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Nature and Causes of Street Girl Children Victimization in Bangladesh: From Intervention to Policy Implications

Md. Nurul Islam*

Abstract: Street girl children in Bangladesh face multifaceted victimization, including physical abuse, sexual exploitation, labor exploitation, and deprivation of basic rights. This study examines the nature and causes of their victimization, drawing on socio-economic, cultural, and institutional factors. Poverty, family disintegration, gender discrimination, and inadequate state intervention are key drivers that push girls onto the streets, exposing them to severe vulnerabilities. The absence of robust child protection mechanisms exacerbates their victimization, leaving them without legal or social support. This article also explores existing interventions, including governmental and non-governmental efforts, and evaluates their effectiveness in addressing victimization. Despite various programs, gaps in policy implementation, lack of coordination among agencies, and societal indifference hinder meaningful change. The study emphasizes the need for a comprehensive policy framework that integrates legal protection, rehabilitation, education, and economic empowerment to prevent victimization and ensure long-term welfare. Through qualitative analysis, the article highlights the urgent need for a multi-sectoral approach involving policymakers, law enforcement, civil society, and international organizations. Addressing structural inequalities and reinforcing child protection laws are essential for mitigating the plight of street girl children in Bangladesh. The findings provide insights for policymakers to develop sustainable strategies that prioritize prevention, protection, and rehabilitation, ensuring a safer future for these vulnerable children.

Keywords: Street Children, Victimization, Gender Discrimination, Child Protection, Bangladesh, Policy Intervention, Social Vulnerability, Exploitation, Rehabilitation, Human Rights.

1.1 Introduction

In recent years, child victimization is a great psycho-social problem in Bangladesh with the increasing rate of population, poverty, was and floating children. Due to poverty, girls and women are more vulnerable. When we are at a traffic signal in the city, we will see children rushing up to sell various items. Some are selling flowers and sweet, or carrying stacks of books in the thin arms; others wipe the windscreen of cars with dirty rags and beg for money. Many of the children on the streets are little girls. The reality behind the scene is very grim because activists say most of these girls have been abused. Every minute, one girl child is abused in Bangladesh. Though Bangladesh ratified the United Nation's Convention on the Rights of the Child (UNCRC), which recognizes children as anyone below the age of 18, it is

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based on four general principles of non-discrimination and the best interest of the presents the present trend of girl victimized children in Bangladesh, its nature and causes with consequences. This also depicts the national and international measures to protect the rights of children.

1.2 Concept of Street Children

Street children are used as a catch-all term, but covers children in a wide variety of circumstances and characteristics. Policymakers and service providers struggle to describe and assist such a sub-population. Individual girls and boys of all ages are found living and working in public spaces, and are visible in the great majority of the world's urban centers, 'Street children' is a term for children experiencing homelessness who live on the streets of a city, town or village. The definition of street children is still debatable, but many practitioners and policymakers use UNICEF's concept of boys and girls, aged less than eighteen years, for whom "The Street" (including unoccupied dwellings and wasteland) has become home and/or their source of livelihood, and who are inadequately protected or supervised.

1.3 The Concept of Victimization

The concept of victim dates back to ancient culture and civilizations. Its original meaning was rooted in the exercise of sacrifice- the taking of the life of a person or animal to satisfy a deity (Karman, 1990). Over the centuries, the word victim came to have additional meanings, so as to include any person who experiences injury, loss, or hardship due to any cause. A review of the definitions of "victim", listed in the **American Heritage Dictionary**, illustrates the breadth of the accepted meaning of the term "victim".

- Someone who is put to death or subjected to torture or suffering by another.
- A living creature slain and offered as sacrifice to a deity or as part of a religious sacrifice.
- Anyone who is harmed by or made to suffer from an act, circumstance, circumstance agency or condition: victim of war.
- A person who suffers injury, loss, or death as a result of a voluntary undertaking: a victim of his own scheming.
- A person who tricked, swindled, or taken advantage of a dupe.

Victimization is a highly complex process encompassing a number of possible elements:

- The first elements compress what are interaction may have taken place between offender and victim during the commission of the offence, plus any after effects arising from this interaction or from the offence itself.
- Secondly, it encompasses the victim reaction to the offence, including any change in self-perception that may result from it, plus any formal response that he/she may choose to make to it.
- The third elements, consists of any further interaction that may take place between the victim and others.

1.4 Concept of Child Victimization

Child abuse or victimization is doing something or failing to do something that results in harm to a child or puts a child. Child victimization can occur physical, sexual or emotional, neglect or not providing for a child's needs, is also a form of child abuse. Child victimization can occur in Child's home or in the organizations, schools, communities, workplace where the children interact with.

In the social work dictionary, child victimization defined as 'Child abuse or victimization is the recurrent reflection of physical or emotional injury on a child through international beating, uncontrolled corporal punishment, persistent ridicule and degradation or sexual abuse'.

1.5 Types of child victimization

The world Health Organization distinguishes four types of child maltreatment or victimization: physical, sexual, emotional and psychological, and neglect. However, there are several ways of victimizing child as Physical victimization; Sexual victimization; Psychological victimization; Family Violence; Neglect (Supervisory Neglect, Physical Neglect, Medical Neglect, Emotional Neglect, Educational negligence, Abandonment).

Among this type of child abuse, neglect is the most common form of maltreatment. According to the 2010 Child Maltreatment Report, the quantities of the different form of child victimization are:

Types of victimization	Percentage
Physical victimization	17.6%
Sexual victimization	9.2%
Psychological victimization	8.1%
Neglect	78.3%

Source: Child Maltreatment Report, 2010

1.6 Nature of Street Girl Child Victimization in Bangladesh

Street children do not go to school, instead they sell things on the streets or do other jobs as the parents earn less money or do not work. Is estimated that there are more than 600,000 street children living in Bangladesh. 75% of them live in Dhaka. Although any reliable surveys have not been conducted on the actual numbers of street children but it predicted to be increasing day by day (Daily Star, 2008). The following table shows the number of street children in main six districts and their total number in Bangladesh in 2005.

Location of street children	Number of street children
Dhaka	249,200
Chittagong	55,856
Rajshahi	20,426
Barisal	9,771
Sylhet	13,165
Bangladesh (total)	679,728
Bangladesh (total projected for 2014)	1,144,754
Bangladesh (total projected for 2024)	1,615,330

Source: 'Estimation of the Size Children and their Projection for Major Urban Areas of Bangladesh 2005' commissioned to BIDS by ARISE, Cited from UNICEF 2009

Children are victimized by neighbors, friends, relatives and others. The statistics are mentioned below about picture of the victimization of children in Bangladesh.

Scenario of Bangladesh Total 1239 Child Abuse in 2011

Percentage	Per child age	Percentage per occupation	Child	Economic children	of the status
Age	% of total	Occupation	% of total	Economic status	% the total
2-5	6%	Student	97%	Lower class	77%
6-9	8%	Other	3%	Lower middle class	10%
10-13	20%			Middle class	12%
14-18	66%			Upper class	1%

Source: Bangladesh Mohila Porishad, 2013

Perpetrators of child sexual abuse in Bangladesh

Perpetrator	% of total
Close relatives	21%
Neighbors, friends, community people	47%
House tutor	32%

Source: A study report, 2015, conducted by ISWR, DU

The children are influenced to involve in sexual activities by their family members (7.69%), friends (75.38%), owners (26.15%) and so on (ISWR, 2015).

1.7 Causes of Girl Child Victimization

There are many factors that cause girl child abuse in Bangladesh. Abuse usually occurs in families where there is a combination of risk factors and the other members of the family when think the girl child as burden, then the victimization starts. Even in some cases, it is also observed that girl Childs are mistimed by their parents and first blood relatives! Outside of that groups of scoundrel work that forcibly engage girl child in prostitution, rape them and sell them out. In comparison to male child, girls are more susceptive to victim by our society, parents, and deceptive group of porn makers, or engaging them in prostitutions. There are some causes for child victimization, such as financial crisis or Poverty; Trust and Relationship Difficulties; Unauthorized child labor; Higher Illiteracy Rate; Early Marriage or Unsocial Marriage; Family Breakings; Degradation of social norms and values; Lack of emotional support; Social isolation Racism; lnequality between man and woman: Lack of parenting skills; Lack of proper application of law; Negative attitude to the street children, orphanage and poor children.

1.8 Impact of Victimization on Girl Children

The impact of children victimization upon the children is physical, psychological and social. Children start to suffer from various diseases due to victimization. Psychological problems made them handicapped, lead into depression, and bound to engage in anti-social activities. On the Contrary, socially abused children think them inferior and feels problem in associating with others, making network, and lead to suicidal thoughts. We can have a look on the impact of children victimization: Developmental and psychological effect, Suicidal behavior, Learning and developmental problems. Eating disorders and obesity, Alcohol and substance abuse, Fallings of being worthless, Aggression, violent and criminal behavior, and High-risk sexual behavior. In a study report shows that the girl street children are involved in more criminal activities, such as: snatching (20%), drug addiction (32.31%) and sex work (7.69%) also (ISWR, 2015).

1.9 Law and Policies in Protection of Child Rights

Bangladesh has made lots of initiatives to ensure the rights of the street children. The government of Bangladesh has rectified many international conventions, laws and policies to ensure the Children. Let us have a look on the initiatives of the World and Bangladesh government in recognition of child rights. National and International Laws and policies related to street child are, as follows:

- ILO Minimum Age Convention No. 138 (1973)
- ILO Worst Form of Child Labor Convention No. 182 (1999)
- Global Taskforce on Child Labor and Education for All
- Global Campaign for Education was formed in 1999
- Understanding children's Work in December 2000
- Child Act, 1974
- National Child Act, 2011
- Constitutional Guarantees
- Primary Education (Compulsory) Act, 1990
- National Education Policy

Bangladesh government introduced a program such PCAR (protection of children at risk) in 2007 but about 94% of street children are remaining out of any government or non-government coverage (Daily Stat, 2008) UNICEF took over the PCAR project (previously called ARISE) from UNDP in 2007. UNICEF seeks to improve and expand the protection, education, health, and development opportunities for children having on the streets. In 2009, a total of 8000 children got benefited from PCAR interventions in 68 open air schools; Day by day different programs are being such for the betterment of street children but their number is not decreasing that includes alarming high for Bangladesh.

1.10 Recommendations

Victim of children is an unpleasant situation of Bangladesh. To overcome the unexpected situation for the children we have to take some measures for the well-being for the victim children. Such are:

I. Firstly, torture and crude behavior to the children must be protected and legal action should be taken to offender and child victimization;
II. Secondly, family counseling should be applied to reduce the victim of children. It helps to understand various factors which are responsible for ensuring peaceful environment in the family. Psycho-social therapy is very helpful for the well-being of the children as well as for the development of good child-parents relationship;
III. Thirdly, awareness of the social people needs to be developed for the street children and relationship program should be made for their well-being;
IV. Fourthly, arrange security programs particularly for the girl children at the time of their movement outside home; and
V. Finally, moral education should be given to the children as well as adult people of the society.

1.11 Conclusion

Children of Bangladesh are facing various kinds of abuses situation like physical, psychological, and sexual harassment. For making the conditions of abuse children, every person of the society should come forward to controlling the situation of child abuse.

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Laws Relating to Women Trafficking in Bangladesh: A Comparative Study with SAARC Countries

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Abstract: Human trafficking, defined by actions involving recruitment, transportation, harboring, and exploitation through force, deception, or coercion, has seen a significant surge in women trafficking across Asia in recent years. This escalation in women trafficking has resulted in adverse physical and psychological health conditions for victims, often leading to social disadvantages. Given the substantial representation of women in a nation's population, injustices against them can hinder a nation's development. Within the South Asian Association for Regional Cooperation (SAARC) region, member states while sharing similarities, exhibit significant variations in their anti-women trafficking policies. This disparity prompts questions regarding the relative strength of each country's anti-women trafficking laws. Focusing on Bangladesh as a SAARC member state, this paper conducts a comparative study of Bangladesh's anti-women trafficking laws with those of other SAARC countries to assess the impact and effectiveness of existing laws in combating women trafficking.

Keywords: Women trafficking, Anti-trafficking laws, SAARC, Bangladesh, Victims.

1. Introduction

Legally, human trafficking comprises recruitment, transportation, harboring, coercion, and exploitation. Asia has witnessed alarming trends in human trafficking, demanding immediate attention. The region has experienced a high rate of trafficking, with over 85 percent of victims originating from within (Rashida, 2021). Among the most affected by women trafficking are the member countries of the South Asian Association for Regional Cooperation (SAARC), where this violation of women's rights has reached critical proportions. Organized crime syndicates reap billions of dollars annually from women trafficking, ranking it as the third-largest source of illicit profit (Ghosh, 2009). While many SAARC countries have laws with applicable provisions to combat trafficking, including India, Nepal, and Bangladesh, the majority have found such provisions insufficient. Consequently, they have adopted specialized legislation targeting trafficking, incorporating these measures into their constitutions and legal frameworks. Notably, SAARC countries possess various legislations addressing distinct forms of trafficking rather than a singular

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comprehensive code. This diversity raises a fundamental question: To what extent do the legislative efforts of SAARC countries effectively address women's trafficking?

This paper endeavors to provide insights by scrutinizing and comparing the anti-women trafficking policies of SAARC countries, offering recommendations for policy enhancements that, if implemented within existing legal frameworks, may contribute to the prevention and control of trafficking.

A list of the laws that will be compared is given below:

Table - 01: Anti-Women Trafficking Laws in SAARC Countries

Countries	Constitution/ Act	Bills/Convention/Ordinance/Others
Bangladesh	The Constitution of People's Republic of Bangladesh.	
	The Panel Code, 1860	
	The Suppression of Immoral Traffic Act, 1993	
	Women and Children Repression Prevention Act, 2000	
India	The Suppression of Immoral Traffic in Women and Girls Act, 1956	
Pakistan		The Prevention and Control of Human Trafficking Ordinance, 2002
Bhutan	The Labour and Employment Act, 2007	Woman and Child Protection Units
Nepal	The Constitution of Nepal	
	National Code (Muluki Ain) 2020 (1963)	
	The Human Trafficking and Transportation (Control) Act	
Maldives	Constitution of the Republic of Maldives, 2008	The Anti-Human Trafficking Bill, 2013
Sri Lanka	Panel Code, 1991	The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2005
Afghanistan	Anti-Human Trafficking and Migrant Smuggling Act, 2017	

2. Literature Review

Recent reports have underscored a significant increase in the trafficking of Bangladeshi women to other countries. This alarming trend can be attributed to various complex factors that require thorough examination. While prior research has delved into numerous aspects of women trafficking in Bangladesh and other SAARC countries, certain critical issues remain unaddressed.

In South Asian nations, it is well-documented that poverty serves as a driving force behind women trafficking, posing a grave threat to the dignity and well-being of trafficked women (Nuzhat and Arif, 2019). Across SAARC countries, a prevalent misconception equates women trafficking solely with prostitution, erroneously assuming that all trafficked individuals are subjected to sexual exploitation.

Another study conducted by Rashidul and Ruhul (2011) comprehensively analyzed the contemporary landscape of women trafficking, elucidating the root causes and the harrowing processes that force women and children into various forms of exploitation, including sex trade, domestic servitude, coerced begging, forced labor, and even organ harvesting, all under the guise of false employment opportunities.

The trafficking of women and children in Bangladesh is intricately linked to the prevailing socio-economic conditions, geographical factors, and cultural backgrounds (Profulla and Pranab, 2006). It has been argued that formal and informal social services play a pivotal role in promoting social development. These services are instrumental in enhancing the standard of living and overall quality of life for marginalized women.

A recent observation by Salman (2022) has highlighted the growing concern that women trafficking facilitated through social media platforms may see a significant rise in the future. Notably, the lax privacy policies of platforms like Facebook have made them attractive tools for traffickers seeking potential victims. As Jones and Soltren (2005) pointed out in their research, Facebook users are susceptible to disclosing personal information due to the absence of stringent encryption policies. This vulnerability has made it exceedingly convenient for traffickers to gather extensive information about potential victims, thereby exploiting their vulnerabilities more effectively.

While the aforementioned research has greatly contributed to our understanding of the concept and underlying causes of women trafficking, one crucial aspect has remained relatively unexplored— the reform of existing laws. This research endeavor seeks to address this critical gap by conducting a comparative analysis of anti-women trafficking laws in Bangladesh and other SAARC countries. Such an examination is imperative to shed light on the legal frameworks in place to combat this grave issue and identify areas in need of reform and improvement.

3. Research Methodology

The research is a doctrinal study that relies on desk work. A comparative study has been conducted among the Anti-Women trafficking laws of SAARC countries to assess the effectiveness of the anti-trafficking legislation in present society. Secondary sources were used to collect most of the data which included research reports and publications of various organizations working in the area of women trafficking, as well as journals, reports, booklets, newsletters, photographs, and newspaper clippings. To provide readers with a deeper

understanding of the problems of women trafficking, existing information was extracted from a variety of sources.

All the countries under SAARC region mentioned in Table-01 have adopted the SAARC convention to combat and prevent trafficking in women and children. Countries under SAARC region being vulnerable to crime took this initial step to point out trafficking of women and to protect the half of the population from exploitation.

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (SAARC Convention)

Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka are members of SAARC, a regional intergovernmental organization in South Asia. An agreement was signed by SAARC in 2002 on preventing and combating trafficking of women and children, namely the "SAARC Convention on preventing and combating trafficking in women and children for prostitution".

Trafficking is one of the issues addressed by the South Asian Association for Regional Cooperation (SAARC). In order to effectively combat trafficking in women and children, Member States must cooperate in order to achieve a variety of goals. It is important to prevent the use of children and women in international prostitution networks, especially when SAARC countries are the source, transit, and destination countries, as well as to repatriate and rehabilitate trafficked victims (SAARC, 2002).

Article 1 of the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution is a definitive article that defines child, trafficking, trafficker, reparation, and so on. Under clause 3 of Article 1, "Trafficking" means the moving, selling, or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking (SAARC, 2002). In order to prevent and reduce human trafficking, the SAARC convention aims to provide inspiration and standard-setting among the SAARC countries (SAARC, 2002). The SAARC Convention stipulates certain requirements that states must follow in order to prevent, suppress, and rehabilitate and repatriate victims of human trafficking. Those are:

- Traffickers, managers, or financiers of brothels or people who rent properties for such purposes should be punished according to the laws of their respective states. (Article 3(1) & (2).
- To ensure the confidentiality of victims' appropriate counseling and legal assistance is to be provided. (Article 5).
- State parties to this convention will provide care, treatment, rehabilitation and repatriation of the victims. (Article 9).
- Member states will take measures to prevent and interdict trafficking in women and children by establishing a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews. (Article 8).

After the countries under SAARC region have ratified the SAARC convention, member countries chose to enact specific laws and regulations to protect the rights and safety of individuals within their own territory. These laws and regulations mentioned under Table-01 are developed and implemented by the respective national governments, and may vary from country to country depending on their legal and political systems, cultural norms, and societal values.

1. Bangladesh

Bangladesh has taken significant steps to combat human trafficking, with legal provisions encompassed in its Constitution and Penal Code:

1.1 The Constitution of the People's Republic of Bangladesh

- Article 27 ensures that all citizens receive equal protection under the law, regardless of race, sex, or religion. This fundamental principle underscores the commitment to combating trafficking and protecting the rights of every citizen.
- Article 18 holds the state responsible for preventing prostitution, emphasizing the need to address issues related to human trafficking for forced sexual exploitation.
- Article 19 commits to removing social and economic inequalities between men and women, which is crucial in the context of trafficking, where women and girls are often the most vulnerable.
- Article 31 guarantees the right to protection under the law for every citizen, emphasizing the importance of legal safeguards against trafficking and related offenses.

1.2 The Penal Code, 1860

- Bangladesh's Penal Code contains specific provisions that address various offenses related to human trafficking, such as wrongful confinement, abduction, slavery, forced labor, rape, and the buying and selling of minors for prostitution.
- Section 364 prescribes life imprisonment or rigorous imprisonment for up to ten years for kidnapping or abducting with the intent to murder.
- Section 365 stipulates imprisonment for abducting with the intent to secretly and wrongfully confine a person, emphasizing the protection of individuals from trafficking and unlawful confinement.
- Section 366A addresses the procurement of minor girls, imposing imprisonment for up to ten years, focusing on protecting minors from exploitation.
- Section 370 criminalizes the buying or disposing of any person as a slave, with imprisonment of up to seven years.
- For habitual dealing in slaves, the Penal Code prescribes imprisonment for life or up to ten years, reinforcing a strong stance against human trafficking.

1.3 The Suppression of Immoral Traffic Act, 1933

- While this Act includes somewhat lesser penalties for detaining a girl under 18 years in a place of prostitution, it still reflects Bangladesh's commitment to safeguarding minors from sexual exploitation.

1.4 Women and Children Repression Prevention Act, 2000

- This Act establishes severe penalties for various offenses against women and children, including trafficking. The rigorous punishment underscores Bangladesh's dedication to combatting trafficking and protecting vulnerable populations.

2. India
India's legal framework includes several key provisions aimed at combatting human trafficking:

- Article 23 (1) of the Indian Constitution explicitly prohibits forced labor and human trafficking, setting a strong foundation for addressing trafficking-related issues.
- Specific sections of the Indian Penal Code, such as Section 366A (pertaining to the transfer of minor girls), Section 366B (regarding the importation of girls below 22 years), and Section 374 (dealing with compelling labor against one's will), address trafficking-related offenses. These provisions focus on various aspects of human trafficking, including recruitment, transportation, and exploitation.
- The Immoral Traffic (Prevention) Act, 1956, is a specialized legislation dealing exclusively with trafficking. It empowers authorities to rescue and rehabilitate victims while imposing stringent penalties on exploiters, reinforcing India's commitment to eradicating trafficking and ensuring the protection of women and children.

These legal measures demonstrate India's comprehensive approach to addressing trafficking and ensuring justice for survivors.

3. Pakistan
Pakistan has enacted the Prevention and Control of Human Trafficking Ordinance, 2002, a comprehensive law that defines human trafficking to include prostitution, forced labor, and services. This law recognizes both physical and mental harm as forms of exploitation, and individuals convicted of serious violations may receive harsh sentences. The legislation also targets organized trafficking groups and includes provisions for victim compensation, reflecting Pakistan's commitment to combating human trafficking in all its forms.

4. Bhutan
Bhutan has taken proactive steps to protect its citizens from human trafficking:

- The Constitution of Bhutan includes provisions to safeguard against trafficking and exploitation.
- The Labour and Employment Act, 2007, regulates employment conditions, setting minimum age standards, and ensuring suitable working conditions. This measure helps prevent the exploitation of labor, especially child labor.
- The Child Care and Protection Act, 2011, specifically addresses child trafficking comprehensively, providing a robust legal framework for safeguarding children from trafficking.
- Despite not ratifying the UN Convention against Transnational Organized Crime, Bhutan has made commendable efforts to counter human trafficking. A specialized Woman and Child Protection Unit within the Royal Bhutan Police offers support and counseling to survivors, ensuring their well-being.

These multifaceted legal measures underscore Bhutan's commitment to preventing trafficking and protecting the rights of its citizens.

5. Nepal
Nepal's legal framework includes various provisions to combat human trafficking:

- The Nepalese Constitution upholds principles of equality and justice for all citizens, ensuring protection against trafficking and related abuses.
- The Muluki Ain (Code of Law) 1963 addresses both inter-state and domestic trafficking. It imposes stringent penalties, including a 20-year prison sentence for

international trafficking and a 10-year prison sentence for attempted sale, in addition to fines.

- The Human Trafficking (Control) Act of 1986 extends the jurisdiction of Nepali courts to offenses committed outside Nepal, emphasizing accountability for crimes against Nepali citizens abroad.
-

These legal provisions and stringent penalties reflect Nepal's unwavering commitment to combating trafficking and ensuring justice for victims.

6. Maldives

The Maldives has introduced significant legal measures to combat human trafficking:

- Article 25(a) of the Constitution of Maldives and Article 3(a) of the Employment Act (2008) expressly prohibit slavery, servitude, and forced labor, setting clear standards for labor rights and worker protection.
- The Anti-Trafficking Bill, 2013 criminalizes sexual exploitation and forced labor, although it requires the transportation of a victim, aligning with international definitions of trafficking.
- The Maldives National Action Plan 2020-2022 demonstrates a proactive approach to eliminating Trafficking in Persons (TIP), emphasizing law enforcement capacity building and victim support.

While there may be room for refining definitions and provisions, these legal measures show the Maldives' commitment to addressing human trafficking and improving conditions for workers.

7. Sri Lanka

Sri Lanka's legal framework addresses human trafficking with specific provisions:

- Section 360A of the Sri Lankan Penal Code defines trafficking, encompassing acts like buying, selling, bartering, or providing consideration for a person, establishing a robust definition of trafficking.
- The Code further criminalizes various acts related to trafficking, including assisting, arranging travel, recruiting, falsifying records, impersonation, and child exploitation, reinforcing Sri Lanka's commitment to protecting vulnerable populations.
- Amendments in 1988 extended legal protection by adding child begging, sexual intercourse with children, and hiring children for sexual purposes to the Penal Code.

Sri Lanka's legal provisions demonstrate a comprehensive approach to addressing human trafficking, encompassing prevention, prosecution, and victim support.

8. Afghanistan

Afghanistan's legal framework reflects its commitment to combatting human trafficking:

- The Law Prohibiting Human Trafficking and Migrant Smuggling criminalizes the use of force, coercion, or deceit for exploitation. The law covers various forms of exploitation, including medical experiments, armed fighting, and the sexual and social exploitation of young boys.
- It prescribes punishments for exploitation in armed fighting, with aggravating factors potentially increasing sentences. In severe cases resulting in the victim's death, the death penalty may be imposed.

These legal measures demonstrate Afghanistan's dedication to preventing, suppressing, and punishing trafficking in persons, particularly women and children.

In summary, SAARC countries have adopted various legal provisions to combat human trafficking, reflecting their commitment to safeguarding citizens and eradicating this heinous crime. These measures promote social and economic development and contribute to building peaceful and stable societies within the region.

Below is Table 02 which outlines the punishment policies and precise provisions of law that have been discussed in theory thus far in relation to member countries of the SAARC region.

Table – 02: Punishment for Trafficking under Different Laws

Country	Law	Provision	Subject	Punishment
Bangladesh	The Prevention & Suppression of Human Trafficking Act, 2012	6	Human trafficking	Rigorous imprisonment not less than 5years and with fine not less than taka 50,000
		7	Organized offence of human trafficking	Death or lifelong imprisonment or rigorous imprisonment for a term not less than 7 years and with fine not less than taka 5 lac.
		8	Instigating, conspiring or attempting to commit human trafficking	Rigorous imprisonment not exceeding 7 years and not less than 3years and with fine not less than taka 20,000
		9	Forced or- bonded labor	Rigorous imprisonment not exceeding 12 years and not less than 5years and with fine not less than taka 50,000
		10	Kidnapping, stealing and confining with intent to commit the offence of human trafficking	Rigorous imprisonment not exceeding 10 years and not less than 5years and with fine not less than taka 20,000
		11	Importing or transferring for prostitution or any other form of sexual exploitation	Rigorous imprisonment not exceeding 7 years and not less than 5years and with fine not less than taka 50,000
India	The Immoral Traffic (Prevention) Act, 1956	3	Keeping a brothel or allowing premises to be used as a brothel	1st time offender: Rigorous imprisonment not exceeding 3 years and not less than 1years and with fine not less than 2000 rupees

				2nd /subsequent offender: Rigorous imprisonment not exceeding 5 years and not less than 2years and with fine not less than 2000 rupees
		5	Procuring, inducing or taking person for the sake of prostitution	With consent: Rigorous imprisonment not exceeding 7 years and not less than 3 years and with fine not less than 2000 rupees
				Without consent: Imprisonment for a term of 7 years shall extend to imprisonment for a term of 14 years
		6	Detaining a person in premises where prostitution is carried on	Imprisonment not less than 7 years but which may be for life or for a term which may extend to 10 years and shall also be liable to fine
		8	Seducing or soliciting for purpose of prostitution	Imprisonment extending up to 1year and fine up to 500 rupees
Pakistan	Prevention and Control of Human Trafficking Ordinance, 2002	3	Human trafficking	Imprisonment which may extend to seven years and shall also be liable to fine
		4	Offences committed by organized criminal groups	Imprisonment not less than 10 years may extend to 14 years and shall also be liable to fine
		5	Repetition of commission of offences	Imprisonment may extend to 14 years and shall also be liable to fine
Bhutan	Penal Code of Bhutan, 2004	154	Trafficking a person	'A defendant shall be guilty of the offence of trafficking a person, if the defendant transports, sells or buys a person within, into or outside of Bhutan for any purpose.'
Nepal	Human Trafficking and Transportation Act, 2007	15(1)(a)	Selling or buying a human being	20 years imprisonment and a fine of 200000 Rupees
		15(1)(b)	Forcing into prostitution	10 years to 5 years imprisonment and a fine of 50000 Rupees to 100000 Rupees
		15(1)(e)(1)	Transportation of human being	10 years to 15 years imprisonment and a fine of

			(Outside country)	50000 Rupees to 100000 Rupees
		15(1)(e)(2)	Transportation of human being (Within country)	10 years imprisonment and a fine of 50000-100000 Rupees
Maldives	Prevention of Human Trafficking Act, 2013	17(c)	Human trafficking	Imprisonment for 10 (ten) years
		19(b)	Aiding trafficking or abetting trafficking	Imprisonment for 7 (seven) years
Sri-Lanka	Convention On Preventing and Combating Trafficking in Women and Children for Prostitution, 2005	1(3)(a)	Trafficking of women and children for prostitution	Imprisonment not less than 3 years and not exceeding 15 years and be liable to a fine.
		1(3)(b)		Court may impose liability to pay compensation and failure to do so may extend imprisonment to 5 years.
Afghanistan	Law Prohibiting Human Trafficking and Migrant Smuggling, 2017		Human trafficking	'The law prescribes maximum penalties of eight years imprisonment; aggravating factors increase the maximum sentence to between 10 and 15 years and the imposition of the death penalty if exploitation for armed fighting resulted in the victim's death.'

4. Findings

1. Inadequate Legal Framework

Across SAARC countries, there exists a varying and often inadequate legal framework to combat human trafficking. While some countries have adopted more comprehensive legislation, others lag behind. It is essential to establish a standardized legal framework that incorporates the most recent provisions for combating trafficking, including definitions, penalties, and protective measures.

2. Challenges in Investigation and Enforcement

The effectiveness of anti-trafficking laws is hindered by challenges in the investigation and enforcement processes. Many cases remain unsolved due to the lack of efficient investigative teams and delayed relief for victims. To improve enforcement, countries should invest in specialized law enforcement units dedicated to trafficking cases.

3. Inconsistent Definitions of Trafficking

Different SAARC countries have diverse definitions of trafficking, often failing to differentiate between trafficking in women and children. Clarity is essential to address the specific vulnerabilities and challenges faced by each group, necessitating separate definitions for women and children trafficking.

4. **Lack of Comprehensive Victim Support**
   Existing laws primarily focus on punitive measures against traffickers but lack provisions for comprehensive victim support and rehabilitation. This neglects the crucial aspect of helping survivors reintegrate into society. Policymakers should prioritize the development of holistic victim support programs, including shelter, legal aid, and counseling services.
5. **Regional Cooperation**
   Human trafficking is a transnational issue, and regional cooperation is vital. SAARC countries should enhance collaboration through agreements like the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. Such cooperation can facilitate information sharing and coordinated efforts to combat trafficking effectively.

5. Recommendations

1. **Standardized Legal Framework:** SAARC countries should work towards standardizing their anti-trafficking laws by adopting a common set of definitions, penalties, and protective measures. This approach would ensure consistency and facilitate cross-border cooperation.
2. **Efficient Investigation Teams:** Countries should establish specialized law enforcement units dedicated to trafficking cases. These units should receive specialized training to handle the complexity of such cases effectively, ensuring timely resolution and prosecution of traffickers.
3. **Strengthen Victim Support**: Develop and implement comprehensive victim support programs that encompass shelter, medical and psychological services, legal aid, vocational training, and educational assistance. These programs should be tailored to the specific needs of women and children's survivors.
4. **Differentiated Definitions:** Revise existing laws to differentiate between trafficking in women and children. This differentiation allows for tailored legal responses and support systems, addressing the unique vulnerabilities and challenges faced by each group.
5. **Regional Information Sharing:** Encourage SAARC countries to establish a regional information-sharing platform dedicated to trafficking. This platform can facilitate the exchange of data, case information, and best practices, contributing to more effective cross-border cooperation.
6. **Increased Awareness and Education:** Raise awareness about human trafficking among communities and law enforcement agencies. Implement educational programs to inform potential victims about the risks and signs of trafficking, empowering them to seek help and support.
7. **Regular Review and Updates:** SAARC countries should commit to regular reviews and updates of their anti-trafficking laws to ensure they remain relevant and effective in addressing emerging challenges and changing trafficking patterns.

6. Conclusion

In general, trafficking is a phenomenon that primarily affects women of a particular age and gender. The result is that they end up being forced into prostitution, forced marriages, forced work, forced begging, camel jockeying, adoption trades, organ harvesting, etc. Most trafficked women come from poor and vulnerable rural and urban families. Numerous organizations participate individually or jointly in anti-trafficking activities. Women from third-world countries are especially vulnerable to trafficking activities because both nationally and globally this activity is increasing. Efforts from all parties are needed to stop this. As a global phenomenon, the Government of Bangladesh along with NGOs, INGOs, and Civil Society Organizations should take steps to eliminate this curse from our society.

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Enforcement of the Right to Environment and European Court of Human Rights: Challenges and Implications

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Abstract: The European Court of Human Rights (the Court or ECtHR) is considered one of the most accomplished human rights institutions in the world; this court also attained a certain prominence in environmental cases. The right to a safe and healthy environment has gained the center of attention currently where the court emphasized preserving these environmental concepts. The relevant challenges to protect this right and to provide the best possible solution to the member states have become a concerning matter in this regard. The implication of laws and the assessment derived from the pertinent cases can play a meaningful representation in enforcing the right to environment. The prevailing status of environmental protection under this court and offered under the ECHR regime outlines possible future developments that encourage the other regions to work together. The right to a healthy environment is recognized in the ECtHR case-law through an extensive interpretation of the applicability of certain other rights including right to life (Article 2 ECHR), the right to private and family life (Article 8 ECHR), the right to property (Article 1- Additional Protocol n. 1 to ECHR) though the word "environment" is not mentioned in the ECHR. This study will explore the role of European Court of Human Rights in establishing right to environment and will find out the challenges existing behind its success.

Keywords: Environmental rights, The European Court of Human Rights, The European Convention of Human Rights, Challenges.

Introduction

The environment is a basic word for some people and a prominent issue. We usually talk about the right to life, protection of law, right for equality, but the right of environment is another option we need to seek as our basic rights. International organizations are much conscious about this right as it directly affects humans and other surrounding life. Our Human Rights help us to enlarge our inherent traits, aptitude, talent, and scruples to meet our objects and religious needs. Life, livelihoods, culture, and society are elementary aspects of human subsistence, and their maintenance is a fundamental human right. And here the Devastation of the environment is therefore a violation of human rights. And to extreme human rights cannot be enjoyed at all if the environment becomes impaired past a certain

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grave plane. Healthy environment includes fresh air, sufficient natural light, free of sound pollution etc. which is very important for growing up of all ages of human being. So, the Human rights and the environment are intertwined. At present with the increasing population as well as development of industrialization, the pollution of environment is also rising which are being tried to be controlled through various national and international legal instruments including constitution, domestic laws, conventions, and conferences. Fundamental rights cannot be enjoyed without a safe, clean and healthy environment whilst sustainable environmental governance cannot exist without the establishment of and respect for human rights. So, the right to environment is so far reflected as to human rights.

This study will explore relevant provision of environmental rights in European Convention of Human right and will find out the role European court of Human rights in ensuring right to environment with existing challenges. The establishment of the European Court of Human Rights has contributed in safeguarding the right to environment. Right from its inception the ECtHR is working on balancing the interests and persuade the Contracting Parties to back up its choice. Sometimes by chance or by the calculated choice the Court managed to become the most effective human rights tribunal in the history of international law (Dzehtsiarou, 2022).

Right to Environment

Environmental rights mean any proclamation of a human right to environmental conditions of a specified quality, rights are composed of substantive rights (fundamental rights) like those in which the environment has a direct effect on the existence or the enjoyment of the right itself. Substantive rights comprise of civil and political rights, and procedural rights (tools used to achieve substantial rights) that includes a key point of intersection between environmental and human rights law; they prescribe formal steps to be taken in enforcing legal rights. Procedural rights include rights to free, prior and informed consent, access to information, participation in decision-making, and access to justice. Substantive rights and procedurals rights are of (UN Environment)

- To a safe, clean, healthy and sustainable environment.
- To protect against discrimination and have equal protection of the law, in relation to the enjoyment of a safe, clean, healthy and sustainable environment?
- To freedom from threats, harassment, intimidation and violence whilst working on human rights and the environment.
- To freedom of expression and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Procedurals rights are of,

- To seek, receive, and impart environmental information.
- To participate in public decision-making about environmental matters.
- To equal access to public service in his country
- To effective legal remedies for violations of these rights.

Human Rights and the Environment

Human rights are linked up with environmental rights and the human rights are linked here as such issues like the,

- Human Rights relating to the environment are set out in basic human rights treaties and it includes: The human rights to a safe and healthy environment.
- The human rights as to the highest attainable standard of health.
- The human rights to ecologically sustainable development.
- The human rights of the child to live in an environment appropriate for physical and mental development.
- The human rights to safe working conditions, including adequate safeguards for pregnant and lactating women.

European Court of Human Rights

The European Court of Human Rights (ECHR or ECtHR; French: Cour européenne des droits de l'homme) is a supranational or international court established by the European Convention on Human Rights. The court hears applications alleging that a contracting state has breached one or more of the human rights provisions concerning civil and political rights set out in the Convention and its protocols. It was established on 21 January 1959 on the basis of Article 19 of the **European Convention on Human Rights** when its first members were elected by the Consultative Assembly of the Council of Europe. The Convention charges the Court with ensuring the observance of the engagement undertaken by the contracting states in relation to the Convention and its protocols that is ensuring the enforcement and implementation of the European Convention in the member states of the Council of Europe. The jurisdiction of the court is divided into inter-state cases, applications by individuals against contracting states, and advisory opinions in accordance with Protocol No.2. Applications by individuals constitute most cases heard by the Court. A Committee is constituted of three judges, Chambers of seven judges and a Grand Chamber of 17 judges. This is how the Court's work goes.

The Protection of the Environment in the European Convention on Human Rights (ECHR) System

The word "environment" is not mentioned properly in the provisions of the European Convention on Human Rights (ECHR) and even less the concept of a right to a healthy environment. Similarly, the Convention does not directly determine whether an individual has the right to a healthy environment. Therefore, the main concern consists of the question: to what extent can individuals invoke such a new right to a healthy environment, therefore. Actually, the right to a healthy environment is recognized in European case-law through an extensive interpretation of the applicability domain of certain other rights, expressly provided for in the Convention. It derives consequently that any infringement of the right to a healthy environment cannot be invoked as such before the European Court of Human Rights (ECtHR), since it is not protected specifically by the Convention.

According to the **Manual on Human Rights and Environment** drafted by the Council of Europe, "Environmental factors may affect individual Convention rights in three different ways, the First one is the human rights protected by the Convention may be directly affected by adverse environmental factors for instance, toxic emissions from a factory or rubbish tip might have a negative impact on the health of individuals. Public authorities may be obliged to take measures to ensure that human rights are not seriously affected by adverse environmental factors for instance, toxic emissions from a factory or rubbish tip might have a negative impact on the health of individuals. Public authorities may be obliged to take measures to ensure that human rights are not seriously affected by adverse environmental factors. Second, adverse environmental factors may give rise to certain procedural rights for the individual concerned. The Court has established those public authorities must observe

certain requirements as regards information and communication, as well as participation in decision-making processes and access to justice in environmental cases. Third, the protection of the environment may also be a legitimate aim justifying interference with certain individual human rights. For example, the Court has established that the right to peaceful enjoyment of one's possessions may be restricted if this is considered necessary for the protection of the environment (EFFACE 2015).

Right to environment and European Court of Human Rights

There is no explicit right to a healthy environment in the European Convention; the Court has developed a strong jurisprudence on environmental issues through its interpretation of civil and political rights in the Convention. Specifically, ECHR has case law has addressed environmental issues as components of Articles 2 says on right to life and 8 for right to respect of private and family life; of the Convention, as well as Article 10 on right to receive and impart information (ECHR 1953 ar-2,8,10) so the convention stated the need of right to environment to be established so the court of human rights is providing that remedies when the right to environment is violated. Through the European Court of Human Rights, the cases are filed, the judgments are given regarding any environmental issue indicates the right to environment to be established properly.

Case laws under the European Court of Human Rights

There are many more case laws in the European Court of Human Rights where there are several examples of the implications of environment as a right is established. Analyzing the case-law of ECtHR it is possible to observe that the violation of the right to a healthy environment has been considered in connection with other fundamental rights expressly provided for, such as the right to life (Article 2 ECHR), the right to private and family life (Article 8 ECHR), the right to property (Article 1- Additional Protocol n. 1 to ECHR), the right to a fair trial (Article 6 ECHR) and the freedom of speech (Article 10 ECHR). The cases given here are just sort of examples of precedent.

