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CONTENTS

Editorial

Mohanan Pillai

India at the Outer Space: The Tryst with the Outer Space Treaty

Girish Kumar R 125

Determining the Limits of Patents: A Biotechnological Perspective

Kshitij Kumar Singh 149

Religion and State in Pakistan in the Post-Cold War Period

Muneer M 165

Islamic Fundamentalism as Human Security Challenge in Bangladesh

Suman Singh 187

Challenges to Peace Building in Afghanistan

Mithila Bagai 203

Editorial

This volume focuses on diverse issues – India's tryst with the Outer Space Treaty, limits to patents in the form of patent exclusions, democracy and Islamic fundamentalism in Pakistan Bangladesh, and Afghanistan.

Four decades have elapsed since the launch of India's first satellite, Aryabhata on April 19, 1975. India has traversed a long way since then. India is now reckoned as a major player in the \$ 300 billion plus global space market. At this stage the UN Outer Space Treaty, often regarded as the constitution of international space law assumes greater significance. In his article on India at the Outer Space Girish Kumar outlines India's tryst with the Outer Space Treaty. The article examines the features of the Treaty, the nature of satellites stationed by India in Outer space, and Indian interface with the Treaty as a spacefaring nation. The author argues that the outer space treaty was able to create a pact that the celestial bodies should not be subjected to exclusive appropriation by any claims of sovereignty, and outer space should be made use for the common interest of all mankind. He also forewarns the space security dilemma that India would get caught in with China.

The advancements in genetics and genomics made the limits to patentable subject matter complex and uncertain. Research exemptions also played an equally important role by enabling accessibility to research tools and improvement over patented invention without much cost to the researcher. However, in biotechnological field countries struggle to draw a line that defines a proper balance between patentee's rights and the exemptions. Kshitij Kumar Singh from a biotechnological perspective, addresses this concern and analyses the limits of patents as to the patentable subject matter and research exemptions in biotechnological inventions. It may be noted that limits to patents in the form of patent exclusions are as important as patents as they promote public good in contested areas such as biotechnology, where ethical and moral considerations form the public policy.

The article on Pakistan, where the state itself is created in the name of religion, assesses the nexus between religion and the state The US support to the Islamist forces in Pakistan against the Soviet invasion during the Cold-War period emboldened the religious forces in Pakistan. This Islamisation of Pakistan with state patronage did not subside even after the Cold War. The terrorist attack in the US in September 2001 by the Islamists and the US declaration of "War on Terror" created a new crisis in Pakistan. Pakistan is now confronting a new crisis, which is being introspected by Muneer, who argues that the situation not only serves as a recipe to foment authoritarian tendencies within the country but also hinders the evolution of a strong democratic culture and society in Pakistan.

Suman Singh examines a similar tendency in Bangladesh, where Islamic fundamentalism acts as a threat to Human security. In her article that analyses ‘security’ in its multi-dimensional forms – political, economic, societal, military, environmental etc, the author sheds light on the genesis of Islamic fundamentalism, nature of Islamic fundamentalism and the challenges raised by Islamic fundamentalism to human security in Bangladesh.

The article by Mithila Bagai, however takes a different perspective in Afghanistan, where Afghans braved the continuing violence unleashed by Taliban and turned out in large numbers to cast their vote in the Presidential and provincial elections held last year. It marked the first historic democratic transition in the country. More than 7 million out of the 12 million eligible voters reposed their faith in the democratic system. This is likely to strengthen the Peace Building process in Afghanistan where a better interface between Islamic societies and democratic aspirations could pave the way for a better South Asia

Mohanan B Pillai

Editor

India at the Outer Space: The tryst with the Outer Space Treaty

*Girish Kumar R

Abstract

The UN treaties commonly referred to as the “five United Nations treaties on outer space” govern the global space. They include: the “Outer Space Treaty” (1967), the “Rescue Agreement” (1968), the “Liability Convention” (1972), the “Registration Convention” (1976) and the “Moon Agreement” (1984). In this article we will be examining the Outer Space treaty (OST), whose fundamental principle is to ensure using outer space for “peaceful purposes.” As we know India is the only developing nation currently in the limited club of space faring nations. India’s prime concern centres on using outer space for human security rather than military security. We will be examining the features of OST, the nature of satellites stationed by India in the Outer space and Indian interface with the OST as a space faring nation.

