/bangladesh-2020?s=vue-d-ensemble#vue-d-ensemble>> accessed May 12, 2022

In their research, M. Anwarul Aziz Kanak and Mohammad Mizanur Rahman Chowdhury<sup>5</sup> revealed that our prisons are overcrowded, that the food that is served to the prisoners is of low quality, and that corruption among the jail administrators is a common occurrence in all of Bangladesh's jails. As a direct consequence of this, there are abuses of human rights that take place on a regular basis inside our organization.

In their research, Md Mahfuzur Rahman and Aroj Ali<sup>6</sup> revealed that our prisons administration system is not good enough compare to western countries and India. But in this paper, the author will focus on the health care for male prisoners in Bangladesh.

This paper follows both qualitative and quantitative approach and collected the data from a primary and secondary source. Most of this research has been conducted utilizing primary sources and secondary sources such as newspaper articles, news features, and official reports in local and national daily newspapers. Secondary data has been obtained by several national non-governmental organizations such as Ain-o-Salish Kendra (Ask), Manusher Jonno Foundation (MJF), Bangladesh Legal Aid and Services Trust (BLAST). The author has collected the data and done some primary research by collaborating with representatives from Dhaka Central Jail and from the ex-male prisoners. This technique is an ongoing, ever-evolving process where the author uses different data collection techniques, including the telephone, the internet, and in-person interviews. For examining main objective, the author will take help with primary data analysis and will take interviews from the male prisoners. To fulfill other objectives, the author will take help from the secondary sources. The authors' observations are commonly taken up when examining the nature and origins of the questions. After data collecting, the author would use graphics and other methods to summarize information on a primary server for understanding. After the research has been completed, the author will examine the data. The author will finally provide a recommendation following the study. ICCPR, ICESCR promotes human rights as well as health rights. In this regards, Mandela Convention theory will be applied as a qualitative approach for conducting research. Besides, the author will take interview from the male prisoners for conducting research. This study details the most recent work of the Bangladesh government to further its goal of improving the health care for male prisoners. The concluding portion of the analysis would present numerous suggestions to help ensuring proper health care rights for the male prisoners. There are some lack of scope and limitation of this paper. There is a shortage of documentation on the precise number of prisoners because of their privacy issue.

---

<sup>5</sup> Kanak MAA and Chowdhury MMR, "The Present Rights of Prisoners in Bangladesh: Disparity between Law and Practice.

<sup>6</sup> Rahman MM and Ali A, "An Analysis on the Real Barriers of Prison Administration in Bangladesh" (1Library April 4, 2018) &lt;<https://1library.net/document/zpwlr9ry-analysis-real-barriers-prison-administration-bangladesh.html>&gt; accessed December 23, 2022

## Conceptual Analysis

### *Prisoner:*

It denotes one who does not have the freedom to do what he wants; one who is imprisoned or detained against his will.<sup>7</sup> A person who is prevented from exercising his freedom until the outcome of any legal proceeding, whether civil or criminal, or upon commutation. It is instructed to the jury that they should "look at the prisoner." Following the execution of the punishment, the judge issues instructions to "transfer the prisoner."<sup>8</sup> In this research only male prisoner will be treated as a prisoner.

### *Prison:*

Convicted offenders are often confined to their cells inside a prison setting. The sentence of life in prison and the possibility of being executed are considered to be the severe punishment that may be inflicted on criminals in Bangladesh.

### *Health:*

It is difficult to provide a precise description of health, and it is much more challenging to do so in a few phrases. The region is rather large. According to the World Health Organization (WHO), health is not only the absence of sickness or infirmity; rather, it is a condition of full mental, bodily, and social well-being.<sup>9</sup> One of the basic rights of every human being, regardless of their ethnicity, religion, political beliefs, economic or social position, is the right to enjoy the best possible level of physical and mental health that is within their reach. No laws in Bangladesh define the word "health" in a clear and straightforward way.

An actual definition for this term is missing even from the Public Health (Emergency Provisions) Ordinance of 1944, which is also known as Ordinance No. XXI of 1944. Section 2 (e) of the Ordinance, however, states that "public health services" and "public health establishments" include all services and establishments maintained by a local authority for the purpose of providing them, including sanitation, water supply, vaccination, sewerage disposal, drainage, and conservancy.<sup>10</sup>

---

<sup>7</sup> Black Law's Dictionary,

<[https://thelawdictionary.org/prisoner/#:~:text=One%20who%20is%20deprived%20of,%2C%20or%20upon%20co muniand%2D%20ment.](https://thelawdictionary.org/prisoner/#:~:text=One%20who%20is%20deprived%20of,%2C%20or%20upon%20co%20muniand%2D%20ment.)> accessed 14 May 2022

<sup>8</sup> Hariston v Com (2007), 50 Va. App. 64

<sup>9</sup> "Constitution of the World Health Organization" (*Constitution of the World Health Organization*) <<https://www.who.int/about/governance/constitution#:~:text=Health%20is%20a%20state%20of,belief%2C%20eco nomic%20or%20social%20condition.>> accessed May 28, 2022

<sup>10</sup> Public Health (Emergency Provisions) Ordinance of 1944 (Act No 21)

### **Present scenario of male prisoner's health care in Bangladesh**

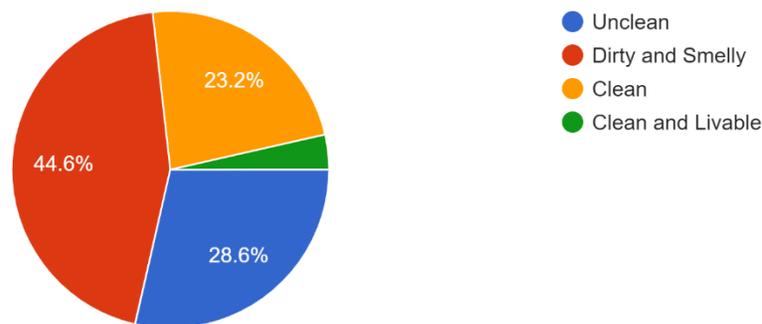
For conducting this research, the author of this paper took primary data with the help of the Bangladesh Police, Jailer and Deputy Jailer of the Dhaka Central Jail. The author of this paper interviewed 60 male prisoners relating to the health care issue, who are imprisoned in the Dhaka Central Jail in Bangladesh. In Bangladesh, male prisoners are confronted with a variety of health-related challenges. The jail is overcrowded, the atmosphere of the prison is not suitable for living, the availability of physicians is not adequate enough, and the jail management is not concerned enough about this issue.

### **Prison environment in Bangladesh:**

According to the survey data conducted by the author, poor persons are disregarded mostly. Those who belong to the top class and the middle class are provided with excellent services by the hospital authorities, whilst the people from the lower classes have a much more difficult time. People from higher and middle classes could easily rent a cabin, and their doctors provided them with specialized care. Those from lower classes are unable to access appropriate medical care. There is a time restriction on the availability of medical professionals, so patients should plan accordingly.

How is the environment of a jail?

56 responses



*Figure 1: Environment of a jail<sup>11</sup>*

This research indicates that the conditions inside a prison are not optimal for human habitation. According to the findings of this study, 44.6% of prisoners said that the walls and floors are filthy and stinky, while

<sup>11</sup> The author collected the primary data from the Dhaka Central Jail by taking help from the Superintendent of Police and Deputy Jailer of Dhaka Central Jail.

28.6% of prisoners stated that the atmosphere is unclean. The remaining prisoners stated that it was clean and habitable. In this aspect, remaining in jail is very difficult simply due to the untidy, disgusting, and unpleasant atmosphere. As a result, they are exposed to an excessive number of health problems, which has a detrimental effect on their mental development.

### Health care system of prison:

Whether medical doctor is always available when the prisoner's need proper treatment?

54 responses

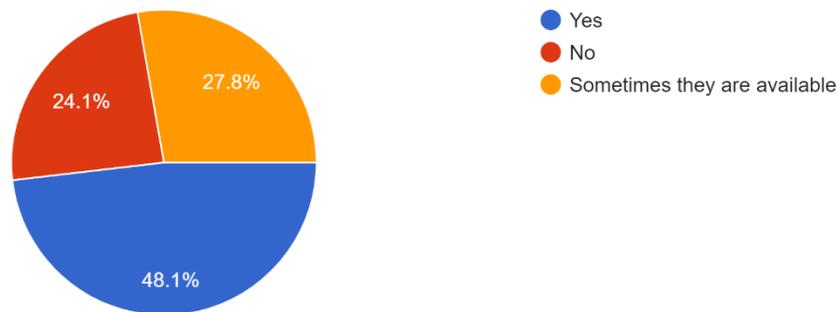


Figure 2: Medical doctors' availability in the jail<sup>12</sup>

According to the findings of this survey, medical professionals are providing care for male prisoners to necessary medical services on demand; 48.1% of prisoners gave a positive response to the question of whether or not doctors' presence in the prison regularly. However, the most significant issue is that the doctors' time is limited. There is no assurance that a medical professional will be readily accessible. For the time being, the doctor in the jail is now providing medical care to the male prisoners. According to the prisoners' testimony, those inmates who pay an additional sum of money or purchase one package of cigarettes are eligible to get additional advantage from the administration. "The majority of prisoners come from middle and lower-class families," making it difficult for them to pay money in jail for better medical treatment." maximum prisoners belong to the middle class and poor class families." Maximum male prisoners mentioned that, male prisoners have a significantly increased risk of developing chronic health conditions such as diabetes, high blood pressure, and HIV, in addition to issues related to drug abuse and mental health. Despite this, healthcare in jail facilities is of poor quality and might be difficult to get.

<sup>12</sup> The author collected the primary data from the Dhaka Central Jail by taking help from the Superintendent of Police and Deputy Jailer of Dhaka Central Jail.

### Accommodation situation in the prison of Bangladesh:

How many people are kept in cell in the jail?

56 responses

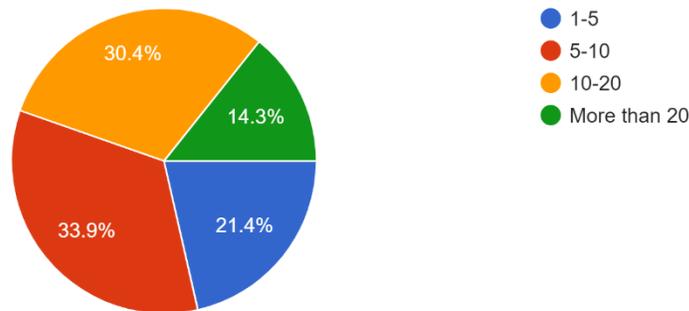


Figure 3<sup>13</sup>

As indicated before, in the central jail, 51.45 per cent of the available prison space is being used; however, in the district jail, that number is just 48.55 per cent. According to the Prison Population Statistics for 2017, the actual population of our correctional facilities is 86,433, and our prisons have a capacity of 36,614. In the year 2021, the prisoner's population density reached 216.9 per cent. According to this research, anywhere from 5-10 prisoners are housed in a single cell at a jail, yet the maximum cell does not have sufficient capacity to accommodate them. According to the research, 30.4% of prisoners stated that the number is growing and 10-20.

Furthermore, 14.3 per cent of prisoners reported hearing that more than 20 prisoners were housed in a single cell under unusual circumstances. Since of this, they are unable to get a good night's sleep, and it is challenging for them to move throughout the facility because there are so many more prisoners. Because of this, many complain of feeling unwell, and some of them are in a potentially life-threatening condition. Since Upazilla prisons weren't working, convicts were confined in central and district jails, contributing to overpopulation. It was impossible to segregate central and district jail populations according to jail officials' records<sup>14</sup>. As a result, most convicts were in Dhaka, Chittagong, and Sylhet prisons.

<sup>13</sup> The author has collected the primary data from the Dhaka Central Jail by taking help from the Superintendent of Police and Deputy Jailer of Dhaka Central Jail.

## Cleanliness and hygiene of prison in Bangladesh:

Whether the environment of the cell of the jail is good for proper health care or not?

56 responses

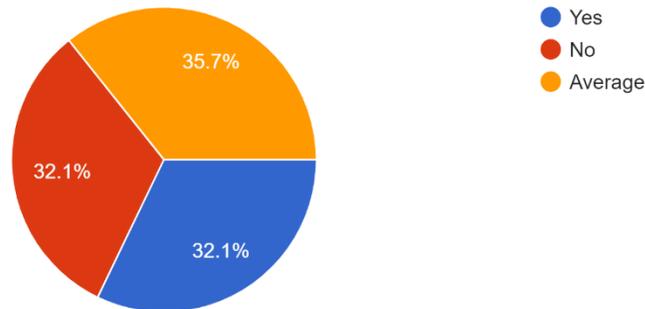


Figure 4: Environment of a jail is good for health or not <sup>15</sup>

According to this research around 32.1% prisoners responded 'yes' to the question of whether the environment of a jail is suitable for living or not. Surprisingly 35.7% prisoners replied average.

