

## Diminishing Hindu Population in Bangladesh from the Perspective of Ethnic Cleansing: A Conscious Unawareness?

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### Introduction

“The dead, it is said, do not live to tell the tale, but this is not true in ethnic cleansing. The dead do tell the tale; it is the living who are reluctant to speak.” – Horowitz, 2001.<sup>1</sup>

A bitter fact in today's Bangladesh is that the Hindu population is dying out. The narrative that describes the vanishing Hindu minority, which once comprised 31% of the population in 1947 and dwindled to a meager 9% by 2002, reflects this sad reality.<sup>2</sup> At the time of India's partition in 1947, Hindus comprised just under one in three East Pakistanis. When East Pakistan became Bangladesh in 1971, they were under one in five; thirty years later less than one in ten; and according to some estimates, less than 8% today. Utilizing demographic studies and other methods, Professor Sachi Dastidar of the State University of New York calculates that well over 49 million Hindus are missing today.<sup>3</sup>

Discrimination towards the Hindu community in Bangladesh is both visible and hidden. The state's bias in the Constitution and its reluctance to address human rights violations against minorities makes this discrimination evident. Moreover, there has been a long history of violence and repression against Hindus in Bangladesh, which has led to the community's dramatic decline. This infamous history consists of many barbaric episodes of violence against Hindus over the years, including attacks in the aftermath of the Babri Mosque incident in India in the 1990s, the 2001 post-election violence, and the vast appropriation of land under the Vested Property Act.

After initially embracing secularism in the post-independence era, Bangladesh is now known primarily as a moderate Muslim country. The atmosphere is certainly a changed one. *The secularist era implied an equal existence for all, while the current period implies that other people exist because Muslims are moderate in Bangladesh.* As a result of systematic human rights violations and discrimination, the Hindu population is now rapidly leaving Bangladesh at

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<sup>1</sup> Horowitz, Donald, *The Deadly Ethnic Riot*. (Los Angeles, University of California Press, 2001) 224.

<sup>2</sup> In 1971, it was near 18% and in 1974 it was 13%, See [http://www.banglapedia.org/HT/P\\_0244.htm](http://www.banglapedia.org/HT/P_0244.htm), last visited on 25.7.2014.

<sup>3</sup> Dastidar, S, *Empire's Last Casualty: Indian Subcontinent's Vanishing Hindu and other Minorities* (Kolkata: Firma KLM Private Limited, 2008),42.

an alarming rate, more than that of any other time. This reinforces the allegation that Bangladeshi society is hostile toward the Hindu community.<sup>4</sup>

The question then remains whether this migration of Hindus from Bangladesh amounts to ethnic cleansing.

Ethnic cleansing is a blanket term that covers a host of criminal offenses, rather than any one specific crime. Despite its recurrence, ethnic cleansing nonetheless defies easy definition. At one end it is virtually indistinguishable from forced emigration and population exchange, while at the other it merges with offenses like deportation, genocide and rape. Although there are many definitions and explanations of ethnic cleansing in the arena of international law, there are some components common to most of them. To narrow those elements down into one simple definition, *ethnic cleansing is the attempt to create ethnically homogeneous geographic areas through the systematic forced removal or displacement of persons belonging to particular social groups*. This systematic removal may consist of heinous crimes against such group.

The repeated incidents of violence as well as discrimination infer hatred towards a community entrenched in a nation's social structure. Being victims of oppression, many Bangladeshi Hindus are forced to leave the country, while discrimination impels many others to seek better refuge in another country. The authors argue that these incidents indicate a discriminatory social policy towards the Hindu community in Bangladesh, which aims at and results in the unwilling departure of Hindus from their motherland.

This article intends to narrate the causes behind the gradual depletion of Hindus from Bangladesh in the context of ethnic cleansing. The authors will endeavor to find the most applicable definition of ethnic cleansing which would reflect the factors surrounding the current forced migration of Hindus from Bangladesh. Specifically, it will attempt to examine the prevailing situation in Bangladesh utilizing the definitions provided under international law. In doing so, the authors shall relay anecdotes and narratives of atrocities committed against Hindus in Bangladesh.

Discriminatory provisions in the Constitution, the repeated occurrence of atrocities, covert discrimination at both the governmental and societal level, and the violation of property rights of Hindus under the veil of biased laws will collectively comprise the primary basis for discussion in this article.

### **Atrocities on minorities: Tragedy or terror?**

In the summary of his report on the events that transpired during the 1971 War of Independence from Pakistan, dated November 1, 1971, the late U.S. Senator Edward Kennedy (D - Massachusetts) wrote:

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<sup>4</sup> See <http://world.time.com/2014/01/14/the-hindus-of-bangladesh-are-fearing-for-their-future/>, last visited on 26.7.2014.

*Hardest hit have been members of the Hindu community who have been robbed of their lands and shops, systematically slaughtered, and in some places, painted with yellow patches marked 'H'. All of this has been officially sanctioned, ordered and implemented under martial law from Islamabad.*

Unfortunately, even in independent and secular Bangladesh, the Hindu population has been suffering on account of its religious identity. Soon after independence in 1971, for instance, the government violated the religious freedom of Hindus when it demolished the remnants of Ramna Kalibari, a sacred and historic Hindu temple situated in Dhaka. The destroyed relics were the last symbol of this historical temple after it previously endured a massive attack by Pakistani invaders in 1971. After the demolition, the land owned by the temple was transferred over to Dhaka Club, a recreation center for the elites.