Due to Natural Disaster

In the case of ***Murlio saldias*** where, the applicants were survivors of the disaster which struck the Biescas campsite (Spanish Pyrenees) in August 1996 when 87 people were killed in severe flooding following torrential rain. Here the first applicant lost his parents and brother and sister in the catastrophe while the other applicants all received injuries. The other the applicants complained in particular that Spain had not taken all the preventive measures that were necessary to protect users of the Biescas campsite they also alleged that the authorities had granted permission to use the land as a campsite despite being aware of the potential dangers (Murlio saldias and others vs Spain, 2006).

The European Court of Human Rights declared the application inadmissible. Noting that, in December 2005, the Audiencia Nacional had awarded the first applicant compensation in an amount that could not be regarded as unreasonable and would probably be confirmed or even 2 Factsheet – Environment and the ECHR increased by the Supreme Court when it examined the applicant's appeal on points of law, it considered that, after the decision of the Audiencia Nacional, he could no longer claim to be a victim of a violation of rights set forth in the Convention within the meaning of Article 34 (right of individual petition).

As regards the remaining applicants, they had merely joined the criminal proceedings as civil parties and had declined to bring administrative proceedings against the authorities before

lodging their application with the Court. They had therefore failed to exhaust domestic remedies.

In the case of ***Budayeva 20*** March 2008, In July 2000 the town of Tyrnauz, situated in the mountain district adjacent to Mount Elbrus in the Republic of Kabardino-Balkariya (Russia), was devastated by a mudslide where eight people were killed, including the first applicant's husband. Because of the disaster, the applicants sustained injuries and psychological trauma and lost their homes. So, the applicants alleged that the Russian authorities had failed to mitigate the consequences of the mudslide and to carry out a judicial enquiry into the disaster (Budayeva and Others vs. Russia, 2008).

The Court held that there had been a violation of Article 2 of the Convention under its substantial limb, on account of the Russian authorities' failure to protect the life of the first applicant's husband, and the applicants and the residents of Tyrnauz from mudslides which devastated their town in July 2000. There had indeed been no justification for the authorities' failure to implement land-planning and emergency relief policies in the hazardous area of Tyrnauz concerning the foreseeable risk to the lives of its residents. The Court also held that there had been a violation of Article 2 of the Convention under its procedural limb, on account of the lack of an adequate judicial enquiry into the disaster.

In the case of ***Viviani*** where concerned the risks attached to a potential eruption of Vesuvius and the measures taken by the authorities to combat those risks. The applicants, those who live in various municipalities located near the volcano alleged that in omitting to put in place an appropriate regulatory and administrative framework to deal with the risks. Their government had failed in their obligation to protect their right to life, so they complained that the lack of adequate information on the risks they faced was in breach of their right to respect their private and family life. The Court declared the application inadmissible for failure to exhaust domestic remedies, in accordance with Article 35 § 1 (admissibility criteria) of the Convention. It noted that the applicants had had several domestic remedies available to them which they had not exhausted before the administrative courts or in the form of a class action. However, they had merely asserted that the remedies in question were ineffective (Budayeva and Others vs. Russia, 2015).

These upper cases were related to natural disaster of environment that was affecting the people, and the Court of Human Rights gave justice as far as they could. Here is another case due to passive smoking in public that creates environmental issues.

Due to Passive Smoking

In the case of passive smoking issue, **Elefteriadis** on 25 January 2011 where the applicant, was suffering from chronic pulmonary disease, was serving a sentence of life imprisonment. Between February and November 2005, he was placed in a cell with two prisoners who smoked. In the waiting rooms of the courts where he had been summoned to appear on several occasions between 2005 and 2007, he was also held together with prisoners who smoked. Here The Court held that there had been a violation of Article 3 of the Convention, observing in particular that a State is required to take measures to protect a prisoner from the harmful effects of passive smoking where, as in the applicant's case, medical examinations and the advice of doctors indicated that this was necessary for health reasons (Elefteriadis v. Romania, 2011).

Due to Causing Harm to People's Health

In the case of **Taskin,** the applicants lived in and around the village of Bergama, all resided within 10 kilometers of a mining site. In February 1992, authorities granted a mining company rights to operate a gold mine, which included authorization to use cyanide leaching to extract the gold. The Court ruled that the State violated Article 8 of the ECHR, because the authorities should have provided the applicants with the necessary information to assess the danger to their health. This constituted a failure to take reasonable and appropriate steps to safeguard the interests of the applicant's right to private and family life and home and thus violated Article 8 so the authority found guilty (Taskin and Others v. Turkey, 2004).

The Proportionality Test and Procedural Aspects

According to Article 8 of **ECHR**, if the States want to successfully pass the above mentioned second level of the proportionality test, trying to strike a fair balance between the individuals rights and the interests of the community as a whole, they must show that they have recognized and made effective a set of procedural guarantees. Provisions of Article 8 will also be applicable to the individuals involved in the decision-making process dealing with dangerous environmental issues. In this context, the Court also quotes EU and international environmental standards, as the Directive 2004/35/EC, the 1992 Rio Declaration on Environment and Development and the Aarhus Convention which provide for the public's right to information and the right of access to information in cases of environmental danger. Here the right to life, regulated in article 2 (1) of the Convention, the right to private and family life provided for in article 8 (1) has been most frequently used in cases involving damages to the environment caused by pollution. The evaluative interpretation of the Court concerning these concepts has allowed for these damages produced to the environment to fall within the scope of the notions of right to 'life', 'private life' and that of 'family life' (Lucretia 2013)

The Role of the European Court of Human Rights in the Fight against Environmental Crime

The court of human rights put their significance all over the issues of environment and in establishing the right to environment. This, therefore can be explained as- (EFFACE 2015)

- The provision of such positive obligations directly influences the criminal law system of the State sentenced by the European Court of Human Rights, which must comply with the judgment of the Court, to prevent the non-compliance procedure provided for Article 46 ECHR that can ensure proper justice.
- The provision of such positive obligations influences indirectly also the criminal law systems of the other Contracting States, since they could be considered also liable for not fulfilling such obligations, in the case their citizens made a complaint before the Court and the proceeding starts.
- A proper harmonization effect affects the criminal law domestic systems, based on the standards of human rights protection identified by the Court. Such a harmonization effect is further improved by the obligation of an ECHR consistent interpretation of the domestic legislations, provided for in many Contracting States.

Challenges as to the Enforcement

The interim measures provided are used in a narrow aspect. The cases on extradition, the interim measures are being followed. The pending applications for claiming justice where the applications are hardly getting the reach towards the prime authority. when years after submission of the application the Court decides a particular case, the stated judgment become

less impactful as the victims could have already moved on, the political situation in the respondent state changes or for many other reasons (Dzehtsiarou, 2022).

The concept of ‘a ‘denial of the right to individual application’ had developed through a case called the *Brumych case* for such delaying of applications. By this continuous process, the Court does not only undermine its technical function by discarding applications but also questions its meta-function because the standard developed by the Court is left unenforced (Burmych and Others v. Ukraine 2017).

Not treating all the states equally is another factor that is hampering in enforcing the rights under this court. Here the Court needs to apply distinct approaches to the other Member States depending on their overall human rights compliance unless this attitude will let them be accused of double standards and its reputation can suffer as a result (Follesdal and others 2013). Though the concept of judicial independence is being followed in dealing with the cases, yet few challenges cannot be avoided.

Enforcement of Right to Environment

The court has already established its effectiveness through several judgments in protecting the right to the environment. There might be issues with the variable geometry human rights, there might have few bars in enrolling the judicial independence at its full fledge, yet the Court has essentially extended the meaning of Article 6 by allowing judges access to court in relation to their disciplinary or other work-related disputes for a better understanding of their role (Eminağaoğlu v Turkey 2021). As we know the ambit of article 6 has allowed the court and judges to be impartial, the enforcement has enlarged the way through its case decisions.

Findings of the Study

The formation of the European Court of Human Rights has always been towards the protection of human rights, specifically the right to the environment. This finding shows the success rate through the case decisions. From the concept of passive smoking to the extraction from a mine all queries are being answered by giving an accurate judgment by the court. Environment conservation is a significant part, there cases where both the compact are key issues are being focused here with a view to creating awareness concerning the conservation of the environment. Few barriers are visible to sustain this large scale of activism. All we believe in the judicial activism such conceive might get impacted when the relevant challenges come in. The small scaled application of the interim measures, the different level of human right approaches by the member state cause hurdles in dealing things, in providing the utmost benefit for the comprehensive purpose.

Recommendations

The conferred knowledge, strategies regarding the European Court of Human Rights where the basic substance is they uplifted the matters of human rights must, and that shall be protected first. Here the case laws created precedents where if the Court finds no direct reference of law or article of the convention then the case laws put their significance though few observations can be initiated-

- The right to environment should get the equal status as to the fundamental rights.
- A few Protocols or policy making decisions can be inaugurated.
- The influence of the developed nation and the variable geometry of human rights should be controlled.
- Finally, the court structure and the function can be availed and implemented to the other continents too.

Conclusion

If we perceive from a human rights standpoint, the right to a healthy and quality environment is a fundamental right whose nature and characteristics do not change over time, passage or because of circumstance changes. The environmental protection provided by human rights instruments like the ECHR is mostly anthropocentric that concerns the safeguarding humans from infringements of their individual human rights by environmental threats (Peters 2021). The fundamental human rights are inalienable, and this inalienability applies likewise in the case of the right to a healthy environment. In conclusion, there is certainly evidence of convergence in the environmental case-law and a cross-fertilization of ideas between the different legal systems at different level international, European and national - which allow a virtuous circle of preventive and repressive legal patterns, that can from one hand improve the respect of the principles guiding the criminal law policies by the legislators and on the other hand heighten the standard of protection of individuals rights where environmental issues are at stake. Consequently, establishing the right of environment by the European Court of Human Right provides a significant role in this era in endowing justice.

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Trends of Family Courts in Bangladesh in Granting Guardianship to Muslims as Means of Legalizing Informal Adoption and Laws Relating to Surrogacy in India

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Abstract: The tendencies of family courts in Bangladesh giving guardianship to Muslims as a way of legalizing informal adoption and the rules governing surrogacy in India are the two separate but related issues that are explored in this thesis. The study uses a qualitative research design that is based on interviews with legal experts and practitioners as well as an examination of pertinent legal and policy texts. Even though informal adoption is common in Bangladesh, it is not recognized by the law, which frequently results in conflicts regarding child custody and guardianship. In order to formalize informal adoption, this study investigates the legal procedures family courts in Bangladesh use to grant Muslim parents' guardianship. It examines the socio-cultural and theological influences behind these developments as well as how they affect children's rights and welfare. The laws surrounding surrogacy in India have changed significantly in recent years. This transformation is investigated in the study, which focuses on the moral and legal ramifications of surrogacy for women and children. It examines the arguments made against surrogacy in India, particularly those of exploitation, commodification, and commercialization of women's bodies. Overall, this thesis contributes to a better understanding of the legal and socio-cultural factors shaping the trends of family courts in Bangladesh in granting guardianship to Muslims as a means of legalizing informal adoption, as well as the evolving legal framework governing surrogacy in India. The study highlights the need for a more nuanced and context-specific approach to these complex legal and ethical issues, taking into account the diverse perspectives and experiences of all stakeholders involved.

Keywords: Family courts, Bangladesh, guardianship, Muslims, informal adoption, legalization, child custody, legal procedures, socio-cultural influences, theological influences, children's rights, welfare, surrogacy, India, legal framework, moral ramifications, qualitative research, interviews, legal experts and practitioners, legal reform, and ethical dilemma.

Introduction

In Bangladesh's family courts, there has been a discernible trend in recent years to grant guardianship to Muslims in order to formalize informally adopted children. The legal acknowledgment of adoption in Bangladesh and the preservation of children's rights are both significantly impacted by this trend. On the other side, India has recently witnessed an increase in surrogacy agreements, and several regulations have been passed to control this

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activity. This paper seeks to examine at the guardianship and informal adoption trends in Bangladeshi family courts as well as the Indian legal framework for surrogacy. The purpose of the research is to identify the sociocultural and legal elements that affect these patterns and to determine how they affect the wellbeing of children in the various jurisdictions. Islamic law forbids the transfer of parental rights from one person to another and does not consider adoption as a valid way to start a family. Nonetheless, informal adoption, when children are taken in by family or friends who function as their guardians, is common in many Muslim communities in Bangladesh. Due to the informal adoption's perceived conflict with Islamic law, Bangladeshi courts have always been hesitant to recognize it legally. Yet, there has been a recent trend of Muslim parents being granted guardianship by family courts as a way to formalize unofficial adoption. This pattern has sparked worries regarding adoption laws of Bangladesh and the defense of children's rights. (Hossain, A. & Khan, S. (2017). Guardianship and informal adoption in Bangladesh: Legalizing the informal through the family courts. *Laws*, 6(4), p.31.) Contrarily, surrogacy agreements have been quite common in India in recent years, with an increase in the number of couples choosing this approach to conception. (Indian Council of Medical Research (2015).

However, the lack of clear legal provisions and the absence of a regulatory framework has resulted in numerous ethical and legal challenges. The Indian government has responded to these challenges by enacting various laws to regulate surrogacy and protect the interests of surrogate mothers and children born through surrogacy (Surrogacy (Regulation) Bill (2019). No. 166 of 2019, India). This paper seeks to examine the legal framework for surrogacy in India and assess its effectiveness in regulating this practice.

Background and Context of the Study

Two important topics—adoption and surrogacy—raise serious legal, moral, and societal questions all across the world. There has been much discussion about the legal recognition of adoption and surrogacy in Bangladesh and India, two South Asian nations. Muslim communities in Bangladesh frequently use informal adoption, whereby children are taken in by family members or others who serve as their guardians. As it clashes with Islamic law, which forbids the transfer of parental rights from one person to another, the legal legitimacy of informal adoption in Bangladesh has been a difficult topic. As a result, Muslim guardianships are increasingly being granted by Bangladeshi family courts as a way to formalize informal adoption. The trend has important ramifications for the protection of children's rights and the legal recognition of adoption in Bangladesh. On the other side, India has recently witnessed an increase in surrogacy agreements, and several regulations have been passed to control this activity. In the assisted reproduction technique known as surrogacy, a woman carries a child for the benefit of another person or couple. Many moral and legal issues have arisen as a result of unclear legal guidelines and a lack of a regulatory framework. In response to these difficulties, the Indian government has passed a number of regulations to control surrogacy and safeguard the rights of surrogate mothers and the children born through surrogacy.

Both the legislative foundation allowing surrogacy in India and the trends in family court decisions in Bangladesh are influenced by a complex web of sociocultural and legal elements. Adoption and surrogacy are legally recognized to varying degrees in these nations depending on socioeconomic factors, cultural and religious traditions, and legal systems. The purpose of this study is to analyze the trends in Indian surrogacy law and the family court rulings in Bangladesh regarding guardianship and informal adoption. The study aims to identify the

driving forces behind these developments and determine how they affect the welfare of children in the relevant jurisdictions.

Literature Review

The study on Legal Frameworks and Trends surrounding Guardianship and Adoption Practices in Two South Asian Countries: Trends of Family Courts in Bangladesh in Granting Guardianship to Muslims as Means of Legalizing Informal Adoption and Laws Pertaining to Surrogacy in India investigates these issues**.** According to Hassan and Bari (2020), informal adoption is a common practice in Bangladesh, particularly among Muslim families**.** In order to formalize these informal adoptions, family courts in Bangladesh have been known to award guardianship to Muslim households. On the other hand, there are issues with the absence of control and oversight in this procedure, which might result in child trafficking and other wrongdoings. (Hassan, M.M. & Bari, N. (2020). On the other hand, in India, the absence of clear legal guidelines and a regulatory framework for surrogacy agreements has resulted in a host of moral and legal issues, including the commoditization of children and the exploitation of surrogate mothers. (Hossain, A. & Khan, S. (2017).

Although surrogacy is a recognized legal activity in India, there have been continuous discussions regarding the ethics and oversight of the sector. According to Rosenwaks (2021), there are worries about both the commodification of infants and the exploitation of women who act as surrogate mothers. (Rosenwaks, Z. (2021).

Between the two nations, there are significant differences in the legal systems governing these practices. According to Mohanty (2019), guardianship can be granted by Indian family courts, however there are rules and laws that must be followed. Because the legal foundation for adoption and guardianship in Bangladesh is less defined, there are many more informal adoption activities which is covered in India. (Mohanty, M. (2019).

Legal Framework of Guardianship in Bangladesh

In Bangladesh, guardianship is a crucial component of family law that is used to create a legal bond between a guardian and a child who is not their biological child. The goal of this legal framework is to provide a general understanding of the guardianship system in Bangladesh, including the laws, rules, and procedures that go into establishing guardianship.

The Guardians and Wards Act, 1890, is the primary statute governing guardianship in Bangladesh (Act VIII of 1890). According to this law, a "guardian" is someone who is in charge of a minor's care, his property, or both. The several types of guardianship are described in Section 7 of the Act, including natural guardianship, testamentary guardianship, and guardianship designated or pronounced by the court. (Guardians and Wards Act (1890).

Natural guardianship refers to the father's right to be the minor child's guardian; in his absence, the mother has the same authority. (Supreme Court of Bangladesh (2020). When a parent appoints a guardian through a will, this is referred to as testamentary guardianship. A guardian is appointed by the court when a guardianship is declared by the court or appointed by the court. (Bhuiyan, S.S. (2018).

Procedure for Establishing Guardianship:

The following actions are required to establish guardianship in Bangladesh:

1. Filling a petition: Submitting a petition to the family court is the first step in establishing guardianship. The petition must contain information such the minor's name and residence, the potential guardian's name and address, and the justifications for the request for guardianship.

2. Service of notice: Following the filing of the petition, the court notifies the minor's parents or legal guardians as well as other interested parties, including family members and the government.
3. Hearing: The court holds a hearing to decide if the proposed guardian is appropriate. The guardian's financial situation, his or her relationship with the minor, and the minor's best interests are all things that the court takes into account.
4. Appointment of the guardian: The guardian is appointed and a guardianship order is issued by the court if it determines that the nominated guardian is suitable. (Guardians and Wards Act ,1890)

The Guardians and Wards Act, 1890, serves as the primary legal basis for guardianship in Bangladesh. The statute specifies the different kinds of guardianship and the steps to take when a guardianship is needed. In Bangladesh, it is customary for the court to appoint a guardian, and the court evaluates the nominated guardian's eligibility based on a number of considerations.

Guardianship under Muslim Law & Its Application in Bangladesh

Guardianship is the term used to describe a person's legal authority and responsibility over the person or property of another person who is unable to handle their own affairs in accordance with Islamic law. In family law, guardianship is frequently used in relation to the care and custody of minors, especially in situations where there has been a divorce or a parent's passing.

1. The Guardians and Wards Act, 1890 governs guardianship in Bangladesh and is applicable to all Muslims living in the nation. A guardian may be chosen by the court to represent a minor or a person who lacks capacity under this Act. (Guardians and Wards Act ,1890).

2. According to the Act, a guardian is someone who is responsible for the person of a child, his property, or both. In cases where it is in the minor's best interests, the court may remove or replace a guardian as well as appoint one if it is satisfied that doing so is in the minor's best interests.

In accordance with Muslim law, the parent or another person with the appropriate authority may appoint a testamentary guardian, who is likewise provided for by the Act. In the event of a parent's decease or disability, a testamentary guardian may be appointed to serve as the minor's guardian until the minor reaches the age of majority.

Guardianship of minors and its legal legislative framework in Bangladesh

The Guardians and Wards Act, 1890, is the primary legal statute in Bangladesh that governs the guardianship of minors. This law, which is applicable to all faiths, allows for the appointment of guardians for kids, including those who are abandoned, orphaned, or illegitimate children. According to the Act, the court may appoint a guardian if it determines that doing so is in the best interests of the minor. (Hindu Minority and Guardianship Act (1956). Act No. 32 of 1956, India) If it is in the best interests of the minor, the court may also appoint a new guardian or remove an existing one. The Act also allows for the appointment of a testamentary guardian, who may be chosen by a parent or another individual with the appropriate personal law authority.

1. A number of other legislations, in addition to the Guardians and Wards Act, cover the guardianship of minors in particular situations. For instance, the Hindu Minority and Guardianship Act, 1956, provides for the appointment of guardians for Hindu kids In India, but the Muslim Family Laws Ordinance, 1961, provides for the appointment of guardians for minors in circumstances of divorce or separation in Bangladesh. (Muslim Family Laws Ordinance ,1961).

   The overall goal of Bangladesh's legal framework for guardianship of minors is to guarantee that the child's best interests are safeguarded and that their guardians are giving them the required attention and protection.

Key provisions of the Guardians and Wards Act, 1890

1. Appointment of guardians: The Act enables under section 4 of it guardians to be appointed for minors, including abandoned, illegitimate, and orphaned children.
2. Power of the court: Section 7 denotes If the court determines that it is in the minor's best interests, it has the authority to name a guardian. If it is required for the minor's welfare, the court may also appoint a new guardian or remove an existing one.
3. Duties and powers of guardians: Section 13 of the Act outlines the responsibilities and authority of guardians, including their responsibility to look after and safeguard the minor's person and property. Also, the guardian must act in the minor's best interests and take care of their maintenance and education.
4. Testamentary guardians: A parent or another person with the authority to do so under their respective personal law may appoint testamentary guardians under Section 9 of the Act. Until the minor reaches the age of majority, the testamentary guardian may serve in that capacity.
5. Guardianship appointment process: Section 11 of the Act outlines the guardianship appointment process, which includes the need for an application to be filed by the person requesting guardianship and notice to be given to interested parties.
6. Appellations: The Act's Section 47 allows for appeals against guardianship court orders. (Guardians and Wards Act ,1890)

Role of Family Courts in Granting Guardianship in Bangladesh

In Bangladesh, guardianship of minors is granted by the family court in accordance with the Guardians and Wards Act of 1890. If the family court determines that it is in the best interests of the minor, it may name a guardian for them. If it is required for the minor's welfare, the court may also appoint a new guardian or remove an existing one.

All cases involving the guardianship of minors must be heard and decided by the family court. The Guardians and Wards Act, 1890, governs the process for appointing guardians before the family court. An application for guardianship must be submitted to the family court, where it will be heard and decided in accordance with the rules of the Act.

If the youngster is old enough to make an informed decision, the family court must also take that wish into account. In addition, the potential guardian's capacity, conduct, and religious beliefs will all be taken into account by the court. In Bangladesh, guardianship of minors is granted by the family court, which is essential for ensuring that the minor's best interests are safeguarded and that their guardians are giving them the required care and protection. (Family Courts Ordinance ,1985).

Informal Adoption and Guardianship in Bangladesh

Informal adoption and guardianship are widespread practices in Bangladesh, particularly in rural regions. In these procedures, the guardianship of a child is transferred from the biological parents to another person or member of the family, who then takes over responsibility for the child's care and upbringing. In Bangladesh, guardianship and informal adoption are not recognized by the law, and there is no established legal framework that regulates them.

Children in Bangladesh are vulnerable to abuse and exploitation because informal adoption and guardianship are not recognized by the law and do not provide them with the same level of legal protection that formal adoption and guardianship provide, claims the Child Rights International Network (CRIN) (CRIN, 2018). Children may also have trouble getting access to healthcare, education, and inheritance rights due to the lack of legal recognition. In spite of these difficulties, cultural and socioeconomic factors contribute to the continued prevalence of informal adoption and guardianship in Bangladesh. Informal adoption and guardianship are frequently viewed as ways to improve the lives of children who may be in poor or challenging familial circumstances. Children are exposed to exploitation and abuse due to the lack of legal acknowledgment and control of these practices.

While informal adoption and guardianship may be considered as a way to better care for and raise children in Bangladesh, these practices need to be legally recognized and regulated in order to preserve children's rights and welfare.

Definition of informal adoption and guardianship

Informal adoption and guardianship include the handover of a child's guardianship from the original parents to another person or member of the family without any formal legal acknowledgment or governing structure (Child Rights International Network, 2018). While the child remains in the custody of the original parents during a guardianship, the legal duty for the child's care and upbringing is given to another person or family member. Informal adoption involves the child being taken in by another family and raised as their own (Child Rights International Network, 2018). These methods are widespread in nations where legal guardianship and adoption procedures may be challenging, expensive, or unavailable, and they may be thought of as a way to give children better care and upbringing. The absence of legal recognition and regulation, however, can leave kids open to exploitation and abuse and make it hard for them to get access to things like education, healthcare, and inheritance rights.

Historical background of informal adoption and guardianship in Bangladesh

In Bangladesh, informal adoption and guardianship have a long history and are intertwined with the social and cultural norms of the nation. Extended families and communities play a significant part in child-rearing in traditional Bangladeshi society, and it is typical for children to be reared by relatives or close friends, even if they are not blood related (Khan, 2017). Because of issues like poverty, difficulty accessing formal adoption procedures, and social and cultural perspectives on parenting, the practice of informal adoption and guardianship has grown more common in Bangladesh in recent years (Rahman, 2018).

Concerns over the protection and welfare of children have arisen as a result of these practices' lack of legal acknowledgment and regulation. Many children who are unofficially adopted or placed under guardianship are at risk of exploitation, abuse, and neglect, and may be denied access to school and healthcare, according to the Bangladesh Child Rights Coalition (BCRC) (BCRC, 2017). In Bangladesh, efforts have been made to address these problems, such as the

creation of rules and legislation for child protection and campaigns to increase public awareness of the dangers of unofficial adoption and guardianship (Khan, 2017).

Types of Informal Adoption and Guardianship

There are various informal guardianship and adoption arrangements in Bangladesh, each having specific traits and effects on the children involved. "Guti putra" or "guti daughter," a popular kind of informal adoption, involves a child being adopted by a family who may or may not be related to the child. The child is raised as a part of the family and may receive the surname of the family, but there is no legal acknowledgement of the adoption, and the child's biological parents may continue to play a role in the child's life to some extent (Akter, 2019). Another informal adoption method is called "kafala," which is a guardianship arrangement that is permitted by Islamic law. In kafala, a child is placed in the care of a guardian who is in charge of looking after and educating the child while the child's biological parents continue to have legal custody and other responsibilities for the child (Akter, 2019). Other informal adoption and guardianship arrangements in Bangladesh include "bhara" (fostering), which entails a kid being placed with a family for a brief period of time, and "mukti" (emancipation), which entails a child being adopted by a male family member and reared as his own (Akter, 2019).

Despite the variety of informal guardianship and adoption arrangements in Bangladesh, they all lack legal registration and oversight, which leaves children open to abuse and exploitation. Due to Islam's prohibition on adoption, it is considered taboo in Bangladesh. But there is also the Kafala, or Islamic Adoption for Life, notion. When a child is adopted without experiencing any status changes or losing his inheritance, he is maintained for life and is eligible for gifts or hibah. Islamic adoption takes on a guardianship-like structure. If the guardian so chooses, the kid may acquire property ownership through Hibah, donations, gifts, wills, etc., but no adopted or orphan child is permitted to make an inheritance claim in Bangladesh under Muslim law, unlike Hindus. Adoption is therefore forbidden or not permitted by Muslim law in Bangladesh, but it is theoretically still feasible because anyone can apply to the court. Adoption is thus forbidden or not permitted by Muslim law in Bangladesh, although it is conceivably still feasible because anybody can apply to the court or by law (Guardianship Act 1890) become the guardian of a child's body and property.

Parents and guardians are accountable for the welfare and protection of their children under the Bangladesh Children Act 2013 and may be held legally responsible for any harm done to a kid in their care. The Act also creates a Child Welfare Board, which is empowered to look into instances of child abuse, neglect, and exploitation and take action to safeguard children's rights and welfare (Bangladesh Children Act, 2013).

Legal Framework for Informal Adoption and Guardianship in Bangladesh

In Bangladesh, there is no established legal structure for guardianship and informal adoption. Yet, some laws and regulations offer some direction on what parents and guardians must do and be in order to preserve the rights of children. The main piece of law in Bangladesh pertaining to children's rights and welfare is the Bangladesh Children Act of 2013. The Act includes provisions for actions to stop child abuse, neglect, and exploitation while emphasizing the preservation and promotion of children's best interests. Yet, the Act is silent regarding guardianship and informal adoption (Bangladesh Children Act, 2013). The Muslim Family Laws Act of 1961 recognizes kafala as an Islamic form of guardianship, although this provision solely applies to Muslim children and does not give other informal guardianship and adoption arrangements legal legitimacy (Muslim Family Laws Ordinance, 1961).

Social and Cultural Factors Influencing Informal Adoption and Guardianship

In Bangladesh, informal adoption and guardianship practices are influenced by a variety of social and cultural variables. Poverty, the significance of family and community networks, and religious convictions are some of these variables. Many families are motivated by poverty to enter into informal adoption and guardianship arrangements. Many families in Bangladesh struggle to meet their children's basic necessities and may seek help from friends or neighbors. Even if a child's biological parents are unable to care for them, informal adoption and guardianship can nevertheless enable them to do so (Akter, 2019).

Another aspect that affects unofficial adoption and guardianship procedures is the significance of social networks within the family and community. Family ties are strongly valued in Bangladesh, and children's upbringing frequently involves the involvement of extended families. Even if their original parents are unable to care for them, children can stay with their extended family through informal adoption and guardianship (Akter, 2019).

In informal adoption and guardianship procedures, particularly with relation to kafala, religious beliefs also play a part. The idea of kafala, or voluntary charity giving, is rooted in the Islamic ideal of "sadaqah," or taking care of orphans and vulnerable children. It is considered as a way to fulfil this religious commitment (Miah, 2017).

Nonetheless, there are worries about the possibility for child exploitation and abuse in these arrangements despite the cultural and religious significance of informal adoption and guardianship traditions in Bangladesh. Without legal recognition and control, there is a chance that kids will end up in the care of people who don't have their best interests in mind (Akter, 2019).

Legalization of Informal Adoption through Guardianship in Bangladesh

In Bangladesh, there have been proposals for the legalization of informal adoption through guardianship in order to provide these practices a legal foundation and guarantee the welfare and protection of vulnerable children. The optimal strategy for handling this issue, nevertheless, is still being argued over and discussed.

One argument in favor of making guardianship-based informal adoption legal is the possibility of increased child safety and security. Children in these situations would have legal recognition and rights, and their careers would be held responsible for their upkeep and welfare with a defined legal framework in place. This could help to safeguard children from abuse and exploitation and to make sure they get the resources and support they require (Kabir, 2019).

Another argument in favor of legalizing is that it could lessen discrimination and stigmatization of children involved in unofficial guardianship and adoption arrangements. These kids would have the same rights and status as kids in official adoption arrangements if they were legally recognized, and they would be less likely to experience prejudice and marginalization (Kabir, 2019).

The potential risks and difficulties of formalizing informal adoption through guardianship, nevertheless, are also a source of worry. One worry is that formal adoption would become more popular as a result of legal recognition, which could result in child exploitation and trafficking. Legalizing these procedures raises concerns that it would diminish the value of official adoption and encourage informal arrangements in society (Akter, 2019).

Current State of Informal Adoption through Guardianship in Bangladesh

In Bangladesh, informal adoption and guardianship are frequent practices, especially when parents are unable to care for their children because of financial constraints, illness, or death. Unfortunately, there is no official mechanism in place to control or supervise these agreements because they are not recognized by the law.

Selim v. Md. Akhtaruzzaman, 60 DLR (AD) (2008) 184 - In this case, the court determined that the minor's wellbeing is the most important factor to take into account while making guardianship decisions. The court further ruled that because the minor's mother is the natural guardian under Islamic law, her views should be given full consideration.

Md. Shamsul Haque v. Sultana Begum, 12 BLD (AD) (1992) 169 - In this instance, the court determined that the child's welfare should be given top priority while making guardianship decisions. The court further ruled that if a father of a minor kid is deemed to be unfit for the position, he cannot be appointed as guardian.

Md. Abdul Jalil v. Nusrat Jahan, 2 MLR (AD), (1997) 106 - In this instance, the court determined that key factors in guardianship decisions include the character and capacity of the potential guardian. The court also ruled that just because a guardian is a minor's close family does not automatically make them a good choice.

These examples show that the courts in Bangladesh consider a variety of issues, including the welfare of the minor, the character and competency of the nominated guardian, and the intentions of the minor's parents, when making guardianship decisions Concerns over child care and protection have been raised in Bangladesh due to the informal adoption and guardianship arrangements' lack of legal acknowledgment and regulation. Because to the lack of oversight and potential for abuse, neglect, and exploitation, children in these situations may not be receiving the best care possible.

In recent years, initiatives have been undertaken to resolve these issues and create a formal legal framework for guardianship and adoption in Bangladesh. The Child Marriage Restriction Act, which had provisions for guardianship and adoption control, was passed by the government in 2017. Although these regulations have been slowly put into practice, informal guardianship and adoption arrangements are still very common in the nation. It also applies while in applying special provisions of minor’s marriage with the permission. (The Child Marriage Restriction Act, 2017).

Best Interests of the Child in Guardianship Decisions

In one famous guardianship judgement in Bangladesh, the best interests of the child were at the forefront: Khaleda Begum v. Md. Safiuddin Ahmed. In this instance, a child was living with the mother after losing his father. The stepfather had stated a wish to adopt the child and take on guardianship duties, but the mother had remarried & got guardianship on the basis of best interest of the child. (*Khaleda Begum v. Md. Safiuddin Ahmed* (2013).

In another case actress badhon got legal custody and guardianship status of her children for the best interest principle. [Dhaka Tribune (2018)]

In Taslima Khatun v. Md. Abul Kashem, the mother sought guardianship of the kid after the father passed away. The mother was given guardianship by the family court, which reasoned

that doing so would be in the child's best interests because she was the child's natural guardian.

Laws, Policies & Challenges related to Informal Adoption through Guardianship

I. Laws related to Informal Adoption through Guardianship:
   A. International Conventions:
      United Nations Convention on the Rights of the Child, 1989 [United Nations (1989)]
   B. Domestic Laws:
      The Guardians and Wards Act, 1890
      The Child Marriage Restraint Act, 2017

II. Policies related to Informal Adoption through Guardianship
   National Policy:
   1. The National Child Protection Policy, Ministry of Women and Children Affairs, Government of Bangladesh, 2011

III. Challenges related to Informal Adoption through Guardianship
   A. Legal Obstacles
   1. Absence of official adoption and guardianship agreements being recognized or regulated by the law.
   2. Discrepancy between domestic and international laws governing adoption and guardianship.

   B. Social Difficulties:
      1. Societal perspectives on adoption and custody.
      2. lack of knowledge of the dangers of unofficial adoption and guardianship arrangements.

   C. Economic Difficulties:
      1. Poverty and financial hardships that force parents to rely on unofficial adoption and guardianship arrangements and the abandonment of them children.
      2. Children who are the subject of unofficial adoption and guardianship have limited access to resources and services.

Benefits of Legalization of Informal Adoption through Guardianship

I. Upholding the Rights of Children
   A. The legal recognition and protection of children's rights, such as the right to Protection from abuse, neglect, and exploitation, would be made possible by the legalization of informal adoption through guardianship.
   B. Legalization would also guarantee that kids under unofficial guardianship and adoption arrangements have access to facilities and services like healthcare and education.
   C. Making informal adoption and guardianship arrangements legal would make it easier to create a framework for monitoring and regulating them to make sure the best interests of the child are being met.

II. Reduced Child Abandonment
   A. Making informal adoption through guardianship legal would give parents who are unable to care for their kids a legal choice, lowering the number of kids who are abandoned or taken into institutions.

B. The formation of a system for vetting and approving prospective guardians would be made easier by legalization, ensuring that kids are put in stable and secure families.

III. Enhancing Social and Cultural Practices

A. The legalization of informal adoption through guardianship would give social and cultural traditions relating to child protection and care respect and validation.

B. Legalization would also encourage better knowledge and comprehension of the advantages and disadvantages of informal guardianship and adoption arrangements, resulting in more informed and responsible decision-making. Ahmed, N. (2020)

Limitations & Risks Legalization of Informal Adoption through Guardianship

I. Legalization's Restrictions

A. Complexity of the Legal System

To ensure that the best interests of the child are being upheld, a sophisticated legal framework would need to be created in order to legalize informal adoption through guardianship & it has difficulty in implementation.

B. A lack of knowledge and comprehension

The effectiveness of legalization may be hampered by the lack of knowledge and comprehension of the advantages and dangers connected with informal guardianship and adoption arrangements.

II. Legalization's dangers

A. Possibility of Abuse

Legalizing unofficial adoption through guardianship may make it easier for unscrupulous people to abuse and exploit children. There has been the danger of trafficking of the child as well.

B. The Possibility of Upsetting Conventional Social and Cultural Traditions

Legalization could upend long-standing social and cultural norms relating to child care and protection, especially in places where these norms are strongly embedded.

Surrogacy Laws in India

In India, surrogacy is permitted and subject to the 2010 Assisted Reproductive Technologies (ART) Regulation Law. The Law specifies the legal framework for surrogacy agreements and offers rules for the surrogate mother, intended parents, and child's rights and obligations. A certificate of infertility from a licensed physician is required for intended parents in surrogacy agreements, and surrogate women must be between the ages of 25 and 35 and possess a certificate of physical and mental health. The intended parents of the child born through surrogacy are acknowledged as the child's legal parents, and commercial surrogacy arrangements are permitted, subject to certain restrictions. However, some detractors contend that India's commercialization of surrogacy has resulted in the exploitation of women, particularly those from lower socioeconomic backgrounds, and that the absence of regulation and oversight has given rise to problems with the safety and wellbeing of the surrogate mother and the child.

Definition of Surrogacy

The practice of a woman carrying and giving birth to a child on behalf of another person or couple is known as surrogacy. The intended parents may or may not be biological, and the

woman who carries the pregnancy is known as the surrogate. Traditional and gestational surrogacy are both options. Unlike gestational surrogacy, which uses an embryo generated using the intended parents' or donors' gametes, traditional surrogacy uses the surrogate's own egg.

A woman "bears a child on behalf of another person or couple, who will thereafter become the child's legal parents," according to a surrogacy contract." (Human Fertilisation and Embryology Act, 2008).
There are two types of surrogacies: gestational surrogacy, in which the surrogate bears a child conceived using the gametes of the intended parents or donors, and conventional surrogacy, in which the surrogate is genetically linked to the child. [Surrogacy Arrangements Act (1985)]

Types of Surrogacy Arrangements
Traditional surrogacy and *gestational surrogacy* are the two basic forms of surrogacy arrangements. In traditional surrogacy, the intended father's sperm or donor sperm is artificially implanted into the surrogate's body together with her own eggs. According to this plan, the surrogate and the kid share genetic ties. In vitro fertilization of the eggs and sperm provided by the intended parents or egg donors, which are then transferred to the surrogate's uterus for gestation, is known as gestational surrogacy. According to this arrangement (Human Fertilization and Embryology Act 2008, s. 54(2)), the surrogate is not a genetic relative of the child.

Historical Development of Surrogacy Laws in India
Over the years, there have been substantial modifications to India's surrogacy legislation. Guidelines for surrogacy were published by the Indian Council of Medical Research (ICMR) in (2002) and later updated in (2005). Surrogacy was mainly uncontrolled in India, and these regulations had no legal standing.

The Assisted Reproductive Technologies (Regulation) Bill, introduced by the Indian government in 2008, called for the regulation of all assisted reproductive technologies, including surrogacy. The bill did not, however, become a law. The Surrogacy (Regulation) Bill, tabled by the Indian government in 2013, sought to control commercial surrogacy and outlaw the practice for international couples. The Lok Sabha, the lower house of the Indian parliament, later approved this law; however, it became ineffective when the Lok Parliament was dissolved in 2019.

The Surrogacy (Regulation) Bill was reintroduced by the Indian government in 2019, and both the Lok Sabha and Rajya Sabha (the upper chamber of the Indian parliament) approved it in 2019. The measure restricted surrogacy to Indian couples who have been married for at least five years but are unable to conceive children, outlawed commercial surrogacy, and prohibited it altogether. Also, the measure outlawed surrogacy for single people, cohabitating couples, and homosexual couples.

Indian Legislation on Surrogacy & Its Implications
The Surrogacy (Regulation) Bill, which prohibits commercial surrogacy and only permits altruistic surrogacy, was enacted by the Indian parliament in 2019. Only Indian citizens who have been married for at least five years and are unable to have children are permitted to use surrogates under Indian law. The law forbids surrogacy for single people, cohabiting couples, and homosexual couples.

The legislation tries to control surrogacy in India and stop its abuse. The interests of the surrogate mother and the child born through surrogacy are also protected. The intended parents are required by law to fulfil a number of duties, such as providing insurance coverage, ensuring the child's health and safety, and paying the surrogate mother's medical costs.

The rule has enormous ramifications for the unregulated and well-known commercial surrogacy market in India, which was previously unaffected. The law intends to protect women and children from exploitation throughout the surrogacy procedure and to advance moral surrogacy practices in India. So, there are Surrogacy (Regulation) Bill, 2019 & the Assisted Reproductive Technology (Regulation) Act, 2021 to regulate the surrogacy procedure in India.

International Perspectives on Surrogacy Laws

Depending on the nation, international views on surrogacy regulations can differ significantly. Surrogacy is legal in some nations, including the United States and Ukraine, but not in others, like France and Germany, where it is completely prohibited. Surrogacy is legal in several nations, including the United Kingdom and Canada, but only on an altruistic basis, which means the surrogate mother cannot be compensated beyond normal pregnancy-related costs. (Center for Genetics and Society (n.d.). *Surrogacy laws by country)*

The ethics and laws of surrogacy are a topic of continuing discussion and controversy in the global community. While some contend that surrogacy can be a good alternative for people or couples who are unable to have a child, others are worried about the possibility of surrogate mothers being exploited as well as the commodification of their children.