The issue of right to get proper health care is accorded a high level of importance in the Constitution of the People's Republic of Bangladesh. The Constitution devotes a lot of attention and discussion to this matter. In the eyes of the law, each and every one of the rights guaranteed by the Constitution may be subdivided into one of the two major groups that are listed below: a) Rights Relating to Civil and Political Institutions (found in Part III under the subject, Fundamental Rights: Articles 27–44); b) Rights Relating to Economic, Social, and Cultural Institutions (placed in Part II under the heading, Fundamental Principles of State Policy): Articles 8–25). Both of these categories can be broken down further into more specific subcategories. The first group includes rights that may be legally enforced while being subject to certain constraints, such as those that are indicated in the regulations. In the event that any of these rights are violated, the person who has been wronged or the victim has the option of seeking remedy through the High Court Division of the Supreme Court. The rights that fall within the second category are not enforceable in a court of law but are preserved as constitutional principles.

---

<sup>14</sup> Sultan MT, “Rights of Prisoners, Ain o Salish Kendra (ASK)” (Ain o Salish Kendra (ASK), August 9, 2015) <<https://www.askbd.org/ask/rights-prisoners/#:~:text=Prisons%20are%20managed%20under%20the,remained%20as%20such%20in%20Bangladesh.>> accessed May 27, 2022

<sup>15</sup> The author has collected the primary data from the Dhaka Central Jail by taking help from the Superintendent of Police and Deputy Jailer of Dhaka Central Jail.

On the other hand, there are a significant number of male prisoners, and this figure is only expected to rise. The aforementioned number demonstrated conclusively that the Bangladeshi jail system is unable to provide the male inmates with adequate medical attention. The prisoners don't get enough foods which contain minerals, vitamins, calcium's etc. Maximum cells of the prisons are overcrowding.

The way our jails are run contradicts our country's rules, standards, and prohibitions. Food, housing, communication, medical treatment, clothes, brutal mental torture, punishment by prison authorities that don't match a court sentence, corruption and other misconduct by jail officials, criminals in jail, and death while in jail custody are some of the things that inmates have to deal with. Unfortunately, these are just some of the issues plaguing prisons worldwide.

There are a total of 68 prisons in Bangladesh, 13 of which are considered to be central prisons, and 55 of which are considered to be district jails<sup>16</sup>. When February 2020 arrives, the official capacity of the prison system will increase to 40944 inmates. (Report written and distributed by the Ministry of Home Affairs) According to data provided by the Bangladesh Society for the Enforcement of Human Rights<sup>17</sup>, there are between 1,150 and 1,200 people entering and exiting the system on a daily basis. These values were arrived at through analyzing the data. But the numbers don't tell the whole story by any means. According to Md. Zakir Hasan, a former Inspector General of prisons in Bangladesh, the total prison population in Bangladesh is approximately 86,100, which is 3.5 times greater than the maximum prison capacity of the country. This number includes those in jail waiting for trial but does not include those detained in the police station.

In addition, there is mental harassment for financial gain practiced in every single jail against the inmates. When new inmates enter the facility, they are given a limited chance to communicate with the facility's security staff in exchange for a monetary payment. In prison, money may be a severe problem. Because they don't have enough money, they have to deal with inhumane treatment, mental harassment, and physical abuse at the hands of prison security or authorities. They may even be accused of being terrorists. Everyday items are being offered at prices that are higher than the current market price. Anyone who dares to protest will find that their life is turned into a living nightmare. In addition to this, the convicts who dominate the other groups use their illegitimate authority to humiliate and torment the incoming inmates.

---

<sup>16</sup> Mohammed Bin Kashem, 'Jails In Bangladesh' (Taylor & Francis, 2011) <<https://www.tandfonline.com/doi/abs/10.1080/01924036.1996.9678560?journalCode=rcac20>> accessed 5 June 2022.

<sup>17</sup> Bangladesh Society for the Enforcement of Human Rights (2020) <<https://www.manabadhikar.org/>> accessed 5 June 2022.

## **Laws and regulations of health care of male prisoners**

The right of all persons deprived of their liberty to the best possible quality of health is protected in a broad range of international agreements. This right applies to those who are detained or imprisoned. These instruments consist of human rights treaties that have been ratified on both the global and regional scales, resolutions that the United Nations have passed, and model standards and guidelines that have been agreed upon and passed by the United Nations General Assembly for the treatment of prisoners. In certain instances, the aforementioned legal papers may outline certain rights and conditions, whilst they may be more general and ambiguous in other cases. The right to health of inmates is spelt out within the framework of economic, social, and cultural rights, which stipulates that the request is universal and does not discriminate in its implementation. The inmates' right to health is also spelt out within economic, social, and cultural rights. In addition, it is articulated via the processes that control civil and political rights.

According to International Covenant on Civil and Political Rights stated that "Although there is no specific right to health provision within the Covenant, questions of health in detention could be raised under the right to life (Article 6) or the right to humane treatment,"<sup>18</sup> "although there is no specific right to health provision within the Covenant, questions of health in detention could be raised under the right to life (Article 6) or the right to humane treatment," "although there is no specific right to health provision within the Covenant, questions of health in detention could be raised under the right to life ( (Article 10).<sup>19</sup> Both the right to life and the freedom to humane treatment place positive obligations on nations that have ratified the treaty to protect the lives and well-being of persons held in custody. The right to life was ratified in 1948, and the right to humane treatment was ratified in 1997. This commitment has often been construed to compel government authorities to make efforts to preserve the health of incarcerated individuals.

As we will see in the following section, the procedures for civil and political rights that are found within the UN and regional human rights systems provide significant safeguards for the health of those who are incarcerated. These procedures can be found in the United Nations and in regional human rights systems.

---

<sup>18</sup> "International Covenant on Civil and Political Rights" (Article 6) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed June 3, 2022

<sup>19</sup> *ibid* Article 10

### **International Mechanisms:**

The right of all people who have had their liberty taken away from them to get the best quality of medical treatment that is reasonably attainable is protected by a broad range of international treaties. These accords may be found all around the world. This right applies to individuals even when they are being kept in custody or while they are jailed. These instruments include human rights treaties that have been ratified on both global and regional scales; resolutions that have been passed by the United Nations; model standards and guidelines for the treatment of prisoners that have been agreed upon and passed by the United Nations General Assembly; and other documents. Bangladesh is the member of UN and as per the International law every member state obey the UN models and they believe that all the guidelines are neutral and not biased which are beneficial for the individuals.

International Covenant on Civil and Political Rights (ICCPR) and International Covenant of Economic, Social and Cultural Rights (ICESCR) ensures the prisoner's right and they guaranteed that prisoners are entitled to have highest attainable standard of physical and mental health. As required by the above treaties and conventions, the jail administration must provide<sup>20</sup>:

1. Living conditions that are secure and conducive to good health for all detainees;
2. Persons' defense against acts of violence and other forms of coercion;
3. Providing enough health care services and medicines, to make them as accessible as possible;
4. Education and information on preventative health measures and healthy lifestyles;
5. Application of fundamental health-preventative strategies;
6. Ways of diagnosing and treating sexually transmitted diseases to reduce the likelihood of these diseases being passed down to future generations;
7. Continuation of medical treatments that were started outside (including those for drug addicts) or the potential of creating them within the facility;
8. The provision of specialized protection for vulnerable inmates, such as those who have tested positive for HIV, against acts of violence committed by other inmates or by inmates who suffer from infectious diseases that, if contracted, could pose a significant health risk to the vulnerable inmate, such as tuberculosis;
9. When HIV testing is done voluntarily, it should always be accompanied by appropriate counselling before and after the test.

---

<sup>20</sup> Reyes H, "Health and Human Rights in Prisons - ICRC" (Health and human rights in prisons - ICRC, December 1, 2001) <<https://www.icrc.org/en/doc/resources/documents/misc/59n8yx.htm#:~:text=Prisoners%20cannot%20fend%20for%20themselves,available%20for%20the%20outside%20population.>> accessed May 14, 2022

### **The United Nations Standard Minimum Rules (Treatment of Prisoners):**

The United Nations Standard Minimum Rules for the Treatment of Prisoners under Rule 5(2)<sup>21</sup> specify that the responsibility for maintaining the prisons is with the respective prison administrations.

#### *Accommodations of the prison:*

They are obligated to offer any and all reasonable accommodations and modifications in order to guarantee that inmates with physical, mental, or other types of impairments have full and effective access to all aspects of prison life on an equal basis. Under Rules 12 and 13 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, the term "prisoner" should not be used. In settings in which sleeping quarters are comprised of individual cells or rooms, it is required that each detainee spend the night in a cell or room that is solely theirs. It is not in anyone's best interest for the central prison administration to create an exception to this rule, even if it becomes essential to do so for exceptional circumstances, such as temporary congestion.<sup>22</sup> It is not ideal to have two inmates sharing a cell or chamber.

In the event that convicts are housed in dormitories, those beds must be occupied by inmates who have been thoroughly vetted to ensure that they are compatible with one another under the given circumstances. In line with how a correctional facility works, there will also be regular monitoring at night. Any space that's going to be used by inmates, particularly every space that's going to be used for sleeping, has to meet all of the health and safety standards that are in place.<sup>23</sup>

#### *Environment of the prison:*

Under Rules 21 and 22 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, any space that's going to be used by inmates, particularly every space that's going to be used for sleeping, has to meet all of the health and safety standards that are in place.<sup>24</sup> Every article of clothing must be kept tidy and in good shape at all times. The authorities of the prison are responsible for maintaining a clean environment and should ensure that the inmates' undergarments are regularly changed and cleaned to ensure proper hygiene. The jail's management is responsible for making sure that each inmate gets food at

---

<sup>21</sup> "The United Nations Standard Minimum Rules for the Treatment of Prisoners" (United Nations Office on Drugs and Crimes) <[https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)> accessed May 27, 2022

<sup>22</sup> *ibid* rule 12

<sup>23</sup> *ibid* rule 13

<sup>24</sup> *ibid* 21

the right times that is healthy, has enough nutrients to keep them healthy and strong, and is cooked and served properly.<sup>25</sup>

*Health care facilities:*

Every correctional facility is required to have a health-care service that is tasked with assessing, promoting, protecting, and improving the physical and mental health of inmates.<sup>26</sup> Special care should be given to prisoners who need special health care or who have health problems that make it hard for them to get better. (Rule 25(1))

*Additional health care service:*

The healthcare service is required to have an interdisciplinary team with a sufficient number of competent employees who are able to operate in full clinical independence. Additionally, the service must have sufficient knowledge in psychology and psychiatry. Every detainee should have access to the services of a licensed dentist who is on staff<sup>27</sup>.

**Constitutional Protection:**

The constitution of the People's Republic of Bangladesh guarantees protection and rights from the state for the citizen of Bangladesh. Bangladesh Constitution ensures 'equality before law' and 'equal protection of law' according to Article 27<sup>28</sup>. In addition, according to Article 28<sup>29</sup> stipulates that the state may not discriminate against any individual on the basis of their religion alone, as well as their race, caste, gender, or the location where they were born. All are entitled to get proper health care from the state, so why not from the jail? According to Article 32<sup>30</sup> it states that nobody should be denied their right to life or their personal liberty unless it is specifically allowed by law.

Bangladesh incorporated some laws and regulation in respect of the prisoners including The Prisons Act, 1894, The Prisoners Act, 1900, and Identification of Prisoners Act 1920, Jail Code 1920, all these laws and rules clearly mention the rights of the prisoner in Bangladesh.

---

<sup>25</sup> ibid rule 22

<sup>26</sup> ibid rule 25(1)

<sup>27</sup> ibid rule 25(2)

<sup>28</sup> The People's Republic of Bangladesh, 1972, P.O. No 76

<sup>29</sup> ibid art 28(1)

<sup>30</sup> ibid art 32

### **The Prisons Act, 1894:**

According to the Prisons Act, 1894 section 3 makes the definition of prison crystal clear<sup>31</sup>, and the term "prison" is defined as any jail or other place that is used permanently or temporarily under the general or special orders of the government for the detention of prisoners. The act also makes it clear that the term "prison" refers to any place that is used for the detention of prisoners.

Rules made by the Government under section 59 it affirms that medical practitioner shall have in charge for ensuring proper health care in the prison, so that the prisoners may get proper treatment<sup>32</sup>. According to section 37 of the same Act, it states that the jailer is required to immediately bring the attention of the medical subordinate to any prisoners who are ill or who have a desire to see him. In addition, it states that any prisoners who have a desire to see the jailer must be reported to the Medical Subordinate.<sup>33</sup> Every prisoner who seems to need help with their mind or body must have the jailer call a doctor right away. The jailer must also follow any written instructions from the Medical Officer or Medical Subordinate about how to treat or discipline an inmate who fits this description.

### **The Prisoners Act, 1900**

The Prisoners Act, 1900 defines the definition of the Prisoner. As per section 2 of this Act, when we talk about "prison," we're referring to any location that the government—either via general or specific orders—has designated as a subsidiary jail.