Furthermore, many Hindu temples and properties were looted and demolished during communal riots in the early 1990s. In December 1992, following the infamous Babri Mosque incident in India, hundreds of temples in Bangladesh were demolished, properties were looted, and Hindu women were raped and killed.<sup>5</sup> The anti-Hindu violence in December 1992 was the worst in terms of damage and destruction.<sup>6</sup>

Several months after the riots, in mid-1993, the Bangladesh Nationalist Party (BNP) led-government issued two orders, which were interpreted as sanctioning the persecution of religious minorities. Specifically, these orders from the Home Ministry asked commercial banks to: (1) control withdrawal of substantial cash money by account holders from the Hindu community, and (2) stop disbursement of business loans to the Hindu community in the districts adjoining the India-Bangladesh border.<sup>7</sup>

Militant attacks against Hindus in Bangladesh escalated dramatically following the October 2001 general election that brought the BNP to power in coalition with hard-line Islamist parties. Following the elections, the BNP coalition and its supporters unleashed a large-scale campaign of violence targeting the Hindu community that lasted more than 150 days. During that period, there were reportedly more than 10,000 cases of human rights abuses committed against minorities. Hindu homes were looted, vandalized, and burned and Hindu temples and sacred sites were destroyed. Scores of Hindu women and girls were raped. In some cases, they were gang raped in front of their male relatives.<sup>8</sup> Hindus were also assaulted on the streets, in their homes, and at their workplaces. "Systematic attacks resulted in a mass migration of Hindus to India and in particular to the bordering state of Tripura. The government did little to prosecute or investigate the violence."<sup>9</sup>

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<sup>5</sup> See <http://www.refworld.org/docid/469f3869c.html>, last visited on 28.7.2014.

<sup>6</sup> Dr. Timm. R.W.(ed.), *State of Human Rights 1995-1996*, (Dhaka: Coordinating Council for Human Rights in Bangladesh, 1996), 55.

<sup>7</sup> Personal interview with Advocate Rana Das Gupta, General Secretary, Bangladesh Hindu Buddhist Christian Unity Council, on 16 .7.2014.

<sup>8</sup> See [http://zeenews.india.com/news/south-asia/100s-of-minority-women-gang-raped-in-bangladesh\\_702369.html](http://zeenews.india.com/news/south-asia/100s-of-minority-women-gang-raped-in-bangladesh_702369.html), last visited on 26.7.2014.

<sup>9</sup> Human Rights Watch World Report 2003.

More than a decade later, on February 28 2013, the International Crimes Tribunal (ICT) sentenced Delwar Hossain Sayeedi (Vice President of Jamaat-e- Islami) to death for committing crimes against humanity during the 1971 War of Independence. Following the sentence, activists of Jamaat-e-Islami and its student wing, Islami Chhatra Shibir, attacked Hindus in different parts of the country.<sup>10</sup> Hindu properties were looted, Hindu houses were burnt to ashes, and Hindu temples were desecrated and set on fire.<sup>11</sup> And in early 2014, during elections and post-poll violence, armed gangs attacked minority communities, mostly in the southwestern and northern districts, including Jessore, Satkhira, Thakurgaon, Panchagarh, Chittagong, Nilphamari, Kurgram, Lalmonirhat, Satkhira, Gaibandha and Dinajpur.<sup>12</sup> International aid agencies estimated that as many as 5,000 families were affected. This wave of violence against the Hindu community was unprecedented and weighed heavily on conscientious and civilized citizens of Bangladesh of all religions.

### **Chronicle of constitutional discrimination: Deliberate marginalization**

Cultural pluralism had historically been the key feature of the Indian subcontinent's social structure, but it suffered a significant blow when the subcontinent was divided by the controversial "Two Nation Theory" in 1947.<sup>13</sup> From that experience, the East Pakistani people realized that a nation cannot be formed solely on the basis of religion and that proper democracy was the ideal path. The 1971 Liberation War was a bitter reminder of this fact. In independent Bangladesh, the 1972 Constitution contained all democratic principles, including secularism,<sup>14</sup> which were the basis of our morale in 1971. That fabric was ultimately ruptured by subsequent governments, who shrewdly utilized religion as a weapon to deceive the country's citizens. In particular, the Fourth Amendment, which was considered the most debated amendment in the constitutional history of Bangladesh, altered and virtually destroyed all basic and essential features of the Constitution,<sup>15</sup> particularly the core democratic values it established.<sup>16</sup> In January 1975, the Constitution (Fourth Amendment) Act 1975 was passed transforming the Constitution beyond any semblance of its original form.

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<sup>10</sup> See <http://www.tehelka.com/violence-against-minorities-in-bangladesh-after-jamaat-leaders-death-sentence/>, last visited on 28.7.2014.

<sup>11</sup> See <http://www.clickitfaq.com/more-stories/attacks-minorities-continue/>, last visited on 28.7.2014.

<sup>12</sup> See: <http://www.ittefaq.com.bd/index.php?ref=MjBfMDFfMDdfMTRfMV8xXzFfOTk0MTU=>, last visited on 27.7.2014.