As a result, several nations have enacted various surrogacy policies, some choosing more stringent guidelines while others adopting a more lenient approach. The ideal moral and legal foundation for surrogacy is still up for debate in the international community.

Surrogacy in the Context of Indian Law

Indian law has changed significantly over the years regarding surrogacy. India used to be a well-liked location for commercial surrogacy because of its liberal laws and affordable rates. The Indian government has, however, taken steps in recent years to control the surrogacy sector and stop its misuse. The Surrogacy (Regulation) Bill, which prohibits commercial surrogacy and only permits altruistic surrogacy, was enacted by the Indian parliament in 2019. Only Indian citizens who have been married for at least five years and are unable to have children are permitted to use surrogates under Indian law. The law forbids surrogacy for single people, cohabiting couples, and homosexual couples.

Ethical and Social Issues in Surrogacy

The difficult topic of surrogacy presents a number of moral and social concerns. Among these problems are:

1. Surrogacy can be exploitative, especially when the surrogate mother comes from a low socioeconomic background and is at a financial disadvantage. Opponents contend that surrogacy has the potential to exploit women's reproductive abilities and turn their bodies into commodities.
2. Issues of autonomy and consent are complicated when it comes to surrogacy. It raises concerns regarding the surrogate mothers' capacity for informed consent and their knowledge of the risks involved. Additionally, it raises concerns regarding the

intended parents' capacity for giving informed permission and their level of understanding of the implications of surrogacy.

3. Parental Responsibilities: Surrogacy raises concerns regarding parental responsibilities. For instance, who is in charge of the child's welfare and who has the authority to decide how the child will be raised? Complex legal agreements that aim to resolve these difficulties are frequently included in surrogacy contracts, but they can be challenging to uphold in actuality.
4. Acceptability on a Social and Cultural Level: Surrogacy can be contentious and may not be accepted on a Social or Cultural Level in some Communities. For instance, some religious and cultural traditions might consider surrogacy to be immoral.
5. Access and Equity: Surrogacy may only be available to wealthy persons or couples because to its high cost. This raises concerns about equity and whether surrogacy should be a luxury available only to those with sufficient financial means.

Benefits of Surrogacy

For intended parents who are unable to have a child naturally, surrogacy can provide a number of advantages. Some of these benefits include:

1. Biological Relationship: For some people or couples, having a biological relationship with their kid may be vital, and surrogacy enables this.
2. Power over the Pregnancy: Through surrogacy, intended parents are given more power over the pregnancy and the child's prenatal care.
3. Reduced Risk of Medical Complications: Pre-eclampsia, gestational diabetes, and other pregnancy-related health problems are just a few examples of the medical disorders that can occur during pregnancy and can be less likely to occur through surrogacy.
4. Emotional Benefits: For intended parents who may have struggled with infertility, miscarriage, or other fertility-related concerns, surrogacy can provide emotional advantages.
5. Family Building: For some people or couples, having a family and having children are significant goals, and surrogacy enables this to happen. Ragoné, H. (1994)

Challenges and Risks of Surrogacy

Intentional parents may benefit from surrogacy, but there are risks and problems involved as well. A few of these are:

1. Legal Difficulties: Surrogacy raises difficult legal questions, particularly when the intended parents and surrogate mother are from separate nations. It might be necessary to handle matters relating to citizenship, immigration, and custody.
2. Hazards Along with Emotions: Surrogacy can be emotionally taxing for all parties. The connection with the kid and having to give it up to the intended parents may present emotional dangers for the surrogate mother. The uncertainty and worry of the surrogacy procedure may present emotional hazards for the intended parents.
3. Health Risks: Surrogacy carries potential health concerns for both the intended parent and the surrogate mother.
4. Surrogacy can be exploitative, especially when the surrogate mother comes from a low socioeconomic background and is at a financial disadvantage. Opponents contend that surrogacy has the potential to exploit women's reproductive abilities and turn their bodies into commodities.
5. Social stigma: Certain societies may stigmatize surrogacy, which presents difficulties both intended parents and surrogate moms. Stuhmcke, A. (2017)

Recommendations for Addressing Surrogacy in India

Here are some suggestions for dealing with surrogacy in India, such as:

1. Regulation: Surrogacy needs to be regulated in India to protect the wellbeing and safety of all parties involved. These could include rules about the surrogate mother's age and health as well as standards for the medical procedures connected with surrogacy.
2. Legal Framework: India should create a surrogacy-specific legal framework that takes citizenship, immigration, and custody into account. These could include rules for the transfer of parental obligations and rights as well as clauses for resolving surrogacy-related disagreements.
3. India should offer safety to surrogate mothers, especially those who may come from underprivileged families and are more susceptible to exploitation.
4. Awareness and Education: To assist combat stigma and dispel misconceptions about the procedure, India should raise awareness and educate the public about surrogacy. This can involve public education campaigns as well as focused outreach to groups who might not be as familiar with surrogacy.
5. India should carefully explore the moral ramifications of surrogacy and make sure that the procedure is carried out in a way that respects the autonomy and dignity of every party involved. Khetarpal, A. (2018)

Comparison of Guardianship Laws and Surrogacy Laws in Bangladesh and India

The guardianship and surrogacy rules in Bangladesh and India differ significantly from one another. While there is no explicit regulation allowing surrogacy in Bangladesh, the Guardians and Wards Act of 1890 oversees the appointment of guardians for minors. In contrast, India has a specific surrogacy law that has not yet become a law called the Surrogacy (Regulation) Bill, 2019. A court or a parent may provide guardianship to a person in writing under Bangladesh's Guardians and Wards Act. The Act also outlines the obligations of guardians, such as the requirement to act in the minor's best interests and to pay for their upkeep and education.

Surrogacy Laws in Bangladesh and India

Surrogacy is not officially covered by Bangladeshi law. Surrogacy is not specifically addressed under the country's legislative framework for assisted reproductive technologies, and there are no rules or norms governing the procedure. As a result, Bangladeshi couples and individuals looking to start a family usually do not have the option of using a surrogate.

India, in contrast, has a particular surrogacy statute, though it has not yet become a law. By creating a National Surrogacy Board and state surrogacy boards to oversee the procedure, the Surrogacy (Regulation) Bill, 2019, aims to regulate surrogacy. The bill includes clauses addressing the requirements for intended parents and surrogate mothers, as well as recommendations for the surrogacy-related medical treatments.

Noting that both Bangladesh and India have strict social norms and values, it should be noted that there might be cultural and religious opposition to the idea of surrogacy in these nations. While there have been incidents in Bangladesh when couples wishing to conceive through surrogacy have encountered societal and legal obstacles, there has also been debate in India around the commercialization of surrogacy and worries about the exploitation of surrogate mothers. [Mohsin, M. (2017), Paul, B. (2017)]

Scope for Emergency of Surrogacy Laws in Bangladesh in Near Future

About the prospective introduction of surrogacy regulations in Bangladesh in the near future, there is scant information available. It is important to note that there have been some arguments and disagreements about the country's surrogacy laws.

The Daily Star, a prominent English-language newspaper in Bangladesh, published an article in 2018 that focused on the problem of "underground surrogacy" there and advocated for regulations to safeguard the rights of surrogate moms and intended parents (The Daily Star, 2018).

Bangladesh may also be impacted by the global trend toward stricter regulation of surrogacy. International organizations including the World Health Organization and the United Nations have asked for further regulation of surrogacy to safeguard the rights of all parties involved. Some nations have recently passed or are considering surrogacy laws (UN, 2019). Thus, despite the fact that there is now no explicit push in Bangladesh towards the formation of surrogacy laws, shifts in public attitudes and international trends may one day result in the emergence of such laws.

Conclusion and Recommendations

The paper demonstrates how Muslim guardianship is increasingly being granted by family courts in Bangladesh as a way to formalize unofficial adoption. Because to the lack of clear rules governing, adoption and Muslim families' resistance to adopting children through official channels, this tendency has emerged. The paper also addresses the difficulties and problems Bangladeshi family courts encounter when handling guardianship matters. The Surrogacy (Regulation) Bill, 2019, which seeks to outlaw commercial surrogacy and limit the practice of surrogacy to exclusively "altruistic" causes, is one example of the legal framework in India that surrounds surrogacy that is discussed in the thesis. The case of Baby Manji Yamada v. Union of India (2008), which demonstrated the necessity for a thorough legal framework to control surrogacy in India and safeguard the rights of surrogate mothers and children born through surrogacy, is also examined in the Paper.

a. Summary of Finding

According to a study on Trends of Family Courts in Bangladesh in Granting Guardianship to Muslims as a Means of Legalizing Informal Adoption and Laws Relating to Surrogacy in India, guardianship is increasingly being granted to Muslims in Bangladesh by family courts as a means of legalizing informal adoption due to the lack of specific laws governing adoption and the unwillingness of Muslim families to adopt children through legal channels. The report also noted difficulties and problems encountered by Bangladeshi family courts when handling guardianship matters.

b. Conclusion

In conclusion, the study on guardianship patterns in Bangladeshi family courts and the laws governing surrogacy in India underlines the importance of paying more attention to legal concerns pertaining to children's welfare and well-being in both nations. Notwithstanding the research' limitations, they highlight the significance of creating thorough legal frameworks for adoption, guardianship, and surrogacy that uphold children's rights and promote their welfare. Various authors of Islamic law also consider these informal adoptions as Mubah understood through the principle of istihab, which is not strictly prohibited is permitted. (Nayzee, Imran Ahsan Khan (2000). Future studies should investigate the viewpoints and experiences of various parties involved in these legal systems, such as commissioning

parents, surrogate moms, and kids. Though there comes a question of ethical issues of surrogacy it has an emerging urgency for both the country will arise in near future as the society of Bangladesh is also evolving rapidly. (Islam, N., & Begum, F. (2016), Jindal, U. (2019)

c. Recommendations for Future Research

1. To ascertain the breadth and depth of the problem, a larger-scale investigation on the prevalence of informal adoption and guardianship practices among Muslim families in Bangladesh is being conducted.
2. Examining the perspectives and experiences of children in Bangladesh who are subject to informal adoption and guardianship arrangements, with an emphasis on their rights and well-being.
3. Examining the social and cultural influences on the informal adoption and guardianship practices in Bangladesh and how they affect children's rights and welfare.
4. Doing a more thorough investigation into India's surrogacy laws that takes into account the viewpoints and experiences of surrogate moms, commissioning parents, and the offspring of surrogates.
5. A study of the moral and social ramifications of surrogacy in India, including how it affects traditional family structures & gender roles.

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Global Warming's Impact on Bangladesh: Addressing the Critical Shortcomings in Implementing Environmental Laws

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Abstract: This article delves into the profound ramifications of global warming in Bangladesh and examines the significant challenges surrounding the implementation of environmental laws to mitigate these impacts. By scrutinizing the intricate relationship between climate change and legislative enforcement, it sheds light on the pressing need to bolster regulatory measures. Through a nuanced analysis of policy deficiencies and climate vulnerabilities, this article aims to provide insights crucial for enhancing resilience and sustainability in Bangladesh.

Keywords: Global warming, Bangladesh, Environmental laws, Climate resilience, Bureaucratic inefficiencies

Introduction

As global temperatures continue to rise, Bangladesh finds itself on the front lines of climate change, grappling with its devastating effects on a daily basis. From rising sea levels to extreme weather events, the nation faces an array of challenges exacerbated by global warming. Despite the existence of environmental laws aimed at mitigating these impacts, critical shortcomings in their implementation hinder progress towards sustainability and resilience. This article delves into the complexities of addressing global warming in Bangladesh, exploring the intersection of environmental legislation and climate vulnerabilities. By examining the gap between policy intent and on-the-ground realities, it seeks to illuminate the path towards more effective environmental governance and enhanced climate resilience. (Rahman, 2023)

Historical Context

Understanding the historical context of environmental legislation and governance in Bangladesh provides invaluable insights into the nation's ongoing struggle to address the impact of global warming. Bangladesh's environmental journey is deeply intertwined with its socio-economic and political history, marked by a series of challenges and milestones. Bangladesh's environmental consciousness can be traced back to its emergence as an independent nation in 1971. The devastating effects of the Liberation War, including widespread destruction of forests and ecosystems, served as a wake-up call for the newly formed government to prioritize environmental conservation and sustainable development. In the aftermath of independence, the government embarked on initiatives to protect natural

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resources, regulate industrial pollution, and address environmental degradation. (Ministry of Environment, Forest and Climate Change, Bangladesh, 2022)

Throughout the 1970s and 1980s, Bangladesh witnessed the formulation of key environmental policies and laws aimed at addressing pressing environmental challenges. The enactment of the Bangladesh Environmental Conservation Act in 1995 marked a significant milestone in the country's environmental governance framework, providing a comprehensive legal framework for environmental protection, conservation, and management. (Khan, 2017)

However, despite these legislative efforts, the implementation of environmental laws in Bangladesh has been marred by a range of challenges. Political instability, bureaucratic inefficiencies, resource constraints, and corruption have hampered enforcement mechanisms, leading to gaps in compliance and accountability. Moreover, rapid urbanization, industrialization, and population growth have exerted immense pressure on the environment, exacerbating issues such as air and water pollution, deforestation, and loss of biodiversity. The vulnerability of Bangladesh to climate change further compounds the environmental challenges facing the nation. As one of the most climate-vulnerable countries in the world, Bangladesh is disproportionately affected by rising sea levels, extreme weather events, and changing precipitation patterns. The devastating cyclones of 1970 and 1991, as well as the catastrophic floods of 1988 and 1998, underscore the urgent need for effective adaptation and mitigation measures. (United Nations Development Programme, 2023)

In recent years, Bangladesh has made strides in addressing climate change through initiatives such as the Bangladesh Climate Change Strategy and Action Plan (BCCSAP) and the Bangladesh Climate Change Trust Fund (BCCTF). These efforts reflect a growing recognition of the importance of climate resilience and sustainable development in the national agenda. (Haque and Hossain, 2022)

Moving forward, addressing the historical challenges and shortcomings in implementing environmental laws will require a concerted effort from all stakeholders. Strengthening institutional capacity, enhancing regulatory frameworks, promoting public awareness, and fostering international cooperation are essential steps towards building resilience and mitigating climate risks. By learning from its past experiences and embracing innovative approaches, Bangladesh can chart a course towards a more sustainable and resilient future for its people and the planet.

Challenges in Implementation

Despite the existence of environmental laws and regulations aimed at mitigating the impact of global warming, Bangladesh faces significant obstacles in effectively implementing these measures. These challenges stem from a variety of factors, ranging from institutional constraints to socio-economic realities, which collectively hinder the nation's ability to enforce environmental legislation and achieve sustainable development goals.

One of the primary challenges in implementing environmental laws in Bangladesh is the lack of institutional capacity and resources. Government agencies responsible for environmental regulation often suffer from inadequate staffing, training, and funding, limiting their ability to effectively monitor compliance, enforce regulations, and respond to environmental emergencies. Additionally, overlapping mandates and jurisdictional issues among different agencies further complicate enforcement efforts, leading to gaps in accountability and coordination. (Rahman, 2023)

Bureaucratic inefficiencies and regulatory complexities pose another significant challenge to environmental governance in Bangladesh. Lengthy permit processes, ambiguous regulations, and bureaucratic red tape create barriers for businesses and individuals seeking to comply with environmental laws. Moreover, corruption and lack of transparency within regulatory bodies undermine the integrity of environmental decision-making, eroding public trust and hindering efforts to combat environmental degradation.

Furthermore, socio-economic factors such as poverty, inequality, and population growth exacerbate the challenges of environmental implementation in Bangladesh. Many communities, particularly those in rural areas, rely on natural resources for their livelihoods, leading to unsustainable exploitation of forests, waterways, and agricultural land. Limited access to alternative livelihood options and basic services further perpetuates environmental degradation, creating a vicious cycle of poverty and environmental decline. (Ahmed and Akter, 2021)

The vulnerability of Bangladesh to climate change adds another layer of complexity to the challenges of environmental implementation. Rising sea levels, increased frequency of extreme weather events, and changing precipitation patterns pose existential threats to coastal communities, agriculture, and infrastructure. Despite efforts to mainstream climate adaptation into development planning, resource constraints and competing priorities often undermine the effectiveness of adaptation measures, leaving vulnerable populations exposed to the impacts of climate change.

Addressing these challenges requires a multifaceted approach that addresses the root causes of environmental degradation while promoting sustainable development and resilience. Strengthening institutional capacity, streamlining regulatory processes, promoting transparency and accountability, and addressing socio-economic disparities are essential steps towards overcoming the barriers to environmental implementation in Bangladesh. Additionally, fostering partnerships with civil society organizations, private sector actors, and international donors can provide valuable support in building capacity, mobilizing resources, and promoting collective action towards achieving environmental sustainability and climate resilience. (Islam, 2018)

Impact of Global Warming

The impact of global warming on Bangladesh is profound and far-reaching, posing existential threats to the nation’s environment, economy, and social fabric. Rising sea levels increasingly inundate coastal areas, displacing communities and eroding valuable agricultural land. Extreme weather events, such as cyclones and floods, are becoming more frequent and intense, causing widespread devastation to infrastructure and livelihoods. Moreover, changes in precipitation patterns and temperature fluctuations disrupt agricultural productivity, exacerbating food insecurity and poverty. The inability to effectively implement environmental laws exacerbates these vulnerabilities, amplifying the socio-economic toll of climate change on Bangladesh’s population. Urgent action is needed to address the impact of global warming and strengthen resilience in the face of mounting environmental challenges.

Bureaucratic Inefficiencies and Regulatory Complexities

Within Bangladesh's environmental governance framework, bureaucratic inefficiencies and regulatory complexities present formidable challenges to the effective implementation of environmental laws. One critical issue within this context is the inadequacy of punishment and monetary compensations for environmental violations. (Haque and Hossain, 2022)

Despite legal provisions stipulating fines and penalties for environmental offenses, enforcement often falls short. Penalties may be insufficient to deter non-compliance, fostering a culture of impunity among polluters. Additionally, the process of imposing fines or compensations can be hindered by delays and bureaucratic obstacles.

An example is observed in the enforcement of the Bangladesh Environmental Conservation Act, 1995. While authorities have the power to impose fines, enforcement remains inconsistent. This lax enforcement perpetuates environmental harm. (Khan, 2017)

Furthermore, inadequate compensation for environmental damage exacerbates the problem, failing to reflect the true cost of restoration. This perpetuates environmental injustices, particularly for disproportionately affected communities.

Addressing these issues requires comprehensive reforms. Laws and regulations should be revisited to ensure penalties align with the gravity of offenses. Streamlining administrative procedures and enhancing transparency can expedite enforcement and improve accountability. Efforts to raise public awareness and empower communities are also vital. Civil society organizations and advocacy groups play a crucial role in supporting affected communities and advocating for stronger enforcement.

Strengthening enforcement mechanisms and empowering communities are key steps towards effective implementation of environmental laws. (Environmental Protection Agency, Bangladesh, 2023)

Policy Recommendations

To address the critical shortcomings in implementing environmental laws and mitigate the impact of global warming on Bangladesh, several key policy recommendations are proposed. Firstly, there is a pressing need to strengthen institutional capacity and regulatory frameworks to enhance enforcement mechanisms. This includes investing in training programs for government officials, improving monitoring and enforcement systems, and streamlining bureaucratic processes to facilitate compliance.

Secondly, efforts should be made to address corruption and bureaucratic inefficiencies that undermine the effective implementation of environmental laws. This may involve introducing transparency and accountability measures, such as public reporting mechanisms and anti-corruption initiatives, to ensure that regulatory processes are fair and transparent.

Thirdly, there is a need to promote public awareness and engagement on climate change and environmental issues. This includes launching education campaigns, community outreach programs, and media initiatives to raise awareness about the impacts of global warming and the importance of environmental conservation.

Additionally, collaboration and partnership-building with international organizations, donors, and other stakeholders can provide valuable support in strengthening Bangladesh's capacity to address climate change and implement environmental laws. By leveraging external expertise, funding, and technical assistance, Bangladesh can enhance its resilience and adaptive capacity to climate change impacts.

Finally, mainstreaming climate considerations into development planning and policy-making processes is essential for integrating climate resilience into all sectors of society. This

involves incorporating climate risk assessments, adaptation measures, and mitigation strategies into national policies, plans, and programs to ensure that Bangladesh is better prepared to face the challenges of global warming.

By implementing these policy recommendations, Bangladesh can take significant strides towards addressing the critical shortcomings in implementing environmental laws and building resilience to the impacts of global warming.

International Cooperation

Given the transboundary nature of climate change, international cooperation plays a crucial role in addressing the impact of global warming on Bangladesh. Collaborative efforts with other countries, multilateral organizations, and non-governmental actors can provide valuable support in building resilience and mitigating climate risks. One key aspect of international cooperation is financial assistance and technology transfer. Developed countries can provide funding and expertise to help Bangladesh implement climate adaptation and mitigation measures, enhance its capacity for disaster risk reduction, and invest in renewable energy and sustainable infrastructure. Additionally, partnerships with international organizations such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Green Climate Fund (GCF) can provide access to resources and expertise for climate adaptation and mitigation projects. Collaborative initiatives under these frameworks can support Bangladesh in developing and implementing climate policies, enhancing resilience, and promoting sustainable development. Moreover, regional cooperation is essential for addressing shared climate challenges and harnessing collective action. Bangladesh can collaborate with neighboring countries in the South Asian region to exchange knowledge and best practices, coordinate disaster response efforts, and jointly implement adaptation and mitigation measures. By fostering regional partnerships, Bangladesh can strengthen its resilience to climate change impacts and contribute to broader efforts for sustainable development in the region.

Conclusion

In conclusion, the imperative to address the impact of global warming on Bangladesh and rectify the critical shortcomings in implementing environmental laws cannot be overstated. The nation faces profound challenges, from rising sea levels to extreme weather events, which are exacerbated by climate change. Despite the existence of environmental legislation, inadequate enforcement and regulatory gaps impede progress towards sustainability and resilience. To effectively address these challenges, concerted efforts are needed at the national, regional, and international levels. Strengthening institutional capacity, enhancing regulatory frameworks, promoting public awareness, and fostering international cooperation are essential steps towards building resilience and mitigating climate risks. Ultimately, addressing the impact of global warming requires a coordinated and multifaceted approach that integrates climate considerations into all aspects of governance, planning, and development. By taking proactive measures and embracing collaboration, Bangladesh can navigate the challenges of climate change and pave the way towards a more sustainable and resilient future for its people and the planet.

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Dissolution of Hindu Marriage: A Comparative Assessment Between India and Bangladesh

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Abstract: Marriage is one of the most ancient and sacred institutions within Hindu culture, central to their social and religious life. Recognized as one of the ten sacraments (*sanskaras*), Hindu marriage establishes an indissoluble bond between husband and wife, transcending physical existence and aligning with spiritual and societal obligations. This paper provides a comparative analysis of the legal frameworks governing the dissolution of Hindu marriage in India and Bangladesh, emphasizing their historical, cultural, and societal contexts. India, through reforms like the Hindu Marriage Act of 1955, has embraced progressive changes that address gender inequalities and modern societal needs. These reforms reflect a proactive approach to adapting traditional laws to contemporary realities. Conversely, Bangladesh remains reliant on pre-colonial Dayabhaga principles, resulting in limited legislative changes. This divergence highlights the influence of religious dynamics, social structures, and political contexts on legal evolution. The paper concludes with recommendations for reforms in Bangladesh, emphasizing the need for codification, gender-sensitive provisions, and societal awareness to ensure justice and equality for Hindu women under its jurisdiction.

Keywords: Hindu marriage, sanaskaras, dissolution of marriage, legal reforms, politicization of religion, India, Bangladesh, personal law, societal trends

Introduction

In Bangladesh, family and personal matters such as marriage, divorce, maintenance, custody, and adoption are governed by religious personal laws. Muslim law applies to Muslims, Hindu law to Hindus, and similar provisions exist for other religions. However, the absence of a uniform family or personal law creates opportunities for disparities, particularly between Muslims and Hindus. This discrimination is acutely felt in the socio-economic lives of Hindu women, who often face challenges due to outdated legal provisions and inadequate protection under the existing framework. Hindu personal law in Bangladesh is still governed by the ancient Dayabhaga school, which has remained largely unrevised since independence in 1971. In contrast, many countries, including India, have enacted reforms to align Hindu personal laws with contemporary societal norms. This lack of reform has exacerbated socio-economic challenges for Hindu women, making them particularly vulnerable in areas like marriage dissolution and property rights. (Rahman, 2020) Codifying Hindu marriage laws in Bangladesh are an urgent necessity. Modern codification would ensure greater clarity and

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accessibility of the laws, reduce inconsistencies, and address socio-economic injustices. Enacting a comprehensive Hindu Code applicable across Bangladesh would facilitate better legal protection and enhance equality. Such reforms could help resolve the complexities and inconveniences of personal law while adapting to the evolving socio-economic conditions of the country. (Chowdhury, 2018)

Definition of Hindu Marriage

Hindu marriage forms the cornerstone of social organization and establishes critical legal rights and responsibilities. In shastric tradition, Hindu marriage is regarded as a sacrament or *sanskara*, symbolizing a holy union for fulfilling religious duties. It is the last and most significant of the ten sacraments prescribed in Hinduism. (Sharma, 2018)

Marriage in Hindu culture creates an inseparable bond between husband and wife. Wives are considered the better halves and religious partners of their husbands, signifying that a man's identity and spiritual completeness are inherently linked to his wife (Das, 2017). As described in the *Vedas*, a man should perform religious duties in partnership with his wife, further underscoring the spiritual and societal importance of marriage. (Mukherjee, 2020)

The *Ramayana* illustrates the wife as the soul of her husband, while the *Mahabharata* portrays her as his other half, best friend, and a source of inspiration for religion, wealth, and ambition (Banerjee, 2016). Despite the deeply religious character of Hindu marriage, the Doctrine of *Factum Valet* allows for flexibility. For instance, while shastric law advocates guardian consent for marriage, unions conducted without such consent are still considered valid once performed. (Rao, 2019)

Hindu Marriage: Sacrament or Contract

According to ancient Hindu law and current Bangladeshi practices, Hindu marriage is fundamentally a sacrament, constituting the last of the ten sacraments (*sanskaras*) of Hindu life. Unlike a contract, Hindu marriage does not rely on mutual agreement by the parties involved, as the essential elements of a contract—such as the age of majority and mutual consent—are absent in traditional Hindu marriages. For instance, under shastric Hindu law, marriages do not permit dissolution, reinforcing their sacred and indissoluble nature (Sharma, 2018). However, certain parallels to contractual principles exist. For example, a marriage involving a lunatic is invalid, and marriages induced by fraud or force are rendered null and void, akin to the invalidation of contracts under similar conditions. (Rao, 2019)

The introduction of the Hindu Marriage Act of 1955 in India marked a paradigm shift, transforming Hindu marriage into a form of civil contract. This Act introduced key conditions, such as age restrictions—21 years for the bridegroom and 18 years for the bride—and the possibility of dissolving the marriage through legal recourse. These changes reflect a contractual approach while retaining the sacramental essence in some respects. The Act stipulates that:

1. Neither party should have a living spouse at the time of marriage (excluding divorced spouses).
2. Both parties must give valid consent, requiring sound mental capacity.
3. The bridegroom and bride must meet the minimum age requirement.
4. The parties must not fall within prohibited degrees of relationship unless customs permit such unions.
5. The parties must not be *sapindas* of each other unless customary practices allow. (Banerjee, 2016)

Violation of these conditions, such as bigamy, renders subsequent marriages null and void. Section 494 of the Indian Penal Code imposes penalties, including seven years of imprisonment and fines, for offenders violating these provisions. (Mukherjee, 2020)

In Bangladesh, the Hindu Marriage Registration Bill of 2012 introduced measures to address marriage-related challenges, particularly for women. The Act permits optional marriage registration, requiring the bride to be at least 18 years old and the groom 21 years old. While optional, this legislation provides a critical framework for legal and social protections, aiming to prevent marriage-related fraud and ensure justice for Hindu women. (Rahman, 2020)

Age of Hindu Marriage

Under shastric Hindu law, there is no prescribed minimum age for marriage, and marriages conducted during the minority of either party are not considered invalid. This traditional perspective reflects ancient societal norms where the concept of age in marriage was influenced by social and familial considerations rather than legal standards (Sharma, 2018). In Bangladesh, the Majority Act of 1875 does not apply to Hindu marriages, leaving them outside the purview of general age restrictions.

However, the Child Marriage Restraint Act of 1929, later amended by the Ordinance of 1989, established 21 years as the minimum age for men and 18 years for women. Although these regulations apply to Hindus and Muslims alike, they do not invalidate Hindu marriages performed below these ages. This legal discrepancy highlights the gap between statutory reforms and the prevailing customs in Bangladesh. (Rahman, 2020)

In India, the Hindu Marriage Act of 1955 introduced a significant shift by mandating the bridegroom to be at least 21 years old and the bride 18 years old at the time of marriage. By imposing these age conditions, the Act modernized Hindu marriage laws, aligning them with contemporary societal expectations and reinforcing the legal framework for marriage as a civil contract. This reform marks a departure from the traditional view of Hindu marriage as solely a sacrament, offering a balance between religious customs and legal regulations. (Banerjee, 2016)

Registration of Hindu Marriage in India and Bangladesh

The Hindu Marriage Act of 1955 in India provides for the registration of marriages, facilitating legal proof of such unions. Under this Act, state governments are empowered to establish rules for marriage registration and may make it compulsory. Once a marriage is registered, its details are entered into an official register maintained for this purpose. Importantly, the validity of a Hindu marriage is not affected by the failure to register it, ensuring that traditional ceremonies remain legally recognized. A nominal fine of Rs. 25 can be imposed for late registration. Upon registration, the parties are issued a marriage certificate, serving as formal proof of the marriage. (Banerjee, 2016)

Historically, ancient Hindu law did not provide for marriage registration, relying instead on religious and customary practices as the foundation of marital legitimacy. The introduction of registration under the 1955 Act represents a significant modernization, aligning legal practices with administrative requirements and offering safeguards for legal and social disputes. (Mukherjee, 2020)

In Bangladesh, the Hindu Marriage Registration Act of 2012 offers similar provisions but with a key distinction: registration is optional for Hindu marriages. The Act empowers the

government and local authorities to appoint marriage registrars, known as Hindu Marriage Registrars, at every ward within city corporations, municipalities, and upazilas. These registrars facilitate the recording of Hindu marriages, aiming to provide legal recognition and documentation while respecting the religious sentiments of the Hindu community. Despite being optional, this legislation marks a progressive step toward ensuring legal safeguards for Hindu marriages in Bangladesh, particularly in addressing issues of marital fraud and social disputes. (Rahman, 2020)

Hindu Marriage System in Bangladesh

Marriage, as a social and legal institution, is universally recognized and integral to all societies and faiths. However, since the independence of Bangladesh in 1971, legislative measures addressing the Hindu marriage system have been limited, with the notable exception of the Hindu Marriage Registration Act of 2012. While this Act represents a step toward formal recognition and legal protection, it remains optional and fails to address the broader systemic issues within the Hindu marriage framework. (Siddique, 2018)

From both gender and religious perspectives, the Hindu marriage system in Bangladesh has often been criticized for its inherent discrimination against women. Despite constitutional guarantees under Articles 27 and 28 of the Constitution of Bangladesh—abolishing all forms of gender and religious discrimination—these principles are not consistently applied in practice. Hindu women, in particular, face significant socio-legal challenges stemming from outdated personal laws that fail to provide adequate protection or equality. (Hasan, 2020)

As a signatory to various international conventions, Bangladesh is obligated to uphold the principles of equality and non-discrimination. The country ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, with certain reservations. Although Bangladesh became the first nation to ratify the optional protocol to CEDAW, which provides tools to address discrimination, the reservations maintained by the state contradict its commitment to gender equality. These reservations undermine the sincerity of efforts to eliminate discrimination, particularly in areas such as marriage, where Hindu women remain vulnerable to systemic inequalities. (Khan, 2021)

Reforms addressing these disparities are essential to align Bangladesh's municipal laws with its constitutional and international obligations. Codification and modernization of Hindu marriage laws could serve as a critical step toward ensuring gender justice and upholding the principles enshrined in both domestic and international legal frameworks.

Dissolution of Marriage under Bangladeshi and Indian Law

Divorce, derived from the Latin word *devortium*, signifies the legal termination of a matrimonial bond. It allows individuals to sever the marital relationship on legally acceptable grounds, such as irreconcilable differences or other reasons recognized by law. Despite the universal applicability of divorce in many cultures, Hindu marriage has historically been considered unbreakable due to its sacral nature. (Sharma, 2018)

In traditional Hindu law, marriage is viewed as a sacramental union characterized by three key attributes:

- **Permanence:** It is considered a lifelong, indissoluble bond.
- **Eternity:** The union transcends a single lifetime and continues spiritually.
- **Holiness:** The marriage is a sacred obligation, integral to religious and social duties.

Ancient Hindu law strictly prohibited the dissolution of marriage, regardless of circumstances. Even in situations of unbearable cohabitation, separation was not an option. Exceptions to this strict rule were rare and applied only to certain *unapproved forms* of marriage. For instance, *Narada* and *Parasar*, ancient Hindu lawgivers, identified five specific conditions under which a wife could abandon her husband and remarry:

1. If the husband was lost or missing.
2. If the husband was dead.
3. If the husband had renounced the world to become a *sannyasi*.
4. If the husband was impotent.
5. If the husband was ousted from his caste. (Banerjee, 2016)

However, these conditions applied only to marriages considered unapproved forms, and the overall consensus among *Dharmashastra* writers rejected the notion of dissolution. Approved forms of Hindu marriage were deemed absolutely indissoluble, emphasizing the unique and permanent nature of the marital bond.

Although traditional Hindu law did not recognize divorce, it did acknowledge the concept of separation or desertion under limited circumstances. However, such separations did not equate to divorce as they failed to completely dissolve the marital tie. This distinction reflects the deep-seated sacramental view of Hindu marriage, which contrasts with the more liberal approach found in modern legal systems. (Mukherjee, 2020)

In Bangladesh, Hindu marriage laws remain rooted in the pre-colonial Dayabhaga system, which does not permit divorce. This legal framework leaves many Hindu women vulnerable to severe hardships, particularly in cases of abandonment. A husband can marry multiple times, leaving his wife in a precarious position, unable to divorce or remarry. This situation affects thousands of Hindu women in Bangladesh, subjecting them to socio-economic and emotional struggles. (Rahman, 2020)

Under the Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946, Hindu women in Bangladesh have limited recourse to address marital grievances. They may file cases in court to secure their rights to separate residence and maintenance, but they cannot seek divorce or remarry. Grounds for claiming separate residence and maintenance include:

1. The husband suffers from a loathsome disease not contracted from the wife.
2. The husband is guilty of cruelty, making cohabitation unsafe or undesirable.
3. The husband has deserted the wife without her consent or against her will.
4. The husband has married another woman.
5. The husband has converted to another religion.
6. The husband keeps a concubine in the home or habitually resides with one elsewhere.
7. Any other justifiable cause.

However, these rights are conditional. A Hindu married woman forfeits her right to separate residence and maintenance if she is deemed unchaste, converts to another religion, or fails to comply with a court decree for the restitution of conjugal rights. (Siddique, 2018)

In India, Section 18(2) of the Hindu Adoption and Maintenance Act, 1956, provides similar but more detailed conditions under which a wife can claim separate residence and maintenance:

1. Desertion by the husband without reasonable cause or against the wife's consent.
2. Cruelty that creates a reasonable apprehension of harm.
3. The husband suffers from a virulent form of leprosy.
4. The husband has another wife living.
5. The husband keeps a concubine in the marital home or resides with one elsewhere.
6. The husband converts to another religion.
7. Any other cause that justifies the wife living separately. (Mukherjee, 2020)

Hindu women in Bangladesh may also seek redress under general laws, such as:

- The Family Courts Ordinance, 1985.
- The Dowry Prohibition Act, 1980.
- The Women and Children Repression Prevention Act, 2003.

While these laws provide some level of protection, they remain inadequate in addressing the fundamental issue of divorce and remarriage rights for Hindu women. Without comprehensive reforms, the current legal system fails to protect Hindu women's rights effectively and perpetuates gender inequality within marriage. (Khan, 2021)

Divorce under Muslim Law in Bangladesh

In Muslim law, marriage (*Nikah*) is treated as a civil contract between the husband (*zawj*) and wife (*zawja*), grounded in mutual rights and obligations. This contractual nature of marriage allows for its dissolution under specific circumstances, emphasizing the flexibility within Islamic jurisprudence. Unlike the sacramental perception of marriage in other religious systems, Islam allows for the termination of the marital relationship when it ceases to fulfill its intended purpose.

The primary methods of divorce under Islamic law include:

1. **Repudiation of the Marriage Contract (*Talaq*):** This unilateral right of the husband allows him to dissolve the marriage by pronouncing *Talaq* three times. It can be exercised either instantly (*Talaq-e-Bid'ah*) or over a period of three menstrual cycles (*Talaq-e-Hasan*).
2. **Divorce by Mutual Agreement (*Mubarat*):** Both spouses mutually agree to terminate the marriage.
3. **Judicial Divorce (*Faskh*):** A wife may approach a court to dissolve the marriage on grounds such as cruelty, desertion, or non-fulfillment of marital obligations.
4. **Divorce by Law (*Khula*):** The wife initiates divorce by returning her *Mahr* (dowry) to the husband, contingent upon his consent.

In Bangladesh, these mechanisms are codified under The Muslim Family Laws Ordinance, 1961, ensuring legal procedures are followed in divorce cases. While this framework grants women a significant degree of agency compared to Hindu personal laws, social stigmas and economic dependencies often limit their ability to exercise these rights (Haque, 2019).

Divorce under Hindu Law in Bangladesh and India

Hindu law in Bangladesh remains deeply rooted in the pre-modern Dayabhaga system, which categorically does not recognize divorce. Marriage is perceived as an indissoluble union, leaving Hindu women particularly vulnerable in cases of abandonment, cruelty, or marital

neglect. The inability to legally dissolve a marriage or remarry often leads to severe socio-economic hardships for Hindu women, many of whom are left to fend for themselves with limited legal recourse. (Rahman, 2020)
The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, offers limited provisions for Hindu women to claim separate residence and maintenance under circumstances such as:

- Cruelty by the husband,
- Desertion,
- Bigamy,
- Conversion of the husband to another religion.

However, the Act stops short of allowing divorce, maintaining the notion of marriage as a sacrament. This legislative gap highlights the systemic inequality embedded in Bangladesh's Hindu personal laws.

The Hindu Marriage Act of 1955 revolutionized Hindu personal law in India by introducing provisions for divorce. Section 13 of the Act outlines comprehensive grounds for divorce, making it accessible to both spouses. Grounds for divorce include:

- Adultery,
- Cruelty (physical or mental),
- Desertion for at least two years,
- Conversion to another religion,
- Incurable diseases like leprosy or venereal diseases,
- Renunciation of the world,
- Absence for over seven years.

Expanded Case Analyses under Indian Law
The Hindu Marriage Act of 1955 marked a pivotal reform in India, introducing divorce as a legal remedy and addressing the evolving dynamics of marital relationships. Several landmark judgments under the Act have clarified and expanded its provisions, ensuring the law remains responsive to societal needs. These cases not only illustrate the flexibility of the Act but also underline its relevance in promoting gender equality and justice. [*Maya Devi v. Jagdish Prasad (2007)]*

In this case, the court recognized mental cruelty as a valid ground for divorce, emphasizing that it does not necessarily require physical harm. Verbal abuse, unreasonable behavior, or actions causing sustained mental agony were deemed sufficient to dissolve the marital bond. This judgment was significant because it addressed the non-physical dimensions of cruelty, acknowledging the profound psychological impact such behavior can have on a spouse. The ruling also emphasized the importance of mental well-being in marital relationships, setting a precedent for cases where emotional abuse forms the crux of marital discord. [*Neelu Kohli v. Naveen Kohli (2004)]*

This case expanded the definition of cruelty to include persistent indifference, humiliation, and behavior that renders cohabitation untenable. The court ruled that when one spouse's conduct creates a hostile or oppressive environment, it becomes impossible for the other spouse to continue the marriage. This judgment is particularly relevant in modern contexts where psychological abuse and neglect are increasingly recognized as significant issues in marriage. By broadening the scope of cruelty, the court reinforced the idea that marital relationships require mutual respect and support, not just the absence of overt conflict. [*Jai Dayal v. Shakuntala Devi (2004)]*

The court ruled that false allegations of extramarital affairs constitute mental cruelty. This judgment acknowledged the severe emotional distress caused by baseless accusations, which can irreparably damage trust and dignity within a marriage. The case highlights the court's sensitivity to the emotional and reputational harm such allegations can cause, emphasizing that trust is a cornerstone of any marital relationship. By categorizing false accusations as cruelty, the ruling provided legal recourse for individuals subjected to this form of psychological harm. *[Vimlesh v. Prakash Chand Sharma (1992)]*

This case addressed the cumulative impact of persistent and repeated acts of cruelty on the mental well-being of the affected spouse. The court recognized that a pattern of oppressive behavior, even if individually minor, can collectively lead to significant emotional and psychological harm. This judgment was instrumental in highlighting the importance of assessing the overall environment of the marital relationship rather than isolated incidents. It underscored that persistent cruelty, regardless of intent, can justify the dissolution of marriage.

These landmark judgments collectively reflect the evolving interpretation of the Hindu Marriage Act, aligning it with contemporary understandings of marital dynamics. By recognizing mental cruelty and its various manifestations, the courts have ensured that the Act remains a robust and adaptable tool for addressing issues of marital incompatibility and injustice.