#### *Proper treatment for the male prisoner:*

This Act talks about the health care of the lunatic prisoners, they are entitled to get proper treatment and they are able to transfer from one cell to another per one place to another place for their better treatment.<sup>34</sup> The Jail Code divides inmates into death row, criminals, under trial, detenus, minors, women, and safe custody. The status of the prisoner' determines who gets 'division' or special privileges. Male inmates aren't separated, so youngsters and those awaiting trial reside among severe criminals.

Penal Code, 1886, Code of Criminal Procedure, 1898, Code of Civil Procedure, 1908, Lunacy Act, 1912, Police Act, 1861, Special Powers' Act, 1974, and Children's Act, 1974 provide prison management guidelines. We need prison changes. 1957 and 1978 Commissions recommended improvements, but implementation has been delayed. The 1980 Munim Jail Reform Commission Report proposed revisions.

---

<sup>31</sup> The Prisons Act, 1894, (Act No 9)

<sup>32</sup> *ibid* section 13

<sup>33</sup> *ibid* section 37

<sup>34</sup> The Prisoner Act, 1900 (Act No 3), section 30

*Accommodation of the prison & other facilities:*

The Ministerial Committee on Jail Reforms recommended that:

1. Sick inmates awarded 'division' (better conditions) must see the same doctor they saw before jail.
2. Families may send food and bedding to prisoners granted division.
3. Toilets and food need separate utensils.
4. Bar fetters must be written and justified.
5. Plastic and leather fetters should replace steel ones.
6. Inmates shouldn't be given demeaning tasks.
7. Prisoners' toilets must be clean.

**Findings:**

The right to health is commonly linked with the availability of medical treatment as well as the construction of hospitals. This is accurate, but the right to health encompasses far more than this. It takes into account a broad variety of aspects that might contribute to the maintenance of a healthy lifestyle for us. The following individuals and organizations make up the Committee on Economic, Social, and Cultural Rights, which is the body responsible for monitoring the International Covenant on Economic, Social, and Cultural Rights: Clean water and sanitation facilities that are sufficient; provision of healthy food; housing and food that are suitable for their needs; safe and wholesome circumstances in the workplace and the surrounding environment; education and knowledge pertaining to health issues; parity between the genders .

The following discussion makes it abundantly evident that

1. Bangladesh enacted an excessive number of rules and regulations, but they were not followed properly. In fact, Bangladesh is unable to fulfill the principles established by the United Nations. The male inmates in Bangladesh are denied their rights, particularly the right to health care, which is a right that is recognized not only by the People's Republic of Bangladesh but also by other legislation.
2. Even if the total number of male prisoners in Bangladeshi cells continues to rise on a daily basis, the facilities themselves have not altered. The results of the primary data indicate that 44.6% of prisoners said that the walls and floors are dirty and smelly, and that 28.6% of prisoners reported

that the environment is unclean. The surviving convicts all agreed that it had been well cleaned and was suitable for habitation. On the other hand according to the Rule 12, 15 & 18 of the United Nations Standard Minimum Rules for the Treatment of Prisoners state that the jail shall maintain a clean environment so that the prisoners are not required to sleep in an area that is too crowded. But in Bangladesh, prison scenario is totally different.

3. According to Rule 25 of The United Nations Standard Minimum Rules for the Treatment of Prisoners, every jail must offer a quality healthcare to evaluate, promote, safeguard, and improve the physical and mental health of convicts, with special attention to those with unique needs and health concerns that hinder recovery. But according to the primary data collected by the author, there is still some uncertainty about the accessibility of the prison's medical staff. The male prisoners don't get any treatment, and they don't have access to medical facilities or anything else.
4. In the prison of Bangladesh those who are able to pay the required amount are able to get appropriate care. Nevertheless, families from the middle class and lower class find the cost to be unmanageable. It is so very evident that there is still evidence of corruption inside the facility, and the male inmates are the victims. But the jail code of Bangladesh guaranteed for equal treatment, even all the legislations and rules ensure equal treatment for getting the prisoners' rights.
5. According to the findings of this study, anywhere from five to ten inmates are crammed into a single cell at a jail, despite the fact that the maximum capacity of the cell does not allow for this number of inmates. According to the findings of the study, 30.4% of prisoners believe that the number is increasing and that it is between 10 and 20. In addition, 14.3% of prisoners reported hearing that unusually large numbers of prisoners were confined in a single cell, with some having as many as 20 other detainees in the same space. They are unable to obtain a restful night's sleep as a result of this, and it is difficult for them to move throughout the institution due to the increased number of convicts. As a consequence of this, a great number of people report that they are feeling ill, and the condition that some of them report having is potentially fatal.
6. In the prison of Bangladesh there are enough staffs and medical practitioners but no one scrutinize all their duties whether they do their task properly or not. There is lack of people to oversee the activities.

### **Recommendations:**

The rights that are provided to male prisoners in Bangladesh jails by the Constitution of Bangladesh and other laws dealing with prisoners are not extended to those male inmates who are incarcerated in Bangladesh. The difficulty is that Bangladesh is still unable to implement the laws and regulations that have been established, despite the fact that certain international procedures have also modified all of the prisoners' rights. As a direct consequence of this, male detainees are unable to obtain adequate rights, most notably those pertaining to their ability to get adequate medical treatment. Even while the number of male prisoners is increasing, the conditions that are already in place, as well as the way things are organized, are still appalling and have not changed. So, some initiatives need take to root out the problems and ensure a better health care for the male prisoners

1. It is recommended that the Jail Code of 1920 be amended following the United Nations Standard Minimum Rules for the Treatment of Prisoners and after consultation with legal specialists, psychiatrists, social workers, and advocates for human rights.
2. To ensure prisoners' rights, the proposed amendments to the Jail Code of 1920 went into effect as quickly and efficiently as possible to protect all convicts' rights. An ombudsman should be assigned to the Municipal Jail to settle complaints and monitor the progress of changes, as was proposed by the Commission to Reform the Municipal Jail. The United Nations Standard Minimum Rules for the Treatment of Prisoners need to be taught to all officers and employees working in prisons. After a quarterly assessment of each case, convicts imprisoned for minor offences should be freed to prevent congestion in prisons.
3. It is recommended that the Human Rights Commission establish 68 teams, with each team having five members (there are 68 prisons), and that there be one team assigned to each jail.
4. Principal responsibility should be assigned on a team in each detention facility so that they may investigate and assess the degree to which the administration of such facilities is respecting the legal rights of inmates. They need autonomy to carry out their duties effectively.
5. A significant contribution from the Human Rights Commission, the Anti-Corruption Commission, and non-governmental groups is required for eliminating corruption from correctional system.
6. Our news organizations should have been allowed unrestricted access to the detention center so that they may monitor the degree to which the administration is respecting inmates' rights.

### **Concluding Remarks:**

An ideal jail system would include human interactions, excellent conduct, mutual respect, and a suitable atmosphere. These are all necessary components. Instead of seeing prisons as a place of punishment, we need to view them as places of rehabilitation for the inmates who are incarcerated there. After that, the motto of the jail, which reads "Prisoners shall be held in secure and shown the route to light," will be realized in its entirety. An ideal jail system would include human interaction, excellent conduct, mutual respect, and a suitable atmosphere. These are all necessary components. Instead of seeing prisons as a place of punishment, we need to view them as places of rehabilitation for the inmates who are incarcerated there. Following that, the jail's motto, "Prisoners shall be held in securing and shown the way to light," will be fully realized. In our country, the laws do a sufficient job of protecting the rights of male prisoners, but the mechanisms by which they are executed do a comparably insufficient job of protecting the same prisoners' rights. The rights of male inmates should be protected by the government, which should take the steps required to ensure that they are implemented. On the other hand, adequate medical facilities that are adequate for the physical condition of the male prisoners should be supplied. All of the rights of male prisoners, which have been described above, need to be ensured as soon as possible. They should be afforded the opportunity to get appropriate medical treatment even while they are incarcerated since they have a life of their own. Although Bangladesh has passed certain laws in this area, it is a source of great regret because the authorities in charge of the prisons do not seem to be sufficiently concerned. They have a responsibility to look after the male convicts since showing compassion and ensuring that they get adequate medical treatment are their highest priorities. The Cabinet hadn't adopted the suggestions by year's end, so they aren't in effect yet.

According to the rules for superintendence and management for jail the duties of the Medical Officer include providing medical care to all of the inmates as well as the inmates' families who live in the facilities of the prison. Medical subordinates provide assistance to the Medical Officer in the areas of attending to the prisoners for their care, keeping the environment clean; maintaining order and discipline inside the hospital, and supervising the tasks of the compounder and attendants. In addition to this, he is responsible for ensuring that the prison is clean and in good sanitary condition, as well as inspecting the food storage and kitchen on a regular basis to verify that the food is of sufficient quality.

04

## A Legal Appraisal of the Protection and Opportunities of Geographical Indication (GI) in Bangladesh

Dewan Alif Ovi\* and Abdul Hakim Noyon\*\*<sup>1</sup>

### *Abstract*

*Geographical indication is a sign used on goods that distinguishes a product depending on its place of source and have qualities or a brand image as a result of that source. The research has concentrated on idea of geographical indication, current regulatory mechanisms for geographical indication protection, the ongoing GI issues, a potential GI goods list, and challenges. This article also examines some of the administrative and legal difficulties that nations like Bangladesh confront in assuring its GI protection. The paper strengthens the argument that a Least Developed Country (LDC) like Bangladesh has its business interests in its neighbors substantially affected by the lack of any uniform policy framework to safeguard cross-border GIs. Furthermore, Bangladesh's sui generis GI registration process, which is currently developing, is insufficient to address this issue. To overcome such challenges, some recommendations have been provided. In order to stop other nations from listing and owning their own products, the authors concluded that Bangladesh must act quickly and with significant effort. Any constructive disciplinary action taken by the Bangladesh government in these areas could safeguard their interests.*

**Keywords:** *Geographical Indications (GI), Intellectual Property, TRIPS Agreement, Bangladesh, GI Products*

---

<sup>1</sup> \*,\*\*Former student of LLB program, Department of Law and Human Rights, University of Asia Pacific

## **Introduction**

Geographical indications are words that distinguish an item starting from a specific spot. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets out global standards that apply to these terms. Since the selection of the Agreement on Trade-Related Aspects of Intellectual Property Rights Known as TRIPS Agreement in 1994 which contains a part on unmistakable licensed innovation, this sort of Intellectual property (IP) has pulled in and pulled in growing thought from policymakers and exchange arbitrators, legal advisors just as makers (for the most part of agrarian items). “Countries from South Asia like Bangladesh having improved in conventional and social scholarly properties hold enormous possibilities of financial advancement by legitimate administration of customary and social scholarly properties. World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) while giving higher status to wines and spirits has let the social events get their own system for guaranteeing geological trademark stock”<sup>2</sup>. The primary function of Bangladesh's licensed innovation system is to grant licenses for the development and enlistment of modern plans, enrollment of exchange and administration imprints, and enrollment of copyrights for writing, imaginative and logical works. “Giving of licenses, enrollment of modern plans and brand names are regulated by the Department of Patents, Designs, and Trademarks (DPDT) under the Ministry of Industries. Before 2013, there was no law in real life for securing our geographically originated or produced goods”<sup>3</sup>. GI are additional markers of value; to tell shoppers that merchandise comes from a space where a given quality, notoriety, or normal for the products is basically owing to their geographic source<sup>4</sup>. GI has the business interests; to advance the merchandise of specific region and they are qualified for the assurance from encroachments as well as unreasonable rivalries. The TRIPs Agreement was haggled with the goal to give more prominent assurance of IP rights overall which depends on a similar treatment guideline.

## **Safeguarding of Geographical Indication (International Perspective)**

Due to the gradually expanding trans-limit interchange and trade in products with geographical indications, mechanisms for the security GI, the Global access to GI dates to the latter part of the 19th century. Regardless, the national industry assurance of geographical indication by integrating

---

<sup>2</sup> Islam, Mohammad Towhidul and Habib, Md., *Introducing Geographical Indications in Bangladesh* (January 12, 2016). *Dhaka University Law Journal* Vol. 24 No. 1 (published in 2016) pp. 51-82., Available at SSRN: <https://ssrn.com/abstract=2714918>

<sup>3</sup> Uddin, M. Kamal, “Report on Innovation and Intellectual Property Policy and Strategy for Bangladesh”, (WIPO) Dhaka.

<sup>4</sup> Ibid

genuine features was not a surprise. There are a few worldwide products that give geographical indication insurance.<sup>5</sup>

*The Paris Convention for the Protection of industrial Property, 1883*

GI was acknowledged as a distinct class of intellectual property under the Paris Convention for the Protection of Industrial Property in 1883.<sup>6</sup> According the Paris Convention of 1883, article 10 completely refuses to acknowledge the illegal utilization of “indications of source” on merchandise and gives a few solutions for the concealment of such practices. Article 10 (b) is of the Paris Convention<sup>7</sup>, gives security in opposition to anti - competitive behavior and subsequently on the other side outlines the grounds for assurance against misdirecting source indicators, including appellations of origin.<sup>8</sup> As per convention “The Paris regime allows the National Treatment Principles to be utilized to preserve the Paris Union's indications of source and indications of origin (AO)”<sup>9</sup>.