<sup>13</sup> Dr.Faruqui, Ahmad, *Was the Two Nation Theory flawed?* See <http://blogs.tribune.com.pk/story/15567/was-the-two-nation-theory-flawed/>, last visited on 28.7.2014.

<sup>14</sup> The meaning of secularism in the Constitution of Bangladesh is different than the words dictionary meaning which is 'lack of religion' or 'practicing atheism'. In our Constitution, it means religion is personal but the state belongs to everyone, i.e., people of every religion, e.g., Hinduism, Islam etc. will practice their religion freely without any fear, however, the state while providing services will not discriminate on the basis of religion and the citizens of the country will also perform their obligations to each other accordingly.

<sup>15</sup> Hamidul Huq Chowdhury v Bangladesh 34 DLR (HCD) 1982 381.

<sup>16</sup> Major changes were brought into the Constitution by this amendment: (1) a presidential form of government was introduced in place of the parliamentary system; (2) a one-party system was introduced in place of a multiparty system; (3) the powers of the Jatiya Sangsad were curtailed; (4) the term of the

Eventually, the short-lived government of Mustaque Ahmed (August - November 1975), brought to power at the behest of young military officers, declared the "People's Republic of Bangladesh" as the "Islamic Republic of Bangladesh" over state radio. And later in 1977, General Ziaur Rahman passed a presidential decree that removed the principle of secularism from the preamble of the Constitution and added a clause that provided "absolute trust and faith in the Almighty Allah." The decree was subsequently legitimized by the second parliament of Bangladesh. Similarly, during General Rahman's regime, a purely Islamic address 'Bismillahir Rahmaner Rahim' was inserted at the beginning of the Constitutional text.

While these events undermined secularist notions in the 1972 Constitution, General Hussein Muhammad Ershad went a step further in 1988 and perpetuated religion-based politics by officially making Islam the state religion through the 8th amendment to the Constitution.<sup>17</sup>

With the annulment of the 5th amendment in 2010, the concept of secularism was, at least in part, reinstated as one of the four fundamental principles in the Constitution that were originally contained in the preamble of the 1972 version.<sup>18</sup> But, in spite of the removal of the 5th amendment, the true meaning of secularism as enunciated during the early 1970's has yet to be applied to our society. This is evident from the presence of contradictory terms - secularism as a state policy and Islam as a state religion.<sup>19</sup> A Constitution is not only a legal document, it is a political document. It signifies the political consensus of a citizenry, and thus, every word in it bears a specific political connotation.

Consequently, if we agree that secularism is interlinked with democracy and that these principles, among others, were at the core of our liberationist zeal in 1971, then the presence of other contradictory clauses in the Constitution is both legally and politically confounding and inconsistent.

In Bangladeshi constitutional history, secularism has never meant profanity against a religion, but rather inferred a prohibition on the state's ability to grant political status in favor of any one religion.<sup>20</sup> But when the "State Religion Islam" clause is inserted into a political document such as the Constitution, it creates widespread political implications and questions regarding the status of minorities. For instance, when citizens are from religions other than the "state religion," are they denying the Constitution by their respective beliefs? And if so, what are the consequences when these citizens can't help their religious identities?

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first Jatiya Sangsad was extended; (5) the judiciary lost much of its independence; and (6) the Supreme Court was deprived of its jurisdiction over the protection and enforcement of fundamental rights.

<sup>17</sup> 8th amendment of the Constitution.

<sup>18</sup> See the case of Bangladesh Italian Marble Works Limited (Petitioner) v. Government of Bangladesh and others (Respondents) WRIT PETITION NO.6016 OF 2000.

<sup>19</sup> Udagama, Deepika, "The Democratic State and Religious Pluralism: Comparative Constitutionalism and Constitutional Experiences of Sri Lanka" in Sunil Khilnani & others(ed.), *Comparative Constitutionalism in South Asia*, India, Oxford University Press, 2013.

<sup>20</sup> Article 12(b) of the Constitution of the Peoples Republic of Bangladesh.

The relationship between the secularism clause and the state religion clause in Bangladesh's Constitution is too vague to answer these questions and leaves uncertain which clause ultimately prevails. The state machinery is silent on this issue and the state's response in minority oppression cases is far too slow, which tends to lead Hindus to believe that the constitutional interpretation is in reality against secularism.

### **Low intensity violence: Saga of hidden discrimination**

Whether Hindus as well as other minorities are discriminated against compared to Muslims is a question of fact. But the facts lead one to believe in the existence of such discrimination. The liberation war took a heavy toll on the lives of the Hindu population in Bangladesh. Many Hindus laid down their lives for the cause of independence, yet only a handful of them received state recognition for their deeds.<sup>21</sup> Moreover, few minorities are hired in positions of power and prestige, so there is little or no representation of them in the government. The representation of Hindus, for instance, at all levels of government and in the civil service are exceedingly low relative to their population. Dr. Samir Sarkar shows that while Hindu representation in parliament in 1954 (pre-independence era) was nearly 25%, it dwindled to less than 3% at later stages.

