

LAW ANALYSIS

Revisiting the 1996 Ganges Treaty



MAZHARUL ISLAM

INDIA and Bangladesh sharing 54 trans-boundary rivers as a result water dispute is a main concern between them. However, the conflict has been primarily centered on the sharing of the waters of Ganges, Teesta, Tipaimuk dam on the Barak River and India's river linking project which have been a bone of contention between two countries. Since, Bangladesh is the downstream country the quantum of water; it has access to dependent on India which is the upper riparian. Bangladesh has repeatedly contended that India has carried out 'unilateral diversion' of the waters, thereby adversely affecting the water flow in Bangladesh.

The dispute over the sharing of river waters between India and Bangladesh originated in 1951 when Bangladesh was the part of Pakistan, because India decided to construct a barrage at Farakka. However, Pakistan opposed the construction of the Farakka Barrage in 1951 and series of correspondences they were subsequently exchanged. Between 1960 and 1970, several meetings were held where two countries shared substantial amount of data. In 1970 India for the first time acknowledged Ganges as an International river. Following the independence Bangladesh signed the Treaty of Friendship, Cooperation and Peace with Indian in 1772 for the

promotion of goodwill between the countries. Article VI of the treaty provides, "both the nations agree to take joint action in the field of flood control, river basin development and development of hydroelectric power and irrigation". Pursuant to this treaty an Indo bangle Joint River Commission was established in 1972 for carrying out a comprehensive study of the river system.

Farakka Barrage was completed in 1971 and became operational in 1975. In 1975 India and Bangladesh signed a temporary allocation agreement which was valid only for a period of 41 days; as a result Bangladesh raised the Farakka issue at the 31st session of the UN General Assembly in 1976. Afterward a bilateral discussion between India and Bangladesh resulted in the formation of water sharing agreement in 1977 but the agreement entered into only for the duration of five years. A significant feature of the treaty was Article 2 it provided a 'guarantee clause' for Bangladesh by assuring it a minimum of 80 percent of its shares during the lean period and further reinforces in Article 12 Bangladesh's share of water cannot be reduced under any circumstances till the duration of the treaty. When the 1977 agreement lapsed in 1982, they signed two memorandum of understanding (MOU) in 1982 and 1985 but it did not include a minimum of 80 percent 'guarantee clause'. After the expiry of this MOU, a vacuum remained till the water

sharing treaty in 1996 was concluded. The Ganges water treaty does not provide a minimum 'guarantee clause', which was in 1977 agreement. In present Article II of treaty simply mentioned that "In the event flow at Farakka falls below 50,000 cusecs in any 10-day period, the two Governments will enter into immediate consultations to make adjustments on an emergency basis, in accordance with the principles of equity, fair play and no harm to either party". The dispute resolution mechanism mentioned in Article VII "The Joint Committee shall be responsible for implementing the arrangements contained in this Treaty. Any difference or dispute arising in this regard, if not resolved by the Joint Committee, shall be referred to the Indo-Bangladesh Joint Rivers Commission. If the difference or dispute still remains unresolved, it shall be referred to the two Governments which shall meet urgently at the appropriate level to resolve it by mutual discussion".

The dispute resolution mechanism has been extensively criticized because it does not provide an arbitration mechanism for settlement of the dispute, while two water sharing treaty of India with Nepal "The Mahakali Treaty 1996" and Pakistan "The Indus Waters Treaty 1960" embraced the arbitration mechanism. In fact, Article IX of the treaty stipulates that the "principle of equality, fairness and no harm to either party" shall guide the future action of both nations. The equitable utilisation theory is

based on the Roman maxim "sic utere tuo ut alienum non laedas" which means "you use your own so as not to injure another". The reflection of this theory is visible in Article 9 and 10 of the treaty between India and Bangladesh. This is evident in Articles 5-7 of UN Watercourses Convention 1997, as well as Articles IV-VIII of Helsinki Rules, 1966. This indicates the application of internationally recognised principle to the dispute, but the problem is that both the country is not a party of the UN Watercourse Convention 1997 which has entered into force 17 August 2014.

There is growing concern that water flow in the region will be insufficient to meet future demands and there also proposals from upper riparian countries such as China to divert water for its own use which can further worsen the existing dispute. This highlights the need to hold multilateral negotiations or discussion on water sharing. Therefore, Bangladesh should focus on plugging the loopholes of the 1996 Treaty and ensure her demand like 'Minimum guarantee clause' and 'Arbitration mechanism' by invoking Article X 'review procedure' in consonance with international legal principles to meet its future demands.