*Madrid Agreement, 1891*

A special agreement spearheaded by WIPO, “the Madrid Agreement for the Prevention of False or Misleading "Indications of Source" on Goods<sup>10</sup> seeks to combat both false indications and misleading sources of source”.<sup>11</sup> The real name of the origin of the product can serve as an illusory early indicator of source whilst at the relatively similar time, “regarding the true origin and efficiency of the product, it might be confusing to the buyer. According to Madrid Agreement article 1 (1) suggests that any product carrying a false and deceptive sign by which any of the Madrid Agreement's participating countries or a place<sup>12</sup> designated therein is expressly or implicitly demonstrated to be the same as the nation or place of origin”<sup>13</sup> Article 11 (3b) requires the Parties to the Agreement to prohibit the use of any indication capable of misleading people in general about the origin of the goods in connection with the sale, display, or offer to be purchased of any products. According to Article 4, national courts must decide whether circumstances are exempt from the Madrid Agreement's rules due to their broad character. The Madrid approach allows for the international registration of the source indication to be safeguarded. The 1891 Convention encompasses both geographic indications and designations of origin due to the expansive

---

<sup>5</sup> Cf Islam (n 1)

<sup>6</sup> Paris Convention for the Protection of Industrial Property, 1967 in Stockholm. According to Article I, Section 2 of the Paris Convention, the mission of industrial property protection.

<sup>7</sup> (*Trade.ec.europa.eu*, 2022) <[https://trade.ec.europa.eu/doclib/docs/2007/june/tradoc\\_135088.pdf](https://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_135088.pdf)> accessed 28 June 2022.

<sup>8</sup> 'Paris Convention Of 1883 for The Protection of Industrial Property' (*Abounaja.com*, 2021) <<https://abounaja.com/blogs/paris-convention-of-1883>> accessed 26 June 2022

<sup>9</sup> Ibid

<sup>10</sup>This Agreement is a part of the "Madrid System". See, for details, Giovannucci et al, above note 2, 42-43.

<sup>11</sup> cf Islam (n 1)

<sup>12</sup> O'Connor, above note 2, 4.

<sup>13</sup> Ibid

definition of source indications. Because of this, all parties to this Agreement, including LDCs like Bangladesh, are required to implement border controls on commodities with incorrect or deceptive labels. Since they have the least ability to develop GI to monitor products abroad, least developed nations stand to gain from this agreement<sup>14</sup>.

*The Lisbon Agreement, 1958 (Registration & Appellations of Origin)*

The year of 1958 saw the adoption of the Lisbon Agreement for the Protection of Appellations of Origin and its International Registration. It began operations in 1966, underwent a modification in 1967<sup>15</sup>, and underwent its most recent correction in 2002. The Agreement developed the Lisbon System,<sup>16</sup> which is managed by WIPO and is a partner of the Madrid System. Outside of their country origin, it is used to understand and verify Appellations of Origin in countries. By using a single enrollment mechanism for an appellation, and by joining meaningful law, for example, characterizing the substance of the assurance that member states should embrace.<sup>17</sup> In Article 3 of the Agreement, the source designation is given broad assurance, stating that regardless of whether the item's actual origin is given, if the identification is used in a decoded structure, or if the designation is linked by phrases, that surveillance will be assured against such a cession or impersonation or if it's followed by words like kind, type, create, or impersonation, or words to that effect.<sup>18</sup> The Agreement has accommodated a worldwide enrollment framework for "handles of cause" given that they must be first enlisted in the nation of root. "Through a single registration, the Lisbon System for the International Registration of Appellations of Origin provides ways to get insurance for a given name of origin in the parties to the Lisbon Agreement that have signed the agreement. So, if an LDC like Bangladesh turns involved with it, a solitary enlistment would ensure Bangladeshi AOs across the Lisbon umbrella"<sup>19</sup>. It would be incredibly beneficial for Bangladeshi AOs to be acquired in international sectors, which might be tough for Bangladesh owing to cost and other essential considerations. Furthermore, there are extra considerations for LDCs, such as Bangladesh, which has a minor voice in amending the Lisbon AO system in order to increase its protective estimation with all GIs other than AO<sup>20</sup>.

---

<sup>14</sup> Ahsan Habib, 'Introducing Geographical Indications In Bangladesh' (2013) 24 Dhaka University Law Journal.

<sup>15</sup> Ibid

<sup>16</sup> Lisbon Agreement Article 5.

<sup>17</sup> "Summary of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (1958)" (Summary of the Lisbon agreement for the protection of appellations of origin and their international registration (1958) <[https://www.wipo.int/treaties/en/registration/lisbon/summary\\_lisbon.html](https://www.wipo.int/treaties/en/registration/lisbon/summary_lisbon.html)> accessed December 28, 2022

<sup>18</sup> Ibid

<sup>19</sup> Cf Islam (n 1)

<sup>20</sup> Ibid

*The Madrid Agreement, 1989 (Protocol Regarding the Registration of Marks 1891)*

Bangladesh chooses to secure its GIs through endorsement signs, index stamps, or assurance signs under brand name structure; it may turn to the Madrid System on the assurance of imprints, which gives total guarantee in the Madrid Union thru a solitary registration. Important imprints, for example, signs or logos, may be safeguarded under the Madrid system on marks.<sup>21</sup> “This implies that a worldwide enlistment framework for brand names, set up by the Madrid Agreement of 1891 and the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks of 1989, can likewise serve as a means of GI assurance on a worldwide scale”.<sup>22</sup>

### **Bangladesh's Current Legal System for Protecting Geographical Indications**

Bangladesh is rich in natural beauty, heritage, and traditional garb. Its animals & plants, folklore, and conventional insight are constantly added to when assembling goods. It has approved “the Geographical Indication of Goods (Registration and Protection) Act 2013”<sup>23</sup> in light of its significant standard set using legitimate and counterfeit resources.<sup>24</sup> As the GI Act has been passed and some of our famous products have already been registered by India, Bangladesh has historical, cultural, and geographical roots in Bangladesh's soil for Jamdani and other unique products, If not, Bangladesh would have to pay a surcharge to the Indian government in order using the name Jamdani and other names<sup>25</sup>. It will assist Bangladeshi manufacturers in differentiating their products from comparable rival items, establishing brand and reputation for local products, and obtaining higher pricing for the products. This will promote sales/exports by safeguarding the local product's reputation<sup>26</sup>. Bangladesh has lost its rights to some traditional products due to the lack of GI law in the country on the other hand; India has begun registering what is known as a geographical indication (GI) for its products. Therefore, under the Geographical Indications (Registration and Protection) Act of 1999, India has Jamdani Sally, Andhra Pradesh (Uppada), Nakshi Katha in West Bengal, and Fazli Mango in the Malda district of West Bengal (Uppada).

---

<sup>21</sup> 'Summary Of the Madrid Agreement Concerning The International Registration Of Marks (1891) And The Protocol Relating To That Agreement (1989)' (Wipo.int, 2021) <[https://www.wipo.int/treaties/en/registration/madrid/summary\\_madrid\\_marks.html](https://www.wipo.int/treaties/en/registration/madrid/summary_madrid_marks.html)> accessed 13 May 2021.

<sup>22</sup> cf Islam (n 1)

<sup>23</sup> Ibid

<sup>24</sup> Geographical Indication of Goods (Registration and Protection) Act 2013.

<sup>25</sup> Hyder, Md. Nayem Alimul (2016) Geographical Indications Protection In Bangladesh: An Overview. Int. J. Bus. Soc. Sci. Res. 4(2): 95-102. Retrieve from <http://www.ijbssr.com/currentissueview/14013133>.

<sup>26</sup> Ibid

Registered as the origin. Jamdani is a unique Bangladeshi hand-woven product with a brilliant history and unique creativity, and Bangladeshi weavers have been making this fine fabric for thousands of years<sup>27</sup>.

#### *Introducing GI Act in Bangladesh*

Bangladesh Government has at last established the much-anticipated Geographical Indication (GI) Act on November 10, 2013. We would now be able to enlist our merchandise and items meriting the GI labels. Bangladesh has a scope of merchandise and items that have the attributes of GI and would effortlessly meet all requirements to the GI alliance. Dhakai Jamdani, Nakshi Kantha, Fazlee-Aam (Mango) from Rajshahi, Hilsha Fish from Chandpur, Rosh Malai from Comilla, Doi (Curd) from Bogra are the most prominent ones among others. It could be recapped that GIs are a sort of licensed innovation that are related with culture, geology, legacy and conventional acts of individuals of a given country. GIs are created in a specific topographical area, which has novel geo-climatic qualities, and this makes them exceptional.<sup>28</sup> They associate with the merchandise or results of a domain, or district or region in that country, and set up a connection between the territory and the quality, notoriety or attributes of such merchandise and item. Already, the Draft GI Act, 2012 got the endorsement of the Cabinet Division however was not set at the Parliament as a Bill. All things being equal, “the Draft Act was returned to the Ministry of Industries where it went through a gashing a medical procedure by the Department of Patents, Designs and Trademarks (DPDT) oddly enough”<sup>29</sup>. DPDT sliced down right around 38 areas from the Draft GI Act, 2012 and planned the 2013 Act dependent on the simple pardon that the segments, that didn't make it to the GI enactment, will ultimately be put in the GI Rules which is normally breathed easy.<sup>30</sup>

#### *GI Registration System in Bangladesh*

Before the law came into force, there was no GI registration process. Currently, the 2013 Geographical Indications of Goods (Registration and Protection) Act and Section 9 provide for how to apply for geographical indications of goods. In accordance with this section, associations, agencies, government agencies, or authorities that represent the interests of those who are configured or registered under applicable law and who create geographical indications of goods shall, in the prescribed form and method, geography of goods<sup>31</sup>. Payment of the prescribed fee for registering indications. If such an individual or group of individuals claims to be a producer, distributor, manufacturer, or processor of a GI

---

<sup>27</sup> Ibid

<sup>28</sup> Abu Yusuf, Mohammad and Burhan, Sheikh Ruksana, Geographic Indication: The role of the private sector (2013) from The Daily Financial Express (Tuesday, November 12, 2013)

<sup>29</sup> cf Hyder (n 24)

<sup>30</sup> cf Abu Yusuf (n 27)

<sup>31</sup> Geographical Indications of Goods (Registration and Protection) Act 2013, s.9

product, they may apply for registration as an authorized user of that GI product under Section 10 increase.<sup>32</sup> To complete registration, the Registrar shall publish the application by notification in the prescribed manner if the application is deemed to meet all the requirements of Section 12 of this Code<sup>33</sup>. If the registrar believes that the application was made incorrectly or under a different name and title and if they think it doesn't require to register a geographical indication under the circumstances.<sup>34</sup> Anyone can refuse to process registration request. Reasonable opportunity agreed to be heard by the applicant in accordance with Section 11. In short, it turns out that the procedure for registering geographical indications in this law is too simple. Without proper steps, no one can register a geographical indication of an item<sup>35</sup>.

*Bangladesh's need for GI protection*

Article 24.9 of the TRIPS Agreement completely gives that: " This Agreement will not be bound to secure topographical signs that are not or cease to be secured in their nation of origin or that have been abandoned in that nation"<sup>36</sup>. So, to conjure an infringement of the WTO TRIPS Agreement, a part concerned should need to initially secure its GI in a structure or another. Then again, any one might be a free rider of a GI on the off chance that it isn't legitimately ensured in its nation of beginning or it has gotten nonexclusive or in any case "has stopped to be secured". For instance, "without a law ensuring the GI in Basmati rice, India would be unable to cope up also with Dispute Settlement or just any WTO Member. One could argue that GI would be protected often without an insurance instrument due to uncalled for rivalry law or the misdeed of passing off"<sup>37</sup>. Yet, as a general rule passing off activity is entirely capricious and convoluted to demonstrate. An enlisted GI provides the unique feature and customer quality affirmation elements. Great defenders of GI enrollment could claim that it exerts positive effects because it gives small, family-run businesses in rural areas the power to fight against modern consolidation.<sup>38</sup> Additionally, the family of traditional practices and native ways of life are currently being impacted by the steadily expanding skyline of globalization.<sup>39</sup> Assurance of customary GIs through enlistment is an unavoidable system to forestall bio-robbery and comparable unmerited practices. One may contend that customary geological characteristic names could be ensured under the brand name system. Yet, there are in any event two significant contrasts among trademarks and GI.

---

<sup>32</sup> Geographical Indications of Goods (Registration and Protection) Act 2013, s.10

<sup>33</sup> Geographical Indications of Goods (Registration and Protection) Act 2013, s.12

<sup>34</sup> Shipta Barua, 'An Analytical Overview on The Geographical Indication Act | Legal Home' (*Legal Home*, 2021) <<https://legalhome.org/geographical-indication/>> accessed 27 June 2022.

<sup>35</sup> Ibid

<sup>36</sup> Islam, Mohammad Towhidul and Habib, Md., *Introducing Geographical Indications in Bangladesh* (January 12, 2016). *Dhaka University Law Journal* Vol. 24 No. 1 (published in 2016) pp. 66 .