Similarly, prestigious posts in the Bangladesh Army, such as Colonel, Lieutenant General, Major General, and Brigadier, among others, include less than 5% Hindu participation, while representation in the navy, air force, and border guard regiment are negligible. The situation with the Bangladesh police is slightly better, though this is unsatisfactory as well.<sup>22</sup> Moreover, Hindu youths frequently allege that merely because of their religious beliefs, they are generally not recruited in the Defense and Foreign Services of Bangladesh as they are thought to have an unnatural tie with neighboring India.<sup>23</sup>

The jobs in the Foreign Service are the most lucrative civil service positions in Bangladesh. Coincidentally, this sector contains almost no Hindu representation. And Hindu representation at the officer level in the Administration is nearly non-existent. There are also reports of discrimination in the promotion of the few Hindu officials in the Administration. Furthermore, in the post liberation war governments, there have been very few members of the Hindu community serving as ministers and cabinet secretaries relative to their population.

Have there ever been any Hindu Foreign, Defense or Finance Ministers? Can a Hindu ever be a President of Bangladesh? Although it is arguable that there may not be suitable candidates, the circumstances are not conducive to providing opportunities for members of the Hindu community. It is a vicious circle indeed.

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<sup>21</sup> The state titles agitated a few other debates. For example, the highest award "BEERSRESTHA" was only given to the martyrs from armed forces, although there were other valiant sacrifices too.

<sup>22</sup> Sarkar, Samir, Systematic Persecution of Religious Minorities in Bangladesh, available at <http://hrcbmdfw.org/files/default.aspx>, last visited on 23.7.2014.

<sup>23</sup> This is an unfortunate event. It may not have been reported anywhere, but the discontent will be found if a Hindu Candidate is told to share his experience in the interview board!

In the education sector, there are no statistics that clearly show discrimination against Hindu students. But the bias becomes obvious when one sees the extinction of age old TOLE (a traditional Sanskrit based institution to teach children basic learning in line with Hindu ideology)<sup>24</sup> or Sanskrit Colleges, versus the enormous investment in Madrasas.<sup>25</sup> Additionally, in some schools there are no teachers that can teach religious precepts to Hindu students.<sup>26</sup> Moreover, daily media reports and social media stories narrate that Hindu students in Bangladeshi Universities are treated differently by right-wing teachers.

The Bangladeshi Government has also promoted discriminatory treatment against minorities by officially encouraging conversion to Islam through incentives. According to the Bangladesh government religious ministry circular number 2/a-7/91-92, dated 28 November 1991, newly converted Muslims were paid cash doles through budgetary allocations in the name of purported rehabilitation. This trend continues till today, albeit informally.<sup>27</sup> Similarly, cremation grounds are taken over by force in cities such as Postagola, Dhaka and in others as well.<sup>28</sup>

Political parties, despite electoral promises in their election manifestos, have failed to stand shoulder to shoulder with minorities. Not a single political party has ever come forward to sincerely support a cause of the minorities. Instead of protecting the minorities, the Government of Bangladesh has always tried to hide the whole gamut of discrimination and violence behind an intricate fabric of lies.

### **The infamous history of vested properties**

Vested properties, otherwise broadly referred to as enemy properties, have been used as a means to oppress minorities in Bangladesh, especially the Hindu community. The concept of enemy properties in any legal system implies that the benefit arising out of such properties should not be used for an enemy state. In the history of the sub-continent's legal system, the Defence of India Act, 1939<sup>29</sup> and Rules were promulgated at the onset of World War II, which contained a provision for vesting all properties of an enemy upon a custodian.

After the emergence of Pakistan as a state, there were numerous discriminatory laws in place against non-Muslims.<sup>30</sup> These statutes were not discriminatory on their face, nonetheless, they proved to be discriminatory under the prevailing circumstances. In 1965, war broke out between

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<sup>24</sup> A traditional Sanskrit based institution to teach children basic learning in light of Hindu ideology.

<sup>25</sup> See [http://www.banbeis.gov.bd/db\\_bb/education\\_finance1.htm](http://www.banbeis.gov.bd/db_bb/education_finance1.htm), last visited on 24.7.2014.

<sup>26</sup> The authors don't encourage religion based education system. According to the Constitution, the Government of Bangladesh should seek a unique education system for allover in Bangladesh. However, after 45 years of independence, there are visibly three mediums in the country—Bangla Medium, English Medium and Madrasa Medium.

<sup>27</sup> Personal interview with Advocate Rana Das Gupta, General Secretary, Bangladesh Hindu Buddhist Christian Unity Council, on 16.7.2014.

<sup>28</sup> The Daily Star, 16.3.2008, See [http://archive.thedailystar.net/newDesign/latest\\_news.php?nid=27842](http://archive.thedailystar.net/newDesign/latest_news.php?nid=27842), last visited on 20.7.2008.

<sup>29</sup> Act XXXV of 1939.

<sup>30</sup> For instance, The East Bengal (Emergency) Requisition of Property Act (XIII of 1948), The East Bengal Prevention of Transfer of Property and Removal of Documents and Records Act of 1952 etc.

India and Pakistan. As the two states had been divided on the basis of religious identities, the state machinery of Pakistan was never sympathetic towards its non-Muslim citizens, particularly Hindus. The situation became worse during the 1965 war. Eventually, many Hindus had to flee from the country to neighbouring India. On September 6, 1965, a state of emergency was declared and the Defence of Pakistan Ordinance<sup>31</sup> and Rules were promulgated with nearly the same language as contained in the 1939 Act.