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BOOK REVIEW

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OUR experience with HIV/AIDS epidemic or Ebola catastrophe at African nations, Zika Virus outbreak in Brazil has vividly reflected the human melancholy at the same time necessity for research & development (R&D) to invent proper medicines for combating such endemic or any other human diseases. It is a harsh reality that World's big giants and MNC's are not interested to invest their time and resources for innovation of new medicines unless their products are safeguarded by appropriate legal mechanism, i.e., patent. Again, if medicines are accorded patent protection it will ensue many associated outcomes including price hike which may hinder access to drugs for mass people at an affordable costs. Thus, medicine patenting and access to drugs or other amenities of public health have been areas of global concerns, particularly from the perspectives of developing nations and LDCs.

WTO-TRIPS regime has set out the global standards for medicine patenting that the Member States are obliged to comply with. Many critics lambaste the 'One Size Fits All' theory of TRIPS and suggest the LDCs to maneuver the TRIPS flexibilities in appropriate manner so that countries may ensure access to drug or public health for their citizenry.

Being a WTO member, LDC like Bangladesh cannot completely negate the TRIPS regime neither it can blindly replicate TRIPS provisions within its domestic legal frameworks. At the current stature of WTO rule, Bangladesh being a LDC is enjoying exemption from providing medicine patent until 1 January, 2033. However, the future of Bangladeshi Pharmaceuticals industry, access to drug for mass people and public health depend on the crafting patent legislation in a way that protects national interests on one hand and becomes TRIPS compliant on the other.

Accentuating to aforesaid backdrops, Monirul Azam, Associate Professor of Law, University of Chittagong, who has been contributing to different international institutions in various capacities and currently serving as visiting scholar at United Nations University, Tokyo, Japan, has recently published a comprehensive scholarly contribution titled "Intellectual Property and Public Health in the Developing World" from Open

Demand for medicine patenting



Intellectual Property and Public Health in the Developing World



Intellectual Property and Public Health in the Developing World
Monirul Azam
Open Book Publishers, Cambridge, UK, 2016, pp. 322

Book Publisher, Cambridge, UK. In this book, the accomplished author has explored ways to design national patent laws for developing nations and LDCs coupled with their institutional frameworks in order to strength the domestic pharmaceuticals industry as well as to ensure access to medicines for the people.

The book has been divided into five chapters. Chapter one sets out the overall backgrounds of the study by outlining the advent of TRIPS and requirements for medicine patenting under TRIPS,

Ramifications of Doha Declaration on Public Health, Relevant research questions and Methodology that have been used to write the book. In chapter two, the writer has endeavored to provide overview of pharmaceutical industry of Bangladesh by taking into account of in-depth analysis of legislative and institutional frameworks for medicine patenting. This chapter analyzes the exiting patent law of Bangladesh in the context of medicine patenting and further explores challenges and opportunities for pharmaceutical industry of Bangladesh under the purview of TRIPS compliant patent regime at near future.

Chapter three sheds the light from the experience of Brazil, China, South Africa and our neighbor India - what legislative and institutional measures they have undertaken to tackle the public health issues and also to boom up domestic medicine industry. Chapter Four outlines the policy options for LDC like Bangladesh under WTO globalised standards and its inbuilt flexibilities for patent protection. It suggests broadly two policy options for Bangladesh, firstly, legislative changes in the legal regime of medicine patenting in Bangladesh. Secondly, governmental and/or other policy interventions those are required and may be needed in the given context.

Finally, the chapter five draws institutional and infrastructural arrangements that should be developed by the LDCs including Bangladesh for successful progress towards innovation and development in the field of medicine patenting and public health in consonance with TRIPS compliant legal regime after transition period and also in post-TRIPS era. It is relevant to mention that the readers may find the redundancy of similar subject matters in different chapters of the book. It is intentionally maintained by the author so that readers may comfortably go through each chapter separately without consulting other chapters. It is a must read book for legal scholars, researchers, students and other stakeholders to successfully comprehend the dynamics of medicine patenting and public health concerns under TRIPS and Post-TRIPS regimes for Developing word in general and Bangladesh in particular.

THE REVIEWER IS A LECTURER OF LAW, EAST WEST UNIVERSITY.