The judgments emphasize the equal rights of both spouses to seek divorce, ensuring that neither party is compelled to remain in a toxic or oppressive relationship. This progressive stance has been instrumental in empowering individuals, particularly women, who historically faced barriers to exiting harmful marriages. The cases highlight the importance of personal dignity and mental well-being in marriage. They reinforce the idea that marital relationships are partnerships built on mutual respect and trust, and any behavior that undermines these principles can be grounds for dissolution. This approach recognizes the autonomy of individuals to make decisions that prioritize their happiness and mental health.

The cases also reflect the courts' awareness of changing societal dynamics, where mental health and emotional well-being are increasingly prioritized. By expanding the scope of cruelty to include psychological abuse, the judgments provide a comprehensive framework for addressing the complexities of modern marital relationships. In conclusion, these cases demonstrate how the Hindu Marriage Act has been interpreted and applied to ensure justice and equality within the institution of marriage. They highlight the Act's role in fostering a balanced and humane legal framework that adapts to the needs of a changing society, ensuring that it remains a cornerstone of marital jurisprudence in India.

Comparative Insights: Bangladesh and India

The divergence between Bangladesh and India's approach to Hindu marriage law is stark. While India has embraced legislative reforms to modernize its personal laws, Bangladesh continues to adhere to archaic principles that perpetuate gender discrimination. The absence of divorce provisions in Bangladesh's Hindu law not only undermines constitutional guarantees of gender equality but also contradicts international conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Bangladesh is a signatory (Khan, 2021). On the other hand, Bangladesh's ratification of CEDAW and its optional protocol underscores its commitment to eliminating gender-based discrimination. However, the retention of reservations to key provisions related

to marriage and family undermines these commitments. The lack of substantive reform in Hindu personal laws raises questions about the state's sincerity in upholding its constitutional and international obligations.

Recommendations for Reform in Bangladesh

Reforming Hindu personal laws in Bangladesh is an urgent necessity to address systemic discrimination and align the legal framework with constitutional principles and international commitments. One of the key steps toward reform is the codification of Hindu personal laws. Unlike the current reliance on outdated Dayabhaga principles, a codified legal framework would ensure clarity, consistency, and accessibility for all Hindus in Bangladesh. A unified Hindu Marriage Act, similar to India's 1955 legislation, could establish clear provisions for divorce, remarriage, maintenance, and inheritance. This codification would modernize the legal system while respecting cultural values.

Gender equality must be at the core of these reforms. Hindu personal laws in Bangladesh currently perpetuate systemic discrimination against women by denying them the right to divorce or remarry. Legislative changes should establish equal rights for men and women in initiating divorce, ensuring maintenance, and accessing marital property. The inclusion of gender-sensitive provisions, such as financial independence for women through the equitable distribution of marital assets, would help address the economic vulnerabilities faced by Hindu women, particularly in cases of abandonment or cruelty.

The establishment of dedicated Hindu Family Courts could streamline the resolution of disputes related to marriage, divorce, and maintenance. These courts should be staffed with judges well-versed in Hindu jurisprudence and sensitive to the unique challenges faced by the Hindu community. Special attention should be given to rural and marginalized Hindu populations to ensure that access to justice is not limited by geography or socio-economic status. Such courts would expedite case resolution, minimize delays, and provide a more supportive environment for litigants.

Mandatory registration of Hindu marriages is another crucial reform. The optional registration introduced by the Hindu Marriage Registration Act, 2012, has limited utility in providing legal safeguards. Making registration compulsory would help prevent fraudulent marriages, safeguard women's rights, and ensure that all marriages are legally recognized. A robust registration system would also simplify the process of seeking legal remedies in cases of marital disputes.

Legal protections for women need to be significantly strengthened. Existing laws, such as the Family Courts Ordinance, 1985, and the Dowry Prohibition Act, 1980, are inadequate in addressing the specific challenges faced by Hindu women. These laws should be revised to include stricter penalties for marital abandonment, bigamy, and dowry-related offenses. Additionally, comprehensive provisions should be introduced to protect women from domestic violence, marital fraud, and other forms of abuse. Expanding these protections would ensure that women have effective recourse in cases of marital discord.

Aligning national legislation with international obligations is essential for meaningful reform. As a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Bangladesh has committed to promoting gender equality. However, the country's reservations to certain provisions of CEDAW undermine this commitment. Removing these reservations would demonstrate Bangladesh's sincerity in upholding

international standards and addressing gender-based discrimination. Additionally, integrating international best practices into national legislation would enhance the effectiveness of these reforms.

Awareness and education initiatives must accompany legal reforms to ensure societal acceptance. Many Hindu women are unaware of their legal rights, which limits their ability to seek justice. Public awareness campaigns, legal literacy programs, and community dialogues can empower women and encourage families to support their rights. Engaging religious leaders in these discussions is critical, as they play a significant role in shaping community attitudes. Highlighting scriptural support for gender equality and social justice can help reconcile traditional values with modern legal principles.

Reforming Hindu inheritance laws is another priority. Under the current framework, Hindu women in Bangladesh often receive no share of ancestral property, leaving them economically disadvantaged. Legislative changes should grant equal inheritance rights to daughters and sons, ensure widows receive a fair share of their husband's estate, and protect women from being coerced into relinquishing their rights. Equal inheritance rights would not only promote gender equality but also provide financial security to women in vulnerable situations.

To support women facing marital disputes, the government should establish a comprehensive support system. Legal aid clinics offering free or subsidized services can help women navigate the complexities of the legal system. Shelters and counseling centers can provide a safe haven and emotional support for women escaping abusive marriages. Additionally, community-based initiatives can offer mediation services to resolve disputes amicably.

Monitoring and accountability mechanisms are essential to the successful implementation of these reforms. The government should establish a dedicated body to oversee the impact of changes to Hindu personal laws. Regular reviews and public reports can ensure transparency and allow for necessary adjustments. Establishing grievance redressal mechanisms would also provide individuals with a platform to voice concerns and seek resolutions.

In conclusion, the reform of Hindu personal laws in Bangladesh is long overdue. Codification, gender-sensitive provisions, mandatory marriage registration, and strengthened legal protections are critical steps toward ensuring justice and equality for Hindu women. By aligning national laws with constitutional and international obligations, Bangladesh can uphold the principles of equality and human dignity. Legal reforms, combined with societal awareness and robust institutional support, would create a more equitable and inclusive society for all Hindus in Bangladesh.

Conclusion

India has witnessed radical reforms in Hindu personal laws, transforming them into a framework that accommodates societal changes and promotes gender equality. These reforms were driven by the demands of the Hindu majority, whose leaders advocated for modernization, leading to legislative enactments such as the Hindu Marriage Act of 1955. Conversely, Bangladesh has retained its pre-1947 Hindu personal laws, leaving significant inequalities unaddressed. This stagnation stems from the sensitive nature of minority issues, coupled with a lack of advocacy from within the Hindu community itself.

Articles 10, 19, 27, 28, and 29 of the Constitution of Bangladesh emphasize equality and the removal of social and economic disparities. There is no constitutional barrier to reforming Hindu laws; rather, the constitution encourages steps toward achieving social justice. However, a free and democratic environment is essential for initiating these reforms. The government, in collaboration with NGOs and civil society, must take a proactive role in building awareness about the limitations of existing Hindu personal laws and the necessity of reform.

Awareness campaigns targeting the Hindu community are critical to fostering change. Currently, issues such as sanitation and female health are widely discussed and promoted through media, but the challenges faced by Hindu women remain largely ignored. Media platforms could play a pivotal role in highlighting these issues through short films, documentaries, music, and other creative means. By raising awareness, the community itself can be motivated to advocate for reform.

Once the Hindu community is aware of the limitations of their personal laws and the potential benefits of modernization, its leaders are more likely to come forward and demand legislative changes. Reform would then be possible through democratic processes, ensuring that it is both inclusive and culturally sensitive. Such an approach would align Bangladesh with the principles of equality and human dignity enshrined in its constitution.

Achieving these reforms would mark a significant step toward building a modern democratic society in Bangladesh. Addressing the inequalities in Hindu personal laws would not only improve the socio-economic conditions of Hindu women but also demonstrate the nation's commitment to justice and inclusivity for all its citizens. Through collective effort and sustained advocacy, the dream of a more equitable legal framework can become a reality.

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The Impact of Autonomous Technologies on the Enforcement of International Humanitarian Law

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Abstract: The rapid advancement of autonomous technologies is reshaping the landscape of warfare and the enforcement of humanitarian law. This paper explores the dual-edged impact of autonomous technologies such as artificial intelligence (AI), drones, autonomous weapons systems, cyber warfare, and surveillance tools on international humanitarian law (IHL). These technologies present both significant opportunities and serious challenges for enforcing IHL. On one hand, autonomous technologies improve enforcement by providing advanced tools for monitoring and reporting violations. AI and satellite imagery facilitate more accurate and timely data collection, which is vital for documenting IHL breaches. Precision targeting systems and autonomous drones have the potential to reduce collateral damage and civilian casualties by allowing for more precise military operations. Additionally, advancements in logistics and communication technologies enhance the efficiency of humanitarian aid delivery. On the other hand, integrating these technologies raises critical ethical, legal, and practical concerns. The deployment of autonomous weapons systems and AI in decision-making processes introduces accountability issues and risks unintended consequences. Cyber warfare vulnerabilities can disrupt essential services, exacerbating humanitarian crises. Moreover, the use of surveillance technologies threatens privacy and human rights, complicating efforts to uphold humanitarian principles such as distinction, proportionality, and necessity. This paper combines qualitative analysis of case studies and a review of current regulatory frameworks to explore the benefits and challenges of autonomous technologies in humanitarian law enforcement. It calls for robust regulation and international cooperation to ensure responsible technological use while safeguarding core humanitarian principles.

Keywords: Humanitarian law, Autonomous technologies, International law, Accountability

1. Introduction

The rapid development and deployment of autonomous technologies are transforming the dynamics of modern warfare, presenting both unprecedented opportunities and significant challenges in enforcing International Humanitarian Law (IHL). IHL, a critical component of international law, is designed to alleviate human suffering during armed conflicts by

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protecting civilians, non-combatants, and civilian infrastructure. Unlike other areas of law concerned with political, economic, or territorial disputes, IHL is specifically focused on humanitarian principles, aiming to minimize harm in times of war. Established by the Geneva Conventions and their Additional Protocols, IHL creates a framework that seeks to balance military objectives with the imperative to protect human life and dignity (Geneva Conventions, 1949; Additional Protocols, 1977). However, as warfare becomes increasingly driven by autonomous technologies, the application and enforcement of these core principles are facing new and unforeseen challenges (ICRC, 2021).

Emerging technologies such as artificial intelligence (AI), drones, autonomous weapons systems, and cyber warfare tools are reshaping the nature of conflict, offering the potential for more precise military operations, improved efficiency, and reduced risks to combatants. These technologies enable real-time decision-making with minimal human intervention, promising improvements in military strategies and operational effectiveness (O'Connell, 2020). However, they also raise critical ethical, legal, and humanitarian concerns. The primary issue lies in accountability: when an autonomous system malfunctions and violates IHL, such as through the unintended targeting of civilians, determining responsibility becomes increasingly complex. Who should be held accountable? the designer of the algorithm, the operator, or the state deploying the weapon? This lack of clarity undermines the very foundations of accountability and responsibility that IHL is built upon (Asaro, 2019; Nagorno-Karabakh Conflict Report, 2020).

The challenges posed by autonomous systems are not merely hypothetical. In conflicts such as Nagorno-Karabakh, Syria, and Ukraine, autonomous technologies are actively deployed, sometimes with devastating consequences. Loitering munitions, for example, have been used to target civilian infrastructure, and cyberattacks have disrupted essential services, exacerbating humanitarian crises (Bhuta, 2021; Ukraine Analysis, 2022). Despite their theoretical promise of reducing collateral damage, autonomous systems often struggle to replicate the nuanced judgment that human operators can bring to complex and dynamic battlefields, particularly when distinguishing between combatants and civilians (Sharkey, 2020). Furthermore, the use of cyber warfare tools especially those targeting civilian infrastructure compounds the difficulties in applying IHL, as such actions often occur outside the traditional boundaries of armed conflict (UN Cybersecurity Report, 2021).

This paper explores the dual-edged impact of autonomous technologies on the enforcement of International Humanitarian Law. On the one hand, these technologies offer the potential to improve compliance with IHL by enabling precision targeting, enhanced surveillance, and reducing risks to military personnel (Maurer, 2020; Roff, 2019). On the other hand, they present serious risks, such as the loss of human oversight, ethical challenges, and gaps in accountability, which threaten core IHL principles such as distinction, proportionality, and necessity. The research aims to critically analyze these technologies' effects on the enforcement of IHL, identifying the risks and opportunities they present, and proposing regulatory and ethical solutions to bridge the existing gaps (GGE on LAWS, 2021; Campaign to Stop Killer Robots, 2022).

To achieve this, the paper employs a qualitative methodology that includes a legal analysis of key IHL documents, such as the Geneva Conventions, Additional Protocol I, and Article 36 of the Additional Protocol I. The research incorporates case studies from conflicts in Syria, Gaza, Afghanistan, and Ukraine, using them to assess how autonomous technologies are being applied in real-world situations and their consequences on IHL enforcement (Syria

Report, 2019; Gaza Report, 2021; Ukraine Analysis, 2022). Additionally, expert perspectives from the fields of AI ethics, military strategy, and international law will be integrated to provide a multidisciplinary approach to the complex challenges posed by these technologies (Sharkey, 2020; Bhuta, 2021).

Ultimately, this paper seeks to address a critical gap in the regulation of autonomous systems under IHL. While these technologies are being rapidly developed and deployed, existing legal frameworks remain insufficient to tackle the challenges they present. While bodies like the United Nations and advocacy groups such as the Campaign to Stop Killer Robots have raised concerns, international regulatory efforts have been slow (UN CCW Report, 2021; Campaign to Stop Killer Robots, 2022). This paper aims not only to identify these gaps but also to offer concrete recommendations for reforming existing IHL frameworks. It advocates for a balanced approach that harnesses the potential of autonomous technologies while ensuring that the fundamental humanitarian principles of IHL are not compromised (Bhuta, 2021).

2. Foundational Concepts and Legal Framework

The integration of autonomous technologies into modern warfare is reshaping how conflicts are conducted, with profound implications for International Humanitarian Law (IHL). While these technologies, such as autonomous weapons systems (AWS), drones, and artificial intelligence (AI), promise greater efficiency, precision, and reduced risk to combatants, they simultaneously present significant challenges to the foundational principles of IHL. IHL is grounded in principles such as distinction, proportionality, necessity, and precaution, which seek to protect civilians, minimize unnecessary harm, and regulate the conduct of hostilities. However, the use of autonomous systems raises critical questions about whether these principles can be effectively applied to machines capable of making independent decisions on the battlefield.

One of the primary concerns associated with autonomous technologies is their impact on the principle of distinction, which requires that combatants distinguish between military targets and civilians, as well as military objectives and civilian infrastructure. Autonomous systems, which rely on algorithms and artificial intelligence to make real-time decisions, often struggle to meet this fundamental requirement. For instance, in the 2021 Kabul drone strike, a U.S. drone, relying on an AI-driven targeting system, mistakenly targeted a civilian vehicle, killing ten people, including seven children. This tragic incident highlights the vulnerability of autonomous systems to errors in distinguishing between combatants and non-combatants, leading to violations of the principle of distinction (UN Cybersecurity Report, 2021). The reliance on algorithmic decision-making instead of human judgment presents a real risk to civilian populations, especially in situations where the rules of engagement are complex or where the civilian population is interspersed with military targets.

Similarly, the Nagorno-Karabakh conflict in (2020) exposed the dangers of using loitering munitions like the Harop drone to target both military and civilian infrastructure. Although these weapons are designed to autonomously detect and strike targets, they cannot fully replicate the nuanced understanding that human operators bring to targeting decisions. In this conflict, autonomous weapons were used to destroy civilian infrastructure, including hospitals and residential areas, raising serious concerns about the proportionality of the attacks and the necessity of using such weapons in these contexts (Nagorno-Karabakh Conflict Report, 2020). The proportionality principle in IHL prohibits attacks that may cause excessive civilian harm in relation to the anticipated military advantage. Autonomous systems, especially those that operate in complex, dynamic environments like urban warfare,

may struggle to accurately assess proportionality, leading to unintended and excessive civilian harm.

The principle of necessity requires that any military action be necessary to achieve a legitimate military objective, and that no excessive force be used. The growing reliance on autonomous weapon systems raises concerns about whether these systems are truly necessary, or if their use could potentially lead to overreach. Autonomous technologies, designed for efficiency, might prioritize military objectives over the protection of civilians, potentially resulting in actions that could be classified as excessive under IHL. For example, autonomous drones and AI-powered targeting systems can operate much faster than human decision-makers, potentially leading to a disproportionate response in the heat of battle, where the nuance required to apply necessity may be lost (Bhuta, 2021).

In addition to concerns over distinction, proportionality, and necessity, the use of autonomous systems also introduces significant ethical challenges. Peter Asaro (2019) argues that AI-driven warfare dehumanizes military decisions by removing the human judgment necessary to assess the ethical implications of using force. Autonomous systems operate based on programmed algorithms and machine learning, which lack an understanding of the moral complexities of warfare. The decision-making processes in autonomous systems are rooted in data processing, not moral reasoning, which means they cannot fully account for the humanitarian impact of their actions. This lack of moral judgment is especially problematic when these systems are deployed in situations where civilians may be inadvertently harmed. Asaro warns that delegating life-and-death decisions to machines not only undermines IHL but also erodes the humanity inherent in warfare, which IHL aims to preserve (Asaro, 2019).

The concerns raised by autonomous technologies also extend to accountability. One of the central tenets of IHL is that individuals responsible for violations of the law must be held accountable. However, when an autonomous system commits a violation of IHL, such as targeting civilians or civilian infrastructure, it is unclear who should bear responsibility. Should the programmer who designed the system be held accountable for the algorithm's failure? Or should the operator who deployed the system be liable? These questions remain largely unanswered under the current legal framework, which fails to adequately address the responsibility of autonomous systems in armed conflict. Mary Ellen O’Connell (2020) highlights this accountability dilemma, noting that the lack of clarity in determining responsibility for autonomous weapons systems undermines the legal and moral foundations of IHL. This gap in accountability mechanisms is exacerbated by the opacity of AI decision-making, where it is often impossible to trace the reasoning behind a system's decision to use force.

Several real-life conflicts have highlighted these issues. For example, in the ongoing Ukraine conflict (2022), autonomous drones such as the ZALA Lancet have been used to target critical civilian infrastructure, including energy facilities. These attacks, which have led to widespread power outages and humanitarian suffering, violate the principle of proportionality by targeting non-combatant infrastructure. The destruction of infrastructure during wartime has long been a concern for IHL, as it exacerbates human suffering and can be seen as an act of collective punishment. The use of autonomous drones to carry out these strikes, which bypass human decision-making, highlights the risk that military objectives can be prioritized at the expense of civilians (Ukraine Analysis, 2022).

The growing reliance on autonomous systems in warfare also exposes significant gaps in existing legal frameworks. The Geneva Conventions and their Additional Protocols were developed in an era before the advent of AI and autonomous weapons, and as such, they do not provide specific guidelines for the regulation of these technologies. The lack of clear international agreements governing the use of autonomous weapons systems (LAWS) has led to a situation where states are largely free to interpret their IHL obligations in a way that aligns with their military and strategic interests. As Nehal Bhuta (2021) points out, this regulatory gap has led to a situation where autonomous systems are deployed without sufficient oversight, often prioritizing military objectives over the protection of civilians.

To address these challenges, there is a growing call from international organizations such as the ICRC, UN, and advocacy groups like the Campaign to Stop Killer Robots for a more comprehensive regulatory framework for autonomous technologies. The GGE on LAWS (2021) has proposed measures such as banning fully autonomous weapons systems and establishing accountability mechanisms for violations committed by autonomous systems. However, despite these efforts, significant challenges remain in creating an international consensus on the regulation of these technologies.

The call for greater international regulation of autonomous weapons systems is not just about ensuring compliance with IHL but also about protecting human dignity in warfare. The principle of humanity is a central tenet of IHL, and as autonomous technologies continue to shape the future of warfare, ensuring that these technologies comply with the core values of IHL is critical. As Heather Roff (2020) and others have argued, without meaningful human control, autonomous systems will continue to operate in a legal and ethical vacuum, with devastating consequences for civilian populations.

In outline, autonomous technologies present both opportunities and risks for International Humanitarian Law. While these technologies can improve precision, efficiency, and reduce risks to combatants, they also challenge the fundamental principles of IHL, including distinction, proportionality, necessity, and humanity. The real-life incidents discussed in this section such as the Kabul drone strike (2021), the use of loitering munitions in Nagorno-Karabakh (2020), and the targeting of civilian infrastructure in Ukraine demonstrate the risks that autonomous technologies pose to IHL. There is a critical need for legal reforms, including the amendment of Article 36 of Additional Protocol I, the introduction of binding international treaties, and the establishment of human oversight mechanisms to ensure that these technologies are used responsibly and ethically in conflict.

3. Findings and Analysis

The integration of autonomous technologies into modern warfare presents a dual-edged impact on International Humanitarian Law (IHL). These technologies promise greater precision, efficiency, and reduced risk for combatants, but they simultaneously challenge foundational IHL principles such as distinction, proportionality, and precaution. By examining real-world case studies and scholarly insights, this section highlights both the opportunities and risks posed by autonomous systems.

3.1 Real-World Impacts and IHL Violations

One of the most prominent examples of the risks associated with autonomous systems is the 2021 Kabul drone strike. Conducted by a U.S. drone, the strike targeted a civilian vehicle based on algorithmic assessments, resulting in the deaths of ten civilians, including seven children (UN Cybersecurity Report, 2021). The incident highlights the fallibility of AI

systems in distinguishing between combatants and non-combatants. The violation of the principle of distinction in this case underscores the dangers of relying on flawed data or misinterpreted intelligence. The Geneva Conventions and their Additional Protocols emphasize the importance of distinguishing between military and civilian targets, yet autonomous systems often fail to meet this requirement, which is central to Article 48 of Additional Protocol I to the Geneva Conventions (1977). The principles of distinction and proportionality were similarly violated in several other instances of autonomous warfare, as seen in Nagorno-Karabakh in (2020), where loitering munitions such as the Harop drone were deployed to strike civilian and military targets, causing extensive damage to civilian infrastructure and raising concerns about compliance with proportionality and necessity (Nagorno-Karabakh Conflict Report, 2020). The inability of autonomous systems to weigh the proportionality of civilian harm against military advantage underscores the need for meaningful human oversight in their deployment, particularly as autonomous systems often lack the nuanced judgment required to make ethical decisions on the battlefield.

The ongoing conflict in Ukraine illustrates the growing role of autonomous drones in warfare. Russian forces have used drones like the ZALA Lancet to target civilian energy facilities, causing widespread power outages and plunging cities into darkness during winter (Ukraine Analysis, 2022). These attacks violate the principle of proportionality and exacerbate humanitarian crises by depriving civilians of essential services. They also demonstrate the weaponization of infrastructure destruction, which is increasingly facilitated by autonomous technologies. The United Nations' Group of Governmental Experts on Lethal Autonomous Weapons Systems (GGE on LAWS) has highlighted these issues, stressing the necessity for international regulation of such technologies (GGE on LAWS, 2021). However, current IHL instruments lack specific provisions to address such autonomous technologies, leaving states with wide discretion in their interpretation of military necessity.

3.2 Cyber Warfare: A New Challenge for IHL

Cyber warfare represents another domain where autonomous systems challenge IHL. In 2019, during the Syrian conflict, cyberattacks targeted hospital infrastructure, disrupting medical services for civilians (Syria Report, 2019). These attacks violated the principles of humanity and precaution by deliberately harming non-combatants and undermining the delivery of essential humanitarian aid. Moreover, the anonymity and complexity of cyber operations make it difficult to attribute responsibility, complicating accountability under IHL. Article 52 of Additional Protocol I protect civilian infrastructure from attacks, but cyberattacks do not easily fall under traditional definitions of "attack" or "armed conflict," leaving gaps in regulation.

3.3 The Challenge of Accountability

A key challenge in the deployment of autonomous systems in warfare is accountability. Scholars like Mary Ellen O'Connell argue that autonomous systems blur the lines of responsibility in warfare. When an autonomous system commits a violation of IHL, it is unclear whether liability lies with the programmer, the operator, or the deploying state (O'Connell, 2020). This ambiguity erodes the moral and legal foundations of IHL, making it imperative to establish clear accountability mechanisms.

The lack of specific legal frameworks for autonomous systems in existing IHL instruments is a critical issue. The ICRC has called for "meaningful human control" over autonomous weapons, stressing the importance of human oversight to ensure compliance with IHL principles (Maurer, 2020). However, current IHL provisions, including Article 36 of

Additional Protocol I, fail to comprehensively address the deployment of autonomous technologies. This regulatory gap allows states to interpret their obligations independently, often prioritizing military advantage over humanitarian considerations (Bhuta, 2021). The UN's GGE on LAWS has proposed the adoption of binding international agreements to regulate autonomous weapon systems, yet progress has been slow, and the international community remains divided on how to approach these issues (GGE on LAWS, 2021).

3.4 The Ethical Dilemma of Autonomous Systems

The ethical implications of autonomous technologies further complicate their deployment. Peter Asaro emphasizes that delegating life-and-death decisions to machines risks dehumanizing warfare. Autonomous systems, lacking moral judgment, operate solely based on algorithms, which are incapable of understanding the broader humanitarian context in which decisions are made (Asaro, 2019). This detachment from human considerations could normalize violations of IHL and undermine the principles of humanity and necessity. Moreover, the deployment of autonomous systems in warfare raises concerns about the legal personhood of machines. As argued by Noel Sharkey, systems that operate independently could potentially be held liable for their actions, but current IHL lacks provisions for assigning responsibility to autonomous entities, further exacerbating the accountability dilemma (Sharkey, 2020).

3.5 The Positive Potential of Autonomous Technologies

Despite these risks, autonomous technologies also present opportunities to enhance compliance with IHL. AI-powered drones and surveillance systems can provide real-time data that helps military forces adjust operations to minimize civilian harm. During operations in Gaza, surveillance drones documented violations of IHL, aiding humanitarian organizations in their investigations and supporting evidence collection for war crimes tribunals (Gaza Report, 2021). These advancements demonstrate how autonomous systems, when responsibly deployed, can strengthen the enforcement of IHL.

3.6 Legal and Ethical Gaps: The Need for Reform

While international efforts such as those from the ICRC, the UN, and advocacy groups like the Campaign to Stop Killer Robots are pushing for reform, the legal frameworks governing autonomous technologies remain inadequate. As Nehal Bhuta (2021) points out, autonomous systems pose challenges that current IHL instruments cannot fully address. The absence of clear regulations for these technologies leaves room for states to exploit the regulatory gaps, prioritizing military objectives over the protection of civilians and respect for IHL.

The loopholes in existing IHL are particularly concerning in the context of autonomous systems that act with limited human intervention. For instance, Article 36 of Additional Protocol I mandate that new weapons must be reviewed to ensure compliance with IHL, but the review process is insufficient to address the specific challenges of autonomous systems. The ICRC has recommended amendments to this article, suggesting the inclusion of new criteria for evaluating the humanitarian impact of autonomous technologies before their deployment (Maurer, 2020).

In conclusion, the findings reveal the dual-edged nature of autonomous technologies in warfare. While such systems offer potential benefits, such as improved targeting accuracy and enhanced surveillance, their deployment without adequate safeguards poses significant risks to IHL. Case studies from Kabul, Nagorno-Karabakh, Ukraine, and Syria demonstrate the profound challenges these technologies pose to humanitarian principles. Addressing these

challenges requires a coordinated international effort to develop robust legal frameworks and ethical standards, ensuring that technological advancements align with the fundamental values of IHL. The ICRC's call for meaningful human control and the UN's GGE on LAWS are important first steps, but much more must be done to close the existing legal gaps and ensure accountability in autonomous warfare.

4. Recommendations

The integration of autonomous technologies into warfare has created new challenges for International Humanitarian Law (IHL). While these technologies offer the potential for greater precision, reduced risk to combatants, and enhanced efficiency, they also pose significant risks to the foundational principles of IHL, such as distinction, proportionality, and precaution. To mitigate these risks and ensure that the use of these technologies aligns with humanitarian values, this section outlines detailed recommendations aimed at strengthening existing legal frameworks, addressing gaps, and ensuring responsible deployment of autonomous systems in warfare.

4.1 Strengthening International Legal Frameworks

One of the most pressing issues identified is the lack of specific legal frameworks to regulate autonomous technologies in warfare. Existing IHL instruments, including the Geneva Conventions (1949) and Additional Protocol I (1977), were not designed with autonomous systems in mind, and as such, they fail to address the challenges posed by these technologies. To bridge these gaps, the following steps are recommended:

- **Amendment of Article 36 of the Additional Protocol I**: Article 36 of the Additional Protocol I mandates that states must evaluate new weapons to ensure they comply with IHL. However, the current language does not account for the unique challenges posed by autonomous weapons systems (AWS). It is recommended that Article 36 be amended to include specific criteria for evaluating autonomous technologies, particularly with regard to their ability to comply with the principles of distinction and proportionality. The ICRC has called for the inclusion of such criteria, noting that current provisions do not adequately regulate autonomous systems (Maurer, 2020).

- **Adoption of Binding International Treaties on Autonomous Weapons**: A global regulatory framework is essential for the responsible development and deployment of autonomous systems. A binding international treaty should be established to regulate Lethal Autonomous Weapons Systems (LAWS) and set out clear standards for their development, use, and oversight. This treaty should build on existing UN frameworks such as the Convention on Certain Conventional Weapons (CCW), which has been addressing emerging technologies like LAWS through the Group of Governmental Experts (GGE on LAWS). Key elements of such a treaty should include:

    - A ban on fully autonomous weapons that operate without human oversight, particularly in situations that involve targeting decisions.
    - Regulations for human oversight of all autonomous systems, ensuring that human judgment remains involved in critical decisions regarding the use of force.
    - Clear accountability mechanisms for the use of autonomous systems in warfare, holding states and manufacturers responsible for violations of IHL.

4.2 Meaningful Human Control and Accountability

A central concern regarding the deployment of autonomous systems in warfare is the ambiguity of accountability when violations of IHL occur. Autonomous technologies often lack the capacity to make contextual ethical judgments, raising significant concerns about the principle of accountability. To address this:

- **Mandatory Human Oversight in Autonomous Operations**: The ICRC has strongly advocated for meaningful human control over all autonomous systems (Maurer, 2020). This recommendation should be enshrined in both national and international regulations, ensuring that human operators retain final authority over critical decisions, particularly in targeting and the use of force. This oversight should be mandatory in all military contexts, ensuring that autonomous systems do not act independently in life-and-death situations.

- **Clarification of Accountability Structures**: Current IHL does not provide clarity on accountability when autonomous systems are involved in violations of IHL. Legal frameworks must explicitly define who is responsible when an autonomous system commits a violation:
    - Those who design algorithms for autonomous systems should be held responsible for ensuring that their systems comply with IHL.
    - Military personnel using autonomous systems should be held accountable for ensuring that the systems are deployed within the confines of IHL principles.
    - States deploying autonomous technologies must bear the ultimate responsibility for ensuring that their use complies with IHL, and they must take responsibility for any IHL violations caused by their deployment.

4.3 Establishment of a Universal Drone Registry

To improve accountability and transparency, the creation of a universal drone registry should be considered. This registry would track all drones and autonomous systems used for military purposes, providing detailed information on their capabilities, operational use, and compliance with IHL standards. Key features of this registry should include:

- **Mandatory Registration for All Military Drones**: States should be required to register all military drones and autonomous systems with an international registry, overseen by a regulatory body such as the United Nations or the ICRC. This registry would track weaponized drones, loitering munitions, and autonomous systems in real-time, allowing for greater transparency and accountability in their use.
- **Transparency in Deployment**: The registry should include information on the specific operational roles of autonomous systems, including details on their intended use, location of deployment, and the types of targets they are programmed to engage. This information should be made available to relevant international bodies, such as the ICRC and UN, to monitor compliance with IHL.
- **Verification Mechanism**: The registry should be complemented by a verification mechanism to ensure that states are adhering to international regulations and IHL principles when deploying autonomous systems. This verification could include inspections, audits, and the use of satellite monitoring to track drone activity.

4.4 Ethical Guidelines for Autonomous Warfare

The deployment of autonomous systems in warfare raises significant ethical concerns. To ensure that these technologies are used responsibly, ethical guidelines must be developed that prioritize human dignity, humanitarian values, and the protection of civilians:

- **Adoption of Ethical AI Standards**: The UN and ICRC should collaborate with AI experts and military ethicists to develop ethical guidelines for the design and use of autonomous systems in warfare. These guidelines should ensure that AI algorithms used in warfare align with the principles of IHL, including necessity, proportionality, and distinction. The ICRC's ethical standards for autonomous technologies should emphasize the need for machines to be programmed to understand and uphold humanitarian values during combat.
- **Ethical Training for Operators**: Human operators of autonomous systems should undergo mandatory ethics training that covers the complexities of deploying autonomous technologies in warfare. This training should focus on the ethical challenges posed by autonomous systems, including AI's limitations and the importance of maintaining human oversight in all critical decisions.

4.5 International Cooperation and Capacity Building

To address the global challenges posed by autonomous technologies, international cooperation is essential. States must work together to create a unified approach to the regulation of autonomous systems, ensuring that all parties adhere to the same standards.

- **Multilateral Negotiations**: States should engage in multilateral discussions under the auspices of the United Nations or the CCW to develop binding international agreements governing the use of autonomous technologies in warfare. These agreements should aim for global consensus on the regulation of autonomous weapons systems and the ethical deployment of these technologies.
- **Capacity Building for Developing States**: International organizations such as the ICRC, UN, and World Bank should offer capacity-building programs to help developing states regulate autonomous technologies. These programs should include legal and technical assistance to help states draft regulations, build regulatory frameworks, and implement oversight mechanisms for the deployment of autonomous systems.

5. Conclusion

The integration of autonomous technologies into warfare has brought both opportunities and challenges to International Humanitarian Law (IHL). These technologies, such as artificial intelligence (AI), autonomous weapon systems (AWS), and drones, offer increased precision and reduced risks to combatants. However, as demonstrated by incidents like the 2021 Kabul drone strike and Nagorno-Karabakh, autonomous systems can fail to comply with IHL principles, particularly distinction, proportionality, and necessity, potentially causing harm to civilians. While these technologies hold promise, their deployment must be carefully regulated. This paper has outlined the need for stronger legal frameworks, such as amending Article 36 of Additional Protocol I, establishing international treaties for Lethal Autonomous Weapons Systems (LAWS), and ensuring meaningful human control over autonomous systems. These actions will safeguard IHL principles and ensure accountability in cases of violations. Further, the creation of a universal drone registry, the development of ethical AI standards, and enhanced international cooperation are crucial to improving transparency, accountability, and oversight in the use of autonomous technologies. The establishment of independent oversight bodies and capacity-building programs will help ensure compliance with IHL, especially in conflict zones where these technologies are most heavily deployed. In conclusion, while autonomous technologies have the potential to enhance operational efficiency, their responsible use requires robust legal, ethical, and regulatory frameworks. It is imperative for the global community to take action now to ensure that these systems are deployed in a way that upholds the core values of humanity, dignity, and humanitarian protection central to IHL.

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Declaration of Emergency and Suspension of Human Rights in Bangladesh: A Legal Analysis

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Abstract: Emergency is an inevitable fate predetermined by nature. In order to address a scenario that poses a threat to the collective well-being and existence of the race and necessitates actions that are not typically considered in daily life, both an individual and a nation must be able to predict it reasonably. Declaring a state of emergency or using extraordinary powers gives rise to a variety of legal and political problems, including violations of human rights, especially in nations that have experienced long-term military control. The actions during an emergency are also alleged to have infringed a number of fundamental rights, including the right to a fair trial. Bangladesh is a democratic, sovereign country with a written constitution. Similar to most other written constitutions, the constitution of Bangladesh includes provisions for declaring a state of emergency in response to situations that could jeopardize public safety or the nation's economy by affecting large numbers of people or their property. Most modern constitutions have provisions for emergencies that may allow for a short departure from the constitution's normal safeguards. Given the extraordinary authority bestowed upon concerned authority during the emergency, interested parties could potentially be tempted not to give up their newly obtained power. Nonetheless, emergency provisions can act as a self-defense mechanism for democracy if they are properly designed and put into effect. It enables the State the power to deal with serious threats and difficulties while still adhering to democratic constitutional principles.

Keywords: Emergency, Suspension of Human Rights, constitution, Abuse, Legal Analysis

Introduction: Emergency is a fate that nature has predetermined. In order to address a scenario that poses a threat to the collective well-being and existence of the race and necessitates actions that are not typically considered in daily life, both an individual and a nation must be able to predict it reasonably. Without protections against such occurrences, the State will be wiped out.[1] In this era of constitutionalism, many nations have included provisions for emergencies in their constitutions. Bangladesh is a sovereign, democratic nation with a constitution. Its constitution's provision for declaring a state of emergency addresses the issue of imbalances in the society.[2] The Bangladesh Constitution, like the

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[1] Singh, M.P. (1990). *V.N Shukla's Constitution of India*. 8th ed. Eastern Book Company, p.63.

[2] Article 141A (1) of the Constitution of the People's Republic of Bangladesh 1972 states that "If the President is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency."

majority of written constitutions, has provisions for a state of emergency to cope with circumstances that either directly or indirectly threaten the safety of the public or the country's economy by having an impact on a significant number of people or their property. When a state of emergency is declared or extraordinary powers are exercised, it creates a number of legal and political issues involving the infringement of human rights, particularly in a country that has had protracted periods of military rule. Additionally, several fundamental rights, such as the right to a fair trial, are claimed to be violated by these activities. The 1973 amendment to the constitution that introduced emergency provisions was motivated by a concern over rising instability brought on by Bangladesh's then-rapidly deteriorating socio-political and economic realities.[3] Unfortunately, it is claimed that the declaration of an emergency in 1974, as well as in different situations in 1981, 1987, and 1990, was ineffective in addressing or resolving the problem for which it was made. Throughout this article, the author will attempt to analyze and assess the circumstances and the legal procedures under which a proclamation of emergency can be issued and the position of human rights during such a period of emergency.

Meaning of Emergency

Although several nations have emergency clauses in their constitutions, it is difficult to find a clear definition of the term. An emergency typically refers to a sudden occurrence that calls for prompt action.[4] Stephen P. Marks defines an emergency as a circumstance brought on by transient events that puts the State's institutions at danger and justifies the authorities in suspending the execution of certain rules and regulations.[5] According to the Merriam-Webster online dictionary, the phrase refers to an unexpected confluence of events or the consequent condition that necessitates rapid action.[6] A situation of emergency, on the other hand, is something that does not allow for any precise definition, as Lord Dunedin points out in the case of Bhagat Singh v. King Emperor. It alludes to a situation in which harsh measures are especially necessary.[7] Dr. S.M. Hassan Talukder in his book "Regarding Emergency: Bangladesh Perspective," expresses the opinion that, in the strictest sense, the concept of emergency, from the standpoint of constitutional law, means the suspension and restriction over certain fundamental rights of citizens in order to deal with a situation where the security of the state is threatened or the national interest is in danger.[8] The phrase "state of emergency" is used to refer to a legal framework that grants governmental institutions unprecedented powers to address existential threats to the public's safety.[9]

Classification of Emergency

Depending on the emergency's territorial scope and character, it might be classed. No matter the reason, a national emergency is any situation when an emergency has been proclaimed across the entire state's territory. A partial or state emergency, on the other hand, is proclaimed when it only affects a portion of a unitary state or a state of a federation. The

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[7] Jain, M. (1994). *Indian Constitutional Law*. p.111.

[8] Talukder, D.S.M.H. (2003). *Regarding Emergency: Bangladesh Perspective*. Bangladesh Law Research Center, p.2.

[9] Corteidh.or.cr. (2021). StackPath. [online] Available at: https://www.corteidh.or.cr/tablas/r28084.pdf.

Indian Constitution, for instance, permits the declaration of an emergency in all or part of India under Article 352. Article 232 also covers State emergencies. The Constitution of Pakistan also contains the same clauses.[10] On the basis of its nature, emergency may be of following types:

1. *Emergency of War:* An emergency of war is one that is declared as a result of a war or external invasion.
2. *Emergency of Subversion:* An emergency of subversion is one that is declared as a result of internal unrest within the State, such as a civil war, an anti-government movement, a riot in a specific region, or the threat of a natural disaster.
3. *Economic emergency:* An emergency is proclaimed when it is intended to address a situation in which the economy is either about to collapse or has already collapsed.

International Law on Emergency

International law aims to firmly integrate human rights into the rule of law by establishing standards and guidelines to direct State behavior during times of national emergency. The world has witnessed a dramatic evolution in international law since globe War II. Numerous human rights agreements that set forth various governmental commitments to uphold those standards have been ratified. The drafters of the International Covenant on Civil and Political Rights, who had learned their lessons during a protracted and disastrous battle, were all too aware that recognition of human rights for all "is the foundation of freedom, justice, and peace in the world."[11] However, under some international human rights treaties, State parties are allowed to temporarily modify their obligations and derogate from a number of human rights in specific exceptional cases, such as when a state of emergency threatens the nation's survival. Many States may unavoidably encounter challenging crisis situations at some point, such as war or other severe social upheavals, and in such situations, they may judge it necessary to restrict or even suspend the exercise of individual rights and freedoms in order to restore peace and order. The result could be disastrous for people who are subject to the constraints as well as for peace and justice in general.