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> cf Abu Yusuf, (n 25)

Without a strong enough legal defense, rivals may complementarily elevate an epithet's standing. Additionally helpful in obtaining a better price search is GI status. In a large number of precise studies, it has been found that a significant portion of consumers are willing to pay more for GI products, but primarily with regard to developed countries. As a non-industrial nation with a solid agrarian area, masterfulness and conventional information, GI law can be a critical public arrangement device for financial turn of events and the business of ranchers and gifted laborer in the field.

### **The prominent GI goods of Bangladesh**

In Bangladesh, GI has immense potential. Dhaka Jamdani, Nakshi Katha, Rajshahi Silk, Sweets, Fazli Mango, Jamdani, Khadi, etc., but because Bangladesh hasn't had a GI law for a while, we haven't been able to boost our financial advantage from this product. As in Bangladesh, this has prevented many people involved in the production of these goods from making economic and social progress.

#### *The Creativity of Bangladeshi Women's Community: Nakshi Kantha*

Nakshi kantha, in another name "wrapped quilt", is a type of folk art from Bangladesh and India. For a long time, the craftsmanship has been drilled in rural Bengal. The fundamental material utilized is string and old fabric. Kanthas are made all through Bangladesh, yet the more prominent Mymensingh, Rajshahi, Faridpur and Jessore zones are generally renowned for this craft. The brilliant examples and plans that are weaved brought about the name Nakshi Kantha<sup>40</sup>, which was gotten from the Bengali word Naksha, which alludes to imaginative examples. The early kanthas had a white foundation complemented with red, blue, and dark weaving; later yellow, green, pink and different tones were likewise included. The running line called "kantha line" is the fundamental join utilized for this reason. Generally, Kantha was created for the utilization of the family. Today, after the recovery of the Nakshi Kantha, they are delivered financially. Nakshi Kantha (weaved quilt), said to be native to Bangladesh, is produced using old cotton garments, overwhelmingly disposed of sari, dhoti and lungi.<sup>41</sup>

#### *Jamdani*

Jamdani is a fine fabric of "muslin" group. A broadly and universally celebrated texture, jamdani is described by geometric or flower plans. Jamdani sarees have colorful direct or flower themes everywhere on the body and have a dazzlingly planned expand pallu.<sup>42</sup> Bedouin, Chinese and Italian merchants had additionally given nitty gritty record of this texture coming based on what is currently Bangladesh. An

---

<sup>40</sup> Ahmed P, The Aesthetics and Vocabulary of Nakshi Kantha (Bangladesh National Museum Collection) <<https://www.exoticindiaart.com/book/details/aesthetics-and-vocabulary-of-nakshi-kantha-bangladesh-national-museum-collection-nak673>> accessed December 28, 2022

<sup>41</sup> Ibid

<sup>42</sup> Zinat Mahrukh Banu and Masood Reza, Jamdani, <[http://www.banglapedia.org/HT/J\\_0056 .htm](http://www.banglapedia.org/HT/J_0056.htm)> 20 Dec 2014.

English explorer, Ralph Finch, likewise praises about muslin and jamdani made in Sonargaon, close to Dhaka.<sup>43</sup> The texture, nonetheless, achieved its zenith during the rule of Akbar, the incomparable Mughal Emperor. It had by then gotten such a sought-after thing that the British East India Company who came in later needed to post a high authority in Dhaka to purchase mulmul khas. He was known as the "Daroga-Mulmul." UNESCO has as of late announced the customary craft of Jamdani weaving in Dhaka as a theoretical legacy of mankind<sup>44</sup>.

*The King of Fruits: Fazli Mango*

Mangoes of the Fazli kind are brought from the eastern region of South Asia (West Bengal and Bihar in India and Bangladesh). This fruit ripens later and became available after other varieties have been much prized in the area. The primary producer of this mango is the Bangladeshi region of Rajshahi. Fazli is a geographical indication that India has applied for; however, Bangladeshi Fazli Mango has already been certified as a product with a Geographical Indication (GI).<sup>45</sup>

*Medicinal plants of Bangladesh*

In customary and elective restorative practices like Unani and Ayurvedic frameworks, conventional therapeutic plants have been broadly utilized roots in Bangladesh.<sup>46</sup> Apparently, the beneficiaries of these frameworks of medication give off an impression of being the provincial individuals, yet for all intents and purposes a decent extent of the metropolitan populace actually keeps on utilizing these conventional prescriptions, albeit coordinated present-day medical services offices are accessible to them. Medicinal arrangements, practically all of which circular segment multi-componential, utilized in these two frameworks bend perpetually produced using plant materials, in some cases with the expansion of some creature items and furthermore some common or manufactured natural and inorganic synthetic substances, major dynamic compound right now or once got from (or designed after) intensifies got from organic variety.<sup>47</sup>

---

<sup>43</sup> Ibid

<sup>44</sup> 'UNESCO - Traditional Art of Jamdani Weaving' (*Ich.unesco.org*, 2015) <<https://ich.unesco.org/en/RL/traditional-art-of-jamdani-weaving-00879>> accessed 28 June 2022.

<sup>45</sup> "Fazli Mango Gets Gi Recognition - Countryside" (The Daily ObserverOctober 22, 2021) <<https://observerbd.com/news.php?id=336402>> accessed December 23, 2022

<sup>46</sup> 3 Mohammad Abdur Rahman, 'Conservation of Medicinal Plants in Bangladesh' (Paper prepared for presentation at the Annual Bangladesh Botanical Conference, 2006).

<sup>47</sup> ibid

## Certified GI Products in Bangladesh

As of 17 May 2022, Bangladesh has total 10 (Ten)<sup>48</sup> GI certified products, Last addition is 'Bagda Prawn'. The department of fisheries applied for GI certification in May 2019 to promote Bagda Prawn in the international market. The Patent, Design and Trademark Office published the official bulletin on October 6, last year, and published it in two journals. If no one disagrees within two months of being published in a trade magazine, there is nothing to prevent the product from obtaining a GI certificate in accordance with regulations<sup>49</sup>. In 2016, Jamdani was designated as Bangladesh's first geographical indication product. Hilsha acquired the geographical indication in 2017, and Kirsia Patty Mango acquired the geographical indication in 2019. On September 24, 2017, the "Bangladesh Silk Development Commission, Rajshahi, applied for the geographical rights of Rajshahi Silk among the six new GI products. Bangladesh Rice Research Institute (BRRI) applied for a GI certificate for Karijira Rice on February 7, 2017. BRRI has also applied for a GI certificate for Kataribhog from Dinajpur"<sup>50</sup>. The Deputy Chief Cabinet Secretary of Netrokona applied to receive a GI from Sadamati of Bijoypur on February 6, 2017. An application to obtain a Dhakai Muslin GI certificate from the Handloom Board, Bangladesh was received on January 2, 2018.<sup>51</sup>

The list of 11 (Eleven) GI products are given below:

1. Jamdani
2. Hilsha Fish
3. Khirsapat Mango of Chapainawabganj
4. Muslin of Dhaka
5. Silk of Rajshahi
6. Shatranji of Rangpur
7. Kataribhog Rice of Dinajpur

---

<sup>48</sup> The Business Standard, 'Bagda Prawn Receives GI Certificate' (2022) <<https://www.tbsnews.net/economy/bagda-prawn-receives-gi-certificate-421706>> accessed 1 July 2022

<sup>49</sup> Ibid

<sup>50</sup> Likhon N, "Six New Items Gain GI Status" (Bangladesh PostApril 23, 2021) <<https://bangladeshpost.net/posts/six-new-items-gain-gi-status-58682>> accessed December 28, 2022

<sup>51</sup> Ibid.

8. Kalijira Rice of Dinajpur<sup>52</sup>
9. Clay-crystalline cellulose composite of Bijoypur in Netrokona
10. Bagda Prawn
11. Fazli Mango

In response to inquiries, “Mr. Abdus Sattar, Registrar of DPDT, stated to Bangladesh Post: "We had hoped to deliver the six new product certifications on 2021 April 26, the day of intellectual property rights, but owing to restrictions, it is not possible”<sup>53</sup>. Since the certificate must be physically handed, we want to distribute it following the EID at a convenient time. The DPDT also stated that it had applied for GI certification for 29 additional goods. One famous example is the Anabus fish (Kai fish). Some of these may receive final GI recognition.

### **Essential of GI’s recognition in Marketing Value of Product**

Interest in GIs has flourished recently in Bangladesh. The commitment, under the TRIPS Agreement, for Members of the World Trade Organization (WTO) to ensure GIs has, generally, set off this consideration. However, what makes the fascination? The short answer is that they are viewed as valuable tools or mechanisms in advertising systems and public strategies, for which there has been developing revenue in the last a few decades. Topographical signs as separation apparatuses in showcasing systems: from simple source markers to brands Consumers give expanding consideration to the geographical origin of products and care about explicit qualities present in the items they purchase.<sup>54</sup> Now and again, the "spot of the beginning" recommends to buyers that the product will have a specific quality or trademark that they may esteem. Frequently, customers are set up to pay more for such items. This has supported the advancement of explicit business sectors for items with specific qualities connected to their geographical place of origin.<sup>55</sup> Brand acknowledgment is a fundamental part of advertising. Geographical indications convey information about the beginning bound characteristics of a product. They along these lines work as product differentiators available by empowering buyers to recognize items with geological Indication attributes and others without those qualities. Topographical signs would thus be able to be a vital component in developing brands for quality-bound-to-origin products. So, it is easily thinkable that the Geographical Indication recognized products are having more value than a random product, due to its

---

<sup>52</sup> Asjadul Kibria, 'Getting Products GI-Tagged' The Financial Express (2021) <<https://thefinancialexpress.com.bd/views/getting-products-gi-tagged-1624722272>> accessed 1 July 2022.

<sup>53</sup> cf Likhon (n 49)

<sup>54</sup> World Intellectual Property Organization, *Geographical Indications* (World Intellectual Property Organization 2015).

<sup>55</sup> Ibid

uniqueness, and historical or popularity of the product keep those products ahead of others.<sup>56</sup> Additionally, the increased desire to pay of customers may be used to produce a higher value premium with the GI<sup>57</sup>. Like brand names, GIs are the most important resources for the producers since they give rivalry control and have a commitment to keep up this benefit.<sup>58</sup> The advertising cost of making another brand name is very high for the producers. However, GIs do not require such a high cost since they have a set up and continuous standing.<sup>59</sup> “They have been now popular for their quality and attributes and there is no requirement for an additional expense for advertising. While the vast majority of GIs are created in country territories, the neighborhood producers enjoy a benefit to utilize these pointers as a showcasing apparatus under lower costs”<sup>60</sup>. GIs subsequently have an immediate commitment for the makers<sup>61</sup>. Comparing with the other developed and developing nations, the GI assurance of Bangladesh at the public and worldwide level is very low, which implies that Bangladesh doesn't accumulate every one of the possible advantages from the insurance of GIs. Numerous studies conducted all around the world demonstrate a rise in “pricing, marketing power, employment, and revenue due to GI security”<sup>62</sup>. As a result, Bangladesh should incorporate the problem of GI insurance into its political strategy as a means of generating marketing, money, and jobs, and ultimately as a means of advancing the area.

### **GI's Product in Rural Development**

Various examinations demonstrate that, under fitting conditions, GIs can add to advancement in rural areas. The qualification to utilize a GI by and large lies with producers, and the additional worth created by the GI gathers along these lines to every such producer. Since GI products will in general produce a premium brand value, they add to nearby business creation, which ultimately may help to prevent provincial mass migration. Also, GI items regularly have significant spin-off effects, for instance in the space of the tourism industry and gastronomy. Geological signs may bring value to a region not just as far as occupations and higher pay, yet additionally by advancing the locale overall. In such manner, GIs may

---

<sup>56</sup> Ibid

<sup>57</sup> Dogan B and Gokovali U, “Geographical Indications: The Aspects of Rural Development and Marketing through the Traditional Products” (2012) 62 *Procedia - Social and Behavioral Sciences* 761

<sup>58</sup> Bilge Dogan and Ummuhan Gokovali, 'Geographical Indications: The Aspects of Rural Development and Marketing Through The Traditional Products' (2012) 62 *Procedia - Social and Behavioral Sciences*.