Key Words: Outer space Treaty, Indian satellites, LEO, MEO, GEO, ASAT, INSAT.

I. THE OUTER SPACE TREATY (1967)

The Outer Space Treaty [OST] was adopted by the UN General Assembly in 1967.¹ It is the constitution of international space law. Presently, 103 countries are part of the treaty. Twenty-three countries have signed the treaty but yet to complete ratification. It was premised upon the “Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space”, which was adopted by the General Assembly earlier in 1963 (UN 1963). The states that were inspired by the great prospects of outer space desired broad international co-operation in the scientific and legal aspects of use of outer space for peaceful purposes. The states recognized the common interest of all mankind in use of outer space for peaceful purposes, and realized the benefit it could accrue to all peoples at different stages of economic or scientific development. The Treaty wanted States to refrain from placing nuclear weapons and weapons of mass destruction in the orbit around the earth. The Treaty reaffirms “the importance of international cooperation in the field of activities in the peaceful exploration and use of outer space, including the Moon and other celestial bodies, and the importance of

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developing the rule of law in this new area of human endeavor”. It postulates the basic framework on international space law, with the following principles:

- “the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries and shall be the province of all mankind;
- outer space shall be free for exploration and use by all States;
- outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means;
- States shall not place nuclear weapons or other weapons of mass destruction in orbit or on celestial bodies or station them in outer space in any other manner;
- the Moon and other celestial bodies shall be used exclusively for peaceful purposes;
- astronauts shall be regarded as the envoys of mankind;
- States shall be responsible for national space activities whether carried out by governmental or non-governmental entities;
- States shall be liable for damage caused by their space objects; and
- States shall avoid harmful contamination of space and celestial bodies” (OST 1967).

Major Provisions

The treaty stipulates that the outer space, (including the moon and other celestial bodies) shall be free for exploration and use for the benefit of all. It could not be subject to claims of sovereignty and its governance shall be in accordance with international law. Article II specifies that outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means (Lee 2004). Further, the Article IV of the Treaty forbids states from placing weapons of mass destruction in orbit or celestial bodies, or stationed in outer space. Instead, outer space bodies may be used exclusively for peaceful purposes. Accordingly, the “establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies” are forbidden. However, the states could use their military personnel for scientific research or for other peaceful purposes.²

It calls for assistance and return of astronauts – the ‘envoys of mankind in outer space’ and space vehicles and asks the state to inform the rest if they find any dangerous

phenomena in outer space or on celestial bodies. Parties shall bear international responsibility for national activities in outer space (Article VI, OST). Parties to the treaty that launch or procure the launching of objects into outer space shall be ‘internationally liable’ for damages. “A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body.” Jurisdiction and control over personnel and objects are not ceased by their presence in outer space or on celestial bodies.

Parties to the treaty shall prevent harmful contamination of outer space, celestial bodies, and the environment of earth. “If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including the moon and other celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment” (Article IX, OST). To promote international co-operation, member nations shall consider requests by other parties to observe the flight of space objects launched by those states. Further, the member states shall inform the UN secretary-general as well as the public and the international scientific community, about “the nature, conduct, locations and results of such activities”. Stations, installations, and space vehicles on the moon and other celestial bodies shall be open to representatives of parties on a basis of ‘reciprocity’ after giving reasonable advance notice to facilitate consultations, safety precautions and to avoid interference with operations. The provisions of this treaty shall apply to parties whether acting singly, jointly with other states, or within the structure of international inter-governmental organizations. Appropriate international organizations may be engaged to resolve practical questions. Despite an elaborative framework, which is often dubbed as the constitution of international space law, the treaty was devoid of any dispute settlement mechanism or for recourse to a court, arbitral tribunal, for resolution of disputes arising between parties to the Treaty over matters covered therein. But, the draft submitted by both the United States and Soviet Union contained provisions for resolution of differences.