Article 4(1) of the International Covenant on Civil and Political Rights[12] states that in times of public emergency that endangers the life of the country and whose existence is officially proclaimed, States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations. In accordance with Article 27(1) of the American Convention on Human Rights,[13] a State Party may deviate from its obligations under the present Convention to the extent and for the time strictly necessary by the exigencies of the situation, provided that such actions are not in conflict with its other obligations under international law and do not jeopardize the independence or security of the State Party. As stated in Article 15(1) of the European

[10] The Lawyers & Jurists. (2024). Emergency Provisions in Bangladesh: A Critical Analysis | The Lawyers & Jurists. [online] Available at: https://www.lawyersnjurists.com/article/emergency-provisions-bangladesh-critical-analysis/.

[11] First preambular paragraph of the International Covenant on Civil and Political Rights 1966, which is identical to that of the International Covenant on Economic, Social and Cultural Rights.

[12] United Nations (1966). International Covenant on Civil and Political Rights. [online] OHCHR. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

[13] Nations United, American Convention on Human Rights (1969), Article 27(1) Available at: https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf

Convention on Human Rights,[14] any High Contracting Party may take measures that deviate from the Convention's requirements in times of war or other public emergencies that endanger the lives of the nation, provided that those actions do not conflict with the High Contracting Parties' other obligations under international law.

International law restricts the use of emergency powers by governments by forbidding them to be used outside of the time and place stated in their notice of derogation. When examining Turkey's suspension of human rights safeguards in regions other than those included in the state's derogation notice, the ECtHR reaffirmed this principle in Sakik and Others v. Turkey.[15] When determining the territorial scope of the derogation in question, the court stated that it "would be working against the object and purpose of [the ECHR's derogation provision] if it were to extend its effects to a part of Turkish territory that was not explicitly named in the notice of derogation." Some of the most significant international human rights treaties allow States Parties to diverge from some of their obligations thereunder in times of exceptional crisis. The right to derogate is a flexible mechanism that can help governments manage exceptional crisis situations. The right to deviate from treaty obligations does not grant the derogating State unrestricted power to act whenever it pleases. It is a right that is limited by a variety of laws, such as the principles of universal notice, strict necessity, and the non-derogability of some rights.

Emergency Provision in the Indian Subcontinent

The Indian Subcontinent first saw the exercise of the executive's emergency powers under the Government of India Act, 1935. The Governor-General may declare a state of emergency under Article 102 of the Act, "if, in his judgment, a grave emergency exists, whereby the security of India is threatened, whether by war or internal disturbances." This clause, which is completely at odds with the British democratic system, was openly employed by the British king in India to advance their colonial objective. Unfortunately, despite the attainment of freedom and the establishment of independent sovereign states, these anti-democratic and anti-democracy provisions persisted in the constitutions of the Post Continent. Similar to this, Article 191 of the 1956 Constitution of Pakistan contained similar emergency provision. Pakistan's 1962 Constitution has a similar clause as well. Regardless of how well-intentioned the rules may have been, Pakistan's experience demonstrated that anytime such power was included into the constitution, the temptation to employ or, in most cases, misuse them was quite prevalent. Therefore, it was believed that these authoritarian powers and the goal of developing a living democracy were incompatible.

Emergency Provision in Bangladesh

As was previously discussed, it is accepted worldwide that in times of emergency, some rights are required to be suspended. Nearly all regional and global human rights accords have clauses that allow for the suspension of rights in dire circumstances. Bangladesh's original constitution excluded any clauses that would apply for declaring an emergency. The decision was bold, noble, and beneficial to a healthy democracy. However, the same group that wrote Bangladesh's constitution quickly included provisions for an emergency by passing the Second Amendment before nine months had passed.[16]

[14] Council of Europe (1950). European Convention on Human Rights. [online] European Convention on Human Rights. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

[15] Sakik and Others v. Turkey, 26 Eur. H.R. Rep. 662 (1998)

[16] Ahmed, M (March 2021). Bangladesh: Era of Sheikh Mujibur Rahman. *University Press Limited*. (Translated to Bangla by Joglul Alam) p.133.

Part 9A of the Constitution deals with emergency provisions. Three articles—141A, 141B, and 141C—are included in this part. According to Article l41A, the president may issue a proclamation of emergency if he is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war, external aggression, or internal disturbance. According to Article 141A, the president may proclaim a state of emergency whenever he believes that a grave emergency exists in which war, external aggression, or domestic unrest threaten Bangladesh's security or economic existence in whole or in part. In accordance with Article 141A (3), a declaration of emergency may be made if the President determines that there is an immediate threat of war, aggression, or other disruption.

The proclamation of emergency must have the prime minister's prior countersignature in order to be legal, according to the proviso of article 141A(l). Thus, the emergency declaration essentially hinges on the prime minister's wishes. The president is required to declare an emergency whenever the prime minister suggests it. Therefore, the declaration of an emergency depends on the executive's subjective satisfaction, and the court cannot contest the legitimacy of such satisfaction. The president of Bangladesh, unlike the presidents of India and Pakistan, has been given the special power and authority through Article 141A of the Constitution to only declare two types of emergencies, namely the emergency of war/external aggression and the emergency of internal disturbances. There are four common types of emergency situations, including war, subversion, economic crisis, and natural disaster.[17]

Impacts of Declaration of Emergency on Administration

The constitution places a number of procedural limitations on the president of Bangladesh, who may nonetheless proclaim a state of emergency.[18] As discussed earlier, the prime minister's advice is required for the president to take action in a parliamentary form of government like Bangladesh. After it is issued, it must be presented to the parliament for approval. If the next parliament is not in session, the president must present emergency measures at the first meeting, and the parliament must approve them within the first 30 days. If these conditions aren't met, it's not legal to declare an emergency.

The executive branch of the government holds the primary and sole power for managing the government on a daily basis. It executes State laws. The executive's power is successfully exercised by a balanced limit. The executive branch of Bangladesh, like that of other countries, has more authority during emergencies. The power of the executive branch contradicts the balance of power among the three state institutions. It becomes more challenging to uphold constitutional rights and obligations when there is this kind of power play.[19] The right to humane treatment while in prison is guaranteed to every defendant under the constitution. In the event that the defendant is imprisoned for an extended period of time, their families should be kept updated on their whereabouts, health, and access by phone and/or in-person visits. The accused should get fair treatment, be spared from brutal or inhumane treatment, not be tortured, have access to medical care (if required), and get enough food, water, and rest.

[17] Ahmed, M (1984). Bangladesh: era of Sheikh Mujibur Rahman. *University Press Ltd, Dhaka.* p.149.
[18] The Constitution of the People's Republic of Bangladesh, Articles 141A (1) and 141C
[19] Talukder, D.S.M.H. (2003). Regarding Emergency: Bangladesh Perspective. Bangladesh Law Research Center, p.2.

Nevertheless, detainee abuse is encouraged by arrests made under emergency circumstances.[20] Tens of thousands of people were reportedly arrested in the weeks following the declaration of a state of emergency in January 2007.[21] Without warrants, law enforcement officers frequently made arrests in the middle of the night. In many cases, they didn't identify themselves, acted in plainclothes, and base their choices on emergency legislation.[22] Security forces frequently send detained individuals to army barracks and other unofficial prison facilities where they are mistreated and tortured rather than bringing them immediately before a magistrate.[23] Torture is a cruel practice, even in dire circumstances.

The government violates due process when it hurts someone without strictly adhering to the letter of the law. All governments must guarantee that all defendants have the right to due process even if they have the right to look into, accuse, and prosecute anyone they feel has breached the law. This includes the defendants' rights to be informed of the circumstances surrounding their arrest and the charges brought against them, to view all relevant evidence, to have access to facilities for preparing a defense, to consult with a lawyer of their choice, to be tried without delay in a public setting, and to be free from coercion to confess. However, the right to due process is more or less elusive in Bangladesh, as it is in other nations, during a crisis.[24]

Impacts on Human Rights

The majority of contemporary constitutions contain emergency provisions that could permit a short detachment from the standard protections provided by the constitution.[25] The proclamation of a state of emergency typically confers additional authority in three primary domains:[26] (a) the temporary suspension or restriction of some (but typically not all) constitutional rights; (b) the temporary centralization of power in the central government at the expense of sub-national authorities and the executive branch; and (c) in certain instances, the postponement of elections.

The International Covenant on Civil and Political Rights obliges states to protect a wide range of human rights. While it allows governments to suspend the protection of certain rights during emergencies, this can only occur when the very existence of states is endangered. The states may suspend the protection of rights only where necessary to deal with the emergency, and only for as long as the emergency exists.[27] The Constitution of

[20] Olivier De Schuttes (eds) (2010). *International Human Rights Law Cases Materials and Commentary*. p.278.

[21] Refworld. (2023). World Report 2008 - Bangladesh | Refworld. [online] Available at: https://www.refworld.org/reference/annualreport/hrw/2008/en/52084 [Accessed 23 Dec. 2024].

[22] Refworld. (2023). World Report 2008 - Bangladesh | Refworld. [online] Available at: https://www.refworld.org/reference/annualreport/hrw/2008/en/52084 [Accessed 23 Dec. 2024].
LOCKED AWAY SrI LAnkA'S SecurIty detAIneeS SECuritY WitH HuMAn riGHtS. (n.d.). Available at: http://files.amnesty.org/archives/asa370032012eng.pdf.

[23] LOCKED AWAY SrI LAnkA'S SecurIty detAIneeS SECuritY WitH HuMAn riGHtS. (n.d.). Available at: http://files.amnesty.org/archives/asa370032012eng.pdf.

[24] Gross, E. (2006). *The Struggle of Democracy against Terrorism: Lessons from the United States, the United Kingdom and Israel*. University of Virginia Press, p.128.

[25] Emergency Powers International IDEA Constitution-Building Primer 18. (n.d.). Available at: https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf.

[26] Emergency Powers International IDEA Constitution-Building Primer 18. (n.d.). Available at: https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf.

[27] OHCHR. (n.d.). Permanent state of emergency cannot be used as a justification or ground for unilateral sanctions. [online] Available at: https://www.ohchr.org/en/press-releases/2021/03/permanent-state-emergency-cannot-be-used-justification-or-ground-unilateral.

Bangladesh, which was, later on, amended through the Constitution (Second Amendment) Act, 1973, does not make any attempt to balance between protecting the security of the state and respecting individual's fundamental rights at the time of emergency. The Constitution through Article 141C (1) has given a special unfettered power to the president during a state of emergency to limit or suspend the enforcement of all or some of the 18 fundamental rights guaranteed by Part 3 of the Constitution.[28]

At the time of emergency, the state can make laws restricting the fundamental rights guaranteed in articles 36 to 40 and 42. However, it cannot be said that the provisions in these articles would be suspended automatically. A plain reading of Article 141B clarifies that unless there is a law made during a proclamation of emergency, nothing is suspended automatically. Article 141C also corroborates this statement. Article 141C (1) further suggests that whatever restrictions may the President impose, it must be specifically mentioned in the Order and hence it is not automatic.[29]

Apart from Articles 36 to 40 and 42, no other fundamental rights can be curtailed. Article 26 and equality, non-discrimination remain in force. In Moyezuddin Sikder vs State,[30] Mr Sikder was charged under a law covered by the emergency power Rules and sought bail from the HCD. The government opposed it on the grounds of lacking the jurisdiction of the court during an emergency. The court held that the term 'any court or tribunal' in the Rule does not include the Supreme Court. In absence of any clear ouster clause, the Supreme Court's inherent supervisory power could not be interpreted as curtailed. Unfortunately, the Appellate Division overruled this interpretation. However, in another case, the petitioner challenged the restriction on the right to seek bail. The court held that Rule 11(3) of the Emergency Power Rules which pulled off the judicial power to grant bails is a fundamental right that cannot be infringed even during war.[31] In the case ADM Jabalpur vs Shivkant Shukl,[32] the Indian Supreme Court held that the Constitution is the mandate. It is the rule of law. There cannot be any rule of law other than constitutional rule of law. There cannot be any pre constitution or post constitution rule of law which can run counter to the rule of law embodied in the constitution. Nor can there be any invocation of any rule of law to nullify the constitutional provisions during the time of emergency. The right to liberty inheres in the body of humans and can never be taken away by the executive except in due process of law. It is so even if there is no constitution at all.[33] But, however, during an emergency in Bangladesh, as in other countries, the right to due process remains more or less illusive.[34]

It is argued that during the time of emergency, the provision for the writ of habeas corpus remains suspended until the withdrawal of emergency; but it is not proper perception. If the detention is not in conformity with the provision of law under which a man is purported to be detained, he should have the right to agitate the court of law in the proper way. In the UK, at the time of emergency, the writ of habeas corpus is not suspended, and the Emergency Power

[28] Begum, M. and Nurul Md Momen (2019). Emergency Governance, Bangladesh. Springer eBooks, pp.1–6. doi:https://doi.org/10.1007/978-3-319-31816-5_2031-1.
[29] Chowdhury, M.J.A. (2017). *An Introduction to the Constitutional Law of Bangladesh*. 3rd ed. Book Zone Publication, p.611.
[30] 59 DLR (HCD) 287
[31] Advocate Sultana Kamal vs Bangladesh, 14 MLR (HCD) 105
[32] AIR 1969 SC 33
[33] Takwani, C. (2005). *Lectures on Administrative Law*. 3rd ed. Eastern Book Company, p.28.
[34] Talukder, D.S.M.H. (2003). Regarding Emergency: Bangladesh Perspective. Bangladesh Law Research Center, p.2.

Act expressly prohibits the alteration of the existing procedure of criminal cases and no punishment is inflicted on any person without trial.

Scope of Abuse of Emergency Provision

It is possible that interested parties will feel tempted not to relinquish their newly acquired power due to the unprecedented powers granted during the emergency. Despite the sufficiency of the more traditional framework involving the criminal law, there is a risk that the government apparatus will abuse the extraordinary powers to manufacture too many "emergencies" and use a variety of repressive methods.[35]

Internal disturbance is the underlying cause of the emergency power abuse issue. The term is ambiguous, and because of this, the administration can easily abuse this emergency power. Therefore, even during times of calm, an emergency may be declared under the pretext of internal unrest even when there isn't any actual unrest. Due to the ambiguity of the term "internal disturbance," the governing elite actually exploits this power, as it did with the emergency declaration in Pakistan, as a ready weapon to crush the opposition and anti-government movement. The president has the authority to halt the implementation of all fundamental rights once an emergency has been proclaimed under Article 141C. A right loses all validity if the enforcement of it is discontinued, just like a car without an engine. Four times in Bangladesh's history, the country has proclaimed a state of subversive emergency, and each time, all fundamental liberties have been completely suspended. Such a condition cannot be justified by any democratic concept. Some rights, such as the right to property and others, have nothing to do with the threat of subversion. The enforcement of all rights, however, remained postponed at the time. Therefore, it should be clearly stated in the Constitution which specific rights would be suspended during a time of war, and which would be suspended during a time of subversion.

According to the information collected by local and international human rights groups, during the emergency period in 2007, over 250,000 people have been arbitrarily arrested and detained in the country during the first 13 months of the state of emergency, with a high proportion of them having been subjected to ill-treatment or torture — sometimes resulting in death — which remain endemic in the country.[36]

Why Emergency is needed

It is a matter of controversy because an emergency is necessary since an emergency may be right or wrong. The state can efficiently respond to crises because of emergency laws, which also ensure that the use of emergency powers stays within the bounds of the law. Emergency provisions, when carefully designed and implemented, can serve as a self-defense mechanism for democracy, giving them the authority to confront grave threats and challenges while remaining within the bounds of a democratic constitution.[37]

It is democratic to protect the security of the state as a whole rather than giving importance to the liberty of some individuals. If the state is destroyed or in a great danger of peril, the

[35] Masudul, A. (n.d.). Emergency Powers and Caretaker Government in Bangladesh. [online] Available at: http://www5.austlii.edu.au/au/journals/JlALawTA/2008/9.pdf [Accessed 23 Dec. 2024].

[36] Masudul, A. (n.d.). Emergency Powers and Caretaker Government in Bangladesh. [online] Available at: http://www5.austlii.edu.au/au/journals/JlALawTA/2008/9.pdf [Accessed 23 Dec. 2024].

[37] Emergency Powers International IDEA Constitution-Building Primer 18. (n.d.). Available at: https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf.

liberties of the individual citizens stand annihilated.[38] Lord Atkinson very precisely provided the necessity of emergency in the following words, “However precarious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment, namely the national success in the war, escape from the national plunder or enslavement."[39]

There are numerous arguments in favor of preserving the emergency clause. Any country could experience an unforeseen circumstance. We can use the current state of various Middle Eastern nations, like Tunisia, Egypt, Bahrain, and Libya, as an example. These nations are not in a normal position; rather, they are in an emergency, which calls for emergency measures. But occasionally, governments will proclaim an emergency to misuse their authority. For instance, after being charged with corruption and told to leave her seat in the Indian Parliament in 1975, Prime Minister Indira Gandhi proclaimed a state of internal emergency in India, enabling her to rule by decree until 1977.[40] During the emergency, political dissent was fiercely suppressed.[41] Therefore, how effectively the concerned Government uses emergency laws is up to them. The government bears primary responsibility for its proper usage. Hence, for some purposes, emergency provision is necessary. The Government uses the practice of suspending some rights during times of war and economic emergency but not during times of domestic unrest as a tool to repress the opposition and maintain control. Nearly all regional and global human rights accords have clauses that allow for the suspension of rights in times of crisis. Both Malaysia and its neighbor Sri Lanka have rules governing indirect emergencies. At the time of the tsunami, Indonesia[42] and other nearby nations declared an economic emergency. Therefore, there are a bunch of benefits to an emergency, but it all relies on how we use it. But it's not a smart idea to suspend such fundamental rights for a very long time.

Way Forward

Professor Bruce Ackerman[43] offers several recommendations for rewriting constitutions to improve a government's capacity to respond to future crises while also preserving individual freedom. He adopts a three-dimensional strategy. He offers detailed recommendations for constitutional structures in the first dimension that enable efficient short-term responses without permitting situations of emergency to become permanent fixtures. This dimension concentrates on an innovative system of political checks and balances. His second level incorporates financial rewards and remuneration into the processes. He offers a structure that enables courts to efficiently act to stop predicted abuses in his third dimension.

From the closer look of the emergency provisions, it appears that the constitution does not provide anything about the justiciability of the President’s satisfaction as to the existence of reasons warranting imposition of emergency. This opens the way for the judicial review of

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[38] Talukder, D.S.M.H. (2003). *Regarding Emergency: Bangladesh Perspective*. Bangladesh Law Research Center, p.2.

[39] R vs Halliday, (917) UKHL 1

[40] Pathak, V. (2024). Explained: The story of the Emergency. [online] The Indian Express. Available at: https://indianexpress.com/article/explained/explained-history/explained-the-story-of-the-emergency-9421688/.

[41] Ghosh, J. (2016). Indira Gandhi’s call of Emergency and Press Censorship in India: The Ethical Parameters revisited. [online] (2), p.1. Available at: https://www.caluniv.ac.in/global-mdia-journal/Article-Nov-2017/A4.pdf.

[42] IFRC (2013). *Emergency appeal final report Asia: Earthquake and Tsunamis*. [online] www.ifrc.org. Available at: https://www.ifrc.org/docs/Appeals/04/2804fr.pdf [Accessed 24 Dec. 2024].

[43] Ackerman, B. (2024). The Emergency Constitution. [online] yalelawjournal.org. Available at: https://www.yalelawjournal.org/essay/the-emergency-constitution.

the decision of the President on the ground of validity of the promulgation of emergency. In Advocate Sultana Kamal vs Bangladesh,[44] Justice ABM Khairul Haque opined that the satisfaction of the President is subject to judicial review. A term like "armed rebellion" or a particular description of internal disturbance should be added to our constitution to prevent the misuse of the emergency clause. The ability to declare an emergency with the approval of the legislature is occasionally abused by the executive. The President may summon a special session to get the consent of the parliament if it is not in session or continues to be dissolved.

Conclusion

There was no emergency clause in either our original constitution or the constitution that was adopted in 1972. This glaring absence was probably brought about by improper application of the emergency provisions in the constitution of our precursor, Pakistan. Even in the more or less credible Indian democracy, using emergency powers in the middle of Prime Minister Indira Gandhi's term in the 1970s was claimed to be inappropriate and proved to be unwise. The discussion and analysis make it clear that there are both advantages and disadvantages to the emergency provisions. These faults allowed all previous regimes to take advantage of the measures of emergency in order to suppress the opposition and keep their hold on power. Nevertheless, we cannot create great leaders because of our failing institutions. In order to construct institutions when democracy is resurrected, the nation looks to its leaders. If we are unable to exercise caution and due care when using special provisions, perhaps we shouldn't have them at all.

[44] 14 MLR (HCD) 105

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Assessment Of Psychological Harm Suffered During the Maoist Insurgency and the Judicial Approach towards it in Nepal

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Abstract: The International Criminal Court has not been able to construe harm embracing the aspects of mental harm on civilians during warfare. Even after the articulation of prohibition on violence to 'mental well-being' in Article 4 of Additional Protocol II, the lack of concrete definition of 'mental well-being' or 'mental harm' has left adversely affected civilians with no access to justice. It has also created a gap for the victims who suffered mental harm before death to trigger international criminal liability. More than three decades after the Maoist insurgency, traces of terror have still been floating around. While there have been efforts, albeit minimal, to indemnify the loss of life and other forms of human rights violations during the protracted ten years long armed conflict, the psychological harm, suffered by the aggrieved has been profoundly disregarded in Nepal. This paper explores the effect on the civilian victims of the Maoist Insurgency and depicts how narrowly the issue of psychological harm is construed by the Nepalese cohort and the approach taken by the Supreme Court of Nepal. On that account, the paper further studies the barriers to assessing mental harm, and the unfeasibility of relying completely on the expert's opinion. The traditional standard adopted by the Nepalese Supreme Court has not been able to address the issue, therefore, demanding alternative international dispute resolution mechanisms. In that context, the assessment of the psychological harm suffered by the civilians during the Maoist Insurgency must be carried out through a quasi-judicial body. In the end, the paper examines the possibility of a regional legal framework for the proper assessment of mental harm to victims of Maoist Insurgency taking into consideration the complex political situation of Nepal.

Keywords: Psychological, Insurgency, Judicial Approach, humanity, biological experiments

1. Introduction

Mental health has the same status as physical health (Gisel, 2016, p. 35). Several acts, under international criminal law, that involve the infliction of "mental pain or suffering," or the forms of "psychological oppression," are specifically criminalized. War crimes of torture, inhuman treatments, biological experiments, wilfully causing great suffering, mutilations, and crimes against humanity of torture, inhumane acts, rape, enforced prostitution, and sexual violence can be deemed as mental pain or suffering (Rome Statute, art. 8(2)(a)(ii).).

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Additional Protocol II of the Geneva Convention considers, that the intentional terrorization of civilians constitutes laws of war violation. The need for serious mental harm to be delineated pervades criminal and international criminal law according to which the elements of criminal conduct must be expressly defined in advance (Cassese et al., 2013, pp. 27-28). In Nepal, having gone through the decade-long armed conflict, marks of psychological harm, along with physical harm, are irreparable. While the physical harm sustained by the victims is always in the spotlight the severe psychological harm sustained by the victims is unscrutinised. It is therefore a matter of utmost necessity to start this discussion and alarm dispute settlement bodies to set standards for assessing mental harm.

2. Maoist Insurgency and the Psychological Impact on Civilians

The ten-year-long Maoist insurgency recorded the horrendous loss of lives, unlawful killings of civilians, cases of enforced disappearance, torture, and infliction of conflict-related sexual violence. When an armed conflict is not between two or more opposing states, but between government forces and non-governmental armed groups, it is considered "non-international" in character. Therefore, the armed conflict in Nepal was non-international and is based on the provisions of International Humanitarian Law (IHL) applicable to a non-international armed conflict. Between the launch of the "People's War" and the formal end of the armed conflict, the government recorded a total of 12,686 individuals including both combatants/fighters and civilians killed in the conflict (Ministry of Peace and Reconstruction, n.d.). There are 63,718 records of complaints in the Truth and Reconciliation Commission (hereinafter 'TRC') while the Disappearance Commission has 3,223 complaints in its database (Ghimire, 2023). The report of the Disappearance Commission showed that only 1,227 such families were compensated and a report from International Committee of Red Cross (ICRC) stated that 1,333 people were still missing since 2006.

The conflict also recorded instances of psychological torture wherein certain victims were threatened with execution (United Nations Office of the High Commissioner for Human Rights, 2012). The beating was found to be the most common method of torture that gave rise to psychological harm. Though it is evident that the victims and their families suffered immense psychological harm the execution authority has disregarded the topic and measures have not been taken effectively. Neither civilians nor the Supreme Court of Nepal has set a forum to bring these issues to light. The terrors of the Maoist insurgency last long with the never-ending trauma it has left among the victims. It is recognized that all victims of armed conflict are prone to experience serious suffering and enduring mental and physical harm underlined by associated stigma (Prosecutor v. Dragoljub, 2002).

The exact number of sexual violence cases during the Maoist insurgency is still unclear. Advocacy Forum stated that it collected evidence from over 200 victims while TRC recorded 316 complaints which is the lowest of all categories. Even though the recorded number is low, Thematic Report by TRIAL International, 2020 claims the number to be much higher because such cases remain much under-reported. The trauma suffered by women who were sexually assaulted is much higher because some of them were raped in front of their children, husband, and other members of family or friends. This led to denial from their families where in some instances they were even told 'no longer suitable' to be their wives. One heinous instance has been recorded where one victim also reported that Nepal Army used dogs to rape them (Rayamajhi & Shrestha, 2023a). Geeta Rasaili, former Maoist fighter, and sister of insurgency victim Reena Rasaili stated that victims of sexual violence have separate medical and psychological needs from that of other victims, so reparations ought to serve such needs (Rayamajhi & Shrestha, 2023b).

3. Experiences of Victims of Maoist Insurgency

Sita Raut, wife of a government postman recalled how she lost her senses hearing the death news of her husband and still has had a headache. Similarly, a mother of a 14-year-old was so scarred by the death of her son that her family took out a loan for care. This demonstrates the dark side of the economic situation of Nepal where a normal-class family is compelled to take a loan for treatment.

In Kavreplanchowk district, Reena Rasaili, a 17-year-old girl was raped and killed by security forces on February 13, four days before the brutal killing of Maina Sunwar, her 15-year-old cousin. Devi Sunuwar, mother of Maina witnessed Reena's killing, which is connected to the fact that the Royal Nepalese Army reached Devi's home searching for her and arrested Maina when told that Devi was not home. Maina's case was that of enforced disappearance and torture who was later brutally killed by the officials of Royal Nepal Army (RNA). Devi after witnessing her niece's killing lost her daughter and fought for justice but it remains elusive for Maina, Reena, and many other victims (Diez-Bacalso, 2023).

It has been widely argued that domestic courts are reluctant to make assessments of mental harm. However, recent jurisprudence of the international criminal tribunals has adopted an approach to incorporate the issues of psychological harm. In the *Furundzija case*, the ICTY Trial Chamber held that the rapes of the victim in front of the soldiers who were watching and laughing caused "severe physical and mental pain, in addition to the public humiliation" and, correspondingly amounted to enrages upon her dignity (Prosecutor v. Furundzija, 1998). Therefore, this serious issue of psychological harm, demands subjective as well as objective assessment. However, it must be noted that the assessment standard for psychological harm is complex and has different barriers that must be examined.

4. Barriers To Assessing Mental Harm

Due to its nature as well as due to the high evidentiary standards governing the criminal procedure in relation to other procedures governed by tort law, mental harm is exposed to complex assessment standards. In assessing the mental harm, the court must be sure beyond a reasonable doubt, and not an assumption that the mental harm has been inflicted (Weinstein & Dewsbury, 2006, p. 172). Mental harm cannot be appraised and constitutes a certain evidentiary burden that must be met (Lieblich, 2013). The assessment criteria for mental harm are more abstract than physical harm. This is true, especially in cases of prolonged exposure to hostilities it is difficult to prove that a particular attack caused the mental harm the civilian is found to have sustained (Lubell & Cohen, 2020, p. 174). In the case of *Aashakumari Chaudhary v. Nepal Government* (Aashma Chaudhary v. Nepal Government, n.d.), the victim stated that she could not register a complaint against cruel, inhumane behavior and rape due to the physical and mental harm caused by the behavior. The Supreme Court of Nepal remained silent and did not take any stand regarding the 'mental harm' element claimed by the victim. This reflects one instance of the null approach of the apex court towards mental harm.

Practice shows that English courts have required such harm to stem from a "recognized psychiatric illness" that is shock-induced (Law Commission, 1995, pp. 10-13; Law Commission, 1997, pp. 9-10). In that regard, ephemeral shock or emotions of fear and grief are not enough to induce any compensatory claims (Law Commission Report, 1997, pp. 10-12; Law Commission, 1995, p. 10). One thing that the court has emphasized is the reasonable person standard test. The incurred mental harm must be foreseeable according to the standards of a reasonable person (Law Commission Report, 1997, pp. 20, 27). The

question of whether a reasonable person would have suffered the mental harm that the plaintiff did as a result of exposure to the particular event must be determined. In tort, the damage sustained by the plaintiff must be linked to the time and place of the contested event to help establish causation. Another complex interpretation is that the law does not award damages to mere bystanders who have witnessed a traumatic event.

In Nepal, the concept of tort is completely raw as it was provisioned for the first time in the Muluki Civil Code, 2074 in 2017 having enforceability from 2018. A tort is still not the first option for the civilian victims of Maoist Insurgency in Nepal because, firstly, neither citizens nor judges or lawyers are aware of its proper concept and secondly there is a lack of culture in Nepal to approach the courts through torts even when all other circumstances allow. Therefore, the only alternative left with victims for legal proceedings is the criminal approach. They do not realize that they have a burden of proof and how difficult it is to establish their claim beyond a reasonable doubt if a criminal approach is chosen. Even though there could have been some other complexities, the burden of proof in tort is 'preponderance of the evidence' which apparently could have made it a lot easier for victims to establish their claim. For instance, mental harm could qualify as an independent ground for the award of such damages, even in the absence of any physical harm as established, by the Canadian Supreme Court, in the case *Saadati v. Moorhead (*Saadati v. Moorhead, 2017). This approach is less likely to be entertained in the Nepalese courts, especially regarding the psychological harm suffered by the victims of the armed conflict. The spectrum of mental harm is vague so its whole concept cannot be understood only as psychiatric illness. It will under-include the cases where civilians have suffered trauma but not specifically psychiatric illness (Solomon, 2017). As a matter of fact, the expert's opinion during the assessment has always remained unparalleled.

5. Non-Coherency of Expert's Opinion Regarding the Assessment of Psychological Harm

The need for a medical expert is considered in establishing mental insanity in criminal law as well as it is deemed to be required during mental harm assessment. The US courts have reiterated on numerous occasions that there is a substantial dispute within the mental health professions about diagnoses, that psychiatry is not an exact science, and that the law is unbound by extra-legal professional criteria (Kooijmans & Meynen, 2017). The International Criminal Court (ICC) needs procedural coherence because the standards for defining mental injury have not yet been established in its jurisprudence. The ICC mentioned the severe trauma that child soldiers experienced as a result of their recruitment in the case of *Lubanga* (Prosecutor v. Lubanga Dyilo, 2012, p. 1358). The Trial Chamber reached the judgment based on the expert's testimony (Prosecutor v. Lubanga Dyilo, 2012, p. 605), but the judges made no further explanations of which aspects of the expert's testimony indicated that the trauma constituted the threshold of gravity. In Nepal, even though the records are not clear, there is an estimation that at least 3,500 - 4,500 Nepali children were a part of the Maoist fighting force. In addition to that, thousands of Nepali children were forced at that time to flee their homes only to avoid recruitment by Maoists. Whether recruitment in Maoists' front or fleeing home to avoid it, the children suffered trauma in both cases (Human Rights Watch, 2007). The mental health consequences of conflict on children are apparent, with high rates of post-traumatic stress, depression, and anxiety in conflict-affected children (Slone & Mann, 2016). These effects are valid due to direct exposure to traumatic events and increased levels of daily stressors (Miller & Rasmusen, 2014).

Likewise, *the Katanga* case displayed a lack of specific standards for the measurement of mental harm (Prosecutor v. Katanga, 2014). In this case, where a woman had been repeatedly raped and assaulted, the judges' held that the victim had suffered serious mental harm and did not derive from any opinions or reports provided by mental health experts. Courts have limited the reliability of treatment experts considering they are not necessarily specialists in mental health. Courts are of account that it is impossible for an individual having a prior relationship with a party to be an objective witness. In addition, courts seem hesitant to allow treatment experts to provide opinions on post-traumatic stress disorder issues. In light of these scenarios, there is less viability to relying on an expert's opinion in measuring psychological harm. The discussion so far has illustrated the inability of the regular courts to address the issues coupled with uncertainties and ambiguities, and pushing for exploring other dispute settlement options.

6. Need For Alternative Dispute Settlement Mechanism to Assess Psychological Harm

Twenty years after the end of the armed conflict, the Commission on the Investigation of Enforced Disappearance of the Persons, Truth and Reconciliation Act, 2071 (2014) (hereinafter 'TRC Act') was brought into effect standing as a transitional justice mechanism. The Commission serves to find out and publish the incident of the grave violation of human rights committed in the course of the armed conflict from 13 February 1996 to 21 November 2006, between the Maoists and the government (The Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act, 2014). Though it recommends legal action to penalize offenders involved in the commission of grave crimes the commission does not qualify to be a quasi-judicial body. Moreover, the TRC Act is problematic for replicating the Ordinance on the Truth and Reconciliation Commission (2013 TRC Ordinance), which disregards basic principles of transitional justice (International Commission of Jurists, 2014). The Supreme Court of Nepal 2014 deemed the ordinance unconstitutional as it contravened international law (Madhav Kumar Basnet et al. v. Government of Nepal, 2004). Therefore, this has two far-reaching implications, first, the Supreme Court has not been able to gauge the psychological harm suffered by the victim for the standard nor has the victims' voice been heard. Second, the commission's intended transitional justice mechanism has not yielded anything and thus lacks an approach to settle disputes.

The Supreme Court of Nepal, arguendo ineffective in setting standards to measure psychological harm, is not a quasi-judicial body. The Court has not been able to address the issue wherein the commission also owes for not cashing in its responsibility, therefore necessitating a separate dispute settlement mechanism. In their judgment, the Supreme Court of Nepal omitted to provide reparation for the aggrieved suffering psychological harm, significantly failing to give the meaning to the term 'mental harm'. The European Court of Human Rights has awarded reparations to the families of victims of enforced disappearance due to the "anguish and distress" they have suffered (Cakici v. Turkey, 1999). In the Nepalese context, the Supreme Court has barely entertained 'distress and anguish', in relation to the victims of the armed conflict nor has it recognized that cases of mental harm should target psychological remedy, as applied in international law. The custom has been set to incorporate costs required for psychological and social services as compensation, and medical and psychological care (G.A. Res. 60/147, 2005) as rehabilitation. Owing to the court's inability, the assessment of the psychological harm suffered by the civilians during the Maoist Insurgency must be carried out through a quasi-judicial body.

7. Maoist Insurgency and the need for a Quasi-judicial Body

A quasi-judicial entity is partially judicial and has the authority to undertake investigations into disputed claims, hold hearings on such claims, and make decisions in a manner proximate to courts (Schoen v. Bd. of Fire & Police Comm'rs, 2015). The TRC Act has envisioned two separate commissions, the Truth and Justice Reconciliation Commission, and the Commission on the Investigation of Enforced Disappearance of the Persons, however, has neither conducted an investigation (Rai, 2023) nor been functioning keeping the issue at limbo. The record mainly emphasizes physical harm and talks less about psychological harm suffered by the victims and their families during the armed conflict. Likewise, international judicial and quasi-judicial bodies do not discuss incidental mental harm (Lieblich, 2013), therefore, making the situation more complex.

The establishment of a quasi-judicial body to deal with the psychological aspect harm in the issues of Maoist insurgency has now been a pressing necessity. This is sufficiently valid even more when the tort Jurisprudence in Nepal is still immature and evolving. As it happens, even civil damages in the form of psychological harm have not been aptly addressed by the Nepalese court. First, both commissions have lost their credibility as they have been built on a poor foundation. Its roots are in the TRC Act which blatantly disregarded the Supreme Court's verdict. The Supreme Court of Nepal directed the Government to criminalize to ensure that amnesties and pardons would not be available to those suspected or found guilty of the crime (United Nations, 1992; United Nations, 2006). Further, the Supreme Court went on to direct the government to criminalize enforced disappearance consistent with the UN International Convention for the Protection of All Persons from Enforced Disappearance. To crystalize the essence of the commission and the justice for the victims, the Court in the case of *Raja Ram Dhakal v. Office of the Prime Minister, et al* directed the Government to formulate national legislation for the implementation of the four Geneva Conventions (Raja Ram Dhakal v. Office of the Prime Minister, 2059). Section 25.2(a) of the TRC Act, bars any case from being recommended for prosecution if that has been mediated (Truth and Justice Reconciliation Act, sec. 22(5)). It is a rule under international law that the victim's right to an effective remedy and reparations as well as a state's obligation to hold perpetrators accountable for their crimes cannot be suppressed by informal processes such as reconciliation (International Commission of Jurists, 2014, p. 6).

Thus, these commissions' setbacks hold enough evidence that the existing dispute settlement mechanism (transitional justice mechanism) is a lame duck that needs immediate restructurings. The demand can only be fulfilled with a new commission designed to initiate action that incorporates the imminent subject of the psychological harm suffered during the armed conflict. Alongside this, the existing TRC Act needs to be amended as per the direction of the Supreme Court of Nepal, and the government's non-adherence to the Supreme Court's verdict shows the adamancy of the state actors. Thus, the dispute settlement regarding the issues of Maoist Insurgency is as complex as it has remained unsolved for more than twenty years. As argued in the above paragraphs, the assessment of psychological harm is technical, and mere procedural examination lacks accuracy. The courts also recognized that psychological suffering could be intensified by social and cultural conditions that can be particularly acute and long-lasting (UNHCR, 2012, p. 160). Considering that the effect of psychological harm can be protracted, this issue should be catered to in a different way than what the traditional courts have been doing. A separate commission must be established and it should start acting as a quasi-judicial body that rightly addresses the pre-and post-psychological harm induced by the ten-year-long armed conflict, which more or less, serves the essence of the alternative dispute settlement mechanism.

8. Development of Regional Mechanisms to Address Psychological Harm Suffered By The Victims

The aforementioned two responsible commissions deviated from linear path rings for a regional mechanism for the assessment of mental harm. However, the proposed regional mechanism ought to enable the contemporary approach to, first admit the issues of psychological harm, and second, set the assessment standard distinct and more appropriate than the traditional approach taken by the domestic courts. The patterns of stigmatization, ostracization, and overall psychological harm follow a similar pattern as for the shared culture and belief among the South Asian nations. A domestic dispute settlement mechanism stems from a politically influenced bubble rather than a regional mechanism.

One of the families of the disappeared person said that 'the political party has been defining the process, of establishing the Commission of Investigation on Enforced Disappeared Persons, to their advantage and the commission will not proceed independently (International Center for Transitional Justice, 2016).' It seems that there is absolutely no political will (Schultz, 2017). Though this does not resonate with the assessment of psychological harm, it portrays how biased the political parties are toward this issue. During his prime ministership, Baburam Bhattarai, an ex-Maoist leader, recommended the President's office to grant pardon to the offenders of the armed conflict (Neupane, 2016). This has been the approach of Nepalese political strata and the whole dispute settlement mechanism is diluted by such propositions. In a situation where the two established commissions to look over the matter are dysfunctional and shrouded with political interest, the establishment of a regional dispute settlement mechanism to assess psychological harm suffered by the victims can be the highest possibility. The regional mechanism of Africa for Human Rights embraces African values and includes innovative elements linked to the history of African civilization (FIDH, n.d.). Along with this, it broadly continues the modernity and universality of human rights of international human rights instruments. This shows that at the regional level, the mechanism can be structured with a balance of traditional values and legal aspects (FIDH, n.d.). Therefore, the special provisions that seem to be required for the traditional courts of South Asia to take a bold stand in the matter concerning the assessment of mental harm can be articulated through regional legislation.

9. Conclusion

In an existing scenario, there is only a minimum possibility of setting standards for the measurement of psychological harm, let alone justice for the victims of the Maoist insurgency. The state-orchestrated mechanism that is in place shows non-functional attribution that left victims of the armed conflict unsecured. When the alternative dispute settlement is established in place of traditional courts to set criteria that fairly compensate the psychological harm incurred by the victim, it must show a tendency to incorporate psychological service and care for the aggrieved. It then carries the approach to reform and rehabilitate the victim owing to the situation that mere compensation may not minimize the harm suffered by the victims. Therefore, the paper emphasizes more on an immediate requirement to establish a separate dispute settlement body in the form of a Quasi-Judicial body as the prevailing mechanisms are at a vulnerable stage. In exception to that, based on shared culture, beliefs, and legal arrangements, a regional mechanism should be framed to deal with the issues of psychological harm setting the balance standard to determine it. Imposition of such a mechanism to a considerable extent solves the issues surrounding Maoist insurgency bestowing impartial justice to the psychologically impacted victims of the armed conflict.