<sup>59</sup> Ibid

<sup>60</sup> cf Dogan (n 53)

<sup>61</sup> Khondkar M, “Geographical Indication (GI): A Way to Promote Our Brands in the Global Market” (2014) 31 *Social Science Review*

<sup>62</sup> cf Dogan (n 53)

add to the making of a "regional brand." An expression of alert is, the simple actuality of building up a GI for an item doesn't ensure programmed achievement or improvement for the locale.<sup>63</sup>

For GIs to add to advancement, a few conditions should be available around there and in the manner by which the particular GI plan is planned.<sup>64</sup> Traditional goods are viewed as sentimental and fascinating local goods as they combine common assets with social strategies to represent the local feature.<sup>65</sup> As a conventional product bunch, GIs highlight the item's geological name as an appealing technique for drawing consumers' attention into the local identity. This would result in a growth of travel and tourist business activities across rural regions. Hence viable insurance of GIs leads not exclusively to expand the acknowledgment of the creation put yet additionally make some outer advantages, for example, expansion in monetary action of different areas that have in reverse and forward linkages with the GI products. For example, expansion in the tourism industry movement because of perceived GI advantages to the producer as well as sets out pay and work open doors to different areas, for example, in administrations for restaurants, gift stores, and hospitality services for lodging. Increased life standards in rural regions are facilitated by economic activity, settlement, and security of GI business sectors<sup>66</sup>. In this manner GI, insurance contributes the rural manageable economy as well as ensures the social legacy too. GIs establish a connection between the name of the geological area where the product comes from and the product itself. As a result, these characteristics are a useful marketing tool for attracting consumers' attention to the geological areas. The majority of these geographic regions have been rural, and GIs offer essential freedoms to rural developments. Assurance of GIs could assist with supporting monetary exercises and repayment in rural regions and raise the standard of living for the locals.<sup>67</sup> Regarding salary and business age, the local populace is the biggest beneficiary of these types of items.

### **Challenges of GI in Bangladesh**

The 'Geographic Indication Act, 2013' has been dependent on the DPDT who will open a separate unit named 'Geographical Indication Unit' to do the exercises identified with enrolment and insurance of GIs as implied under the Act. The GI Unit will be led by the DPDT's Registrar. According to the GI law, "any

---

<sup>63</sup> Hoang Truong Giang and Nguyen Hoang Anh, Geographical Indications Sand Sustainable Rural Development in Vietnam (2021)

<<https://www.unescap.org/sites/default/files/Geographical%20Indications%20and%20Sustainable%20Rural%20Development%20in%20Vietnam.pdf>> accessed 9 May 2021.

<sup>64</sup> Ibid

<sup>65</sup> Bilge Dogan and Ummuhan Gokovali, 'Geographical Indications: The Aspects Of Rural Development And Marketing Through The Traditional Products' (2012) 62 Procedia - Social and Behavioral Sciences.

<sup>66</sup> Ibid

<sup>67</sup> Ibid

person chosen to address the public interest of the producers of GI products, or any legal organization, affiliation, or government body, may apply to the Registrar for enrolment of GI goods or items<sup>68</sup>. In addition, any person or group involved in providing GI goods may apply to be listed as an authorized consumer of such GI goods or items<sup>69</sup>. Unfortunately, the arrangements that were cut off comprised a few of explicit arrangements that are required again for enrolling measure. Because of how difficult it was to develop the GI Act, this expresses concern. It required thorough missions, requests produced using different pressing factor gatherings and common society, public counsels, and subsequent meet-ups did over a decent number of years. Presently it is fascinating to its obvious, with respect to “how long the concerned Ministry would devour to present the Rules under the geographical Indications Act, 2013”<sup>70</sup>. In Bangladesh, for example, It took six years for the concern authority to submit the Copyright Rules after the Copyright Act was passed in 2000<sup>71</sup>. The enrolled approved consumer of GI products, whose residency to use GI products or items has been lowered to a long time from 10 years as it was contemplated in the Proposed GI Act 2012, was not included in DPDT's cutting binge. Actually, the residence requirement for enrolling in GI goods or items has made the stay legitimate until the enrolments are cancelled or deemed invalid. This will permit the GI merchandise or items to try not to go through reestablishments after a specific timeframe - because of DPDT's frightening intelligence. Besides all of these, confusion regarding patent versus GI recognitions and TRIPS agreement with bilateral agreement that happened within particular region is also need to clear to rid out of these challenges.<sup>72</sup>

## Recommendations

- ◆ First and foremost, the Department of Patents, Designs, and Trademarks (DPDT) should make solid and compelling strides as to GI merchandise in Bangladesh.
- ◆ The DPDT GI unit should have a detailed list of GI goods from around the country as an essential information base for nearby products. The GI Act, 2013 may secure the nation's cases to items, for example, jamdani saree, Hilsha fish, nakshi kantha, fazli mango, and some other popular food sources of Bangladesh.

---

<sup>68</sup> Rubel, “Challenges and Protection of Bangladesh GI Goods” (OurtimeBDMarch 22, 2020) <<https://www.ourtimebd.com/beta/challenges-and-protection-of-bangladesh-gi-goods>> accessed December 23, 2022

<sup>69</sup> cf Hyder (n 24)

<sup>70</sup> Ibid

<sup>71</sup> Ibid

<sup>72</sup> Barua S, “5 Challenges to Protecting of Geographical Indication” <<https://legalhome.org/protecting-geographical-indication/#:~:text=There%20are%20a%20number%20of,along%20with%20the%20TRIPS%20Agreement>> accessed December 23, 2022

- ◆ In terms of GI security, Bangladesh should align its policies and procedures with international treaties, such as the Madrid Agreement, Lisbon Agreement, Paris Convention and TRIPS Agreement etc.
- ◆ In order to prevent the mediation of the GI enlistment center wing in DPDT The recorder office must limit the scope of its vast jurisdiction.
- ◆ Registration process seems to be cumbersome and time consuming. Therefore, the registration process should be transparent, convenient and expeditious to limit unnecessary procedures.
- ◆ Regarding profitable systems, the period of detention and penalties for violating the GI Act must be adequate.
- ◆ The public authority should have to organize customary preparing on licensed innovation rights concerns among the law upholding organizations and legal authorities that can procure sensible information and encounters on the concerned issue.
- ◆ Create a better environment to protect GI goods; A Sui Generis Act must be enacted to protect cultural knowledge.
- ◆ The GI reign made no mention of the GI inspection structure required to ensure and sustain the stated quality of GI products.
- ◆ By utilizing media and other strategies, the government authorities might organize a public awareness campaign about the relevance of GIs in Bangladesh.
- ◆ At last, government and every one of the partners identifying with Geographical indication products must make great efforts to protect the rights of GIs in Bangladesh.

### **Concluding Remarks**

In spite of the fact that they are probably the most established type of IP, GIs have as of late become the subject of summed up interest. In numerous nations, the need to consent to commitments under the TRIPS Agreement set off this emphasis on GIs. Nations soon realized the potential value of this form of intellectual property. The placement of GIs in a region suggests that they could be effective tools for developing privately based events. Their nearby linkage with custom proposes that they can emphatically affect the protection of TCEs and TK. With the growing recognition of Geographical Indication (GI) multifunctional nature, the challenge will be to develop and carry out a comprehensive GI strategy which

could be the cause of an economic turn of events. This analysis outlines some of the methodological considerations associated with improving GI planning, as well as some of the factors and circumstances that contribute to its success. It then concentrates upon one of several prerequisites, specifically the protection of GIs as an IP right. Plainly actual security of GIs should not be taken for granted, and it is not a necessary component of a successful GI. Nonetheless, it is also noteworthy that even failure to adequately secure GIs as IP can toss over the edge even the most adjusted, improvement situated GI plan.

Protecting GI goods is of great benefits both inventors and users, whether in developed, developing, or least developed countries. Bangladesh has compiled a list of goods, both food- and non-food-related, which can be deemed GI. After registration, even greater steps need to be made to prevent neighboring countries from duplicating Bangladesh's GI, as happened in Jamdani sari, Fazli Mango, Uppada Jamdani Saree, and Nakshi Katha<sup>73</sup>. India has many goods on the GI list. We don't know if more Bangladeshi GIs would desire to follow in India's footsteps in the future<sup>74</sup>. However, this should serve as a wake-up call in Bangladesh. English Philosopher and Attorney General Francis Bacon once said "*Silence is the virtue of fools*" in the same manner Samuel Taylor Coleridge an English poet wrote "*Silence does not necessarily denote wisdom*". In this circumstance, we must remember these phrases.

---

<sup>73</sup> Samiun Bhuiyan, 'Measures of The Protection of Geographical Indications in Bangladesh' (Academia.edu, 2016) <[https://www.academia.edu/50248100/Measures\\_of\\_the\\_protection\\_of\\_Geographical\\_Indications\\_in\\_Bangladesh](https://www.academia.edu/50248100/Measures_of_the_protection_of_Geographical_Indications_in_Bangladesh)> accessed 28 June 2022.

<sup>74</sup> Ibid

## Factors facilitating Gender Based Violence in Bangladesh and difficulties in accessing Justice: A Legal Analysis

-\*<sup>1</sup>Protyasha Ahmed Mim

### *Abstract*

*Any violence committed against a person solely on the basis of gender of the person is gender-based violence. Women and girls are subjected to such violence from the time immemorial at the society because of their subordinate and weak status. Now a days, gender-based violence has become a practice and has been granted as a common scenario not a crime. It is not possible to eliminate all kind of crimes form the world but the distinction between right and wrong must be distinguished. No offence should be made legitimate at the perspective or opinion of the society. Cultures, traditional beliefs, norms and social institutions legitimize and therefore perpetuate violence against women are influencing gender crimes against women Gender-based violence against women is one of the manifest expressions of unequal power relations between men and women. Gender biased attitude and mindset mainly causes Gender-based violence against women. Gender-based violence is not only violation of human right but also violation of fundamental rights and human dignity. It has been recognized by international conventions as well as domestic special laws of Bangladesh to prevent gender crimes. Even after imposing punishment those crimes cannot be controlled. Various legislation and international instrument-imposed duty to protect women but due to lack of enforcement the existing justice system fails. This paper tries to explore the reasons and factors instigating violence against women in Bangladesh, the present practical scenario and laps of laws and incidents of the rape and sexual harassment, effectiveness of legal mechanism to control Gender Based Violence against women.*

**Keywords:** *Gender, violence, justice, women etc.*

---

<sup>1</sup> Former student of regular LLM program of Department of Law and Human Rights, University of Asia Pacific in partnership with UNESCO Madanjeet Singh South Asian Institute of Advanced Legal and Human Rights Studies(UMSAILS)

## Introduction

Violence can be said as an intense form of aggressiveness. When a person is subjected to violence solely because of their gender identity or sexual orientation, this is known as Gender-Based Crime. “*Gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.*”<sup>2</sup> Due to inequality, a lack of balance in the distribution of power, and their status as social outcasts, women had been the target of violence since the dawn of time.<sup>3</sup> The violence against women and girls has been addressed as a global issue in the contemporary world through the international legal framework on gender-based violence. The majority of international treaties consider gender-based violence against women as a violation of human rights. Similar protections are provided for "equality and non-discrimination" in Article 28 of the Constitution of People's Republic of Bangladesh. The language of Article 28(2) is clear: “women shall have equal rights with men in all spheres of the State and of public life”. But in Bangladesh, it is matter of fact that individuals who have a patriarchal and gender-biased worldview routinely subject women to injustice and discrimination through physical, verbal, psychological, sexual, and socio-economic assault. The Bangladesh government has passed numerous specific laws, formed courts and special tribunals to address violence against women, but the country's justice system is unable to give victims of gender-based crimes with access to justice. Is it the systematic difficulties that are giving increment day by day to the enhancement of inequality and gender-based violence against women in Bangladesh? Why, in spite of laws specifically designed by the government to combat inequality and violence against women, do victims of gender-based violence in Bangladesh still face a variety of obstacles to accessing legal recourse? To find answers of these questions, the research is conducted in qualitative method aiming to analyze factors of gendering crime and difficulties to gain legal protection in Bangladesh context.

## Analysis on Statutory Provisions of Bangladesh

Laws are enacted to maintain order in society, regulate human behavior and ensure the rights which are required to be protected which belong to human being as their inherent right. With a view to ensure equality and equity, the rights of the dominated section of the society should be protected.

---

<sup>2</sup> Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention 2014) [2014] ISBN 978-92-871-7990-6 art 3.

<sup>3</sup> Radhika Coomaraswamy, ‘Special Rapporteur on Violence against Women, Its Causes and Consequences (1994-2003)’ 1 <<http://www.awf.or.jp/e4/un-01.html>>.

*The Prevention of Women and Children Repression Act, 2000*

This Act is specially enacted to control offences, reduce and remove violence against the woman and children. This Act will be effective over any other laws so that the victims may get the proper remedy in the possible shortest time.<sup>4</sup> Rape, Attempt to rape, gang rape, rape with murder, custodial rape, dowry, hurt and murder for dowry, injury and death with corrosive or inflammatory or poisonous substance, Abduction, Adduction for ransom, sexual assault, mutilations of children for purpose of begging, abatement of suicide of women, publishing the identity of the victim in media have been addressed within the scope of this Act to bring the culprit under punishment prescribed under law.<sup>5</sup> The ascension of this law was a hard-won victory for women's rights organizations in Bangladesh but still lacking appears regarding the awareness of law. In many cases, it was found that the victims do not know their rights available under the law.<sup>6</sup>

*Domestic Violence (Prevention and Protection) Act, 2010*

This Act is an important step forward in conceptualizing the definition of domestic violence against women and children by including physical, psychological, sexual and economic abuse. This is the first piece of legislation which addressed psychological abuse in Bangladesh.<sup>7</sup> Before commencement of this Act, legislation on violence against women and girls in Bangladesh failed to address domestic violence adequately. This law addressed protections for victims, including granting magistrates the power to issue compensation orders, child custody, restraining orders, and provisions for safe shelter.<sup>8</sup>

*The Child Marriage Restraint Act, 2017*

In the world, the maximum number of child marriages occur in Bangladesh, where approximately 40% of girls get married before the age of 15.<sup>9</sup> To control and reduce the rate of child marriage where more than half of girls are married before age of 18<sup>10</sup> Child Marriage Restraint Act, 2017 was enacted under which marrying or facilitating the marriage of girls under 18 or a man or a boy under age of 21 is a criminal offence; but this law is rarely enforced. Marriage below these ages is illegal except when granted under

---

<sup>4</sup> Prevention of Women and Children Repression Act 2000, s 3.