This Act contained rules regarding “enemy” and “enemy properties.” Many Hindus, who had to flee to India, were termed as supporters of India, and their properties were vested as “enemy properties” upon the Government. Rule 182 of the aforesaid rules authorized the Central Government to appoint a custodian of enemy properties and with specific accompanying powers. In addition, the Enemy Property (Custody and Registration) Order 1965 provided for preventing the payment of any money to an enemy firm and to preserve the enemy properties during the war.<sup>32</sup>

Many of these temporary wartime measures existed even after the war came to an end. Although the Emergency was called off and the 1965 Ordinance and Rules was repealed in 1969, new legislation known as the Enemy Property (Continuance of Emergency Provisions) Ordinance 1969 was enacted, which continued some of the provisions regarding enemy properties from the previously repealed rules. Consequently, the plight for those people fleeing Pakistan, mostly non-Muslims, persisted as their properties continued to be vested.

Despite the emergence of Bangladesh in 1971, the oppressing law of 1969 remained in force. Bangladesh was in no way a successor state of Pakistan<sup>33</sup> and therefore could not be termed as an automatic enemy of India. Still, the 1969 Ordinance was arguably<sup>34</sup> continued by the Laws Continuance Enforcement Order, 1971. The Ordinance was repealed in 1974, but simultaneously a new law was enacted in its place called the Vested and Non-resident Property (Administration) Act (VPA), 1974.<sup>35</sup>

This Act specifically vested former “enemy properties” upon the Government and thus, became the actual successor of the 1969 Ordinance. Under this Act, though the Government was liable for management of the properties and tasked with returning them to their rightful owners in due time,<sup>36</sup> in practice subsequent regimes actually had no intention of returning them. In many instances, when a person left the country for any reason, whether temporarily or permanently, they were designated as an “enemy” under the VPA, and their property was “vested” or seized

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<sup>31</sup> XoXXUI of 1965.

<sup>32</sup> Bhattacharya, Debesh, *Enemy (vested) property laws in Bangladesh: Nature and implications*, (Chitra Bhattacharya, 1991), 4.

<sup>33</sup> Ibid, p-8, 10.

<sup>34</sup> Enemy properties under the 1969 Ordinance were outcomes of enmity between Pakistan and India. Bangladesh was not in a state of war with India. Besides, India put forward a whole hearted support towards our liberation movement. So, continuance of the 1969 Ordinance could not be identical with the emergence of Bangladesh as a sovereign state.

<sup>35</sup> Act XLVI of 1974.

<sup>36</sup> Benoy Bhusan Bardhan Vs. Sub-Divisional Officer, Brahmanbaria and others 30 DLR (SC) 139.

by the state. And frequently, when one Hindu member of a family left the country, the family's entire property was confiscated.<sup>37</sup>

After a prolonged movement against it, the Act was finally repealed in 2001 with the enactment of the Restoration of Vested Property Act.<sup>38</sup> However, the Restoration of Vested Property Act still contained several flawed provisions. For instance, this new Act had no effect upon a large amount of land confiscated after 1969 and thus was insufficient to allay the plight of many victims.<sup>39</sup> The Act was amended in 2002, but its procedures only started very recently. Until all the confiscated properties are returned to their rightful owners, the stigma of the Enemy/Vested Property Act will keep haunting our national ideals.

### **Ethnic cleansing in international law: A glimpse**

In spite of being frequently used, the term "ethnic cleansing" has not been clearly defined in international documents; rather it has been associated with a number of other offenses. Reportedly, the terminology was first used in the context of the erstwhile Yugoslavia to describe certain human rights and humanitarian provisions in the territories of Bosnia and Herzegovina and Croatia.<sup>40</sup>

With the adoption of Security Council Resolution 819 in the same context as the former Yugoslavia, however, there was a move in the direction of legal recognition for the term, as the Security Council condemned "any taking or acquisition of territory by the threat or use of force, including through the practice of 'ethnic cleansing' as 'unlawful and unacceptable'."<sup>41</sup> Security Council resolutions are binding upon all United Nations (UN) member states as per articles 24 and 25 of the UN Charter. Yet, the extent and nature of a binding resolution can be ascertained only according to the language used. The mere condemnation referenced above in Resolution 819 lacked the stricture to oblige state parties to act, though it still had normative value.<sup>42</sup>

In the context of the present discussion, ethnic cleansing has more proximity with crimes against humanity. The terminology "crimes against humanity" covers a vast spectrum, sufficient

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<sup>37</sup> Khan, Tariq Mahbub, *Revitalization of Panam Nagar: Social Displacement and the Minority Issue*, The 4<sup>th</sup> International Conference of the International Forum on Urbanism (IFoU), Amsterdam, 2009, <http://newurbanquestion.ifou.org/Proceedings.html>.

<sup>38</sup> Act XVI of 2001.

<sup>39</sup> "When the petitioner as well as his vendor is citizens of Bangladesh and the disputed property had been in their possession successively without a notice under President's order 16 of 1972 and the rules thereunder the property cannot be treated as abandoned property."-High Court Division in *Rahimuddin Bharsha v. Bangladesh* 46 DLR 130 HCD.