With this treaty a “remarkable endeavor of great significance to international law and politics has reached fruition” ensuring nations with divergent political philosophies to adhere to a common law and answer a pertinent question of those times - “whether it is possible for a terrestrial nation-state to acquire sovereignty over all or part of a natural celestial body, and what would be required under existing law to make such a claim legally valid” (Dembling and Arons 1967). Its successful conclusion was a necessity as the Cold War made outer space an arena of jingoism with two super powers – USSR and USA – involving in space race for supremacy in national security, pride, and ideological preeminence.³ “Fear gave birth to the international legal regime for outer space: the ever-

present fear of a nuclear war between the United States and Soviet Union, the fear that either superpower would achieve a decisive military technological advantage over the other in outer space, the fear that competition for the best “real estate” on celestial bodies might itself result in war between the superpowers, and the fear that the superpowers might cooperate in a duopoly over all of outer space” (Hickman 2007).⁴

The treaty by now has become customary international law, to such an extent that it is now established law in space among states (White 2003). It created a mood that the celestial bodies should not be subject to exclusive appropriation by any claims of sovereignty, should be made use for the common interest of all mankind, outer space as “province of mankind” implying all nations to have the nonexclusive right to use and explore space, some what a *res communis*, an international commons (Gabrynowicz 2007). In fact, Article 1 of the Nuclear Test Ban Treaty prohibited nuclear explosion in outer space as early in 1963.⁵ Still OST was the first step intended to make outer space safer. President Johnson stated in his message to the Senate prior to its ratification by the US that “The future leaves no option. Responsible men push forward in the exploration of space, near and far. Their voyages must be made in peace for purposes of peace on earth. This Treaty is a step – a first step, but a long step – toward assuring the peace essential for the longer journey” (quoted in Dembling and Arons 1967).

The Outer Space Treaty succeeded in ceasing the creation of Hobbesian anarchy in outer space. Its declaration that outer space is to be used for “peaceful purposes”, i.e., weapons of mass destruction cannot be used in space and that the celestial territory (such as the moon or Mars), shall not be subject to “national appropriation” had a strong influence in the behavior states. The international community’s denial of Bogota Declaration represents the mood it has created nine years later. In late 1976, eight states – Colombia, Ecuador, Congo, Indonesia, Kenya, Uganda, and Zaire – that “traversed by the Equator” convened in Bogotá, Colombia – concluding that Article II of the 1967 Outer Space Treaty that stipulates that “outer space, including the moon and other celestial bodies, is not subject to national appropriation” unfairly removed their sovereign rights over a natural resource. The Bogotá Declaration categorized the geostationary orbit (“GEO”) as a natural resource, not a region of space. “The geostationary orbit is a scarce natural resource, whose importance and value increase rapidly with the development of space technology and with the growing need for communication; therefore, the Equatorial countries meeting in Bogota have decided to proclaim and defend on behalf of their peoples, the existence of their sovereignty over this natural resource” (Bogota Declaration 1976).⁶ This declaration that proclaimed that orbits that go around the Earth’s equator, or in the direction of the Earth’s rotation, must be owned by the countries beneath was though not an attempt to undermine the treaty, brought the value of geostationary orbit to the fore as a scarce natural resource. A geostationary orbit is a band 35,786 kilometres above Earth’s equator, having a radius of 42,164 kilometres and there are only 360 degrees of orbit that can be used. A satellite in

GEO is stationary and stays over a fix point on the Earth's surface because of the gravitational pull of earth, moon and other planets. Satellites must be several degrees apart to avoid interference; satellite positions—called “orbital slots”—in GEO are limited. Most satellites for telecommunications, broadcasting and weather forecasting need be in orbits over a specific point of the earth, usually over a receiving station. In fact, Principle 3(c) of the Declaration specifically recognized the right to superjacent transit. Article I of the Chicago convention on International Civil Aviation 1944 states that the every state has ‘complete and exclusive sovereignty over the airspace above its territory’. India was also a party to this Convention. This right was drafted to ensure the rights of aircrafts and of the nations over which such aircrafts fly. Geostationary orbit became part of outer space and not a part of country's airspace, albeit it may be stated the sovereignty of airspace ceases at a level of sixty kilometres according to Chicago convention. Satellites are normally placed below 90 kilometres though, the upper limit was not accepted by OST either. But equatorial states' rights to geostationary orbit by virtue of Article I and Article II of the Outer Space Treaty has passed into the domain of customary international law. It declares outer space as the ‘province of all mankind’.

Article I reads:

“The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind. Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies. There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation”.

Article II reads:

“Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”.