<sup>5</sup> Prevention of Women and Children Repression Act, 2000.

<sup>6</sup> Human Rights Watch, Interview with Kamrun Nahar, Lawyer and Project Director for Unit for Body Rights Project at Naripokkho, (Dhaka, Bangladesh, 3<sup>rd</sup> February 2021).

<sup>7</sup> UN Women, 'Domestic Violence (Prevention and Protection) Act 2010' <<https://evaw-global-database.unwomen.org/es/countries/asia/bangladesh/2010/domestic-violence-prevention-and-protection-act-2010>> accessed 7<sup>th</sup> August 2021.

<sup>8</sup> Domestic Violence (Prevention and Protection) Act 2010 chapter 3 and 4, s 6(g), 13, 14, 16 and 17.

<sup>9</sup> UNICEF, 'Ending Child Marriage: Progress and Prospects' (July 2014) <[www.unicef.org/media/files/Child\\_Marriage\\_Report\\_7\\_17\\_LR..pdf](http://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf)> accessed 8<sup>th</sup> August 2021.

<sup>10</sup> UNICEF, 'Child Marriage' (April 2020) <[data.unicef.org/topic/child-protection/child-marriage/](http://data.unicef.org/topic/child-protection/child-marriage/)> accessed 25 March 2021.

the “special circumstances”.<sup>11</sup> By this provision Bangladesh took a major step back in the fight to end child marriage as this section do not specify any minimum age to marry under undefined “special circumstances”.<sup>12</sup> A strong correlation between child marriage and domestic violence have been found through research<sup>13</sup> that young women who had been married before the age of 18 experienced physical, emotional and verbal abuse.

### *Legal Framework for Dealing with Sexual Harassment*

Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favors or other unwelcome conduct of sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances. It is a wide range of offensive and unwelcome conduct of a sexual nature, be it in or outside an institutional setting.<sup>14</sup> In Bangladesh, there is no legislation which specifically incriminates “sexual harassment”. But it is not to be said that sexual harassment is completely unaddressed by the legislation. Section 509 of the Penal Code 1860 makes any acts, words and gestures punishable offence which is made intending to “outrage the modesty of a woman”. This section imposes punishment up to 1 year along with fine.<sup>15</sup> But the wording of this law itself is lapse which has made option for the sexist biases and unwarranted discussion with the word – “modesty” which is mostly seen to be end up victimizing a woman rather than providing protection. In addition to the provision under the Penal Code, The Nari-O-Shishu Nirjatan Daman Ain 2000 criminates the acts of persons who touch a woman or child (with any part of their body or with an object) or “violates a woman’s modesty” in order to “illegally satisfy their sexual desires.”<sup>16</sup>

A significant event took place in 2009 when the High Court Division issued 11-point directives on the prohibition, prevention and redress of sexual harassment in the workplace and educational institutions by the decision of Bangladesh National Women Lawyers Association vs Government of Bangladesh (2009). This happened as consequence of the writ petition filed by the Bangladesh National Women Lawyers Association (BNWLA) where they challenged the widespread prevalence of sexual harassment of women

---

<sup>11</sup> Child Marriage Restraint Act 2017, s 19.

<sup>12</sup> Human Rights Watch, ‘Bangladesh: Legalizing Child Marriage Threatens Girls’ Safety’ (2 March 2017) <<https://www.hrw.org/news/2017/03/02/bangladesh-legalizing-child-marriage-threatens-girls-safety#>> accessed 8<sup>th</sup> August 2021.

<sup>13</sup> Sunita Kishor and Kiersten Johnson, ‘Profiling Domestic Violence – A Multi-Country Study’ 2004 Measure DHS+ ORC Macro 29 <<http://dhsprogram.com/pubs/pdf/od3>> accessed 8<sup>th</sup> August 2021.

<sup>14</sup> Bangladesh National Women Lawyers Association (BNWLA) vs. Bangladesh [2009] 29 BLD (HCD) [2009] 415 [55].

<sup>15</sup> Penal Code 1860, s 509.

<sup>16</sup> Prevention of Women and Children Repression Act 2000, s 10.

in university campuses and office spaces.<sup>17</sup> Bangladesh's obligations under the Convention on the Elimination of Discrimination against Women (CEDAW) were drawn upon along with the affirmative safeguards on gender equality and women's rights under the constitution of Bangladesh. Under this 11 circumstances sexual harassment has been extensively defined that would constitute acts of sexual harassment, ranging from unwanted physical contact to coerced sexual relations through abuse of power to unsolicited sexual remarks, advances and gestures be they in person, in writing or through telephone, etc. All institutions are obligated by those guidelines to form Sexual Harassment Complaint Committees which will register and investigate sexual harassment complaints filed by women and then take the appropriate disciplinary action against the perpetrator if allegations are found to be true. BNWLA challenged the prevalence of stalking and "eve-teasing" by filing subsequent writ-(BNWLA) v Gov't of Bangladesh<sup>18</sup> in 2011. The court recognized that the government did take certain steps to tackle sexual harassment following the directives issued in the 2009. Till now in 2021, ten years have been passed but the government is yet to implement this legal reform which it was directed to conduct.

### **Highlighting Recent Incidents of Rape and Sexual Harassment**

#### *Child Bride Nurunnahar Succumbed to Death due to Child Marriage and Marital Rape*

Nurunnahar – A 14 years old girls died on Sunday, 25 October 2020 in Basail, Tangail, due to excessive genital bleeding caused by continuous forced sexual intercourse. She was married to a man of 34 years old named Rajib who worked in the United Arab Emirates. Nurunnahar died within about a month of her marriage. The marriage was not registered as it was child marriage.<sup>19</sup>

A writ petition was filed by Bangladesh Legal Aid and Services Trust (BLAST), Brac, Naripokkho, and Manusher Jonno Foundation, four member organizations of the Rape Law Reform Coalition On November 1, a writ was filed before the High Court Division of the Supreme Court of Bangladesh where they challenged the legality of marital rape of women and girls aged above 13 in the rape legislation. On 3<sup>rd</sup> November 2020 a *Rule Nisi* was issued by the High Court Division calling upon the government to show cause why the provision of marital rape of women and girls aged above 13 years should not be declared void and discriminatory. The existing legal framework under the existing provision of law regarding marital rape under the Penal Code is discriminatory and Violation of the fundamental rights of married women and girls guaranteed under the constitution i.e. the right to equality, no- discrimination,

---

<sup>17</sup> Bangladesh National Women Lawyers Association (BNWLA) V Gov't e of Bangladesh 31 BLD (HCD) 2011-324.

<sup>18</sup> *ibid* 324.

<sup>19</sup> Taqbir Huda, 'Marital rape killed a child in our country. Why is it still legal?' *The Daily Star* (Dhaka, 29<sup>th</sup> October, 2020) 12

protection of law, protection of right to life and personal liberty. Under the exception clause of section 375 of the Penal Code<sup>20</sup> sexual intercourse against the will and consent of a married women by her husband is legalized as such act do criminalize the husband under the law. Again any girl aged under 12 years if raped by her husband can be punished for a maximum term of 2 years.<sup>21</sup> Though under section 9(1) of the The Nari-O-Shishu Nirjatan Daman Ain 2000 such exception as the Penal Code has not been mentioned<sup>22</sup> but nowadays, in a society of the people with patriarchal and gender biased mindset, where marital rape is hardly considered as a crime to most of the men. In Bangladesh Contracting or facilitating a child marriage is a criminal offence<sup>23</sup> and any person involved will be punished, but, the validity of the marriage is not affected. Therefore, it is not possible for a minor wife above the age of 13 to file a rape case against her husband. Even declaring marital rape as a criminal offence will not be so much fruitful for the victims because of the lack of strict enforcement of laws against child marriage. In an interview it is asserted that “society at large refuses to accept that marital rape exists, since we are trapped in the archaic notion that a wife, upon signing the marriage contract, perpetually and irrevocably consents to sexual intercourse with her husband whenever he so demands.”<sup>24</sup>

*A Young Lady in Rajshahi City was subjected to humiliation for Smoking at Public Place*

On 29 December 2020, a video went viral at social media where a young lady was seen to be smoking in a public place and a crowd of male was humiliating her. At the same place many other males were also smoking but the crowd of male did not found the males as perpetrators who were smoking in public but they found that young lady as a very serious offender for not being a violator of law but being a 'woman' smoking in public. If the relevant applicable laws are looked upon in this case –

The Tobacco Controls Act 2005 prohibits smoking in public place. Under section 4 of this Act, smoking in public place is a penal offence and up to 300 taka can be imposed according to this section. This Act was enacted with mandate of the constitutional provision for improving public health as a primary duty of the state.<sup>25</sup> Only the law enforcing agency holds the power to bring any offender under legal provision but no person have the right to harass a women even if she was smoking at a public place. The language of this section is immensely clear that it has not implicated any gender prerogatives. The most interesting

---

<sup>20</sup> Penal Code 1860, s 375

<sup>21</sup> Penal Code 1860, s 376.

<sup>22</sup> Prevention of Women and Children Repression Act 2000, s 9(1).

<sup>23</sup> Child Marriage Restrained Act 1929, s 5.

<sup>24</sup> Kohinur Khyum Tithila, ‘Marital Rape, Hardly Considered a Crime’ Dhaka Tribune (Dhaka 25 November 2020) <<https://www.dhakatribune.com/bangladesh/2020/11/25/marital-rape-hardly-considered-a-crime>> accessed 26 March 2021.

<sup>25</sup> Constitution of the People’s Republic of Bangladesh art 18(1).

matter in that video the males were dispersing ponderous ethics towards the young lady but it is completely right when same deviant act is done by males because they are the 'Male'!

Now, if attention is drawn to the act of the person who recorded the video without the permission of the young lady, while a crowd of people were harassing her, has committed an offence under section 26(1) of the Digital Security Act 2018 and a person committing such offence can be punished up to 5 years and can also be liable for fine up to 5 lac taka.

### **Case Study**

Court is the adjudicating body where justice is sought. It is considered to be the ultimate justice system to deliver justice to the victims & justice seeker. In Bangladesh, response of legal system towards rape victims are hereinafter mentioned through the following case studies-

*Abdul Majid vs State [2008] 13 BLC (HCD) [2008] 53 [66]*

In this case, a rape victim alleged while sleeping in her house at night with her daughter, the accused entered inside and raped her. The trial court found the accused guilty of rape and sentenced him for imprisonment for life. During the trial the defense lawyer made her admit before the court that the woman was married in to four places and ‘divorced woman’. Therefore she is a woman of immoral character. Against the sentence of the trial court, the convicted preferred appeal before the High Court Division. The HCD held that –

*“The withholding and non-production of independent material witnesses create[s] a serious doubt on the prosecution case which lends support to the defense case that the victim is a woman of loose moral character and involved in anti-social and immoral activities and the accused along with others used to give her resistance, for this reason informant (PW 1) filed this false case against the accused only to harass and humiliate the accused.”<sup>26</sup>*

*Uzzal alias Hossain vs. State [2007] 59 DLR (HCD) [2007] 505 [19]*

A teenage girl was brutally gang raped by four men and also photographed the incident. It was witnessed by several persons that father of the girl went to the house of the accused and begged before them to return the photographs. In response, the accused came to the house of the girl, rebuked the father suggesting that the girl whom they raped was of ‘immoral character’. They threatened the father of that

---

<sup>26</sup> Abdul Majid vs State [2008] 13 BLC (HCD) [2008] 53 [66].

girl; taking any legal action against the accused will cost them the obscene photographs pasted at all street corners.<sup>27</sup> The girl committed suicide on the next day in order to preserve her self-esteem and honor.

During the trial the defense suggested that the girl committed suicide because she was of immoral character and due to family reasons, there is no connection of the rape with her suicide. The defense alleged she committed suicide because her father did not agree to marry the boy with whom the girls had an affair. The accused was convicted by the trial court for rape and causing death under section 9(2) of the Nari O Shishu Nirjatan Daman Ain 2000.

The most interesting turning point in this case is that the conviction was modified by the HCD on appeal. It was found by the HCD that there was no link of the suicide with the rape. From this case a clear visualization how a rape victim's character assassination starts socially and transported to the courtrooms.