<sup>40</sup> Petrovic, Drazen, Ethnic Cleansing – An Attempt at Methodology, *European Journal of International Law*, Vol. 5, 1994, p. 342.

<sup>41</sup> Pégrier, Clotilde, *The Legal Qualification of Ethnic Cleansing*, PhD Thesis, University of Exeter, 2010, p.47, <https://ore.exeter.ac.uk/repository/bitstream/handle/10036/3091/PegorierC.pdf?sequence=1>, last visited on 13.7.2014.

<sup>42</sup> *Ibid*, p.51

enough to relate to this discourse. Such crimes have been articulated in article 7 of the Rome Statute<sup>43</sup> and under article 5 any commission of such acts has been made triable. Links between these two have been established by many International Criminal Tribunal for the former Yugoslavia (ICTY) cases.

For instance it was held in the Nikolić case that: “The implementation of that discriminatory policy, commonly referred to as “ethnic cleansing”, over the region of Vlasenica alone seems to have been so wide-spread as to fall within the Tribunal’s jurisdiction under Article 5.”<sup>44</sup>

In another case, ethnic cleansing was associated with crimes against humanity as it stated: “It does appear; [...] relative to the events subject to its review, that a deliberate and systematic line of conduct called “ethnic cleansing” has been substantiated [...]”<sup>45</sup>

The word “systematic” draws special attention here. Article 7 of the Rome statute provides that: “..... ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”

In the above definition, two adjectives “systematic” and “widespread” are interconnected with the conjunction “or”; not “and”. This enables the provision to include a wide range of activities within the definition. However, there are no specific parameters to measure these two elements; they need to be determined on a case-by-case basis.<sup>46</sup> Also, the term “attack” has been defined as any mistreatment of any civilian population during peace or war, which is broad enough to include any ill-treatment against a definite population.<sup>47</sup>

Similarly, the elements of crimes against humanity, primarily the “systematic” or “widespread” requirement has been held as a condition of ethnic cleansing. In the words of Mr. Tadeusz Mazowiecki, the special rapporteur of the Commission on Human Rights, on the situation

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<sup>43</sup> These are Murder, Extermination, Enslavement, Deportation or forcible transfer of population, Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, Torture, Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, Enforced disappearance of persons; The crime of apartheid, other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

<sup>44</sup> Prosecutor v. Dragan Nikolić (“Sušica Camp”), Case No. IT-94-2-R61, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, Trial Chamber I, 20 October 1995, para. 27.

<sup>45</sup> Prosecutor v. Radovan Karadžić and Ratko Mladić, Cases No. IT-95-5-R61 and No. IT-95-18-R61, Review of the Indictments Pursuant to Rule 61 of the Rule of Procedures and Evidences, Trial Chamber I, 11 July 1996, p. 974 paras 22.

<sup>46</sup> Prosecutor v. Dragoljub Kunarac et al. (“Foča”), Cases No. IT-23-96-T and No. IT 23-96/1-T, Judgment, Trial Chamber I, 22 February 2001, para. 430.

<sup>47</sup> Prosecutor v. Dragoljub Kunarac et al. (“Foča”), Cases No. IT-96-23-A and N° IT-96-23/1-A, Appeals Judgment, Appeals Chamber, 12 June 2002, para. 86. See also: Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, para. 581.

of human rights in the territory of the former Yugoslavia: "Ethnic cleansing may be equated with the systematic purge of the civilian population based on ethnic criteria, with the view to forcing it to abandon the territories where it lives."<sup>48</sup>

When ethnic cleansing can be termed as a crime against humanity, the protection of minorities is a recognized privilege. For instance, article 2 of Universal Declaration of Human Rights (UDHR), 1948 provide as follows:

*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

Likewise, article 27 of the International Covenant on Civil and Political Rights, 1966 provides:

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

There are also several regional instances of this, such as the Framework Convention for the Protection of National Minorities, 1998 and the European Charter for Regional or Minority Languages, 1992 in Europe.

### **Ethnic cleansing: How far and why it relates to the prevailing situation in Bangladesh**

At the most general level, ethnic cleansing can be understood as the "systematic" expulsion of an "undesirable" population from a given territory due to discrimination based on religious, ethnic, political, strategic, ideological differences, or a combination of these.<sup>49</sup> In earlier cases, state participation was held as an essential element of ethnic cleansing and thus, a part of the "systematic" element.<sup>50</sup> But later case law provided a distinction between these two and held that no formal policy needs to be shown to substantiate the claim of systematic occurrences.

The word "systematic" has been defined in the leading case of Akayesu, (Trial Chamber), September 2, 1998, para. 580:

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<sup>48</sup> Pégurier, opcit. 2010, page. 178.

<sup>49</sup> Andrew Bell-Fialkoff, "A Brief History of Ethnic Cleansing ", Foreign Affairs 72 (3): 110, Summer 1993. Retrieved May 20, 2006.

<sup>50</sup> Margaret McAuliffe deGuzman, 'The Road from Rome: The Developing Law of Crimes Against Humanity', Human Rights Quarterly Vol. 22, Issue. 2, 2000, 371.