However, the Bogota Declaration was a strong political message to the space-haves, mainly the developed nations that are monopolizing the geostationary satellite leaving little space in future for the late-comers, mostly developing nations. Despite declaring outer space as the province of all mankind, little has been done to develop outer space as a province of the humanity, as it is explored by developed nations alone to promote their economic and military interests in the new frontier. Instead access to space

technologies is restricted, constraining international co-operation. The Bogota Declaration eventually stood dismissed by the international community, which proved beneficial to nations like India.

2. INDIA'S OUTER SPACE PROGRAMMES

The forefathers of Indian space programme in harmony with the Nehruvian foreign policy of non-alignment endeavored to venture into space mission with an avowed vision of peaceful use of space amidst Cold War. Indian space programme took wings in 1962, a year after Yuri Gagarin orbited the earth. Vikram Sarabhai, the founder of Indian space mission declared: "We do not have the fantasy of competing with the economically advanced nations in the exploration of the moon or the planets or manned space-flight. But we are convinced that if we are to play a meaningful role nationally, and in the community of nations, we must be second to none in the application of advanced technologies to the real problems of man and society." In fact, India recognized the interdependence and interconnectivity of the modern state and has collaborated with all the nations having technology without aligning with any bloc and going mid-way to maintain its autonomous space policy (Kumar 2014). Despite the early genesis of its space programme in the 60s and being an elite member among few space faring nations including the 'cryo club', India is yet to author a coherent Space Law or Space Policy. Curiously, many such as Canada, Germany, the Netherlands, South Africa and Ukraine, though not established space powers, have carefully crafted their legal framework. Nevertheless, out of the five United Nations treaties on outer space, India has ratified four and signed one – notwithstanding the fact that ratification necessitates a nation to create necessary municipal laws to give domestic effect to the treaties within a given time-frame. India is an original signatory of OST and has actively participated in its deliberations.

India's interest in space is manifold. It relies heavily on space and has substantial investments in space such as eleven INSAT (Indian Satellite) satellites with 211 transponders, very high-resolution radiometers on INSAT. The INSAT satellites are the mainstay for television broadcasting providing connectivity to more than 11,000 TV transmitters (Chandrashekhara 2011). They provide rural and business communications, tele-education and telemedicine services; and network with radio stations. They also produce cyclone warnings, assist weather forecasting for emergency communication, provide support during disasters, gather meteorological data, and aid search and rescue missions. "The Indian Remote Sensing (IRS) system, comprising eight satellites, includes some of the best satellites in the world for generating information on natural resources. Data from the remote sensing satellites are used for a variety of applications such as drought monitoring, flood-risk zone mapping, urban planning, forest survey, environmental impact analysis, and coastal studies" (Bharath Gopalaswamy 2015).

Barring China, India is the only developing nation, which is presently a member of elite club of the global space powers. India has the capability to place satellites at any of the earth's orbit. Satellites travel in a variety of orbits, which is related to their function. Orbits could be low-Earth orbit (LEO), medium-Earth orbit (MEO), and geostationary orbit (GEO). There are more than 1000 satellites placed at different orbits. Russia launched the first satellite, Sputnik 1, in 1957. The oldest one still in orbit, which is no longer functioning, was launched in 1958. They are the information gatherers, broadcasting and communications facilitators, that serve a multitude of functions indispensable to the modern economics. They could travel in LEO, which is just above the end of earth's atmosphere upto an altitude of 2000 km. Normally LEO spacecraft/satellites make close observation for communication and include military reconnaissance spacecraft, civilian remote-sensing satellites, and mobile telecommunications. They constitute more than half of the world's satellites. The International Space Station orbits in LEO. The MEO satellites orbit at an altitude that range between 2000 km to 35,586 km. GPS satellites are placed here. The GEO satellites orbit at the highest altitude, which are placed above 35,586 km and could be upto 35,986 km (GEO +/- 200 km) and rotate at the same speed as Earth's rotation. The GEO satellites engage in missile early-warning, electronic intelligence, missile early-warning, commercial communications, and direct broadcasting like direct television and radio services. More than 40% of satellites are placed here.