*Sree Pinto Pal vs. State [2010] 30 BLD (HCD) [2010] 220*

A man named Pinto Pal was accused for rape of a 17 year old girl. Father of the girl filed the case under section 9(1) of the Nari O Shishu Nirjatan Daman Ain 2000. Pal was found guilty for rape by the trial court and convicted with life imprisonment and 5000 taka fine. Pal was acquitted by the HCD on appeal. The finding of the trial court reversed on the following ground stated by the judge –

*“Victim herself stated that in the following day of the occurrence, the victim entered into the house of the victim by climbing paupa tree as the gate of the house was closed which also proves that the victim is a woman of easy virtue, so her evidence cannot be believed without the corroboration of reliable evidence”.*<sup>28</sup>

## **Factors Facilitating Violence against Women in Bangladesh**

Violence against women is often tried to be justified by victim blaming. Many victims experienced social pressure not to report abuse and seek for remedy. Some circumstantial factors which are kind of facilitating gender based violence against women in Bangladesh are discussed as follows-

*Domestic violence is often not considered as offence, it is taken for granted be to be happen in family:* Many women specially in the rural area have been abused physically and verbally by their husband or in-laws for months and years but most of the abuses are not reported to police. The main reason behind this

---

<sup>27</sup> Uzzal alias Hossain vs. State [2007] 59 DLR (HCD) [2007] 505 [19].

<sup>28</sup> Sree Pinto Pal vs. State [2010] 30 BLD (HCD) [2010] 220 [40].

is that the victim's family considers domestic violence as a private matter which needs to be settled within family. According to a women's lawyer - "Society thinks domestic violence is silly violence, that it's something that normally just happens in the family."<sup>29</sup> Cases of domestic violence are not filed because of embarrassment of the survivor in her family or community complemented with fear of retaliation by their husband or his family.<sup>30</sup>

### *Financial Dependency*

Many women being victim of domestic violence have no other choice but to suffer because of fear of abandonment and economic destitution. They are unable to leave their husband's home as they are not economically able to care for herself and her children.<sup>31</sup> Those women and girls without access to financial support mostly rely on their families for protection. In most of the cases they have really little choice to decide whether to seek justice or not.

### *Discriminatory legislative framework*

Where number of special laws are being enacted to protect women and girls from gender crimes, the major law applicable in court ; the evidence Act, 1872 upheld discriminatory provisions which facilitate gender crimes by providing opportunity to the accused by injuring the character of the victim. On the other hand, in criminal proceedings the fact that the person accused is of a good character is relevant.<sup>32</sup> In criminal proceedings the fact that the accused person has a bad character is irrelevant.<sup>33</sup> The credit of a witness may be impeached by the adverse party when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.<sup>34</sup> According to this provision of Evidence Act, if the victim of rape is from an ordinary family and of ill repute, the testimony of the victim will not be used as evidence without corroboration as she is deemed to be no reliable.

## **Failure in Implementation of Laws and Accountability**

The legislative framework of Bangladesh is important step forward to address the acts of violence against women. Despite those laws aim to protect women, the laws are rarely been implemented which results

---

<sup>29</sup> Human Rights Watch, Interview with Taqbir Huda, Representative of Bangladesh National Women Lawyers Association (Dhaka 1 October 2019).

<sup>30</sup> <<https://docs.google.com/spreadsheets/d/1wynpydwvhqP9avLxDS7ZzdkIHeQRVBqoJ5Isyh-xO8M/edit#gid=1558295702>> (accessed 9<sup>th</sup> August 2021)

<sup>31</sup> Human Rights Watch, "'Will I get my dues before I die?'" Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce' 2012 ISBN: 1-56432-935-6 <<https://www.refworld.org/docid/50584a552.html>> accessed 9<sup>th</sup> August 2021.

<sup>32</sup> Evidence Act 1872, s 53.

<sup>33</sup> *ibid*, s 54.

<sup>34</sup> *ibid*, s 155(4).

unabated continued violence against women. Odhikar's annual human rights, covering year 2019 reported receiving and giving dowry are punishable offence under the Prevention of Oppression against Women and Children Act 2000 and Dowry Prohibition Act 2018 but this distorted culture is manifested in society. In terms of taking and giving dowry, the rate of implementation of law is almost zero.<sup>35</sup> Besides in 2009, High Court guideline prohibiting sexual harassment is not monitored and implemented, the law of domestic violence is not being effectively enforced.<sup>36</sup> These reports clearly indicate continuance of the same situation of violence against women because of failing to implement the law.

In Bangladesh, offenders of gender based violence are seldom held to account. The implementation of law are poor as well as victims of gender based violence of Bangladesh even don't let anyone know about the abuse they experienced. On the other hand, a matter of great concern is that who seek for regal recourse, merely one percent of them succeeds to obtain legal remedy. The conviction rate in rape cases is merely 2%, the reason behind is that case of the prosecutrix in a rape case falls down by the defense as they attacks the complainant and drive towards she is of a woman of immoral character. All these events are inducing miscarriage of justice as laws are not effective enough to redress the gendering crimes. Alongside existing laws that are lacking of accountability and its mechanism with which failure of implementation of laws can be held liable.

### **Barriers to access to justice**

Though special tribunals and courts have been established for purpose of addressing gender violence against women, the legal system of Bangladesh falls short to provide entrance to legal protection to the victims of gender-based crimes. The following reasons can be identified for the failure and create barriers to accessibility to justice-

#### *Inefficiency and negligence in investigation by police*

When victims report the aggression they encountered following an assault to the police, they usually encounter resistance in the majority of cases.<sup>37</sup> The reasons for this disregarding conduct of the police include refusal to file reports, doubt, corruption, and indifference towards investigations. People seldom have confidence in the police that they will get protection from the police according to the law.

---

<sup>35</sup> Odhikar, 'Annual Human Rights Report 2019' (8 February 2020) 59 <[http://odhikar.org/wp-content/uploads/2020/02/Annual-HR-Report-2019\\_Eng.pdf](http://odhikar.org/wp-content/uploads/2020/02/Annual-HR-Report-2019_Eng.pdf)> accessed 10<sup>th</sup> August 2021.

<sup>36</sup> Department of Foreign Affairs and Trade, 'Country Information Report Bangladesh' (22 August 2019) 35 <<https://www.dfat.gov.au/sites/default/files/country-information-report-bangladesh.pdf>> accessed 10<sup>th</sup> August 2021.

<sup>37</sup> Human Rights Watch, Interview with Kamrun Nahar, Shireen Huq, director of Naripokkho, (Dhaka, Bangladesh, 3<sup>rd</sup> February 2020).

*Absence of responsiveness and partiality*

As per to the final finding report of the CEDAW Committee regarding Bangladesh's adherence with the Convention on the Elimination of All Forms of Discrimination against Women, it was discovered that existing regulations, guidelines, and strategies to address violence against women are seldom being put into practice because of gender partiality, prejudice and lack of gender sensitivity on the part of law enforcement officials.<sup>38</sup>

*Corruption and Carelessness*

The manner of response by the police to a complaint greatly influences whether or not the assaulted person will ultimately be able to pursue legal action. Many cases are dropped, left unresolved, kept stayed, and ended in acquittals as a result of incompetence and corruption. The function of a police officer is crucial regarding this.<sup>39</sup> The survivors frequently witness police negligence due to their lack of belief and ignorance. In particular, the police would not accept a complaint from a complainant against her spouse or a family member of the in-laws'. Another frequent occurrence is that, after the police receive the complaint, spouse or the offender bribes the police, which results in the case being dismissed. As a result, these obstacles to justice deter victims of abuse since- if they submit a complaint, they may be able to simply dismiss the police, but afterwards, there is a serious risk to the victims' life.

*Deficiency of ingress to information*

Most often, women from low-income families who depend on their husbands or in-laws for financial support are the victims of domestic violence. Therefore, they are unable to bring a lawsuit against their husband. However, the majority of these women are unaware of the availability of legal aid.

*Lack of witness protection*

Despite of promise by the government, Bangladesh has no victim or witness protection law up to date. This causes serious obstacle to pursue cases effectively.<sup>40</sup> As a consequence witnesses are discouraged or most of the time feared to come to the court which is a major bar for proper finding of any case.

---

<sup>38</sup> CEDAW Committee, 'Concluding observations on the eight periodic report of Bangladesh' (18 November 2016) CEDAW/C/BGD/CO/8 para 18(b).

<sup>39</sup> Taslima Yasmin, 'Implementation Status of the Acid Offences Prevention Act 2002 and the Acid Control Act 2002 in Bangladesh' 2014 Acid Survivors Foundation <[old.acidsurvivors.org/images/frontImages/Implementation\\_status\\_of\\_Two\\_Acid\\_Acts.pdf](http://old.acidsurvivors.org/images/frontImages/Implementation_status_of_Two_Acid_Acts.pdf)> accessed 11<sup>th</sup> August 2021.

<sup>40</sup> Human Rights Watch, Interview with Taqbir Huda, Representative of Bangladesh National Women Lawyers Association (Dhaka 1 October 2019).

Perpetrator threatens the witnesses, victim, their families not to depose against them in court otherwise they will be in trouble. Sometimes lawyers also warn them against punishing them or seeking legal recourse for having done so.

### *Backlogs in cases and delayed justice*

The laws of Bangladesh have required the complaints of gender-based violence to be resolved promptly to combat gendering crimes.<sup>41</sup> In reality, however, the situation is the opposite, and cases frequently drag on for years. Numerous survivors drop their lawsuits as a result of the ongoing delays in court actions because they cannot afford the litigation expenses. Together with court costs, officials frequently demand payments for travel expenses. It may be too risky to continue a legal case for years on end, particularly for those who have experienced gender-based abuse and lacks safety precautions or safe shelter.

### **Recommendations**

Government of Bangladesh should take the following measures to tackle the increasing rate of violence cases against women of the country-

- Access to services for the victims of gender based violence need to be improved. Adequate number of shelters should be established which must be accessible to all survivors. In every district there should be at least one shelter where victims will be served with financial support, legal assistance, counseling, housing, health and mental support services.
- To increase awareness public campaigns should be implemented so that everyone in Bangladesh get aware about the forms of gender based violence e.g. acid attacks, dowry etc. is illegal. And in this regard which services are available and specific information needs to be provided about the process to access of services.
- Development of implementation strategies to recruit and retain more female prosecutors, police officers, and judges.
- Police officers, prosecutors and judges should be sufficiently trained to handle cases of gender based violence.
- Provision of the existing rape law should be modified. In case of rape trial questions should not be asked harming the character of the victims. The law should be focused to determine whether the crime was occurred. The provision of considering the character of the victim should be abolished.

---

<sup>41</sup> Prevention of Women and Children Repression Act 2000, s 20(3).

- Enactment of a law regarding protection of the witnessed and victim is demand of time. The government should implement a program for non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of witnesses, relocation of at-risk witnesses and evidentiary rules that permit witness to testify before the court in a manner that protects them from intimidation, harassment, or coercion of the witness while upholding the fair trial rights of the accused.
- To take necessary measures to ensure that women and girls seek for legal remedy if they are victim of domestic violence or acid violence. Also to ensure they are aware about the legal aid services and are able to access legal funds eligible under Legal Aid Services Act 2000 and rules of 2015.
- An online centralized platform can be created for reporting the cases of gender bases violence against women and girls. All the relevant case information should be made accessible and open to all parties free of cost.
- All public prosecutors and legal officers should be held accountable who are requiring bribes in exchange for legal advice, legal representation or other legal services to which complainants or the accused party is entitled to get.
- The law enforcement officers who require bribes, are negligent or refuse to perform their duty promptly should be held accountable under the Acid Offence Prevention Act as well as under the Penal Code.
- Sufficient training should be provided to police officers and the public prosecutors on the effective and standard criminal investigation and gender equality and development of women's rights.
- Speedy and proper investigation should be ensured for ensuring right to fair trial.
- For implementation and enforcement of the existing laws all logistic support, availability and accessibility to information, access to court system for all legal aid and legal advice should be easier to access and social awareness need to be increased.

### **Concluding Remarks**

It is difficult for a developing nation to combat all types of violence against women that are motivated by their sex as day by day the rate of violence against women is increasing in Bangladesh. Even though the government has made many significant initiatives to safeguard women and girls, reducing the rate of gender-based crime would not be achievable without the cooperation and support of legal personnel at every stage and without increased public awareness. Gender bias mentality is a type of societal sickness

and a nation's progress is hampered by it. Even the passage of numerous laws would not be sufficient to stop the rising number of gender-based crimes. Laws need to be amended in some cases, new legislation needs to be passed, and existing legal frameworks must be upheld and carried out.

- 01. The Role of Laws of Forest in Forest Conservation of Chittagong Hill Tracts**  
Ishraque Labib and Soeb Aktar
- 02. Socio-Legal Analysis of Maintenance of Parents in Bangladesh**  
S.M Amanullalal Aman
- 03. Health Care for Male Prisoners in Bangladesh: Law and Practice**  
Shahariar Islam Sovon
- 04. A Legal Appraisal of the Protection and Opportunities of Geographical Indication (GI) in Bangladesh**  
Dewan Alif Ovi and Abdul Hakim Noyon
- 05. Factors facilitating Gender Based Violence in Bangladesh and difficulties in accessing Justice: A Legal Analysis**  
Protyasha Ahmed Mim