*The concept of 'systematic' may be defined as thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.*<sup>51</sup>

According to this definition, a planned, repetitive course of action is enough to support the allegation of ethnic cleansing.

The Rome Statute states that crimes against humanity indicate attacks against a particular civilian group pursuant to any state or organizational policy.<sup>52</sup> This was supported by the preparatory committee in the Finalized Draft Text of the Elements of Crime.<sup>53</sup> However, this provision was accompanied by a footnote concluding that:

*A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack.*

From this it is clear that it is not only an active state policy that may constitute an element of crimes against humanity, but also the failure to protect a population against an attack, or the failure to suppress any such attack.<sup>54</sup>

Accordingly, planned violence against a particular group has been held to be “systematic” by case law; while state failure to protect that group can also constitute a crime against humanity as well as a case of ethnic cleansing. In the context of Bangladesh, repeated occurrences of discrimination and the state’s unwillingness to protect minorities are evident, as noted in previous parts of this article.

Despite being home to profuse cultural diversity, the subcontinent has also witnessed the most brutal religious confrontations.<sup>55</sup> Perhaps the inheritance of this history was sufficient to instill communal feelings among the mass population. That is why secularism was never a popular concept for the *majority of the majorities*, though Bangladeshi secularism was never a godless atheism. In order to claim support and recognition from the so-called Muslim world, an effort to be portrayed as an “Islamic State” was initiated soon after Bangladesh’s independence.<sup>56</sup>

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<sup>51</sup> See <http://www.hrw.org/reports/2004/ij/ict/4.htm>, last visited on 25.7.2014.

<sup>52</sup> Article.7(2)a of the Rome ICC (International Criminal Court) Statute, adopted on 17.5.1998, entered into force on 1.7.2002.

<sup>53</sup> Article 7(3), Finalized draft text of the Elements of Crimes, UN Preparatory Commission for the International Criminal Court, UN Doc. PCNICC/2000/1/Add. 2 (2000), 9.

<sup>54</sup> Pégrier, *opcit.* 2010, page. 188.

<sup>55</sup> See [http://www.columbia.edu/itc/mealac/pritchett/00ambedkar/ambekar\\_partition/307c.html](http://www.columbia.edu/itc/mealac/pritchett/00ambedkar/ambekar_partition/307c.html), last visited on 23.7.2014.

<sup>56</sup> Bangladeshi Sheikh Mujibur Rahman as the President of Bangladesh participated in the meeting of the Organization of the Islamic Conference (OIC) held in Pakistan in 1974. Many middle-eastern Muslim countries were against our independence as they termed it as a division of an Islamic state. Joining the conference was an attempt to gain support from the Muslim world.

Though it arose out of a contextual necessity, this iconic compromise provided a huge opportunity for subsequent rulers to divert people's attention away from secularism. With a view to claiming support from the majority, these regimes continuously tried to shape the country in an Islamic mould. Eventually, the Maududian theory of "political Islam" and an "Islamic State" found a strong base in Bangladesh.<sup>57</sup>

The idea of an "Islamic State" was in direct conflict with a democratic ideology and was unacceptable to the nation's minorities as well as its liberal population. Yet, the concept of an "Islamic State" garnered support from the general populace and helped in the rise of religious fundamentalism. Bangladeshi Hindus have been the helpless victims of this prevailing atmosphere for much of the post-independence period and the State has been surprisingly reluctant to protect them and in fact acted in an inexplicable manner on several occasions.

Systematic human rights violations against minorities started immediately after the independence of Bangladesh, even though it emerged as a secular state. The unlawful continuance of the vesting of Hindu properties<sup>58</sup> was perhaps the first crucial symbol of this persecution. This was followed by the subsequent land confiscation and demolition of Ramna Kali Mandir ruins. Moreover, the 1989 attack by Muslims on the Hindu community in Daudkandi and Comilla, and the 1990's communal riots resulting in the demolition of a number of Hindu temples were additional glaring examples of human rights abuses against Hindus.

Furthermore, the post-election violence in 2001; the attacks following the pronouncement of the verdict in the trial of war criminal Delwar Hussain Sayeedi in 2013; and the post-poll violence, particularly targeting Hindus, in January of 2014, collectively demonstrate a pattern of systematic persecution. The violence is perhaps the most flagrant example of the "systematic" element required for ethnic cleansing or crimes against humanity. Similarly, attacks on a Hindu locality for any trivial issue, ransacking properties and ordering them to leave the country and go to India, and conditions forcing them to escape<sup>59</sup> are all commonplace and systematic in nature.

Hindus in Bangladesh also regularly complain about routine humiliation by being addressed as 'infidels.'<sup>60</sup> Additionally, there is blatant discrimination in access to higher education, employment and business opportunities, political disenfranchisement,<sup>61</sup> and incarceration by implication in fictitious cases.<sup>62</sup> At the same time, vandalism and the destruction of deities<sup>63</sup> and

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<sup>57</sup> Maududi, Abul A'la. *The Islamic law and constitution*, in Khurshid Ahmad (ed. and trans), (Lahore 1955).

<sup>58</sup> See "The infamous history of vested properties" part of this article.