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Table 1: Major differences between LEO, MEO & GEO satellite systems

Parameter	LEO	MEO	GEO
Satellite Height	500-1500 km	5000-12000 km	35,800 km
Orbital Period	10-40 minutes	2-8 hours	24 hours
Number of Satellites	40-80	8-20	3
Satellite Life	Short	Long	Long
Number of Handoffs	High	Low	Least(none)
Gateway Cost	Very Expensive	Expensive	Cheap
Propagation Loss	Least	High	Highest

Note –

- HEO refers to highly elliptical orbits which have a visibility of about 12 hours.
- ICO or intermediate circular orbit is an example of MEO.
- GPS satellites are not in Geostationary orbits but instead, they orbit twice for every rotation of the earth at a height of 20, 000 km.
- Handheld terminals have low sending power are hence use LEO for mobile communication. LEO are also closest to the earth, have better signal strength and less time delay.

Source: Dev (2012).

LEO-based telecommunication systems facilitate better telecommunication services, and are especially useful to underdeveloped countries and areas where the ability to use land lines are negligible or nil and would even be impossible to lay land lines. Earth observation satellites and spy satellites use LEO to assess the ground better.

Table 2: India's Earth Observation Satellites

SN	Name	Purpose	Launch date	Launch vehicle
1	Bhaskara-I	Earth Observation, Experimental	7-Jun-79	C-1 Intercosmos
2	Rohini Satellite RS-D1	Earth Observation	31-May-81	SLV-3D1
3	Bhaskara-II	Earth Observation, Experimental	20-Nov-81	C-1 Intercosmos
4	Rohini Satellite RS-D2	Earth Observation	17-Apr-83	SLV-3
5	IRS-1A	Earth Observation	17-Mar-88	Vostok
6	SROSS-2	Earth Observation, Experimental	13-Jul-88	ASLV-D2
7	IRS-1B	Earth Observation	29-Aug-91	Vostok
8	IRS-1E	Earth Observation	20-Sep-93	PSLV-D1
9	IRS-P2	Earth Observation	15-Oct-94	PSLV-D2
10	IRS-1C	Earth Observation	28-Dec-95	Molniya
11	IRS-P3	Earth Observation	21-Mar-96	PSLV-D3 / IRS-P3
12	IRS-1D	Earth Observation	29-Sep-97	PSLV-C1 / IRS-1D
13	Oceansat(IRS-P4)	Earth Observation	26-May-99	PSLV-C2/IRS-P4
14	The Technology Experiment Satellite (TES)	Earth Observation	22-Oct-01	PSLV-C3 / TES
15	IRS-P6 / RESOURCESAT-1	Earth Observation	17-Oct-03	PSLV-C5 /RESOURCESAT-1
16	CARTOSAT-1	Earth Observation	5-May-05	PSLV-C6/CARTOSAT-1/HAMSAT

17	CARTOSAT-2	Earth Observation	10-Jan-07	PSLV-C7 / CARTOSAT-2 / SRE-1
18	CARTOSAT – 2A	Earth Observation	28-Apr-08	PSLV-C9 / CARTOSAT – 2A
19	IMS-1	Earth Observation	28-Apr-08	PSLV-C9 / CARTOSAT – 2A
20	RISAT-2	Earth Observation	20-Apr-09	PSLV-C12 / RISAT-2
21	Oceansat-2	Climate & Environment, Earth Observation	23-Sep-09	PSLV-C14 / OCEANSAT-2
22	CARTOSAT-2B	Earth Observation	12-Jul-10	PSLV- C15/CARTOSAT- 2B
23	RESOURCESAT-2	Earth Observation	20-Apr-11	PSLV- C16/RESOURCES AT-2
24	Megha-Tropiques	Climate & Environment, Earth Observation	12-Oct-11	PSLV-C18/Megha- Tropiques
25	RISAT-1	Earth Observation	26-Apr-12	PSLV-C19/RISAT- 1
26	SARAL	Climate & Environment, Earth Observation	25-Feb-13	PSLV-C20/SARAL
27	INSAT-3D	Climate & Environment, Disaster Management System	26-Jul-13	Ariane-5 VA-214

Source: <https://www.isro.gov.in/spacecraft/list-of-earth-observation-satellites>