LAW OPINION

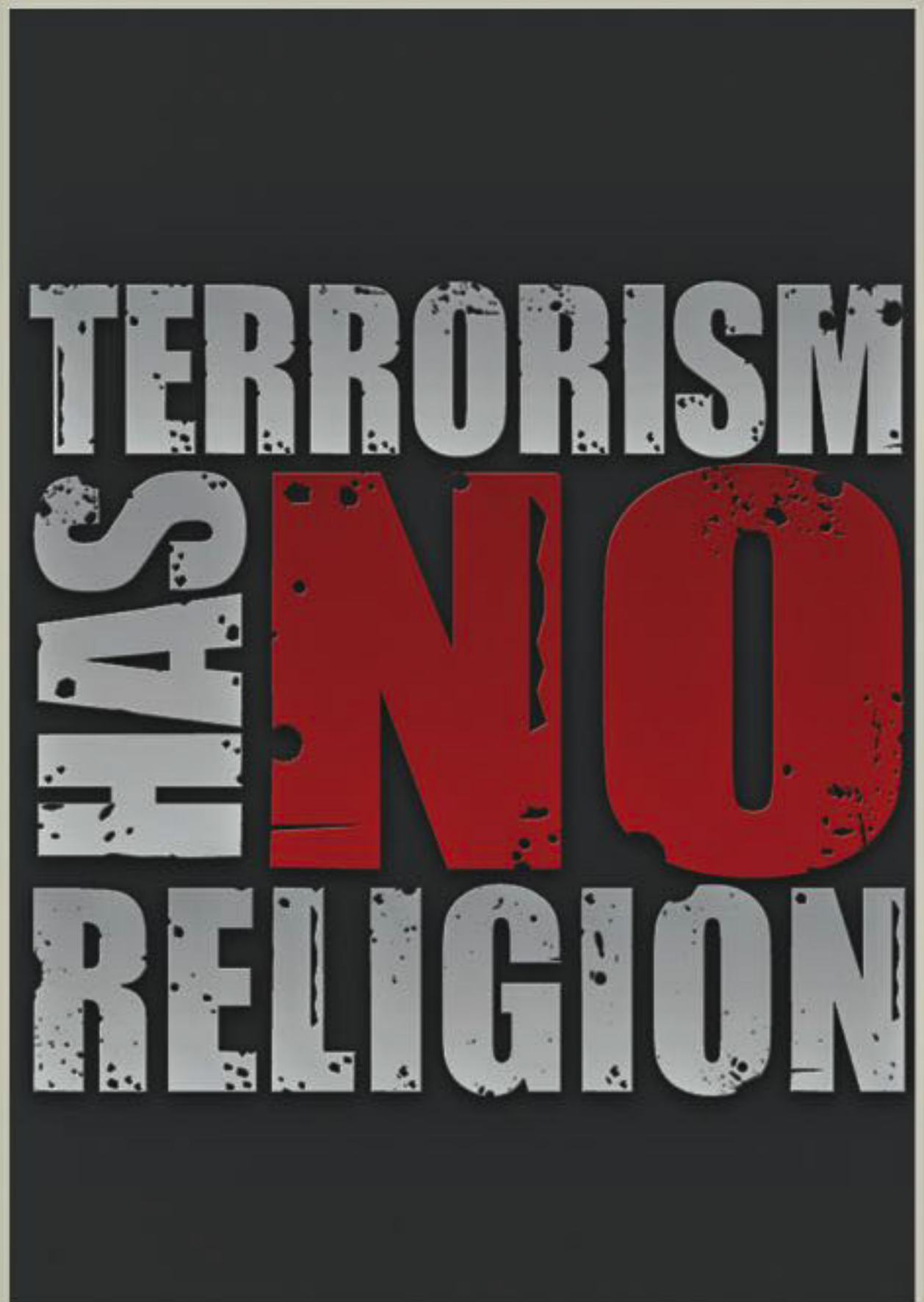
Fighting religious terrorism in Bangladesh

KHANDAKAR KOHINUR AKTER

TERRORISM has been now labeled as the systematic internal or external violence and intimidation practiced by organised terrorists. However the last decade witnessed a transformation of the definition and patterns of terrorism, both domestically and internationally. Defining terrorism refers to any political act designed by groups to have their message heard. It means and includes unlawful act of violence which intimidates government or societies and its goal is to achieve political or ideological objective. In line with the above definition, religious terrorism can be defined as terrorism carried out based on the objectives and goals that have a predominantly religious influence.