<sup>59</sup> For example, See [http://news.bbc.co.uk/2/hi/south\\_asia/1670410.stm](http://news.bbc.co.uk/2/hi/south_asia/1670410.stm), last visited on 25.7.2014.

<sup>60</sup> It is common in Waaj by Islamic extremist to address non-Muslims as infidels which provokes atrocities to some extent.

<sup>61</sup> The Daily Kaler Kantho, 5.1.2014. See <http://www.kalerkantho.com/print-edition/last-page/2014/01/05/38255,last> visited on 29.7.2014.

<sup>62</sup> The Daily Jankantha, 9.1.2014, See [http://www.dailyjanakantha.com/news\\_view.php?nc=15&dd=2014-02-09&ni=163082](http://www.dailyjanakantha.com/news_view.php?nc=15&dd=2014-02-09&ni=163082), last visited on 29.7.2014.

<sup>63</sup> The Daily Star, 24.1.2014, See <http://www.thedailystar.net/city/hindu-idols-desecrated-in-barisal-sylhet-8200?archive=2014-01-24>.

temples,<sup>64</sup> forced conversions,<sup>65</sup> abductions,<sup>66</sup> rape and forced marriages to the rapist, and gang rape are regularly reported in the media.<sup>67</sup>

All of these above mentioned atrocities and types of discrimination have resulted in lower levels of participation of minorities in educational institutions, parliament, the cabinet, the secretariat, reputable work sectors, military forces, civil service positions and other spheres of public life. These incidents have further forced Hindus to seek refuge in neighboring countries and those who have the financial ability to do so are immigrating to developed countries.

The reluctance of successive governments to send law enforcement to areas that have witnessed atrocities against minorities or not sending them at all, and the failure to promote and uphold the rights of minorities is all too apparent. Finally, state indifference in prosecuting perpetrators of crimes against minorities is a common phenomena.

## Conclusion

Bangladesh's Hindu population has been the victim of a systematic expulsion since soon after the emergence of the state. The pattern of severe discrimination and atrocities that have occurred in Bangladesh resemble the offense of ethnic cleansing, as defined under international law. As a result, we have strived to use the paradigm of ethnic cleansing when examining the exodus of Hindus from the country.

Discrimination enshrined in the Constitution, or the supreme law of the land, horrific incidents of violence, hidden discrimination that violates basic rights, and the legalized infringement of property rights are the major facets of the victimization of Hindus in Bangladesh. From these incidents and discrimination, the state's reluctance to protect and promote the rights and safety of Hindus is clearly visible. While current and past Bangladeshi governments have repeatedly noted that the perpetrators of violence were not government agents, they have nonetheless been complicit in such acts by prosecuting few and punishing even fewer.

Perhaps because there are no concentration camps or killing fields and because the decimation of Bangladeshi Hindus has been occurring slowly but steadily over decades, it has been particularly difficult to get people to recognize it.

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<sup>64</sup> The Daily Star, 27.2.2014, See <http://www.thedailystar.net/hindu-temple-attacked-in-gazipur-13218>, last visited on 28.7.2014.

<sup>65</sup> Newsnextbd.com, 9.6.2014. See <http://newsnextbd.com/hindu-girl-abducted-raped-and-converted-to-islam-in-lalmonirhat/>, last visited on 29.7.2014.

<sup>66</sup> Ibid.

<sup>67</sup> The Daily Prothom Alo, 11 January 2014, See <http://www.prothom-alo.com/bangladesh/article/120487/%E0%A6%AE%E0%A6%A8%E0%A6%BF%E0%A6%B0%E0%A6%BE%E0%A6%AE%E0%A6%AA%E0%A7%81%E0%A6%B0%E0%A7%87-%E0%A6%A6%E0%A7%81%E0%A6%87-%E0%A6%97%E0%A7%83%E0%A6%B9%E0%A6%AC%E0%A6%A7%E0%A7%82%E0%A6%95%E0%A7%87-%E0%A6%A7%E0%A6%B0%E0%A7%8D%E0%A6%B7%E0%A6%A3-%E0%A6%AE%E0%A6%BE%E0%A6%AE%E0%A6%B2%E0%A6%BE>, last visited on 29.7.2014.

The silent process of ethnic cleansing serves its purpose, as the intent need not necessarily be to physically annihilate an entire victim group. *A group can be practically destroyed by killing its political elite, intellectuals and people in general.* The vacuum created by these killings leaves little or no chance for Hindus to thrive in Bangladesh as a distinct entity with self-respect and high ambitions. And that is how the quiet case of ethnic cleansing is taking place in Bangladesh - by *killing the souls of Hindus.*

Through this article, we appeal to common citizens from every country around the world and the larger global conscience to take notice of the suffering of minorities in Bangladesh. Those responsible for oppressing minorities must be held accountable for their actions, including the ethnic cleansing of Hindus and the murder and widespread violation of human rights of minority communities.

It is now incumbent upon the state of Bangladesh to reassure its Hindu and minority population at large that this nation is truly secular, that it is home to all its people, that an attack on one community is an attack on any community, and that those who attempt to humiliate any community will be dealt with summarily and with an iron hand. Ironically, we have virtually gone back to the days of constitutional secularism. We want to believe that this is a positive development. However, in order to earn that belief, the state has to act in such a way that will prove that they actually do what they claim to do.