Medium Earth orbit is currently defined as the region between 2,000 and 36,000 kilometers in altitude. Volume wise, it is 150 times the combined size of low Earth orbit and geostationary orbit. Only 5 percent of operational satellites are placed in MEO, presently (Space News 2010). Three nations - USA, Russia and China, besides EU, have the Navigation Satellite System. These four navigation constellations are the U.S. GPS, Russia’s Glonass, Europe’s Galileo and China’s Beidou/Compass. At the moment India is not having a Navigation Satellite System that is placed at MEO. India is depending mainly on US’ GPS and also on Russia’s GLONASS. However, the GPS offers only degraded signal with 36-meter accuracy. GPS transmits radio signals to users free of cost but the system is under US Air Force’s control, which is used to meet US, strategic goals, primarily. In 2014, Indian Space Research Organization (ISRO) successfully launched the second satellite of this system, the IRNSS-1B using PSLV (PSLV-C24). IRNSS-1B has been presently launched into a sub-Geosynchronous Transfer Orbit (sub-GTO). The first, IRNSS-1A, was launched in 2013. But it may be noted that the seven satellite based IRNSS system would not be placed in the MEO – four satellites in the inclined geosynchronous orbit (IRNSS-1A & 1B are already in this orbit) and the other three satellites would be placed into the geostationary orbit (36,000km above the earth’s surface) and may restrict accurate applications. China’s decision to offer the services of its thirty-five satellite (five in geostationary orbit and 30 in MEO)based BeiDou Navigation Satellite System to Pakistan with a military quality signal further forced India to strengthen its Indian Regional Navigation Satellite System (IRNSS) (Lele 2014).

GEO

Table 3: Indian Satellites placed in the GEO.

SN	Name	Purpose	Launch date	Launch vehicle	Longitude	Inclination
1	INSAT-3B	Communication, and Meteorology	Mar 22, 2000	Ariane, France	83°E	4.5°
2	INSAT-3C	Communication, broadcasting and Meteorology	January 24, 2002	Ariane5-V147	74° E	0.8 °
3	INSAT-3A	Telecommunication, broadcasting and Meteorology	April 10, 2003	Ariane5-V160	93.5° E	1.3 °
4	INSAT-	Communication	September,	Ariane5-	126.83° E	2.7°

	3E		28, 2003	V162		
5	INSAT-4A	Communications	December 22, 2005	Ariane5-V169	83° E	0.0 °
6	INSAT-4B	Communication	March 12, 2007	Ariane5	93.5° E	0.0 °
7	INSAT-4CR	Communication	September 2, 2007	GSLV-F04	74° E	0.0 °
8	GSAT-8	Communication	May 21, 2011	Ariane-5 VA-202	55° E	0.0 °
9	GSAT-12	Communication	July 15, 2011	PSLV-C17	83°	0.0 °
10	GSAT-10	Communication	September 29, 2012	Ariane-5 VA-209	83° E	0.0 °
11	INSAT-3D	Meteorological and Search & Rescue Services	July 26, 2013	Ariane-5 VA-214	82° E	0.0 °
12	GSAT-7	Communication	August 30, 2013	Ariane-5 VA-215	74°E	0.1 °
13	GSAT-14	Communication	January 05, 2014	GSLV-D5	74°E	0.0 °
14	IRNSS-1C	Navigation	Oct 16, 2014	PSLV - C26	83° E	2.9 °
15	GSAT-16	Communication	Dec 06, 2014	Ariane-5 VA-221	55°E	0.0 °
16	GSAT-6	Communication	Aug 27, 2015	GSLV Mk.II-D6	83° E	0.1 °
17	GSAT-15	Communication	Nov 11, 2015	Ariane-5 VA-227	93.5° E	0.0 °

Source: ISRO available at <http://www.isro.gov.in/Spacecraft> and <http://www.n2yo.com/satellite/?s=27298>

A nation needs to have a space in the global space economy. The forces of globalization has further internationalized the space market, creating new economies of scale and fostering spread of space technology that vary from mobile phone use to rocket launchers(Moltz 2014). India is one of the nations that has identified the potential of space technology and economy, investing heavily a decade after its independence. India participated actively in OST deliberations, contributing significantly to its norm-setting process and profiteering from the outer space for its scientific, commercial and military operations.

3. INDIA AND ITS TRYST WITH OUTER SPACE TREATY

India and Peaceful uses of outer space

Indian space programme emphasized on civilian applications and has successfully ‘integrated space technology into the lives of a significant segment of its population and in making the public aware of its services’. It made ISRO a household name. The thrust was on the application of advanced space technologies to meet the ‘real problems of man and society’, which was in consonance with Sarabhai’s dream. To meet the nation’s developmental challenges, the space programmes focused on telemedicine, tele-education, disaster warning, search and rescue operations, mobile communications, remote sensing and weather forecasting. Its space missions included broadcasting, monitoring environmental surveillance, survey of natural resources, and predicting disasters, communication, meteorology and oceanography.