Considering the concepts of four waves of terrorism given by David Rapoport in 2002 it is found that the fourth wave which is called "religious wave" began in 1979 the year of Islamic revolution in Iran. The wave continues with some international political happenings like Afghanistan war with Russia, Middle East crisis, Kashmir crisis, Iraq invasion by US and lastly Syria crisis. To further analysis, it can be collaborated with sociological propositions established by Boyns and Ballard (2004) which indicates that a sociological foundation can be held responsible where terrorism can easily be transplanted.

The first proposition is counter-hegemony which refers to response towards a potentially hypothetical powerlessness. The terrorist groups are demanding to change the hegemonic order of the social and political order which clearly indicates their dissatisfaction and powerlessness. Secondly, the resource mobilisation proposition asserts that due to the globalisation and democratisation of educational and technological resources, such resources will become more available to terrorist groups. As example we see that those groups are using latest communication technologies and they have the access to resource helping them to strike hard. Thirdly the power-prestige proposition describes that the more severe and more publicly



visible the terrorist attack, the more attention they gain within their own network. For example, we see that the attackers are uploading pictures of victims in internet to show the world about their superior position which matches this proposition.

And lastly the solidarity proposition indicates, 'the more successful or visible a terrorist attack, the greater the internal solidarity of both hegemonic (the victimised by the attack) and counter-hegemonic (those responsible for the attack) groups will be strengthened'. This proposition becomes understandable when we find that people from all parts of the world are joining terrorist groups as they feel the same religious solidarity.

Matching those propositions it can be said that in Bangladesh these factors were responsible for such terrorist attacks. Socio- economic deprivation, political and institutional order, divided education system and values, failure of social-control mechanism, identity and cultural clash, global economic and political order, deviated religious leaders and agents, availability of finance and technological support can be held responsible for such rise of terrorist activities.

Response to those, the government of Bangladesh has enacted the Anti-terrorism Act 2009 to combat terrorism that covers terrorism including religious extremism. Section 6 holds that any person, entity or foreigner may be punished with death or imprisonment for life and in addition to that a fine may also be imposed if he commits offence for the purposes of threatening the unity, integration, public security or sovereignty of Bangladesh. Simultaneously the accused shall be punished with imprisonment for life or a rigorous imprisonment not exceeding fourteen years but not less than four years, and additionally fine if he abets or instigates any person to murder, injure seriously, confine or kidnap any person, or abets or instigates to damage any property of any person or entity or the State.

Moreover, if any person is found guilty of financing terrorists, the person shall be punished with an imprisonment for a term not exceeding twenty years but not less than four years, and a fine may be imposed equal to twice the value of the property involved with the offence or taka ten lakh.

So along with legal interventions, social interventions can be focused on changing the underlying social conditions of children and youth of 'at risk' families. Moreover in the schools children must learn the religious scriptures with proper meaning and may provide proper knowledge on religious. Community and criminal justice interventions must be strengthened by effective monitoring system.

THE WRITER IS A LECTURER OF LAW, BANGLADESH OPEN UNIVERSITY.

LAW EVENT

LCLS South conducts career fair

London College of Legal Studies (South), Affiliate Centre of University of London and registered support centre for BPP conducted Career Fair 2016 on its premises on July 23. The institution's far-fetched reputation among the external institutions running the legal studies programme materializes from such brilliant opportunities provided by it. 40 law chambers, firms, organisations, corporate entities of various caliber including Dr Kamal Hossain and Associates, Quader Chambers, Law Valley, Legal Nexus, A Karim and Co, Grays Chambers, Chowdhury and Ullah, Vertex Chamber, A Hossain and Associates, Bangladesh Legal Aid Services Trust (BLAST), Bangladesh



National Women Lawyers' Association (BNWLA), Grameenphone LTD were invited thus encouraging the LLB students of different academic years to opt for internship, mini-pupillage, and

pupillage according to their choice. The daylong event from 11 AM to 5 PM was attended by the faculties of LCLS South while students from other external institutions were also welcome to drop

their resume in the law firms and chambers of their choice. Even in midst of torrential downpour the event saw a good turnout in the latter half of the day. Senior advocate of the Supreme Court, Barrister Tania Amir graced the event with her presence which was great encouragement for enthusiastic interviewees. The students now await response from the legal entities in the hope of delving deeper into the Bangladeshi legal system which is an opportunity much needed for those who study Law in Bangladesh.

THE EVENT WAS COVERED BY ANUPOMA JOYEETA JOYEE, STUDENT OF LAW, UNIVERSITY OF LONDON INTERNATIONAL PROGRAMMES.