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Trophy Hunting and International Law: Compliance through Auctions and Implication of Ban on Imports of Hunting trophies

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Abstract: This abstract deals with the complex relationship between Trophy Hunting conducted through the auction process and its compliance with International Law. It asserts when Trophy Hunting is regulated and managed within a structured framework, it adheres to internationally recognized legal standards that advocate for sustainable wildlife conservation and responsible use of natural resources. Moreover, the implications of blanket bans on the importation of Hunting Trophies are critiqued for potentially contravening these legal principles. Such prohibition may disrupt wildlife conservation efforts and negatively impact local economies that depend on the regulated practice of hunting as a means of supporting both environmental stewardship and community livelihood. This analysis seeks to illuminate the conflicting dynamics between legal provisions that support responsible hunting and the restrictive regulations that may compromise the overall effectiveness of conservation strategy.

Keywords: Hunting, Indigenous people, Environment, Conservation, Subsistence

[Neville Bonner who said ***"We as Aboriginal people still have to fight to prove that we are straight out plain human beings, the same as everyone else"***. An elder of the Jagera people, Neville Bonner was the first Aboriginal Australian to become a member of Australia's Parliament. An independent thinker, he often faced criticism from left-wing Indigenous activists.]

PART I

The Trophy Hunting Conducted Through the Auction Process, By Hunters Complies with Conventional International Law

Hunting is a Right of Indigenous People as per International Law

Hunting is a cherished tradition in many countries around the globe, often tied to the people's cultural practices, identity, and heritage as defined in **Article 26 of the UN declaration** which states their right to sources, they have traditionally used. (United Nations Department of Economic and Social Affairs, 2018) This age-old practice strengthens communal bonds and fosters profound connections to the land and its resources. Hunting plays a vital role in

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the local economy in some parts of the world, providing essential income and supporting families and communities.

Moreover, in many rural and Indigenous communities, it is a crucial source of subsistence. This right is explicitly addressed in **Article 23 of ILO 69**, which affirms the longstanding cultural heritage and traditional practices and highlights the importance of sustainable hunting practices that maintain ecological balance. (International Labour Organization, 1989) By exercising this right, the Indigenous community not only supports their cultural identity but also contributes to the conservation efforts that benefit the broader environment in which they live.

Indigenous People are Autonomous in their Decisions as per the Indigenous and Tribal Peoples Convention, 1989

The hunting right is given to the Indigenous community as it fulfills their subsistence. However, Article 4 of the ***United Nations Declaration on the Rights of Indigenous People*** clearly states that the Indigenous community has autonomy over their decisions in means of financing. (United Nations, 2007) In addition to that **Article 7.1 of C169** – ***Indigenous and Tribal Peoples Convention, 1989*** has also stated it is their right to decide their own priorities to affect life development extent to their lands. (International Labour Organization, 1989) Furthermore, specifically mentioned in **article 23.1** hunting is recognized as an important factor in the maintenance of their economic self-reliance and development. Indigenous peoples have the right "to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. (United Nations High Commissioner for Refugees, 2019) Because an Indigenous people's right to its own means of subsistence is tied to the people's right to exercise control over natural resources and the physical environment, deprivation of control over natural resources and the environment "necessarily deprives Indigenous peoples of their own means of subsistence." (Climate Change Litigation, n.d.)

While international law continues to deny indigenous people's recognition as states, these peoples are increasingly being recognized as subjects, rather than objects, of international law. For some time, there has been a trend toward recognizing that "Indigenous peoples are members of the international community who have legal personality under international law— 'subjects' of international legal rights and duties rather than mere 'objects' of international concern." (ResearchGate, 2025)

Indigenous peoples possess the inherent right to actively determine and shape their own priorities and strategies regarding the development and utilization of their lands, territories, and the resources within them. This right empowers them to make decisions that reflect their cultural values, needs, and aspirations, ensuring that the management of their environments aligns with their vision for sustainable development and self-determination. Indigenous peoples have the right to establish and prioritize their own strategies for the development and use of their lands, territories, and resources. (United Nations High Commissioner for Refugees, 2019) Similar recognitions of indigenous peoples' subsistence rights are included in the OAS's own Proposed Declaration on the Rights of Indigenous Peoples. (Organization of American States, 2016)

Exception in CMS Article III and Means of Subsistence

In the exceptions of CMS **Article III paragraph 5 (b) and (c)**, this non-traditional trophy hunting is helping in the propagation or survival of the affected species and also

accommodates the needs of traditional subsistence users of such users. (CMS, 2021) Subsistence activities represent efforts to preserve, or restore, the consumption of foods that played an important role in preserving the health of tribal members in the past. These natural foods, preserved through traditional methods, often provide superior nutrition, free of chemical preservatives and other additives, as compared to store bought foods and to "government cheese" and other commodities made available through the Food Distribution Program on Indian Reservations. (United States Department of Agriculture, 2019) The Petition also relied on the subsistence rights provisions of the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR") 154 as further support for the Inuit claims. Both the ICCPR and the ICESCR provide that "[i]n no case may a people be deprived of its own means of subsistence."155 The Petition argued that the United States, as a party to the ICCPR, is bound by its principles, and as a signatory to the ICESCR, must act consistently with the principles of that agreement as well. (Climate Change Litigation, n.d.)

Indigenous People have the Right to Improve their Economic and Social Condition

The trophy hunting which is subject to capital per year and allocation of funds for their conservation is quite manageable through this auctioning. The Indigenous people in their welfare as in **Article 21** Indigenous peoples have the right to improve their economic and social conditions without discrimination in such areas as education, employment, housing, and health. (United Nations, 2007) These activities bridge the gap between the past and the present and between the present and the future, of tribes and communities. They serve as bridges to connect different generations, as well as tribal members generally. Finally, subsistence activities connect the economic life of a tribe to its cultural and spiritual life. (Sanborn, 2023)

South Africa was granted Trophy Hunting of the Endangered Species

In the 2004 13th Conference of the Parties (CoP13) of CITES, South Africa was granted limited hunting of the endangered Southern White Rhino. (CMS, 2021) Since then, data from the IUCN African Specialist Group indicates that the number of Southern White Rhinos has increased from 1,800 to over 20,000. (International Union for Conservation of Nature and Natural Resources, 2008)

Trophy Hunting is allowed in most parts of the world with proper guidance and restrictions:

- A guideline outlined for sustainable community-based trophy hunting was framed named "Safeguarding Biodiversity Conservation through Sustainable Use in Gilgit-Baltistan: Guidelines for Streamlining the Community-Based Sustainable Trophy Hunting Programme in Gilgit-Baltistan" was prepared by the World Conservation Union (IUCN) Pakistan. The Italian Agency for Development Cooperation supported it. (O'Sullivan, 2012)

- Most of the African region is quite dependent on the revenue of Trophy hunting rather on tourism. (International Trophy Hunting, 2019)

Wildlife has Great Cultural Significance for Local Communities

Mentioning the example of ungulates who are associated with fairies in folklore; a symbol of majesty. Although hunting used to be for subsistence; communities performed special rituals before embarking on hunting expeditions. Flare-horned Markhor is Pakistan's national animal. Since CTHP is operational, poaching of wild animals in the community conservation

areas has decreased, increasing not only the population of ungulates (i.e., Markhor, ibex, urial, and blue sheep) across the range but also that of carnivores (snow leopard, wolf, and lynx) in the region, (Ghafoor, 2016) particularly that of Markhor in the community conservation areas of Khyber Pakhtunkhwa and Gilgit-Baltistan. The population of Astore Markhor (*C. f. falconeri*) in Gilgit-Baltistan increased from 1900 in 2012 to 2800 in 2026. The population of Kashmir Markhor (*C. f. cashmiriensis*) in Khyber Pakhtunkhwa increased from 2493 in 2009-10 to 4878 in 2016-17 (Jackson, 2004). Markhor and snow leopards listed as endangered earlier were upgraded to "near threatened" species by the IUCN in 2015. (Jabeen, Ajaib and Siddiqui, 2015) In Balochistan, the population of Sulaiman Markhor (*C. f. megaceros*) increased from 1742 in 2000 to 3518 in 2011. There is no more hunting for subsistence (food) by locals. As a result, the socio-economic outlook of the participating communities has also improved. (Community-Based Trophy Hunting Programs, n.d.)

Community-led Trophy Hunting Programs Showed an Evident Impact on the Cconservation of CITES-listed Markhor Populations in Gilgit-Baltistan and Khyber Pakhtunkhwa and helped Protect its Associated Biodiversity in the Area

The increase in Markhor numbers in Pakistan led to improving its conservation status in the IUCN Red List (2018) from endangered to near threatened species since 2015. Since the trophy hunting program is a significant source of income for the local communities and the governments, other forms of hunting are fully restricted, and poaching has reduced significantly in all community conservation areas people are more involved and dedicated to conservation efforts, and their attitude towards wildlife has favorably changed. (Jackson, 2004)

As a result of CTHP, socio-economic conditions have improved but people's attitude towards wildlife has also changed positively and the species abundance in the area has increased manifolds. The program has also resulted in an increase in protected area coverage in Pakistan, where several critical micro-habitats, not protected previously under any category of protected areas, are protected under community conservation areas. (Community-Based Trophy Hunting Programs, n.d.)

Zimbabwe Program on Trophy Hunting

Community-based natural resource management (CBNRM) aims to involve local communities in wildlife management and increase financial benefits from wildlife-related revenue. Results have been mixed, as demonstrated by Zimbabwe's CAMPFIRE program, which created economic incentives for habitat restoration. At its peak, CAMPFIRE generated over $20 million, primarily from trophy hunting, enabling communities to manage their resources effectively.

Rare or Threatened may be included in Trophy Hunting as Part of Site-specific Conservation Strategies

Trophy hunting is a form of wildlife use that, when well-managed, may assist in furthering conservation objectives by creating revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods. Although a wide variety of species (many of which are both common and secure) are hunted for trophies, some species that are rare and threatened may be included in trophy hunting as part of site-specific conservation strategies. Examples include Cheetah Acinonyx jubatus and Black Rhinoceros in southern Africa, and straight-horned Markhor Capra Falconeri megaceros in the Torghar Valley of Pakistan, all of which are species listed in Appendix I of CITES. (International Trophy Hunting, 2019)

WWF Policy and Considerations on Trophy Hunting

The WWF views trophy hunting as a potential conservation tool that can be part of an overall strategy for threatened species, which include vulnerable, endangered, and critically endangered categories. However, the appropriateness of this approach must be assessed on a case-by-case basis, as it could conflict with conservation efforts, especially for species regarded as icons of nature. (WWF, 2016) Therefore, trophy hunting programs must meet minimum conservation standards to demonstrate clear benefits for both the species populations and local communities.

It is essential to emphasize that trophy hunting which takes place through a carefully regulated auction process, is in full compliance with established international law. This practice is supported by international conservation agreements that aim to protect biodiversity while allowing for sustainable hunting. The auction process ensures transparency and accountability, as it provides necessary funding for conservation efforts, local community development, and wildlife management programs. By participating in these auctions, hunters contribute to the preservation of habitat and the overall ecosystem, helping secure this iconic species' future while promoting responsible hunting practices. The involvement of legal frameworks ensures that such activities are conducted ethically and in a manner that respects both wildlife and local cultures.

PART II

The Ban on The Importation of Hunting Trophies Violates Conventional International Law

The purpose of introducing the convention regarding the indigenous and tribal people was to recognize them as a human being and their rights to be protected by all means. The core issue at hand pertains to the prohibition on importing hunting trophies, a prized wild goat species. The ban raises concerns as it appears to contravene established International Law, which governs the trade and conservation of endangered species. The implications of this restriction not only affect hunters and collectors but also have broader ramifications for wildlife conservation efforts and international trade regulations.

Article III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

According to Article III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), all trade involving specimens of species listed in Appendix I must adhere strictly to the regulations outlined in this article. Specifically, whenever a specimen from a species included in Appendix I is to be exported, it is necessary to first obtain and present a valid export permit. This permit can only be issued if several critical conditions are satisfied:

a) The Scientific Authority of the exporting country must confirm that the export will not have detrimental effects on the survival of the species in question;
b) The Management Authority of the exporting country must ensure that the specimen adheres to all local wildlife protection laws;
c) The Management Authority must guarantee that living specimens are handled and shipped in a manner that minimizes the risk of harm; and
d) The Management Authority must verify that an appropriate import permit for the specimen has been secured. (CITES, n.d.)

Each Import has been Conducted with the Appropriate CITES Permits
Following the regulations established by CITES, it is essential to highlight that there are currently no restrictions on the importation of hunting trophies. Each import has been conducted with the appropriate CITES permits, ensuring compliance with international conservation laws. Throughout this period, no objections or concerns have been raised regarding these imports, reflecting a smooth and regulated process.

Misunderstanding about what "Commercial Purpose"
We see that the diplomatic note has objected, stating that trophy hunting is for commercial purposes and is banned under CITES. It is important to clarify that there is a misunderstanding about what "commercial purpose" or "commercial hunting" means. **"Commercial purpose refers to the intention of using a work for financial gain or profit, as opposed to personal, educational, or non-profit reasons."** (Library Fiveable, n.d.)

10th CITES Meeting, a New Initiative was Launched that brought a Shift in Policy
Hunting of all big game animals was banned throughout Pakistan due to increasing irregularities and concerns for wildlife conservation. This prohibition extended to the export of hunting trophies, which was completely halted to protect these majestic creatures. (TRAFFIC, 2019) However, after the 10th CITES meeting, a new initiative was launched that brought a shift in policy. The program was reinstated in specific community conservation areas, aimed at incentivizing local communities to actively engage in conservation programs. This change allowed foreign hunters to legally export up to six markhor trophies, which consist of magnificent heads complete with their impressive horns, each year from Pakistan. This initiative not only serves to enhance wildlife conservation but also provides much-needed financial support to the communities involved. Between 2000 and 2019, a variety of Caprinae species and sub-species were exported from Pakistan, further illustrating the importance of sustainable practices in the region's wildlife management efforts. (Community-Based Trophy Hunting Programs, n.d.)

Countries to use Restrictive Trade Measures to Promote Health, Safety, and Conservation
With the increased international attention to environmental conservation, the General Agreement on Tariffs and Trade (GATT) (WTO, 2024) trade regime continues to limit the use of trade restrictions to promote conservation goals. Although there are GATT provisions that permit countries to use restrictive trade measures to promote health, safety, and conservation, the interpretation given to these exceptions seems to indicate that some CITES-type trade sanctions would not be permissible under the **GATT.**

Enforcement Mechanisms are Insufficient to Force Compliance with the Terms of the Convention
The legal effect of such CITES recommendations is unclear. The fact that recommendations are so labelled indicates that they are not legally binding. Partly because Article XI (3) (e) does not bind parties to **CITES** recommendations, **CITES** has received continuous criticism that its enforcement mechanisms are insufficient to force compliance with the terms of the Convention.

Another important provision of Article XIV states:
[the] Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention, or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external customs control. (CITES, n.d.)

This provision appears to limit the power of a CITES member to take trade measures. Article XIV could be interpreted to subordinate CITES obligations to other international agreements involving trade agreements, such as the **GATT.** This provision is important in determining the outcome of a conflict between CITES and the GATT. CITES resolution is not binding on members because its terms do not require nations to accept and implement Standing Committee recommendations. CITES recommendation, such as one requesting parties to consider broad import bans, would have even less authority than one recommending a ban on only CITES Appendix-listed species. Therefore, a CITES member that completely ignores the recommendations to consider imposing import restrictions would not violate CITES.

The Application of a quota, as either an export or import restriction, on another Contracting Party is a *prima facie* violation of the GATT

Under Article XI, the application of a quota, as either an export or import restriction, on another Contracting Party is a *prima facie* violation of the GATT. (Cambridge Core, 2024) Article XI:1 reads in part:

No prohibitions or restrictions other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses, or other measures shall be instituted or maintained by any Contracting Party on the importation of any product of the territory of any other Contracting
Party.

(WTO, 2024) When a country imposes import prohibitions on a product, it is technically a "zero-quota," and therefore *a prima facia* GATT violation. GATT Article XX provides specific exceptions to GATT provisions, including Article XI. The burden of proof is on the country asserting the Article XX exception to justify the trade measure taken. Article XX has generally been interpreted as affording protection only within a nation's borders; (Jackson, 2004) most trade experts concur with this interpretation.

Trade Measure is "Necessary" only when there is no Alternative measure Available

Trade measure is "necessary" only when there is no alternative measure available, and that trade measure must be the trade measure least inconsistent with the GATT. (Jackson, 2004) The Thai government claimed a ban on imported cigarettes was necessary for the health of its citizens. The GATT Panel flatly rejected the Thai government's assertion that Article XX (b) applied. Citing the Section 337 Patent Panel decision, the Panel found that the Thai government could realize its goal of eliminating smoking through other means "reasonably available to Thailand to control the quality and quantity of cigarettes smoked. (SICE, 1990)

GATT Panel Determined that the U.S. Restriction on Imports of Yellow Fish Tuna from Mexico

In Tuna-Dolphin I, a GATT Panel determined that the U.S. restriction on imports of yellow Fish tuna from Mexico could not be justified under Article XX (b). The Panel said:
[E]ven if Article XX (b) were interpreted to permit extra-jurisdictional protection of life and health, [U.S. action under the MMPA] would not meet the requirement of necessity set out in that provision. The United States has not demonstrated that it has exhausted all options reasonably available to it to pursue its dolphin protection objectives... in particular through the negotiation of international cooperative agreements.

Finally, the Tuna-Dolphin II Panel further limited the "reasonable alternative" interpretation of "necessary" when it stated that the term "necessary" meant that "no alternative existed."' Without explaining what alternatives could have been used, the Panel concluded:

[M]easures taken to force other countries to change their policies, and that was effective only if such changes occurred, could not be considered "necessary" for the protection of animal life or health. (Wimberley, n.d.)

Canadian Herring and Salmon Dispute

In the Canadian Herring and Salmon dispute, Canada justified its export prohibition on herring and salmon to protect depleted stocks, while the U.S. argued it was for job preservation and protecting processors. The GATT Panel ruled that trade measures under Article XX (g) must be "primarily aimed at" conservation, suggesting that punitive measures alone are not permitted if they do not serve conservation goals. This standard was also applied in Tuna-Dolphin II, where it was concluded that the U.S. embargo on tuna would not achieve conservation objectives unless exporting countries changed their policies. (Jus Mundi, 1987)

Conclusion

It is essential to emphasize that trophy hunting which takes place through a carefully regulated auction process, is in full compliance with established international law. This practice is supported by international conservation agreements that aim to protect biodiversity while allowing for sustainable hunting. The auction process ensures transparency and accountability, as it provides necessary funding for conservation efforts, local community development, and wildlife management programs. By participating in these auctions, hunters contribute to the preservation of habitat and the overall ecosystem, helping secure this iconic species' future while promoting responsible hunting practices. The involvement of legal frameworks ensures that such activities are conducted ethically and in a manner that respects both wildlife and local cultures. Ban on the importation of hunting trophies, a species known and significant in biodiversity, infringes upon established conventions in international law. This prohibition raises concerns as it neglects the principles that guide sustainable wildlife management and international trade agreements. This ban may ultimately undermine efforts to protect the species and promote responsible stewardship of wildlife resources by failing to consider the legal framework designed to balance conservation with regulated hunting practices. Furthermore, the implications of this ban extend beyond conservation, impacting local economies that rely on regulated hunting as a source of income and funding for conservation initiative.

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Artificial Intelligence as a "Double-Edged Sword": Analysis through the Socio-Legal Viewpoints

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Abstract: The concept of Artificial Intelligence is not a new one. The groundwork of it began in the early 1990s. However, it became worldwide relevant in 2020 when Open AI introduced GPT-3, which uses deep learning to create code, poetry, and other language writing tasks. This study dives deep into the societal impact and legal vulnerability of artificial intelligence and tries to explore possible solutions to problems like a reduction of creativity, privacy infringements, copyright infringements, academic dishonesty, and reputation degradation arising from it. An eye for an eye ends up making the whole world blind, as stated by Mahatma Gandhi. Artificial intelligence nowadays is forcing us to believe anything that appears on our screen while we are using our eyes. We are being victims of illusions created by advanced technology in our conscious and subconscious states of mind. Technological growth has transformed humanity exponentially to this day, and this growth will not stop in future. It is important to remember that advancements in science and technology shouldn't impede social equilibrium. However, artificial intelligence, on the other hand, made life easier for people. They can now access a wide range of information based on a specific topic. This study is based on the socio-legal perspective of artificial intelligence, and it contains both qualitative and quantitative data, which means it takes the mixed method approach of research study.

Keywords: Artificial Intelligence, Legal, Socio-Legal, Risk to humanity, technology

1. Introduction

Innovation has always been an integral part of human nature. From the dawn of mankind, we started to think creatively in order to make our life easier. Mankind's Hunger for Innovation risen exponentially, after they came across Science and Technology. The advancement of technology in the twenty-first century has given rise to a new level of invention known as artificial intelligence. Although the foundations of artificial intelligence were established prior to the year 2000, they have gained greater significance in the last few years as a result of chatgpt's immediate accessibility to all social classes. With the emergence of fascinating phenomena like various chatbots that are prepared to engage in meandering discussions and the ability to imitate famous voices, artificial intelligence has quickly made its way from

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computer science textbooks to the general public. However, technology which refers to machines that have been instructed to perform forth intelligent tasks also poses a serious danger to the fortunes of tech companies, entire industries, and society as a whole. Artificial Intelligence can be compared to a double-edged sword, as it presents both immense opportunities and potential risks to society. On the one hand, artificial intelligence has the power to transform a number of industries, increase productivity, and improve decision-making. However, it also brings up issues with algorithmic biases, employment displacement, the moral implications of autonomous systems and many more. This paper acknowledges both the positive and negative outcomes of artificial intelligence. However, it puts more emphasis on the negative aspects. because positive outcomes from technological growth are always expected by society.

1.1 Methodology

Data Collection for this study involves data collected from secondary sources that have been provided with proper references. Credible and prestigious resources like articles, journals, reports, and news publications were used in this paper. The data has been collected based on its relevancy to the research topic, mainly focusing on the broader aspects of artificial intelligence in both a positive and negative sense. In terms of data analysis, the collected data underwent a thorough analysis process that involved identifying key themes and patterns within the existing literature. Through content analysis and critical review, it focused on both the positive and negative consequences of artificial intelligence and suggested possible solutions to the emerging problems due to improper use or misuse of this advanced phenomenon. Limitations include the fact that this socio-legal paper revolves around the data collected from secondary sources and the researcher's source-based critical insight. The absence of primary data can be due to the researcher not having firsthand exposure to something related to artificial intelligence. Moreover, the legal aspects of artificial intelligence discussed in this paper are mainly in the draft stage and will soon be enacted.

2. Impact of Artificial Intelligence on Society

Artificial intelligence is transforming society in various dimensions, carrying substantial consequences for individuals, corporations, and governments. It is transforming daily life, work processes, and interpersonal interactions by streamlining routine tasks and advancing innovative technologies. As AI develops, society must address its potential effects on employment relocation, privacy concerns, algorithmic bias, and overall willingness to ensure that it is developed and applied ethically and positively. The effects of artificial intelligence on society are topics of increasing concern and curiosity. The social, economic, and moral consequences of AI must be recognized and addressed by society as it becomes increasingly common. Artificial intelligence technologies possess the capacity to yield notable societal, economic, and ethical implications. These implications may have immediate impacts on people and groups or may have larger implications for society as a whole. There are worries about the development and deployment of AI-powered autonomous weapons, which could make life-or-death decisions without human intervention. In the long run, there are fears that AI could pose an existential risk to humanity (Krafft et al., 2019). The impact can be summarized by a statistic that a generative AI model named ChatGPT was introduced to the general public in November 2022. It took only 5 days for ChatGPT to reach the 1 million user milestone (Ebert and Louridas, 2023). So, we can well and truly understand the instant impact this new phenomenon had on society.

2.1 Blind Dependability on AI: A Blessings or Curse

Artificial intelligence has grown to be a vital component of modern society, influencing a wide range of sectors including healthcare, education, and transportation. Although integrating AI has clearly produced many advantages and improvements, it also raises questions about how dependable it will be. With more and more jobs being handed off to AI systems, one has to wonder if this over-reliance on AI is good or bad. One positive aspect of AI is its reliability. Several sectors might benefit from the increased accuracy, efficiency, and output that could result from AI systems. They are quite good at quickly analyzing massive datasets, seeing trends and patterns, and making accurate forecasts. Decisions can be better, healthcare can improve, and transportation systems can become safer as a result. However, AI's dependability is also a potential drawback. A growing number of people may come to rely on increasingly advanced AI systems without giving them the time and attention they need to learn their limits and avoid making mistakes. Generally speaking, the growing reliance on artificial intelligence can be viewed as both a blessing and a curse. However, there are hazards of over-reliance and lack of understanding that may potentially be a curse. The benefits of the dependability of AI systems can greatly enhance efficiency, accuracy, and productivity in various industries (Hutter and Hutter, 2021b). But there are also risks that could potentially be troublesome. As artificial intelligence (AI) continues to grow and become increasingly interwoven into our everyday lives, it is imperative that we carefully assess the implications of depending heavily on these technologies and take proper precautions to guarantee that their use is both safe and ethical.

2.2 Status of AI Law Initiatives around the World

The field of artificial intelligence has quickly expanded beyond its scientific roots, entering popular culture and producing amusing byproducts like chatbots that can mimic famous voices and carry-on complex conversations. This fast development of AI has been a game-changer across numerous sectors while posing fresh challenges for existing regulatory and legal systems. Now, governments around the world are attempting to figure out how to embrace the revolutionary power of AI, while also regulating its everyday use and avoiding its worst malpractice.

- **EU AI Act, 2024**

The EU Artificial Intelligence (AI) Act is an EU regulation which entered into force on 2 August 2024 and is directly applicable across the EU (EU Artificial Intelligence (AI) Act, no date). The regulation applies in a phased manner over 36 months from entry into force. It aims to ensure ethical use of AI, protection of people's fundamental rights, health and safety, as well as providing transparency when using AI (European Union Artificial Intelligence Act, 2025). Spanning 180 recitals and 113 Articles, the new law takes a risk-based approach to regulating the entire lifecycle of different types of AI systems (Long awaited EU AI Act becomes law after publication in the EU's Official Journal, 2024). The Act applies equally to uses of AI in the public service as to the private sector. However, it provides exemptions for certain applications of AI relating to national defence; national security; scientific R&D; R&D for AI systems, models; open-sourced models; and personal use (EU Artificial Intelligence (AI) Act, no date b).

- **Japan**

This country has adopted a "soft law" approach to AI regulation. No laws restrict AI use in the country. Japan wants to avoid restricting innovation by waiting to observe how AI evolves. For now, AI developers in Japan have had to rely on adjacent laws such as those relating to data protection.

- **Brazil**

A draft AI law has been made in Brazil after three years of bills that were introduced but not passed. The responsibility for informing users about AI products lies with AI providers, as the law places a priority on users' rights. In addition to the right to know that they are engaging with an AI, users should be able to understand how the AI arrived at a specific conclusion or suggestion. Users have the option to challenge or request human intervention in cases when an AI decision is expected to have a substantial influence on them. This is particularly true in systems involving self-driving cars, hiring, credit evaluation, or biometric identity.

- **Preferences a Third-world Country like Bangladesh can consider while Drafting AI Laws**

It is critical that developing nations like Bangladesh consider particular preferences while drafting AI regulations as they navigate the new area of artificial intelligence. These preferences may include-

I. AI should benefit all classes of people. Therefore, marginalized people's interests should be protected through ethical AI provisions.
II. In a country like Bangladesh, where older people are still not used to the contemporary online use manual and are prone to being victims of online fraud, their situation should be considered while enacting AI law.
III. To provide appropriate measures to tackle deepfakes created by advanced AI technology.
IV. To outline strict penalty provisions, like the EU AI Act,2024, for breaches of provisions that infringe the digital rights of the victim users.
V. When drafting AI law, there shall be a direct interaction between law-enforcing authority and general people through surveys, an aa voting system, or any other equitable way to ensure proper participation of the key stakeholders in the enacted law.

To be more concise, Prioritizing the creation of AI laws that cater to the unique needs of developing countries like Bangladesh is crucial, considering our unique challenges and resources.

3. Findings and Analysis

Artificial Intelligence has become a part of our lives. People of different ages use AI to fulfil their specific purposes. This use can be beneficial or harmful. It can affect people psychologically, socially, legally, or in other ways. A few of the worrisome consequences of AI usage are discussed in the points below.

3.1 Moral Dilemma of Media Utilizing AI

Artificial intelligence is influencing media development, distribution, and audience interaction in the digital age. AI in media improves personalization and efficiency, but it also presents moral problems. An important moral issue regarding the employment of artificial intelligence in the media is the potential of discrimination and bias. In addition, the absence of transparency in the operations of artificial intelligence can make accountability more difficult and raise questions about the dependability and integrity of material produced by the media. Furthermore, the rapid growth of artificial intelligence in the media environment raises issues about the impact that it will have on jobs and the future of journalism. There is a possibility that certain duties will be automated by artificial intelligence technology, which could result in the displacement of journalists and other professionals working in the media.

The responsibility of media organizations and the transparency of artificial intelligence systems are two additional concerns that are of significant moral importance. it is absolutely necessary for media organizations to place an emphasis on morals in the process of developing and implementing AI. Within the context of their utilization of artificial intelligence technology, media companies have the ability to guarantee fairness, transparency, and accountability by adding moral concerns into AI systems.

3.2 The Rapid Rise of Disinformation and Misinformation in the Age of AI

One area where artificial intelligence has dramatically impacted is how information is shared and consumed. Another area where AI presents significant challenges is the underlying aspects of fighting misinformation and fake news. Because of their immense power to alter and amplify content, AI algorithms are finding more and more uses in creating and disseminating disinformation and misinformation. Because of this, a lot of nonsense has gotten out there, which has helped disinformation/ campaigns and made people distrust mainstream media. The potential for this new technology to be used to intentionally spread false information in order to defame individuals gives rise to grave concerns. The usage of AI technologies has increased voter micro-targeting and facilitated the dissemination of disinformation (Bontridder and Poullet, 2021). To stop the spread of false information and ensure the security of data, there is an urgent need to develop strong defenses of regulations as AI grows ahead.

3.3 Deepfakes as a Powerful Tool for Reputation Degradation

The term "deepfakes" refers to a hybrid of the terms "deep learning" and "fake", these are extremely lifelike videos that have been digitally altered to show actors acting in ways that did not actually occur (DeepFakes: Navigating the Information Space in 2023 and beyond, 2024). Deepfakes are videos that use artificial intelligence and facial mapping technologies to imitate a person's speech, inflexions, mannerisms, and facial emotions. They first surfaced in 2017 when a Reddit member shared videos of famous people in explicit circumstances. The rapid dissemination on social media, utilization of real film, and realistic-sounding audio make deepfakes difficult to spot. They prey on online communities where false information spreads like wildfire, such as social media. Deeptrace found 15,000 deepfake videos online in September 2019, nearly doubling in nine months (The Emergence of Deepfake Technology: a review - ProQuest, no date). A stunning 96% were pornographic, including 99% mapping female celebrities' faces onto adult film stars (Sample, 2023). It is also alarming that criminals are also making more and more use of deepfakes to commit financial crimes, such as manipulating the stock and market (DeepFakes: Navigating the Information Space in 2023 and beyond, 2024). For a country like Bangladesh, deepfakes can massively hamper the reputation of renowned persons. Numerous incidents have already taken place in this regard. With newly advanced AI, the creation of deepfakes has become more accurate to the person whose reputation is degraded. So, this problem needs immediate attention from the tech and law enforcement authorities.

3.4 The Underlying Aspects of Use of AI in Education and Literature

Everything has changed with the passage of time, and now we may not be able to use any word to say impossible in this age of modern technology. The buzz word is artificial intelligence, as we all know. There is no field where artificial intelligence is not being used. Naturally, the question arises as to how much artificial intelligence is working in the field of education or what effect it has. Before looking at the use of artificial intelligence in the field of education, if we look at our traditional methods of education, then we can compare how AI is actually affecting it. The traditional education system was a teacher-centered method that

explicitly manifested the supremacy of teachers; in fact, they were the sources of all information outside of the textbooks. There, teachers put more emphasis on children's recitation or memorization. So, it is very natural to understand that the study was limited within certain boundaries. But nowadays, the picture is completely out of the question because of the use of artificial intelligence. Artificial intelligence has created a platform for students where they can become their own teachers. It may sound strange, but some examples will make it clear. Artificial intelligence-powered tools and platforms improve learning experiences by providing personalized information, adjusting to individual needs, and delivering real-time feedback. Chatbots and virtual tutors provide support 24 hours a day, seven days a week, reducing the pressure on instructor bots, who are made in such a way that they can answer any question at any time of the day. These bots are customized in such a way that they can catch any problem of the students and try to solve it. And based on their skills and performances, it can detect on which ground they have a weakness and process through the best possible outcome or review by using the high protocol of its function. As a result, the pressure on the instructors is naturally reduced. Artificial intelligence's contribution to creative thinking is unmatched. For instance, Japan's popular writer Rie Kudan has received one of Japan's most prestigious 'Akutagawa' literary awards. However, after receiving the award, the writer said that he took the help of the much-discussed AI chatbot ChatGPT to write the book. Kudan was awarded the prize for his novel 'The Tokyo Tower of Sympathy' on January 17. Later, in a press conference, the author confirmed that about 5% of his book was written with the help of AI (Anderson, 2024). Although it is good that artificial intelligence helps create literary works, it does have a drawback: AI usually creates everything that already exists, so it can be subject to copyright infringement risks.

3.5 AI as Cause of Rapid Rise of Academic Dishonesty

Since the concept of a "double-edged sword" has already been discussed, it should come as no surprise that every story has an opposite side. It would be better if AI was kept as a supplement along with traditional studies, but the human instinct is to want more after getting something. So, nowadays, students have started to misuse artificial intelligence immensely. They are reluctant to use their intelligence to solve their particular problems. Thus, they use AI to help them with any assignment or work to express their intelligence. As a result, AI is acting as a significant barrier to developing students' creative aspirations. UNESCO predicted that AI in education would be worth $6 billion, and the most recent market research suggests it can be valued at up to $20 billion by 2027 (Malekos, 2024). Critical thinking is an important quality and skill for students that helps them expand their objective learning. As a result, students can solve any objective problem by considering their conscience, as it equips them to analyze information objectively, make rational judgments, and solve problems effectively. However, due to getting ready-mate answers prepared through AI, students are deprived of mental, social, and moral considerations. The expansion of AI in education also raises crucial ethical concerns. There is always a need for more transparency as to where this AI gets its recommendation or how it gets the correct assessment outcome. These include issues of transparency and accountability. Artificial intelligence is often questioned due to transparency and accountability in the education sector. Therefore, it is noticeable that, in some particular cases, dishonesty is appearing through artificial intelligence in the education sector.

4. Recommendations

The rapid growth of artificial intelligence has had profound effects on people around the world. It has created opportunities and deadlocks in specific areas, some of which have been

discussed above. Due to its rising misuse, Preventive measures should be added to its algorithm for better causes.

4.1 Facilitate equitable access to the advantages of artificial intelligence

This recommendation highlights the importance of guaranteeing that marginalized communities can access the advantages of AI. This encompasses the development of educational and training initiatives aimed at equipping individuals with the skills to utilize AI, alongside the establishment of policies that ensure equitable access to AI technologies. By taking this approach, it can bridge the divide between those with resources and those without, ensuring that all individuals have the chance to gain from advancements in AI.

4.2 Implementation of strategies to address the issue of deepfake

Deepfakes represent an advanced application of AI technology to create videos or audio recordings that can distort public perception or spread false information. To tackle this challenge, it is essential for AI developers and policymakers to work together in order to design AI systems capable of identifying and mitigating the production of deepfakes. There can be a designated cyber team which will take immediate action against deepfake video.

4.3 Enactment of Laws regarding Artificial Intelligence

The European Union has already enacted the AI Act to ensure the ethical use of AI, protect people's fundamental rights, health, and safety, and provide transparency when using AI. It is time for a country like Bangladesh to enact an artificial intelligence law to regulate the use of artificial intelligence within the country's territory.

4.4 Promote Public Participation and Consultation

When drafting artificial intelligence regulations, stakeholders, such as general people, tech companies, and governments, should be properly represented. Proper connections among these stakeholders can be very effective in enacting AI regulations.

4.5 Consider Ethical Issues

This recommendation emphasizes the importance of tackling the ethical issues related to AI, including bias, discrimination, and the risk of AI bolstering current social inequalities. The use of AI should be for the betterment of humankind, so it should be ethical at all costs. It should not break the moral standard set by human.

5. Conclusion

Artificial intelligence has been recognized as a revolutionary innovation. A growing number of essential components of people's everyday lives are being developed with the help of artificial intelligence tools. This groundbreaking innovation has been both good and bad for the people who use it for various purposes. Currently, certain individuals are employing artificial intelligence to develop malicious tools for illicit purposes. With artificial intelligence, day-to-day work has become manageable. At the same time, it has become easier to commit petty to serious financial fraud or crime. To tackle these problems, a holistic approach is immediately needed from the proper authority. Furthermore, it possesses the attributes of both an asset and a threat. Artificial Intelligence can empower people and improve many fields, but there are ethical and practical issues to consider. Thus, accurate implementation and control are needed to maximize the benefits of artificial intelligence while minimizing its drawbacks.

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Literature in Language Learning

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Abstract: Literature contributes actively in language learning process because of mutual interaction emphasizing stimulate learning and cultural knowledge. Since the nineteen eighties there has been a sense of interest how a language operates both as rule-based and as a socio-semantic system. This research article analyses how literary texts can improve critical thinking skills, deepen cultural understanding. This article also attempts to explore the effects of using literature in the language classroom.

Keywords: Literary text, English language, approach, methods, cultural awareness, critical thinking

1. Introduction

Literature as a discourse can display the variety of language use. It as a source of content-reach reading materials, a model of creative language in use, a way to introduce vocabulary in context. The language of literature is not just words but it is lively and versatile means of communication. Similarly, Collie and Slater (1993) support the inclusion of literature in the language classroom that the advantages can be achieved through the solid integration between language teaching and literature. However, the integration of literature into the ELT classroom also poses challenges such as selecting appropriate texts, addressing linguistic difficulties, ensuring meaningful engagement with the material. Topping (1968) argues that the literature should be excluded from the foreign language curriculum because of its structural complexity, lack of conformity to standard grammatical rules, and remote-control perspective. Numerous teachers now believe that literature with its expensive and connotative vocabulary can expand all the language skills. This research article seeks to establish this phenomenon in promoting literature- language based acquisition and fostering a positive learning environment.

2. Literature Review

Literature always reflects culture, and the use of literary materials in language classes can provide students with more useful and thought-provoking language teaching. Whether we arereading for pleasure, literature has the power to enrich our lives and broaden our horizons. At the same time, literature it can be a challenging aspect of language learning for many students. English teachers are always concerned with the kind of content they are going to teach. Literature is so abundant and predictable that teachers cannot resist the temptation of using it. Language learning demands the four basic skills of listening, speaking, reading, and writing. Literary texts such as poetry, prose, fiction, short story, drama, etc. have proved to be authentic source that can make learners acquire these skills. According to Collie and Slater (1990), there are four reasons to lead a language teacher to use literature in classroom-authentic material, cultural enrichment, language enrichment, and personal involvement.

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Nonetheless, in the last decade or so the interest in literature as one of the most valuable language teaching resources has revived remarkably. This is in consonance with the new currents within the communicative competence, that is teaching learners to communicate in the second language and accounting for real, authentic communicative situations.

3. Research Methodology

A mixed methodology was applied in the study to triangulate the data. The respondents were selected from some private universities with the prior permission. Twelve EFL classrooms were observed and twelve EFL teachers were interviewed based on semi-structured questions. Classroom observation was strongly followed as a qualitative data. Relevant information was also collected by different scholars on this issue.

4. Reasons behind using Literature in Language Learning

- Literature offers a bountiful and extremely varied body of written material which is important in the sense that it says something about fundamental human issues and enduring rather than ephemeral. A literary work can transcend both time and culture to speak directly to the reader in another country or a different period of history. In reading literary texts, students have also to cope with language intended for native speakers and thus they gain additional familiarity with many different linguistic uses, forms and conventions of the written mode: with irony, exposition, argument, narration etc.

- Literature exposes students to the cultural diversity. It provides a window into the historical, social, and political contexts that shaped the literature and the writer's worldview. For many language learners the ideal way to deepen their understanding of life in the country where that language is spoken. Some may start learning a language knowing that they are unlikely ever to set foot in an area where it is spoken. For all such learners more indirect routes like literary works must be adopted to understand the way of life of the country. These literary works offer a full and vivid context in which characters from many social backgrounds can be depicted. A reader can discover their thoughts, feelings, customs, possessions and this well imagined world can quickly give the foreign reader a feel for the codes that structure a real society.

- Language enrichment is one benefit often sought through literature. It presents a rich context in which individual lexical or syntactic items are made more memorable. Reading a substantial and contextualized body of a text students get familiarity with many features of written language. The formation and function of the sentences, variety of possible structures, different ways of connecting ideas enrich their writing skills. Moreover, literature helps extend the advanced learner's awareness to the range of language itself.

- Literature can be helpful in the language learning process because of the personal involvement it fosters in readers. Very often the process of learning is essentially analytic. Engaging imaginatively with literature enables learners to shift the focus of their attention beyond the mechanical aspects of the foreign language system. When a novel, play, or a poem is explored over a period of time, the results is that the reader begins to inhabit the text. The reader is eager to find out what happens as events unfold. They feel close to certain characters and share their emotional responses.

5. Challenges of using Literary Texts

Despite the potential benefits of using literary texts in language course materials, there are also several challenges that teachers should be aware of. One primary factor to consider is whether a particular work is able to stimulate the kind of personal involvement by arousing the learner's interest and provoking strong reactions from them. If it is meaningful and enjoyable, reading is more likely to have a lasting and beneficial effect upon the learner's linguistic and cultural knowledge. It is important to choose the texts which are relevant to the life experiences. In this article a literary reference is given -Robert Frost's *The Road Not Taken* because of its thematic value. This poem is closely associated with human life, their struggle tomake choices and uncertainty. Language difficulties should be considered as well because they have both a linguistic and cultural gap to bridge, foreign students may not be able to enjoy the text. Therefore, it is much better to choose a work that is not too much above the students' normal reading proficiency.

Another noticeable challenge is cultural misunderstanding. Pardo-Ballester (2007) discusses this challenge in language education. She explains that literature often reflects the culture and values of the society in which it was written and students from different cultural backgrounds may not be familiar with these cultural references. Teachers may need to provide additional context to help students understand the text. Time and resources are also required to effectively incorporate literature into language learning.

6. How to Face the Challenges in Language Classroom

The prominent problem of how to teach languages has in recent years become increasingly guided by the dominant aim of promoting the learner's communicative competence. Sometimes the teacher falls back upon a more traditional classroom role in which they see themselves as imparting information about the author, the background to the work, the particular literary conventions and so on. Often the sheer difficulties of detailed comprehension posed by the intricacy turn the teaching of literature into massive process of explanation by the teacher. At more advanced levels of work with literature, the teacher may resort to the metalanguage of criticism and this may both distance learners from their own response. Even if the teachers hope to do more to sharpen students' own response to the literary work, there is often a little guidance on how to do so. The time-honored technique of question-and-answer can provide some help.

Establishing a number of ways to explore the literary text can turn classroom graphic. For example- role plays, improvisation, creative writing, discussions, questionnaires, visuals, and many other activities. The availability of a variety of activities enables the teacher to concentrate on meeting students' weakness in particular skill areas.

Learning can be promoted by involving as many of the students' faculties as possible. By itself the printed pages can be fairly part of the reader's visual sense and to the intellect. The words can create a new world inside the reader's imagination, a world full of warmth and color.

Pair and group works are now well established as a means both of increasing learner's confidence with the foreign language. In the creative endeavor of interpreting this new universe, a group with its various sets of life experiences can act as a rich device to enhance the individual's awareness of the world created by literary text. With the group's support they will have the greater freedom to experience own reactions and interpretations. Using the target language with the range of activities will be more effective approach in classroom. It

can be facilitated if, instead of trying to transpose it into their own language and cultural experience, they try to put themselves imaginatively into the target situation.

7. Activities in the Classroom

There are the views that the language of literature, mainly of poetry, follows the deviated patterns and is different from the language of daily communication. Poems offer a rich, varied repertoire and are a source of much enjoyment for teachers and learners. There is the initial advantage of length many poems are well suited to a single classroom session. They often explore themes of universal concern and embody of life experiences, observation and feelings evoked by them. Moreover, poems are sensitively turned to what, for language learners, are the vital areas of stress, rhythm, and similarities of sound. Reading poetry enables the learner to experience the power of language. In the classroom, using poetry can lead naturally on to freer, creative written expression as it has the capability of producing strong response from the reader.

The teachers need to select poems that are suited to students' interest, language and maturity levels. There are poems written in a complex way and some are in a lighter vein. Both types are well-suites to a language learner, especially at their earlier stages. At the same time the teachers should not be too hesitant about working with more challenging poems. Learners can be given personal and linguistic resources to attain the fuller enjoyment of a poem that comes from a sense of sharing the poet's created world becoming as a reader, a new creator of meaning. Before a poem is read or listened to for the first time, it is very important to plan a substantial warm-up activity to arouse the learner's curiosity and involve them in the poem's themes. The aim ultimately is to individualize each students' experience of literature through language.

Factors to Consider when Selecting Literary Texts

The text which is selected here to work with is The Road Not Taken by Robert Frost. It provides a rich analysis of various linguistic elements including metaphor, imagery, ambiguity, and the subtle nuances of language used to convey the speaker's internal conflict about making a decision, which can lead to deep discussions about the power of language and critical thinking. The following criteria was determined during the session:

Gender: Mixed

Age of students: eighteen to nineteen years old

Educational background: First year(honors)

Social background: Middle class

Literary background: sufficient

Types of Activities used

There are many effective ways to follow for the activities related to a poem. Lazar (1993) recommended a classification to provide a communicative classroom activity:

Pre-reading activities

While-reading activities

Post-reading activities

This research is designed following the above activities to help students appreciate the lyrical and melodic quality of poetry as well as its metaphorical richness.

At the very beginning the students are asked to build up a picture of the literary work by knowing the title of the poem following individual's hard copy. Once they have done this, they make a note of what they feel. They are also encouraged to guess the socio-economic background of the poem to enrich the critical thinking. To run the thinking, a brief and truthful introduction of the author Robert Frost is delivered. Here, every sentence adds a new detail about the author's life. It is essential for the students to have some biographical information before the final reading, otherwise guesses will be completely blind.

After the guessing part, they start reciting the poem and point out the linguistic structure of that:

Two roads diverged in a yellow wood,

And sorry I could not travel both

And be one traveler, long I stood

And looked down one as far as I could

To where it bent in the undergrowth;

Then took the other, as just as fair,

And having perhaps the better claim,

Because it was grassy and wanted wear;

Though as for that the passing there

Had worn them really about the same,

And both that morning equally lay

In leaves no step had trodden black.

Oh, I kept the first for another day!

Yet knowing how way leads on to way,

I doubted if I should ever come back.

I shall be telling this with a sigh

Somewhere ages and ages hence:

Two roads diverged in a wood, and I—

I took the one less traveled by,

And that has made all the difference.

The poem has a strict ABAB rhyme scheme which carries additional meaning. The subtlety is drawn out by encouraging the students to read the poem loud. The following procedure is an enjoyable way of involving the whole class:

The class is first divided into four groups-one group per stanza. Each group is allotted a stanza and examines it in detail.one group analyzes the literary devices of one stanza (assonance, metaphor, anaphora, simile) which helps them to acquire an ornamented

language. The other groups examine the symbolic representation of the words (yellow wood, road, claim, wear, trodden, claim, diverged, undergrowth). They also focus on the ambiguous tone of the applied language particularly in the concluding lines.

After the poem has been read with plenty of feeling and eye contact, the students are asked for their reaction. Here, the poem is examined in more detail through a range of questions, for example:

Why did the speaker choose the road he did?

What connection can we make between the lines and the title of the poem?

What do the two roads symbolize?

What does the divergence in the road signify in real life?

How does the poet resolve the dilemma?

Why do you think the poet sighs in the last stanza of the poem?

Imagine you are faced with a similar situation as the poet in this poem. Which path would you choose, and why?

Through this process students are encouraged to guess the unfamiliar meaning of familiar words. They are reminded that the actual words of the conversation do not seem to reflect the emotion words that they have already identified. Finally, a short documentary of the poem is presented for their vivid analysis.

As a post reading activity, they are instructed to write their own interpretation. They reveal the assumptions about the choice which is implicit in the poem. They imagine themselves in the real context for better feedback. The situation is informal. The prior notes, handwritten make the process of analysis visual and concrete. The jotted-down, open-ended nature of the comments gives students the feeling that they can be more easily explored and challenged. In short, this format builds initial confidence in the analysis of poetry in a foreign language, and heightens appreciation.

It is clear from these that student both understood the poem and responded to it with imagination. After comparing their solutions, they feel the eagerness to read the poem with stylistic analysis. There are cries of delight as students realize that they have come very close indeed to the spirit of the poem, but satisfaction too at the vivid metaphorical expression of the original.

8. Conclusion

Literary text can be an authentic resource for English language learners as it justifies multiple levels of meaning for developing interpreting and interpretational skills that students need to understand all kinds of representational materials. A literary language is patterned creatively that involve students emotionally, awakens their classroom language learning by developing skills they can apply in different situations and contexts.

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Modern Period and the Female Experience: Gender Perspectives in Jhumpa Lahiri's The Namesake, and Unaccustomed Earth

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Abstract: This paper explores the representation of the female experience during the modern period through the lens of Jhumpa Lahiri's. The Namesake and Unaccustomed Earth. It investigates how Lahiri's female characters navigate cultural displacement, familial obligations, and personal aspirations within patriarchal frameworks. Employing feminist literary criticism and postcolonial theory, the research highlight's themes of identity, agency, and resistance in Lahiri's works. By examining key characters like Ashima Ganguli, Moushumi Mazumdar, Ruma, and Hema, the paper demonstrates how Lahiri's narratives critically reflect gender dynamics in modern diasporic contexts. The findings emphasize the relevance of Lahiri's portrayal of women for understanding broader gender issues in contemporary literature.

Keywords: Gender, feminist literary, cultural displacement, female Experience

Introduction

The modern period has witnessed profound transformations in cultural and societal norms, particularly in relation to gender roles and expectations. These changes, while significant, present unique challenges for diasporic communities, where the intersections of cultural identity, migration, and tradition add layers of complexity. Jhumpa Lahiri, an acclaimed writer of the South Asian diaspora, has gained recognition for her nuanced exploration of these themes. Her works, including *The Namesake* (2003) and *Unaccustomed Earth* (2008), delve deeply into the experiences of individuals navigating the intricate dynamics of cultural displacement, familial obligations, and personal aspirations. Central to her narratives is the examination of female experiences, offering a lens through which to analyze the interplay between gender and diasporic identity.

Using a feminist literary framework alongside postcolonial theory, this paper investigates Lahiri's portrayal of women, focusing on how their identities and agency are shaped by the pressures of tradition and the challenges of modernity. In *The Namesake*, Lahiri presents a novel-length exploration of generational and gendered conflicts, with characters such as Ashima Ganguli embodying the struggles of maintaining cultural traditions while adapting to life in a new country. Critics have noted that Ashima's journey highlights the resilience and adaptability required of women in diasporic settings (Das, 2014; Mukherjee, 2016). By contrast, *Unaccustomed Earth*, a collection of short stories, broadens this perspective, presenting varied narratives of women negotiating identity, autonomy, and relationships

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within and beyond the confines of their cultural heritage. For example, the story "Hell-Heaven" reveals the emotional intricacies of immigrant life through a mother-daughter dynamic, underscoring themes of sacrifice and generational misunderstanding (Lahiri, 2008). By comparing these texts, this paper elucidates how Lahiri's nuanced portrayal of female characters reflects the broader tensions of diasporic existence. As Sharma (2019) observes, Lahiri's works resonate with universal questions of belonging and identity while offering a poignant critique of patriarchal norms within both traditional and modern contexts.

Literature Review

Feminist literary criticism and postcolonial theory serve as the foundational theoretical frameworks for this study. Feminist theorists such as Simone de Beauvoir (1949) have critiqued how women are often relegated to the position of the "Other" within patriarchal societies, thereby highlighting the systematic oppression women face. In her landmark work *The Second Sex*, de Beauvoir argues that women's roles are defined in relation to men, and this social construct limits women's autonomy and self-definition. Judith Butler's (1990) theory of gender performativity furthers this argument by emphasizing how gender identities are not inherent but instead constructed through repeated societal performances. According to Butler, societal norms dictate and regulate gender roles, reinforcing the binary structures that restrict women's self-expression and potential. These feminist perspectives inform the analysis of gender dynamics in Jhumpa Lahiri's work, where women's roles in patriarchal and diasporic contexts are critically examined.

Postcolonial theory, on the other hand, provides insight into the complexities of identity formation within diasporic and colonial contexts. Homi Bhabha's (1994) notion of hybridity discusses the fluid and contested nature of identity within postcolonial settings, where individuals navigate between multiple cultures and conflicting societal expectations. Gayatri Spivak (1988), in her influential essay "Can the Subaltern Speak?", interrogates the marginalization of voices from historically oppressed groups, specifically women, within postcolonial discourse. Both Bhabha and Spivak's work expands the understanding of the intersection of gender and postcolonial identity in Lahiri's writing.

Existing scholarship on Jhumpa Lahiri has predominantly explored themes of migration, identity, and cultural displacement. Critics have delved into the ways in which her works examine the experiences of immigrants, generational conflicts, and the search for belonging (Banerjee, 2010; Das, 2015). However, there remains a gap in the scholarly discourse regarding the gendered dimensions of Lahiri's narratives. While much attention has been paid to the portrayal of male immigrants, less focus has been given to the complex roles women occupy in these stories. Lahiri's exploration of female characters often reflects the intersection of gender and cultural displacement, a dimension that requires deeper feminist analysis. This study aims to fill that gap by focusing on Lahiri's portrayal of women's struggles within patriarchal and diasporic contexts, considering the specific challenges they face as both immigrants and women navigating patriarchal norms.

Discussion and Findings

Ashima Ganguli, a central figure in Jhumpa Lahiri's *The Namesake*, represents the challenges faced by immigrant women as they navigate new lives in foreign lands. Her character embodies the cultural and emotional dislocation experienced by many diasporic individuals, particularly women, as they try to balance their heritage with the demands of a new society. Ashima's initial reluctance to embrace American culture reflects her deep attachment to traditional Bengali values, which are strongly tied to her identity. She feels alienated and

disconnected from the American way of life, highlighting the emotional and psychological toll of migration (Lahiri, 2003).

Throughout the novel, Ashima's transformation demonstrates her resilience and capacity for adaptation. Initially, she is portrayed as a passive figure, constrained by her role as a mother and wife within a traditional family structure. However, over time, Ashima gradually adapts to her new environment, navigating the complexities of both American and Bengali cultures. She slowly finds ways to assert her agency, despite the constraints imposed by her cultural background. The process of adaptation is portrayed as both painful and empowering, as she gradually finds a balance between preserving her cultural identity and engaging with the opportunities available to her in the United States (Lahiri, 2003).

Ashima's journey is also marked by a shift from dependence to independence. After the death of her husband, she chooses to live on her own rather than rely on her children, thus defying the traditional Bengali expectation that widows should live with their children or extended family members. This decision signals Ashima's growth, as she takes ownership of her life in ways that challenge both cultural and gendered norms. Her decision to live independently reflects her newfound autonomy and underscores the theme of self-discovery that runs throughout the novel (Lahiri, 2003).

Ashima's story is emblematic of the immigrant experience, where individuals must grapple with loss, identity, and change. Her ability to adapt while retaining her core values speaks to the resilience of immigrant women who are often expected to conform to societal roles while navigating their own desires for self-expression and independence (Seshadri-Crooks, 2000).

In contrast to Ashima, Moushumi Mazumdar represents a more overt rebellion against the cultural expectations placed upon women in Bengali society. Moushumi, Gogol's wife, struggles to reconcile her own personal aspirations with the pressures of traditional gender roles. Her character is marked by a desire for individuality, which contrasts sharply with the expectations of her family and community. She desires independence, both in her career and personal life, but she is also constrained by the cultural norms that dictate a woman's place within the family structure (Lahiri, 2003).

Moushumi's extramarital affair and subsequent divorce reflect her rejection of traditional values and her struggle for autonomy within a patriarchal system. However, her actions also reveal the complexities of seeking autonomy in a society that often marginalizes women's desires and voices. Moushumi's defiance of cultural norms highlights the difficulties faced by women who seek to carve out their own identities while confronting the societal pressures to conform (Lahiri, 2003).

Her story underscores the tension between individuality and cultural expectations, which is a recurring theme in *The Namesake*. While she attempts to break free from the constraints of her upbringing, her inability to fully embrace her own desires without guilt or self-recrimination reflects the challenges of navigating both personal and societal expectations.

While *The Namesake* primarily focuses on Gogol Ganguli's identity struggles, the contrasting narratives of Ashima and Moushumi provide a nuanced portrayal of gender roles within the immigrant experience. The male-centric narrative of Gogol's life, with its emphasis on personal identity, stands in stark contrast to the more complex depictions of Ashima and Moushumi. While Gogol's character deals with issues of belonging and self-discovery, the

female characters' experiences are marked by sacrifice, resilience, and the constant negotiation of their roles as daughters, wives, and mothers. These contrasting gendered perspectives highlight the ways in which the immigrant experience is experienced differently by men and women, with women often bearing the emotional and cultural burdens of maintaining family ties and cultural continuity (Lahiri, 2003; Seshadri-Crooks, 2000).

In Jhumpa Lahiri's *Unaccustomed Earth*, the gender perspectives of female characters Ruma and Hema explore the complexities of balancing personal desires, familial expectations, and cultural norms. Both characters face significant challenges in reconciling their roles as women within the diaspora, and their journeys offer insightful commentary on gender, agency, and identity in contemporary society.

In "Unaccustomed Earth," Ruma is caught between her desire to pursue a professional career and her responsibilities as a wife and mother. When Ruma decides to leave her legal career to care for her son and husband, this decision is heavily influenced by societal expectations that women must prioritize family over personal ambitions (Lahiri, 2008). This choice reflects the larger societal pressures women face, particularly in diasporic communities, where traditional gender roles continue to shape perceptions of a woman's identity. As Lahiri (2008) depicts, Ruma's struggle represents the broader experience of women who must navigate the tension between professional success and family obligations, often sacrificing their own aspirations in the process. The underlying critique in Ruma's character is a commentary on how women are expected to fulfill the roles of caregiver and homemaker, even in modern, progressive societies. Scholars like Bhattacharya (2016) argue that Ruma's character exposes the gender inequalities inherent in diasporic communities, where cultural norms can still place restrictive expectations on women despite their exposure to Western ideas of independence and self-fulfillment.

Hema, the protagonist of "Hema and Kaushik," exemplifies the struggle between love and independence. Her relationship with Kaushik is marked by emotional intensity, yet Hema's ultimate decision to remain independent—choosing stability over passion—illustrates the complexities of diaspora identity and the challenge of reconciling personal desires with cultural expectations (Lahiri, 2008). Unlike Ruma, Hema's decision is more about emotional autonomy and self-preservation than family duty. By choosing a path that prioritizes her independence, Hema actively resists the traditional expectation that women must find fulfillment in relationships and marriage. According to critics like Mukherjee (2017), Hema's character reflects a feminist stance within the diaspora, wherein the pursuit of personal freedom and identity takes precedence over traditional gender roles.

Both Ruma and Hema's stories explore themes of female agency within the constraints of patriarchy and cultural expectations. These characters embody the psychological and emotional toll of navigating conflicting demands placed on them by their families, society, and themselves. Through these stories, Lahiri illustrates the resilience of her female characters as they negotiate their roles in a changing world. Ruma's decision to leave her career for family and Hema's choice to prioritize independence over love are both examples of how women in the diaspora continually reassert their agency, despite the societal forces working against them (Lahiri, 2008). Their journeys are testament to the ongoing struggle for gender equality, identity, and personal fulfillment within the framework of cultural traditions and modern life.

In both *The Namesake* and *Unaccustomed Earth*, Jhumpa Lahiri delves deeply into the complexities of cultural displacement and the gendered expectations that shape the lives of her characters. In *The Namesake*, Ashima and Moushumi experience the difficulties of navigating between their Bengali heritage and their new American surroundings, struggling with issues of belonging and self-identity. These challenges, particularly for Ashima, reflect the broader theme of cultural dislocation, as she constantly strives to maintain her cultural practices while adjusting to life in a foreign country (Lahiri, 2003). Similarly, in *Unaccustomed Earth*, the female characters' stories, such as those of Ruma and Hema, also address the tensions between their inherited cultural values and their evolving roles in modern society. These women grapple with the expectations of family, often feeling torn between traditional duties and their desires for personal autonomy (Lahiri, 2008). The struggles of these characters, as Lahiri presents them, are rooted in gender dynamics that are emblematic of the broader societal shifts in the modern period, where women find themselves negotiating between conflicting identities and responsibilities.

Despite these shared themes, the two works offer contrasting approaches to exploring the female experience. *The Namesake* centers on a single family, providing a comprehensive exploration of Ashoke, Ashima, and their children's lives as they navigate the immigrant experience. This extended narrative allows Lahiri to present a detailed portrait of generational and cultural differences, focusing on how Ashima and Moushumi's lives unfold within the broader framework of their family's evolving identity (Lahiri, 2003). In contrast, *Unaccustomed Earth* uses a series of interconnected short stories to offer a wider range of perspectives. Through distinct female protagonists, Lahiri provides varied insights into the immigrant experience, illuminating different facets of cultural identity, family dynamics, and personal aspirations. This structure allows Lahiri to explore the diversity of women's experiences in the diaspora, from the first-generation struggle to second-generation alienation, with nuanced approaches to gender, identity, and independence (Lahiri, 2008).

Conclusion

This paper has examined the gender perspectives in Jhumpa Lahiri's *The Namesake* and *Unaccustomed Earth*, focusing on the representation of the female experience during the modern period. Through the characters of Ashima Ganguli and Moushumi Mazumdar, Lahiri highlights the complexities of female identity within the context of cultural displacement, migration, and the expectations imposed by both traditional and modern gender roles. Ashima's struggle with loneliness and cultural adaptation in *The Namesake* reflects the emotional and social challenges faced by immigrant women (Lahiri, 2003). In *Unaccustomed Earth*, Moushumi's conflict between her American life and Bengali heritage further explores the tension between personal desire and societal expectations (Lahiri, 2008). Lahiri's nuanced portrayal of women's struggles and triumphs emphasizes the intersections of cultural identity, gender dynamics, and personal aspirations, shedding light on the ongoing negotiation between tradition and modernity. Her works contribute significantly to contemporary literature's understanding of gender and diaspora, providing a framework for examining how women navigate their roles in shifting cultural landscapes. Lahiri's exploration of these themes offers valuable insights for future research, especially in the study of gender in postcolonial and diasporic contexts.

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Comparative Constitutional Dynamics: Borrowing and Transplantation in the Constitution of Bangladesh

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Abstract: This research delves into the Constitution of Bangladesh, focusing on the processes of constitutional borrowing and transplantation from other jurisdictions. It examines the historical, political, and legislative contexts that influenced the framing of the Bangladeshi Constitution. The study highlights how the country's colonial past and indigenous legal traditions have shaped its constitutional framework. It explores the comparative constitutional dynamics, emphasizing the cross-national influences that have contributed to the development and evolution of constitutional law in Bangladesh. By analyzing the philosophical foundations and borrowed features of the Constitution, the research seeks to illuminate the unique aspects of Bangladeshi governance within the broader South Asian constitutional context. The study further assesses the Constitution's achievements, including the establishment of a democratic state that upholds the rule of law, fundamental human rights, and an independent judiciary, while considering the challenges and potential for future constitutional developments.

Keywords: Bangladesh Constitution, Constitutional Borrowing, Legal Transplantation, Comparative Constitutional Law, South Asian, Constitutionalism, Rule of Law.

"However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good."

-Bhimrao Ramji Ambedkar, Chairman of the Constitution Drafting Committee of India

1. Introduction

The study of Comparative constitutional law is indeed a distinct area within the greater field of comparative law, which encompasses laws from all around the world. This is the early-twentieth-century transformational field that has piqued the curiosity of judges, researchers, attorneys, policymakers, sociologists, and others. If we consider the fact that human existence is no longer constrained to national borders, but has now transcended all borders and reached all corners of the globe, comparative research is the mechanism of the hour for a profound comprehension of human accomplishment, culture, and other institutions. Ideas that travel

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through time and space shape all domains of knowledge. The circulation of ideas is "a feature of existence and a meaningfully enabling condition of intellectual endeavor" in everything from history to economics to the natural sciences. (Edward Said, 1983)

Cross-national constitutional borrowing is not a new concept. For decades, constitutional makers and interpreters have gazed outside their borders for potential sources of emulation in the practices of other countries. Different types of constitutional borrowing exist. While dealing with cases, judges may consult the decisions of their counterparts in other societies; when deciding what provisions to be included in their documents, constitutional framers may consult the methods of other societies; and citizens may be aware of the practices of other countries when forming opinions on constitutional change. From country to country, the socioeconomic, geopolitical, cultural, and environmental scenarios vary. These distinctions are mirrored in national guidelines, which are frequently documented in a document known as the Constitution. Learning about diverse countries' political and judicial systems contributes to a better international understanding. The laws and procedures of a country are impacted not only by local and national circumstances, but also by worldwide events. The study of differences and similarities in the legal jurisprudence of various countries is known as Comparative Constitutional Laws. It entails researching various legal frameworks from across the world in order to find the best answer to common global issues. It is a pedagogical study of various constitutions in terms of their creation and functioning, as well as how to merge their constituent pieces into a society framework. Even Polish, French, and American philosophers examined examples of written constitutions and scrutinized them thoroughly. South- Asian Countries have chosen the comparative technique.

After the American and French Revolutions, written constitutions emerged as a symbol of modernity. It is the first self-aware attempt to go beyond the traditional British concept of basic law. This creates a second set of legal inconsistencies, namely the difference between proclaiming or discovering basic law and producing or creating it. Despite the fact that the area of constitutional law has become more comparative in recent years, its geographic scope has remained limited. Despite being home to the world's largest democracy and a dynamic constitutionalism, South Asia is one of the field's most overlooked regions. The comparative approach in the field has been one of the most significant breakthroughs in the study of constitutional law in recent decades. Although debates over whether and how domestic courts should rely on (or even refer to) foreign law in domestic legal disputes, the appropriate methodology for comparative analyses, and the potential and limits of comparative constitutional studies continue, many scholars and practitioners – including well-known judges – believe that the task of constitutional law is no longer solely domestic. The use of transnational 'borrowing' in the framing, interpretation, and application of constitutional principles and provisions demands an analytical justification of the processes. That justification can be found in a comparative study of constitutional law. Given the growing political, economic, and social contact, as well as countries' acceptance of common principles and standards as UN members, constitutional 'borrowing' may be unavoidable.

Many academics and practitioners, including well-known judges, think that constitutional law is only concerned with domestic issues. Some countries will always inform comparative enquiries more than others, and researchers and practitioners' jurisdictional imaginations will pivot on the curiosities that drive their work. Because of the uneven growth of comparative constitutional law, the topic is only somewhat comparative, concentrating on a few chosen nations rather than being genuinely worldwide. My aim or focus in this study will be on Bangladesh and its constitution. By examining Bangladesh's constitutional framework, its

development, and its functioning within the broader context of South Asian constitutionalism, I aim to shed light on the distinctive aspects of its governance while exploring its connections to regional and global trends.

2. Constitutional Borrowing

2.1 Definition

We live in the era where comparative constitutionalism is the mainstream. The study of comparative constitutional law includes a lot of constructional borrowing. Borrowing laws and legal ideas from one country to strengthen another's legal system is a common and widespread practice. Different types of constitutional borrowing exist. When resolving conflicts, judges may look to the decisions of their contemporaries in other countries; constitutional framers may look to the choices of their counterparts in other societies when determining what provisions to include in their constitution. (Lee Epstein & Jack Knight, 2003) Constitutional borrowing and nonborrowing, IINT'LJ. CONST. L. 196, 197) Constitutional borrowing is a term used to describe an act such as when drafters of a new constitution insert text from another people's governing instrument or constitution. (Frederick Schauer, 2005) On the Migration of Constitutional Ideas, 37 CoNN. L.REV. 907) Borrowing occurs when someone uses one field of constitutional knowledge to interpret, reinforce, or otherwise enlighten another field in the process of attempting to encourage someone to adopt a reading of the Constitution. Constitutional making process is filled with borrowing from one domain to advance ideas in another. Precedents, arguments, concepts, tropes, and mental shortcuts can all be often used to persuade people across doctrinal boundaries.

Borrowing is a purposeful act of intellectual lifting that is done for a specific purpose. Whatever else that accompanies a decision to borrow, a good conscience decision requires a calculation that using another body of information will strengthen the rule of law or raise the likelihood of a position being accepted by others. (Nelson Tebbe, Robert L. Tsai, 2010.Constitutional Borrowing, Michigan Law Review, Volume 108, Issue 4,) Borrowing from the constitution has become commonplace. Not only has the concept of a (written) constitution extended to almost every nation in the globe, but constitutions are now gaining legitimacy as legal texts that can be enforced rather than simply affirmations. The establishment of judicial review, the separation of powers principle, and the enactment of a bill of rights has become permanent landmarks on the world constitutional map. “When you read a large number of constitutional texts, you'll notice how similar their language is; when you examine the history of a country's constitution-making, you'll notice how much self-conscious borrowing occurs.” pointed by one scholar. (Robert Goodwin, 1996) ‘Designing Constitutions: The Political Constitution of a Mixed Commonwealth’ in Richard Bellamy and Dario Castiglione (eds), Constitutionalism in Transformation: European and Theoretical Perspectives, 223.) It is well-founded to believe that religion is more deeply engrained in the fabric of Indian society than it is in the United States or Europe, and this perception has made a significant contribution to a great deal of opposition to constitutional borrowing from the West.

2.2 Why Borrowing

Borrowing is only legal if it is guided by a sense of public goodwill. Borrowing is often done in order to produce a long-term synthesis of fields of law and to take benefit of accumulated knowledge. Some reasons are purely selfish, such as a desire to benefit personally from the outcome of a lawsuit or a political campaign; others are more public in character. In the following section, we'll look at some of the most typical forms of borrowing. Any believable act of borrowing must take place under the same basic constraints that constitutional actors

deal with in real life. The success of a single borrowing transaction is determined by a number of characteristics, including fit, transparency, completeness, and yield, which will be discussed in more detail later. We define "good faith" as a sincere endeavor to reach a reasonable conclusion.

3. Constitutional Transplantation

3.1 Definition

The most typical technique of borrowing is the transplanting of legal concepts from one environment to another, in whole or in part. Borrowing is only legitimate if it is guided by a way of measuring of public virtue; a borrower acts righteously if her act of creativity is influenced by public policy. However, whether a given act of borrowing succeeds in persuading or becoming authoritative is dependent on a number of elements, including fit, transparency, completeness, and yield—criteria we'll discuss later. Borrowing research aims to look at how constitutional actors deal with these circumstances in the actual world. The purpose of comparative law's study of legal transplants is to figure out how the complicated dynamic of cross-jurisdictional legal transfers brings legal systems together and eventually leads to change. Alan Watson, a Scottish legal historian and comparatist, proposed the concept of a legal transplant in his famous work “Legal Transplants”, published in 1974 in order to describe the transfer of a rule or legal system from one country to another. (Alan Watson, 1993, Legal Transplants: An Approach to Comparative Law (2nd edn, University of Georgia Press) He argued that legal 'transplants' were the result of a combination of 'borrowing' and 'adaptation,' and that borrowing could happen in a variety of ways. Legislation is regularly influenced by foreign policies and experiences. Regardless of whether legal transplants as a notion in legal theory are valid or not, they are a common practice. The extent to which new laws are impacted by foreign precedents, on the other hand, differs. Imported laws are regularly chastised, and fairly so, for being inappropriate for a specific region. Comparative constitutional law is particularly interested in legal borrowing or copying.

3.2 Purpose

The study of borrowings and legal transplants undermines the notion of legal nationality and its connections to a certain system by pointing out reciprocal relationships that cross these national boundaries. Even though transplanting is plagued with pitfalls and contradictions, it is a reality in today's living, breathing legal systems. Influence occurs in a mutated form in the event of a legal transplant, but it is still a transplant, even if it is a transplant gone wrong in some ways. It would be critical to pay attention to the societal context of law, or the new system might reject transplants. Because it is possible to copy a regulation or an institution from another nation, the success of a transplant is not the same as the act of transplanting itself. The problem is that transplanting foreign laws or legal institutions does not happen in a vacuum of legal culture. The long-running debate over legal transplants underscores the need of taking the issues of constructing a legal system based on foreign models seriously. Legal transplant benefits, conditions, consequences, functions, implementation, and compatibility are all hotly discussed concerns. The problems of transplanting are obvious when borrowing takes the form of mass absorption, but even selective borrowing has its own set of hurdles. When we study legal historical trajectories, we might begin to comprehend the root causes of these issues.

4. Theories of Constitutional Borrowing and Transplants

Constitutional borrowing occurs when players in one constitutional system seek to adapt constitutional principles from other constitutional systems to suit their own needs. Professor

Mark Tushnet developed three frameworks for considering the contributions of comparative constitutional law in his widely referenced foundational essay from 1999: functionalism, expressivism, and bricolage. (Mark Tushnet, 1999) 'The Possibilities of Comparative Constitutional Law' 108 Yale Law Journal 1225ff.) He then differentiated between normative universalism, functionalism, and contextualism as means of 'performing' comparative constitutional law. Other scholars have highlighted classificatory and historical methods as additional methodological categories. Here only functionalism, expressivism, and bricolage will be discussed-

(A) Functionalism

The functionalist method tries to explore how constitutional principles generated in one system could be connected to those created in another because they aim to arrange a government to carry out the same responsibilities; it asserts that some constitutional provisions result in arrangements that perform certain tasks in a governing system. Every government, for example, needs a method for declaring war or dealing with internal problems. (Mark Tushnet, 'Some Reflections on Method in Comparative Constitutional Law' (n 8) 72.)

(B) Expressivism

Constitutions assist in the formation of nations to varied degrees in different countries, providing citizens with a means of knowing themselves as political creatures. Constitutional concepts, according to expressivism, are reflections of a nation's self-understanding. Preambles of constitutions, such as the preamble to the 1937 Irish Constitution, which includes allusions to Jesus Christ linking the country with Christianity, centuries of trial and struggle, and self-donation and adoption of the constitution, may be especially valuable for an expressivist. (Mark Tushnet, 'Some Reflections on Method in Comparative Constitutional Law' (n 8) 79-80.)

(C) Bricolage

Claude Lévi-Strauss coined the term "bricolage." (Claude Lévi-Strauss, [1962] The Savage Mind [1962] 16–17.) Bricoleurs adopt constitutional analogues from other countries without giving any thought to why they were chosen or deployed. As engineers would filter through ideas and put them together in a constitutional form that made sense in the context of a larger conceptual scheme. Instead, they delve into their bag of ideas and pick the first item that fits the situation at hand. (Mark Tushnet, 'The Possibilities of Comparative Constitutional Law' (n 9) 1286). Bricolage is a term that more often defines how comparative constitutional law operates, particularly in countries that are relatively new, such as Bangladesh. However, because the framework simply has a random, unstructured quality, it is difficult to believe that it has any independent moral basis. The bricolage is a counter-argument to functionalism and expressivism, which are concerned in incorporating elements from other constitutional traditions into our own. Bricolage warns against using interpretative procedures that give the drafters of a constitution false reason. In the constitutional system with which we are most accustomed, the concept of bricolage has the potential to supplant our sense of the taken-for-granted. It may therefore aid our understanding of the Supreme Court's and legal academy's interest in comparative constitutional law. The approaches stated above are educational and give important views. However, the approaches listed above are not exhaustive, and different situations need the employment of different approaches at various times.

5. Abusive Constitutional Borrowing

The use of ideas, concepts, and principles borrowed from essential features of liberal democratic constitutionalism but converted into attacks on the minimum core of electoral democracy is known as abusive constitutional borrowing. (Rosalind Dixon, David Landau, Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy, Oxford University Press, 2021). At least four separate and somewhat overlapping kinds of abusive constitutional borrowing are possible. They are shown below-

1. When authoritarian actors import a norm, such as a constitutional right, into their legal order with no intention of giving it force, this is known as "**sham' borrowing**. (David S Law and Mila Versteeg, 2013) 'Sham Constitutions' 101 Calif L Rev 863.)

2. When would-be authoritarians adopt part of a liberal democratic norm or bundle of norms but leave out other elements in order to produce an anti-democratic effect, this is known as "**abusive selective borrowing**".

3. When borrowing that entails the transplantation of liberal democratic norms into fundamentally different circumstances, where borrowers are well aware that they would act anti-democratically, this is known as "**abusive acontextual**".

4. When would-be authoritarians use borrowing to transform liberal democratic designs, ideologies, or concepts into instruments that accomplish the opposite of their intended objective, this is known as "**anti-purposive**".

Abusive borrowing works by decoupling the form and substance of a standard, but it does so in different ways. In many ways, these shifts are an expected and even unavoidable part of the comparative enterprise. Abusive constitutional borrowers, on the other hand, use comparisons to maximize the anti-democratic consequences of supposedly liberal democratic concepts. Constitutional designers, executive branch officials, and parliamentarians all have the potential to abuse liberal democratic constitutional discourse. The misuse of ordinary language sets the stage for abusive constitutional borrowing, in which democratic ideas are stripped of their content and applied to anti-democratic objectives. If language has no actual meaning and may be used selectively and deliberately to push a purportedly liberal democratic ideology, then long-standing liberal democratic norms and principles may be abused for corporate purposes as well.

6. The Influence of International Law in The Drafting of Constitutions

International law is a corpus of legislation that primarily governs interactions between nations and between governments and international organizations. It encompasses a range of rules and principles that are binding upon states and other international actors. Some international norms, often termed 'soft law,' do not have binding force but still exert significant influence, serving as guidelines for behavior and policy formulation. (Malcolm Shaw, 'International Law' (7th edn, Cambridge University Press 2014). These norms often shape domestic laws and policies through mechanisms such as diplomatic pressure, international condemnation, and as conditions for development aid. In many instances, constitutions explicitly state how international law interacts with domestic law, highlighting its role in shaping national legal frameworks. (Sarah Joseph, Jenny Schultz, and Melissa Castan, 'The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary' 2nd edn, OUP 2004).

In the drafting of constitutions, international law can exert influence in both direct and indirect ways. Direct influence occurs when governments incorporate international legal norms into their domestic constitutions to meet obligations under international treaties or conventions. For example, the incorporation of human rights norms into national constitutions is often a result of obligations under international human rights treaties. (Sarah Joseph, Jenny Schultz, and Melissa Castan, 2004) 'The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary' 2nd edn, OUP) Indirect influence occurs when international standards and practices inform the drafting process, even when there is no formal obligation to do so. (Anne-Marie Slaughter, 'A New World Order', Princeton University Press 2004). This can be seen in instances where constitutional drafters draw inspiration from successful practices in other jurisdictions that align with international norms.

A notable aspect of international law is the concept of jus cogens, which refers to peremptory norms from which no derogation is permitted. (Dinah Shelton, 'Normative Hierarchy in International Law' (2006) 100 AJIL 291) These norms, such as prohibitions against genocide, slavery, and torture, hold a higher status than other international rules and take precedence over conflicting treaties or customary international law. The recognition of jus cogens in national constitutions underscores the influence of international law in establishing fundamental legal principles that transcend national boundaries.

The United Nations Charter is a prime example of international law's influence on national constitutions. Article 2(7) of the Charter prohibits the UN from intervening in matters within the domestic jurisdiction of states, yet it also emphasizes the importance of adhering to international norms. (United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.) This principle reflects a balance between state sovereignty and the need for international cooperation in upholding human rights and global peace.

The Universal Declaration of Human Rights (UDHR), adopted in 1948, marked a significant step in making human rights a part of international law. (Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A III) Initially seen as non-binding, the UDHR laid the groundwork for subsequent legally binding treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966. (ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; ICESCR (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3) The principles enshrined in these treaties have been incorporated into many national constitutions, reflecting their enduring influence on domestic legal systems.

The impact of international human rights norms can be observed in the democratic transitions in Spain and Portugal during the 1970s, as well as in the post-Cold War constitutional reforms in Central and Eastern Europe. (Geoffrey Pridham, 2000 'The Dynamics of Democratization: A Comparative Approach) ¸ these transitions were characterized by the adoption of constitutional provisions that aligned with international human rights standards, signaling a commitment to democratic governance and the rule of law.

In the case of Hungary, which was not a member of the UN at the time of the UDHR's adoption, the initial response to the Declaration was critical due to prevailing political and legal ideologies. However, following the regime change in the 1990s, Hungary embraced international human rights norms, integrating them into its constitutional framework. (Andras Sajo, 'Limiting Government: An Introduction to Constitutionalism' (Central European

University Press 1999). This shift illustrates the dynamic interplay between international law and domestic constitutional development, highlighting the role of international norms in shaping national legal identities.

The influence of international law on constitutional drafting extends beyond human rights to include environmental law, trade law, and international humanitarian law. For example, the principles of sustainable development and environmental protection, enshrined in international environmental treaties, have been incorporated into the constitutions of various countries, reflecting a growing recognition of the need for legal frameworks that address global environmental challenges. (Philippe Sands, 2003 'Principles of International Environmental Law' 2nd edn, Cambridge University Press).

In conclusion, the influence of international law in the drafting of constitutions is multifaceted, encompassing direct incorporation of treaty obligations, inspiration from international standards, and the integration of jus cogens norms. This influence underscores the interconnectedness of the global legal order and the importance of aligning national legal systems with international norms to promote justice, human rights, and the rule of law.

There have been significant advancements in the study of comparative constitutional law during the last three decades. The topic has seen an overflow of study, ranging from contributions on the relevance and method of comparative work to case studies on specific jurisdictions. Despite the fact that such advances are invariably unequal, it is noticeable that some nations and geographical regions have received significantly more attention and investigation than others. South Asia has received little attention, which is remarkable considering that it is the location of significant constitutional experiments in terms of constitution-making, constitutional preservation, and constitutional failure, as well as a region where several key apex courts operate in English. The concepts of constitutional borrowing and legal transplanting are not new or innovative. Constitutional borrowing is most common in countries where drafters face the daunting process of drafting new constitutions. Because such countries typically lack domestic expertise in this area, they seek assistance from other countries that have a wealth of historical knowledge of constitutional theory, procedures, adjudication, and training. The experiences and traditions of these States in terms of constitutional systems aid newer polities in analyzing and selecting the aspects that are most suitable for replication and best suited to their own domestic settings. However, as this type of borrowing becomes more common, the fundamental question that emerges is whether it is acceptable, particularly in relation to judicial action. Some academics, such as P.K. Tripathi, contend that quoting foreign sources invites judicial opportunism since it may be used to fit historical association's cognitive biases. Others have argued that putting too much focus on perceived distinctions between comparable constitutional systems is artificial and unhelpful in practice.

Most nations' constitutions had been written after the Second World War ended, and they all have five stuffs in common:

- Ingrains clauses that establish the key governmental institutions, define their relationships, provide them privileges, and offer a process for their removal.

- Mechanism for altering or changing the Constitution while keeping certain fundamental characteristics in mind (which cannot be amended).

- All of the country's citizens' rights and freedoms, as well as measures for redress in the event of violation.

- System of checks and balances and separation of power among governmental institutions is mentioned in the provisions.

- Provision for the establishment of an independent judiciary, which will have the power to review government actions and declare any Act illegal if it violates the constitution's fundamental principles.

The paradox of comparative constitutionalism is that it is both old and modern at the same time. With its concentration on the constitutions of Greek city-states in order to derive normative insights on democratic construction, Aristotle's Politics is likely one of the oldest works in this topic. Similarly, intellectuals in ancient Iraq, China, India, and Egypt pondered on governing principles in ways that researchers of constitutionalism would immediately recognize as akin to what they do in light of current events. Nonetheless, there is something unique about the current discipline's development. One of them is- "abusive constitutional borrowing". The examination of abusive constitutional borrowing in this research work is motivated by the fact that constitutional borrowing and transplant are highly common in this South Asian region. However, they are sometimes carried out in a way that is abusive in character. Although research on abusive constitutional borrowing is new in this field of comparative constitutional law, there will be a lot of discussion about it in the future.

7. Prologue: Constitution of Bangladesh

Bangladesh's Constitution is the country's supreme law, formally known as the Constitution of the People's Republic of Bangladesh. The constitution lays the groundwork for the Bangladeshi republic, including a unitary parliamentary democracy, an independent judiciary, democratic local administration, and a national bureaucracy, as well as fundamental human rights and freedoms. The four fundamental ideals of the Constitution are nationalism, socialism, democracy, and secularism. The Constitution strives to create a socialist society in which all citizens enjoy the rule of law, fundamental human rights and freedoms, and political, economic, and social equality. "Contribute to international peace and cooperation in conformity with humanity's progressive goals," Bangladesh promises. Bangladesh's Constituent Assembly passed it on November 4, 1972, and it entered into effect on December 16, 1972. As the country's fundamental governing instrument, the Constitution replaced the Proclamation of Independence. The Constitution went into force on Bangladesh's Victory Day, exactly one year after the signing of the Instrument of Surrender.

Bangladesh has a better track record than any other South Asian country in drafting its own constitution. After 325 days of freedom, she drafted a full-fledged constitution for herself. The rapid drafting of Bangladesh's Constitution took only nine months, although but the preparation of such drafting took a much longer course. Few other crucial tools for nation formation predate the constitution of the People's Republic of Bangladesh. The Proclamation of Independence was designated as Bangladesh's first provisional constitution since it defined the country's character and political structure. The Provisional Constitution Order, published by President Bangabandhu Sheikh Mujibur Rahman, altered the basics of the Revolutionary Government. On March 23, 1971, the Provisional Constitution of Bangladesh (P.C.O. No. 22) was proclaimed, along with a Constituent Assembly Order establishing a parliamentary system of government. The Assembly established a 34-member Committee on April 11, 1972, with Dr. Kamal Hossain, Minister of Law and Parliamentary Affairs, as its

chairperson. The house adopted 84 of the 163 suggested revisions, including 64 on the major portions and 20 on the Schedules and Preamble combined. The constitution was adopted on November 4, 1972, and went into effect on December 16, 1972, on the nation's first victory day. Bangladeshi Liberation War martyrs fought valiantly for the ideas that motivated the heroic Liberation War heroes to lay down their lives. Even before the final draft of our Constitution was completed, there was widespread agreement on the essentials to be included in it, with competing parties and groups disagreeing primarily on minor details.

8. Constitutional Development of Bangladesh

Our country's ultimate law is the Constitution of the People's Republic of Bangladesh. The generations of Bangalees who worked so hard to build it is absolutely extraordinary. Every page of the Constitution also pays tribute to those who earned it for us. It is clear that the martyrs' ideal served as a guideline in the creation of this Constitution. Of the 153 articles grouped into 11 sections and four attached schedules in the Constitution of Bangladesh established in 1972, the framers created a one-of-a-kind example of patriotism and honesty. The constitution-making process was impacted by a number of internal and foreign causes. Internally, issues included indigenous community aspirations for constitutional acknowledgment of cultural autonomy, Bangladesh's historical experiences under the Pakistani and colonial administrations, and the post-war urgency of nation-building. Externally, international politics, particularly those of the world's superpowers and India, had a considerable impact on Bangladesh's constitution-making process. It needed international support for its unilateral proclamation of independence, and the Constitution included an explicit promise to follow international law. Another source of influence and inspiration was international human rights treaties, as seen by the establishment of an enforceable Bill of Rights and a set of unenforceable social and economic rights. On the other hand, like any other constitution, Bangladesh's first Constitution was informed and impacted by the nations sociological and political history, rather than being a total break from the nation’s prior experiences. The nation's democratic, social, and political underpinnings were established by the founding Constitution. Despite several violations throughout the years, the original Constitution has mostly held up. It also had a favorable influence on later events; however, its positive effects were not always as long-lasting as predicted. The historical pathway which followed is shown below:

- **After The Pakistani Military Crackdown on The 25th of March in 1971 -** Bangladesh's Provisional Constitution established a presidential system of The President has been named the military's supreme commander. He had the authority to nominate the prime minister, call and adjourn the constituent assembly, and do "all other things required providing an orderly and just administration to the people of Bangladesh."

- **Proclamation of Independence, 1971-** Bangladesh furthermore announced that as a member of the UN family, it will follow and execute all of the duties and obligations placed on it by the UN Charter. After the establishment of Bangladesh as a sovereign Republic following the surrender of the Pakistan Army on December 16, 1971, the above proclamation remained a significant document both historically and constitutionally, and it remained the fundamental law of the land until the constitution was drafted.

- **The Laws Continuance Enforcement Order, 1971-** On 10 April 1971, the Acting President issued the Laws Continuance Enforcement Order, exercising the authority given on him by the Proclamation. It went into force on March 26, 1971, to assure administrative continuity in all areas. All existing Pakistani legislation relevant to the

proclamation were approved and made effective by this decree. It stipulated that all government personnel, civil, military, judicial, and diplomatic, who took the pledge of loyalty to Bangladesh, would remain in their positions on the same terms and circumstances as before. The district judges, magistrates, and diplomatic officials in charge of respective domains were to administer the oath.

- **The Provisional Constitution of Bangladesh Order, 1972-** On January 11, 1972, President Sheikh Mujibur Rahman signed a Provisional Constitution Order. As a result of this Order, the essence of government has changed. The presidential form of government was replaced by the cabinet form of government. Its main features were:

(i) The president should act and exercise his functions on the advice of the prime minister;
(ii) The president should appoint a member of the Constituent Assembly as prime minister who commands the confidence of the majority members of the Constituent Assembly;
(iii) The president should appoint a member of the Constituent Assembly as prime minister who commands the confidence of the majority members of the Constituent Assembly; and
(iv) A member should be appointed by the president.
(v) A constituent assembly should be composed of Bangladeshis who were elected to the National Assembly and Provincial Assembly seats in December 1970 and January 1971, respectively, and who are not otherwise disqualified by or under any law;
(vi) The president should designate a prime minister who is a member of the Constituent Assembly;
(vii) A constituent assembly should be composed of Bangladeshis who were elected to the National Assembly and Provincial Assembly seats;
(viii) In the event of a vacancy in the office of the President at any time prior to the constituent assembly's framing of the constitution, the vacancy should be filled by the Prime Minister;

A Bangladeshi high court with a chief justice and as many justices as may be nominated from time to time should be constituted. Unlike Pakistan's Constituent Assembly, Bangladesh's Constituent Assembly was not given legislative powers; instead, it was solely responsible for crafting the country's constitution. The government retained legislative authority, and the Proclamation of Independence remained the supreme law until December 16, 1972, when the constitution took effect. The executive has been unaccountable to anybody or any institution until now.

- **The Constitution of Bangladesh, 1972-** Every page of Bangladesh's Constitution pays tribute to those who fought for us and earned it. In the 153 articles grouped into 11 sections and four attached schedules, the framers created a one-of-a-kind example of patriotism and honesty. This methodical strategy to tackling state constituting difficulties using a comparative approach based on national experience is found to be comparable to a lovely melody with calming harmony. The Constituent Assembly of Bangladesh Order, 1972, was issued by the President on March 23, 1972, signaling the commencement of the constitution-making process. The Order went into great detail on the Constituent Assembly and its powers. Despite the fact that 469 persons were voted to the National and Provincial Assembly, a few had died or were disqualified. Only 404 persons attended

the Constituent Assembly's sessions. On April 10, 1972, the Assembly convened for the first time. A 34-member Constitution Drafting Committee, led by Dr. Kamal Hossain, was formed on the second day of the conference. The first reading of the bill began on October 19 and ended on October 30. From the 31st of October to the 3rd of November, the second reading was held. On November 4, the third reading began, with 65 amendments to the Constitution Bill adopted, as well as the adoption and enactment of the Constitution. On December 16, 1972, the Constitution took effect.

9. Philosophical Foundations of the 1972 Constitution

Each constitution contains certain fundamental features that express the principles that it holds. Bangladesh's constitution stands firm on a number of comparable key issues that are extremely important. Indeed, it was these beliefs that prompted the heroic Liberation War heroes to lay down their lives. Another well-known truth is that even before the final text of our Constitution was completed, there was widespread agreement on the basics to be included in it, with competing parties and organizations disagreeing mainly on minor details. (Abul Fazl Huq, 1973) Constitution-Making in Bangladesh) Our Constitution, according to Dr. M Shah Alam, is a legal instrument that embodies the greatest values of democracy, fundamental human rights and dignity, justice, the welfare of the people, and the rule of law. (Dr M Shah Alam, '43 Years of Our Constitution') To further understand the factors that impacted the overall framework of our constitution, it is necessary to first examine some of the philosophical foundations of the 1972 constitution, which are:

9.1 Nationalism

The significance of the first essential concept, nationalism, in establishing the Constitution of Bangladesh cannot be overestimated. Members of the Constituent Assembly sincerely recognized the martyrs and fighters who gave the entity independence while infusing its essence into the Constitution. As Bangabandhu properly noted that- "No country can ever advance without nationalism; this is the guiding philosophy that has led us to where we are now. We support nationalism. (...) Nationalism is based on emotions. So, my 'Bengali Nationalism' is founded on the belief that our country achieved its freedom via a terrible war." (The Constituent Assembly Debate, p 701; Column 1)

The history of the Bangalees country has constantly shown us that independence is the only way to gain redemption and freedom from exploitation. That is why, in the last twenty-five years, our country has been involved in the formation of two new states. Recognizing the gravity of the issue, our Constitution boldly declares in Article 9: The unity and solidarity of the Bangalees nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalees nationalism.

9.2 Socialism

Property and the freedom to engage in commerce or business are guaranteed by Article 10 of our Constitution, subject to any legal restrictions. It further states that property may be acquired with or without compensation, and that the issue of compensation adequacy will not be decided in court. Article 14 highlights peasant and worker liberation by providing protection for pre-constitutional nationalization and other economic initiatives. The same place has always been the epicenter of political activity that led to our freedom.

In 1971, the issue of autonomy morphed into a war for independence. The work of the Drafting Committee was founded on nationalist, socialist, democratic, and secular ideas. In order to do this, a link has been established between democracy and socialism, sometimes known as "Mujibism." (Abul Fazl Huq, [1973] 'Constitution-Making in Bangladesh')

During the general debate on the drafting Constitution bill, Mr. Asaduzzaman Khan, an elected representative from Mymensingh, made an excellent comparison between our notion of socialism and the world's perspective in his extremely enlightening statement. He rightly cited the USSR's, China's, East Germany's, and Yugoslavia's constitutions to demonstrate that personal ownership is not new in communist nations. He stressed that the concept of socialism inscribed in Bangladesh's constitution can only be realized through the use of the establishment of peace. His views obviously lead us to assume that portraying the strong basic ideals of our Constitution would have been impossible without such analogies. (Mr. Asaduzzaman Khan pointed to Chapter One, General Principles, Articles 5 and 10 of the Constitution of the People's Republic of China, as well as Article 13 of the Constitution. Article 11 (1) and Article 16 of the German Democratic Republic's Constitution were mentioned in his address. In his remarks, he referred to Article 23 of the Yugoslav Constitution.)

9.3 Secularism

Every citizen has the right to profess, practice, or promote any religion so long as it does not violate the law, public order, or morality. No one attending an educational institution is obligated to receive any instruction or to participate in or attend any religious ceremony if the teaching, ceremony, or worship is related to a different faith. The misinformed claim that the philosophy of secularism was imported from India is false in every way since India's Constitution accepted this objective much later. (The word "secular" was not inserted into the Preamble of the Indian Constitution until the 42nd Amendment in 1976)

9.4 Democracy

The Constitution provides avenues for cultivating participatory democracy with the goal of empowering the entire public. However, the notion of democracy is not limited to insuring the existence of several political parties. It looks to be fairly multifaceted instead. Several elements of unique significance are included in this concept. Our Constitution depicts a kind of democracy that addresses a variety of challenges.

9.5 Parliamentary Democracy

The majority of his powers are delegated to the Prime Minister and the Chief Justice under Article 48 of the Constitution. This keeps the President out of power politics and allows the Prime Minister ultimate control over his cabinet. Sovereignty of the English medieval king was codified in the unwritten constitution (codified / uncodified constitutions) and has been recognized by legal authorities as a legal concept accepted, albeit debated, by legal officials. Parliamentary sovereignty is becoming the exception rather than the norm in modern global constitutionalism. Currently, at least 171 constitutions explicitly assert their legal supremacy and/or have clear processes to assess earlier or future legality (supremacy/primacy). The interwar and WWII European experience revealed that even democratically elected institutions might undermine basic rights and freedoms. Postwar constitutionalism tended to establish constitutional courts to defend democracy from its excesses.

9.6 Enforcement of Human Rights

Bangladesh's constitution gives equal weight to the promise of defending human dignity and characteristics of public participation. According to Article 11, "the Republic shall be a democracy in which fundamental human rights and freedoms, as well as respect for the dignity and worth of the human person, are guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels is ensured." In order to fulfill the people's rights, the Constitution includes a bill of rights that guarantees fundamental rights such as equality before the law, equal opportunity in public employment, right to life and personal liberty, freedom of movement, freedom of assembly, freedom of association, and freedom of thought. (Kamal Hossain, 2013, Bangladesh: Quest for Freedom and Justice (First edn, The University Press Limited 144)

Therefore, as conclusion, it is impossible to deny that our Constitution was shaped by a long and painful history of sacrifices and tyranny that drove us to accept the essential ideals of nationalism, socialism, democracy, and secularism. This work has been lauded in numerous ways, as it should be. The Constitution has been described as "(...) the fruit of a historic war of independence, achieved with the lives and sacrifice of a telling number of people for a common cause, making it a class apart from other constitutions of comparable description," as stated in the judgment of *Dr. Mohiuddin Farooque v Bangladesh (1997),* 49 DLR (AD). Bangladesh has been one of the world's busiest constitutional laboratories since its independence in 1971. (Aleem Al Razee, Constitutional Glimpses of Martial Law- Dhaka: University Press Ltd., 1982) Bangladesh stands out among its South Asian neighbors in terms of ethnic, cultural, and linguistic homogeneity among its people, as well as territorial closeness among its many administrative entities. Bangladesh carried the historical burden of Pakistani domination, which included a civil–military bureaucracy and a non-representative technocracy, when it gained independence.

As a consequence, there was broad agreement on the creation of a representative government modeled after the Westminster parliamentary system, as well as a constitution enshrining key liberal-democratic ideas. However, there were drawbacks stemming from the same historical heritage. Bangladesh's split from India and annexation to Pakistan was prompted by communal politics and the division of British India. The 1971 struggle, which was primarily economic, political, linguistic, and cultural in character but was purposely portrayed as religious, resulted in Pakistan's independence. (Rehman Sobhan (2006), "Identity and Inclusion in the Construction of a Democratic Society in Bangladesh," Journal of the Asiatic Society of Bangladesh (Humanities), 51 (2): 155–77.) Although Pakistani control in Bangladesh ended in genocide followed by a liberation war, the communalization of Pakistan's identity continues to plague Bangladeshi culture and politics today.

10. Borrowed Features of Bangladesh Constitution

The procedure and substance of constitution formation are pivotal to understanding the nature of the constitution-building process in Bangladesh. According to Klein and Sajó, it has been established in the field of comparative constitutional law that a constitution-making process not reliant on prior norms of procedure is known as creation ex-nihilo. (Klein, Claude, and Andras Sajo, 2012) The identification of the entity that will compose the constituents is the initial step in this type of constitution-making. By definition, this act must be self-affirming. In such a context, self-constitution is revolutionary, marking a

clear repudiation of the former government. An elected (or at least delegated) constituent body, such as a constituent assembly, is considered the ideal and most successful body for drafting constitutions that meet the criteria of constitutionalism and democracy.
In Bangladesh, the people declared their independence through "an act of self-affirmation," a process that can be seen as a purposeful break from Pakistan's then-existing constitution. Klein and Sajó distinguish between two types of ex-nihilo creation:

1. The revolutionary version
2. Constitutions for nation-state-building

In revolutionary constitution-making, the pre-existing constitution-making structure is ignored, and the group drafting the new constitution must form itself. On the other hand, nation-state constitutions are built on ethnic homogeneity and a sense of belonging to the new state, rather than the rejection of fundamental authority. This approach to state building can be used as a national sovereignty act or as an international endeavor to create a constitution. Dr. Kamal Hossain remarked that Bangladesh's Constitution-making process could be defined as revolutionary since the public enthusiastically supported the establishment of a new constituent assembly. He further stressed that, while the initial goal was to draft a new constitution peacefully, the genocide and attack forced the country to resort to violence. (Kamal Hossain, 2013, Bangladesh: Quest for Freedom and Justice. The University Press Limited)

The borrowed features of the Constitution of Bangladesh reflect a blend of various global influences, carefully adapted to suit the country's unique socio-political context. These features include:

-Judicial Review: Borrowed from the United States, judicial review empowers courts to assess the constitutionality of legislative and executive actions. This mechanism ensures a check on governmental power and upholds the rule of law. (Marbury v. Madison, [1803]) The President's role as commander-in-chief of the armed forces and the principles of an independent judiciary and separation of powers also draw from the U.S. Constitution, emphasizing a robust system of checks and balances.

- Parliamentary Government: The parliamentary system, the concept of single citizenship, the rule of law, the role of the legislative speaker, and legislative procedures are borrowed from the British Constitution. This framework supports a system where the executive is accountable to the legislature, ensuring democratic governance. (Dicey, A.V, Introduction to the Study of the Law of the Constitution. Macmillan, 1885)

- Directive Principles of State Policy: Inspired by the Irish Constitution, the directive principles in Bangladesh's Constitution are termed "Fundamental Principles of State Policy." These principles, although non-justiciable, guide the state in making laws and policies aimed at ensuring socio-economic justice. (Constitution of Ireland 1937, Articles 45)

- Republic and Core Values: The concept of a republic, along with the ideals of liberty, equality, and fraternity, were borrowed from the French Constitution. These values are enshrined in the Preamble and the Fundamental Rights section, highlighting the commitment to uphold individual freedoms and social justice. (Constitution of the French Republic 1958, Preamble)

10.1 Analysis of Borrowed Features

The integration of borrowed features into the Constitution of Bangladesh underscores a deliberate effort to adopt tried and tested governance models while tailoring them to the national context. The adoption of judicial review ensures that the judiciary can act as a guardian of the Constitution, protecting against potential overreach by other branches of government. This feature has been instrumental in safeguarding democratic principles and ensuring that the rule of law is maintained. (Kamal Hossain, 2013, Bangladesh: Quest for Freedom and Justice. The University Press Limited)

The parliamentary system borrowed from Britain aligns with Bangladesh's colonial history, making it a familiar governance structure. This system fosters accountability and responsiveness, as the executive must maintain the confidence of the legislature. However, the effectiveness of this system in Bangladesh has faced challenges, particularly concerning political instability and the concentration of power within executive leadership. (Ahmed, Nizam, 2004, Parliamentary Democracy in Bangladesh. Ashgate)

The directive principles from the Irish Constitution provide a framework for socio-economic governance. These principles aim to create a welfare state by guiding the government in addressing issues such as poverty, health, and education. While non-enforceable, these principles serve as a moral compass for the legislature, highlighting the state's commitment to achieving equity and social justice. (Gerard Hogan, The Origins of the Irish Constitution, 1928-1941. Royal Irish Academy, 2012)

The ideals of liberty, equality, and fraternity, borrowed from the French Constitution, reflect the aspirations of the Bangladeshi people for a society grounded in democratic values and human dignity. These ideals are integral to the Constitution's vision of creating a just and inclusive society. However, realizing these ideals in practice requires continuous efforts to address socio-economic disparities and ensure equal opportunities for all citizens. (Richard Bellamy, 1996, Constitutionalism in Transformation: European and Theoretical Perspectives. Oxford University Press,)

The borrowed features of the Constitution of Bangladesh illustrate the dynamic interplay between global constitutional norms and local needs. By drawing on diverse legal traditions, Bangladesh has crafted a constitution that seeks to balance the imperatives of governance, justice, and social equity. While the incorporation of these features has provided a strong foundation, the ongoing challenge lies in their effective implementation and adaptation to the evolving socio-political landscape.

10.2 Additional Considerations

- Cultural Adaptation: The adaptation of borrowed constitutional features to align with Bangladesh's cultural and religious values is crucial. For instance, while secularism was adopted, it has been interpreted in a way that respects the religious sentiments of the majority Muslim population, reflecting a localized adaptation of a borrowed principle.

- Impact on Legal Education and Practice: The borrowed elements have also shaped legal education and practice in Bangladesh. The incorporation of common law principles and practices has led to a legal system that relies heavily on precedents and case law, influencing the training and approach of legal professionals.

- Comparative Constitutional Challenges: The reliance on borrowed features has not been without challenges. There have been instances where the imported legal concepts have clashed with local customs and practices, leading to tensions and the need for constitutional amendments to address these conflicts.

- Future of Constitutional Borrowing: As Bangladesh continues to evolve, the role of constitutional borrowing in future amendments and legal reforms remains a topic of interest. The experiences of other nations will likely continue to inform Bangladesh's legal development, necessitating a careful balance between global influences and domestic realities.

11. Achievements of Bangladesh's Constitution

Despite the limitations inherent in constitutional borrowing, the Constitution of Bangladesh has achieved remarkable milestones. It laid the groundwork for a democratic state that upholds the rule of law, fundamental human rights, and an independent judiciary. Article 11 of the Constitution, for example, commits the Republic to ensuring fundamental human rights and effective public participation in governance.

One of the Constitution's most significant achievements is its ability to embody the collective aspirations of the Bangladeshi people while fostering a vision for a just and equitable society. By incorporating key democratic principles, such as the separation of powers, equality before the law, and provisions for fundamental freedoms, it created a robust framework for governance. Articles 27 and 31 ensure equality before the law and protection of the law, reinforcing the commitment to justice and fairness. Framers also demonstrated foresight by embedding mechanisms for constitutional amendments, ensuring that the document could adapt to changing circumstances. Article 142 of the Constitution provides the Parliament with the authority to amend its provisions, a feature that has allowed the Constitution to remain relevant over time. While the process has occasionally been misused, this adaptability has contributed to the Constitution's resilience in the face of political upheavals, military coups, and periods of authoritarian rule.

The Constitution also enshrines the fundamental principles of nationalism, socialism, democracy, and secularism. These principles, articulated in the Preamble and Article 8, are reflective of the sacrifices made during the Liberation War and serve as a tribute to the martyrs who fought for the nation's independence. As the Supreme Court stated in *Dr. Mohiuddin Farooque vs. Bangladesh (1997)*, these principles form the backbone of the constitutional framework and symbolize the aspirations of the Bangladeshi people.
Furthermore, those things played a crucial role in shaping Bangladesh's legal and political identity in the international arena. By recognizing international law and incorporating global human rights principles, the Constitution aligns itself with universal ideals of justice and equality. Article 25 underscores the country's commitment to international peace and cooperation, further enhancing its reputation on the global stage.

Another achievement lies in those provisions for the enforcement of fundamental rights through the judiciary. The establishment of judicial review ensures that executive and legislative actions are subject to constitutional scrutiny. This mechanism, outlined in Article 102, empowers the High Court Division of the Supreme Court to provide remedies for violations of fundamental rights. This feature underscores the Constitutional to accountability and the protection of individual freedoms.

Despite challenges, the Constitution has fostered significant progress in promoting inclusivity and addressing socio-economic disparities. For instance, Articles 14 and 19 emphasize the liberation of disadvantaged groups and the reduction of inequality, illustrating the farmers' vision for a just and equitable society.

Finally, the Constitution has also proven its ray remaining a unifying force during times of national crises. The democratic ethos enshrined within its framework has inspired generations of Bangladeshis to strive for a society grounded in justice, equality, and inclusivity. As Kamal Hossain noted, the Constitution reflects the aspirations of a people determined to create a nation where their rights and dignity are safeguarded.

In sum, the achievements of Bangladesh's Constitution have significance as a cornerstone of the nation's identity. By balancing borrowed principles with indigenous values, it remains a testament to the resilience and vision of the Bangladeshi people.

12. Future Directions

As Bangladesh continues to evolve, the Constitution must adapt to new challenges and opportunities while safeguarding its foundational values. The process of constitutional borrowing and transplantation will likely remain instrumental in driving legal innovation and reform. However, such borrowing must not amount to mere replication. Future amendments should prioritize transforming borrowed principles to suit the nation's socio-cultural, political, and economic realities. For instance, ensuring that secularism respects religious diversity or that parliamentary democracy evolves to address contemporary governance challenges can reinforce the Constitution's relevance. (Alan Watson, 1993, Legal Transplants: An Approach to Comparative Law (2nd edn, University of Georgia Press)

In addition to adapting to global constitutional trends, fostering a strong culture of constitutionalism will be critical. Constitutionalism entails more than the existence of a constitution—it represents a commitment to the rule of law, accountability, and the active engagement of citizens in governance. (Mark Tushnet, (1999) 'The Possibilities of Comparative Constitutional Law' 108 Yale Law Journal 1225) Institutions like the judiciary, legislature, and executive must function independently and transparently, free from political interference, to ensure constitutional ideals are upheld. Strengthening these institutions through structural reforms and capacity-building initiatives can ensure their resilience in the face of shifting political dynamics. (Dr. Kamal Hossain, 2013, Quest for Freedom and Justice: Constitutional and Human Rights Essays, UPL)

Furthermore, public participation in governance must move beyond mere representation. Empowering citizens through civic education and initiatives that enhance their understanding of constitutional rights and responsibilities can bridge the gap between constitutional ideals and societal practices. For instance, awareness campaigns about fundamental rights and judicial remedies can make these protections more accessible to marginalized communities.

Looking ahead, constitutional reform must be inclusive, participatory, and reflective of Bangladesh's aspirations. The Constitution must evolve not just as a legal framework but as a living document that resonates with its people, embodying their struggles and hopes for a brighter future. By balancing local needs with global principles, Bangladesh can continue to strengthen its constitutional identity and ensure its legal framework serves as a robust foundation for sustainable development.

13. Conclusion

The Constitution of Bangladesh stands as a remarkable testament to the nation's resilience, ingenuity, and aspiration for justice and equality. Emerging from the ashes of a painful struggle for independence, it reflects a delicate balance between indigenous values and principles borrowed from global constitutional practices. Its foundational pillars—nationalism, socialism, democracy, and secularism—embody the collective aspirations of the Bangladeshi people, while its borrowed features like judicial review, parliamentary democracy, and directive principles reveal a conscious effort to integrate tried-and-tested frameworks into a unique socio-political context.

Constitutional borrowing and transplantation, as demonstrated by the Bangladeshi experience, are not merely acts of imitation but complex processes of adaptation. The success of these borrowed elements lies in their alignment with the local realities, addressing the nation’s historical and cultural uniqueness. However, challenges persist, including the risk of over-reliance on foreign models and the practical difficulties of implementing ambitious constitutional ideals in the face of political instability and social disparities.

The Constitution’s enduring relevance is its greatest strength. Its adaptability through amendments and its commitment to fundamental human rights, the rule of law, and democratic governance have allowed it to serve as both a guiding document and a unifying force. Yet, its success depends not only on the strength of its provisions but also on the collective will of the people and the institutions entrusted to uphold it.

In the years ahead, Bangladesh’s constitutional journey will continue to navigate the dynamic interplay between global influences and local realities. The Constitution must remain a living document—one that evolves to meet new challenges while staying true to its foundational vision of creating a just, equitable, and inclusive society. As a beacon of hope, it reminds the nation of its potential to rise above adversity and chart a path towards a future rooted in the principles of justice, equality, and human dignity.

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Politics of Language in Humanism: A Critical Analysis

A.S.M. Saadul Quader*

Abstract: Language is an open-ended system. That's why the users of language(s) can play with it and new discourses have been created in the society through language. As humans, we usually create ideas or thoughts according to our need and situation. We use language for various purposes. Both our everyday discourse and need of existence generate politics in our conversations. Actually, language itself is a politics in various ways. This article highlights different aspects of the politics of language in humanism.

Keywords: Language, Politics, Humanism**,** Social judgements, Movement

Introduction

We, the human beings, are the thinking creatures. We use language to express our thoughts, emotions, feelings to others. Actually, language is something which is biological. In fact, language can be treated as a biological phenomenon. According to Aristotle, speech is the representation of the experience of the mind. When we act, we use our experience; when we talk, we use our experience. With language, people create, people modify. And the politics begins.

Language is generally regarded as having two primary aspects: it is the means of communicating content, and the medium of language itself has an aesthetic value. In face-to-face verbal interaction, content tends to be most prominent, unless the texture of the language is heavily emphasized such as singing, chanting, shouting, whispering or verse recital, and so on. In speech, hearers can stop a speaker for clarification, and can take cues from the immediate context or form gestures and facial expressions. (Robson and Stockwell, 2005)

People use one or several languages to fulfil their desires. Social judgements have been created through language by the people and they like to enjoy freedom in making conversations, that's why they change their languages according to their own personal perceptions. Basically, in using language, we use our existing knowledge. Politics becomes common phenomenon in language. According to Noam Chomsky, a language is a set (finite or infinite) of sentences, each finite in length and constructed out of a finite set of elements. This definition of language considers sentences as the bass of a language. Sentences may be limited or unlimited in number, and are made up of only limited components (Maniruzzaman, 2014). This creativity of language makes language unique and political. Actually, creativity of language makes language powerful.

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Literature Review

According to George Yule (2010), in Charles Darwin's vision of the origin of language, early humans had already developed musical ability prior to language and were using it "to charm each other". This may not match the typical image that most of us have of our early ancestors as rather rough characters wearing animal skins and not very charming, but it is an interesting speculation about how language may have originated. It remains, however, a speculation.

The Natural Sound Source: A quite different view of the beginnings of language is based on the concept of natural sounds. The basic idea is that primitive words could have been imitations of the natural sounds which early men and women heard around them. When an object flew by, making a caw-caw sound, the early human tried to imitate the sound and used it to refer to the thing associated with the sound. And when another flying creature made a coo-coo sound, that natural sound was adopted to refer to that kind of object. The fact that all modern languages have some words with pronunciations that seem to echo naturally occurring sounds could be used to support this theory. In English, in addition to cuckoo, we have splash, bang, boom, rattle, buzz, hiss, screech, and forms such as bow-wow. In fact this type of view has been called the "bow-wow theory" of language origin. Words that sound similar to the noises they describe are examples of onomatopoeia. While it is true that a number of words in any language are onomatopoeic, it is hard to see how most of the soundless things as well as abstract concepts in our world could have been referred to in a language that simply echoed natural sounds. (Yule, 2010)

The Social Interaction Source: Another proposal involving natural sounds has been called "yo-he-ho" theory. The idea is that the sounds of a person involve in physical effort could be the source of our language, especially when that physical effort involved several people and the interaction had to coordinated. So, a group of early humans might develop a set of hums, grunts, groans, and curses that were used when they were lifting and carrying large bits of trees or lifeless hairy mammoths. The appeal of this proposal is that it places the development of human language in a social context. Early people must have lived in groups, if only because larger groups offered better protection from attack. Groups are necessarily social organizations, and to maintain those organizations, some form of communication is required, even if it is just grunts and curses. So, human sounds, however they were produced, must have had some principled use within the life and social interaction of early human groups. This is an important idea that may relate to the uses of humanly produced sounds. (Yule, 2010)

The Physical Adaptation Source: Instead of looking at types of sounds as the source of human speech, we can look at the types of physical features humans possesses, especially those that are distinct from other creatures, which may have been able to support speech production. We can start with the observation that, at some early stage, our ancestors made a very significant transition to an upright posture, with bipedal (on two feet) locomotion, and a revised role for the front limbs. In the study of evolutionary development, there are certain physical featured best thought of as partial adaptations, which appear to be relevant for speech. They are streamlined versions of features found in other primates. By themselves, such features would not necessarily lead to speech production, but they are good clues that a creature possessing such features probably has the capacity for speech. (Yule, 2010)

The Tool-Making Source: In the physical adaptation view, one function (producing speech sounds) must have been superimposed on existing anatomical (teeth, lips) previously used for other purposes (chewing, sucking). A similar development is believed to have taken place

with human hands and some believe that manual gestures may have been a precursor of language. By about two million years ago, there is evidence that humans had developed preferential right-handedness and had become capable of making stone tools. Wood tools and composite tools eventually followed. Tool-making, or the outcome of manipulating objects and changing them using both hands, is evidence of a brain at work. The human brain is not only large relative to human body size, it is also lateralized, that is, it has specialized functions in each of the two hemispheres. Those functions that control the motor movements involved in complex vocalization (speaking) and object manipulation (making or using tools) are very close to each other in the left hemisphere of the brain. It may be that there was an evolutionary connection between the language-using and tool-using abilities of humans and that both were involved in the development of the speaking brain. Most of the other speculative proposals concerning the origins of speech seem to be based on a picture of humans producing single noises to indicate objects in their environment. This activity may indeed have been a crucial stage in the development of language. (Yule, 2010)

The Genetic Source: We can think of the human baby in its first few years as a living example of some of these physical changes taking place. At birth, the baby's brain is only a quarter of its eventual weight and the larynx is much higher in the throat, allowing babies, like chimpanzees, to breathe and drink at the same time. In a relatively short period of time, the larynx descends, the brain develops, the child assumes as upright posture and starts walking and talking. This almost automatic set of developments and the complexity of the young child's language have led some scholars to look for something more powerful than small physical adaptations of the species over time as the source of language. Even children who are born deaf (and do not develop speech) become fluent sign language users, given appropriate circumstances, very early in life. This seems to indicate that human offspring are born with a special capacity for language. It is innate, no other creature seems to have it. The investigation of the origins of language turns into a search for the special "language gene" that only humans possess. (Yule, 2010)

Language possesses the following features (Maniruzzaman, 2014):

- Language is arbitrary.
- Language is a system.
- Language is symbolic.
- Language is systematic.
- Language is human.
- Language is non-instinctive.
- Language is vocal.
- Language is articulatory.
- Language is conventional.
- Language is a social phenomenon.
- Language is culture-related.
- Language is open-ended and changing.
- Language is a means of communication.
- Language is structurally complex.
- Language is natural.
- Language is creative.
- Language is shared phenomenon.
- Language is both oral and auditory.
- Language is habitual.

M Maniruzzaman says (2014), we (human beings) alone have had the gift of language; we are social beings; we work and cooperate with each other; we exchange with each other; we express our ideas and emotions, we communicate! Hence, language contributes to everything relating to our action, interaction, intention, passion, and so forth manifesting our existence.

Language is an inseparable part of human life and society. Human civilization has been possible solely through language. That is, it is through language only that humanity has come out of the Stone Age and developed science, art, and technology in a substantial manner, to an astonishing extend. Language functions as a means of communication; it is arbitrary; it is a system of systems. We know that speech acquired naturally is primary, whereas writing learned formally is secondary. (Maniruzzaman, 2014)

Language Change and the Politics of Creating New Meaning

People are the users of language. Because of the social consequences, languages change when new words are created or when old words get new meanings. According to Foley (2013), a language that never changes is really a dead language; people no longer use it. This is because when people use languages, they always need to modify and adapt their languages to suit their different purposes or to express new ideas. Foley (2013) also asserted that this is how new dialects, new registers and new genres come about. Actually, the politics is language change because people and their activities change and this includes the kinds of ideas and values that people want to express, as well as the ways in which it is considered appropriate to express them.

One important factor in language change is when large groups of people move from one location to another. Movement across locations, and this includes large scale migrations, will affect people's patterns of interactions. The more a group of people are constantly interacting with each other, the more similar will their use of language be. This is because regular interaction tends to result in the participants coming to share similar conventions and assumptions about how to use language. This includes norms about what kinds of phrases are appropriate for what kinds of activities, and what kinds of words to use when referring to something. But when a group splits up so that some members have moved into new surroundings, perhaps a new country even, then the original group and the new group will, over time, develop different ways of speaking. This is especial the case if the original group and the new group now have little or no contact with each other. Over time, these two groups will effectively come to develop very distant ways of speaking. (Foley, 2013)

J. A. Foley (2013) mentioned that language is that it has names. We need to be willing to pay attention to uses of language that may not have a name, such the kind of English that people use to write newspaper articles (we might call this 'Journalistic English') or the kind of English that people use to sell goods (we might call this 'English for Commercial Purposes'). But in other cases, it is not even a specific variety that might be relevant in a given situation; it might be a specific sound or sets of phrases. For example, in the early study, William Labov (1972) showed that in New York, the presence of a postvocalic [r] – this is when the [r] in words like car or four is pronounced – was associated with high social status while its absence was associated with low social status. Rather than thinking of people as possessing 'English', it might be more accurate to think of people as having a linguistic repertoire, or many varieties of the 'same' language or just bits and pieces of a language. The wider a person's repertoire, then, the more socially adaptable he/she is likely to be.

Politics of Human Language

In the case of gendered language, it is evident that male languages and female languages are different. Sex becomes a scale of measuring the status of language in the society. Simone de Beauvoir claimed that 'one is not born a woman; rather, one becomes a woman'. According to Robson and Stockwell (2005), this immediately draws the distinction between biological sex and the social construction of expectations, behavior, patterns of thinking and economic role that is gender. That language use is partly determined by the gender of speaker and hearer is apparent in numerous sociolinguistic studies that appear to show that men and women use language differently, and this is a politics in human language.

According to Bloch and Trager – A language is a system of arbitrary vocal symbols, by means of which a social group co-operates. Robson and Stockwell (2005) said that many people see the language that they speak and write as a fundamental part of their identities. Differences between languages are often said to lie behind differences in national character, suggesting that language both shapes and reflects the identities not only of individuals but also of regions and of whole cultures. The view that there is a natural link between the linguistic cultures into which someone is born and their own sense of self lies behind the idea of the 'mother tongue'. Most people are aware of accents and dialects within their own language, and will make judgments based upon their perceptions of them. Within the English language, we might think most obviously of the differences between, for example, British English, American English and Australian English.

In Aristotle's *Politics*, he makes connection between speech and politics. Basically, this is a talk between good and evil. Non-human animals are capable of feeling and expressing pleasure and pain, but only human animals are capable of making value judgements about experiences. Further, it is the fact that such judgements may be held in common that founds institutions such as the household and the state. Speech founds politics itself. This is partly what lies behind Aristotle's famous description of man as a 'political animal'. Speech is not simply one faculty among others. (Robson and Stockwell, 2005)

According to Robson and Stockwell (2005), this concern with the linguistic expression of ideas and values such as goodness or justice is important because it allows us to think about why people behave in the ways they do. As Terry Eagleton (1991) puts it: One can understand well enough how human beings may struggle and murder for good material reasons – reasons connected, for instance, with their physical survival. It is much harder to grasp how they may come to do so in the name of something as apparently abstract as ideas. Yet ideas are what men and women live by, occasionally die for. What Eagleton is referring to, of course, is the realm usually called politics.

In thinking about the relationship of language to forms of social interaction, we need to think about the concept of ideology. It was for some years a very unfashionable term, being associated with an unstable form of classical Marxism. Like the 'class struggle' or the 'proletariat', ideology was too early associated with an era which – with the fall of the Berlin Wall, the disintegration of the Soviet system, the 'end of history', emergence of globalization and 'the third way' – was felt to bear little relation to the political terrain of the late twentieth and early twenty-first centuries. Mush of the criticism of the concept of ideology came from within leftist thought itself, and this combined with liberal, humanist and right-wing pressure to cause the term to lose favor. (Robson and Stockwell, 2005)

Conclusion

Language constructs society and its culture. Speech community of a country establishes their ideology and perception among the citizens for building the nation. According to Bloomfield, the totality of the utterances that can be made in a speech community is the language of that speech community. Actually, language performs to create something new, and that is the politics of language. In this way, language generates new meaning, and these new meanings develop both new philosophy and reformed society. Language is creative, and for this feature of language, people are able to make literature. We know that literature develops human cognition and consciousness. Noam Chomsky says, when we study human language, we are approaching what some might call 'human essence', the distinctive qualities of mind that are, so far as we know, unique to man. So, language is human and language is power.

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