India is situated north of the equator between 8°4' to 37°6' north latitude and 68°7' to 97°25' east longitude. India being a nation situated near equator is a beneficiary of OST. By virtue of Article I and II of OST, GEO became part of outer space giving huge benefits to India vis-à-vis its communication infrastructure. The introduction of international satellite communications in 1960s increased the demand for Geostationary Satellite Orbit Spectrum – a limited international natural resource with International Telecommunications Union (ITU). In 1970 there were only forty-three satellites in GEO (Peterson 2005). This has increased to about 400 satellites, which are in operation now. As few as three satellites, however, are sufficient to cover the whole inhabitants of the earth. Scarcity in GEO is not a matter of physical congestion, but occupying the “highly favoured positions that reach a vast or wealthy population or a politically important one, and very complex engineering questions of the spacing...”(Penent2014).Great disparities exist vis-à-vis telecommunication requirements of, say US or Soviet Union and India or China.

Due to increased communications and broadcasting, the orbit is crowded, and it is the ITU, which assigns geostationary slots to different countries.⁷ The ITU’s international regulatory regime for satellite communications spells out its main objective

in Articles 44 and 45 of the ITU Constitution. It calls for avoiding harmful interference and to ensure equitable access to radiofrequencies and satellite orbital slots with a focus on the special needs of the developing countries (ITU 2011). In fact, the US largely shaped the direction of the International Telecommunications Union in the post War world for it had the greatest spectrum demands and the greatest ability to use the spectrum (Savage 1989). The growing communication needs are putting heavy demand for communication satellites, especially in GEO. India's has also placed a fleet of 10 INSAT satellites in space. These satellites have a total of 182 transponders in C band, extended C band, Ku band and S band. 53 more transponders have also been hired from foreign satellites. They are utilized for various services like TV broadcasting, VSAT, DTH and DSNG. Foreign satellites like Asiasat 5, Thaicom-2, Asiasat-3S & IS-10 etc. are already being used for TV broadcasting in C-band by the users over India (TRAI 2010).

The Radio Regulations as formulated by World Radio Conferences (WRCs) of the ITU makes frequency coordination among various administrations of satellite networks to ensure radio interference-free operation. The economic importance of radio spectrum is growing tremendously in developing countries like India, which is further evidenced by the auction money government of India has earned in 3G and BWA auctions in 2011. Although spectrum allocations are available from 9kHz to 1000 GHz in the radio regulations (Telecommunications 2011), frequencies from 30 kHz to 300 GHz are generally used as radio spectrum.⁸ Nationally, the allocation of spectrum bandwidth for any wireless service is governed under the provisions of Indian Telegraph Act 1885 and Indian Wireless Telegraphy Act 1933.⁹

Space's military use

Two conflicting narratives – optimistic (commercial) and pessimistic (defence)-dominate the use of space technology in IR. The dual-use characteristics of space technology make the applications of space technology tools for political and military dominance forcing the nations to have a dystopic view about its utility. Indian space programme though emphasized on civilian applications needed to undergo transitions from its thrust from human security to military security (Kumar 2014). This transition from the civilian side to the military side' is quite unusual to other nations, as most countries develop the large rocket programme for military needs, the notable exception being Japan (Moltz 2012). India, definitely had three motives, nevertheless. It had to meet the growing communication demand, to make itself emerge as a seller of high-end space service and had to meet the growing Chinese threat to its national security.

The 1980s witnessed a massive revolution in communication. Telecommunication in India has greatly been supported by the INSAT system of the country, which has now emerged as one of the largest domestic satellite systems in the

world. It provides access to India's diversified communications system linked all parts of the country by telephone, Internet, radio, television and satellite and needed expansion in the application of space technology (Rao and Bhaskaranarayana 2009). In 1980, the First satellite earth station for domestic communications was established at Sikandarabad, UP. An attempt was also made in 1981 to set up 5,000,000 lines per year. For this the then Prime Minister Indira Gandhi signed contracts with Alcatel CIT of France to merge with the state owned Telecom Company (ITI), though the agreement was scuttled due to political opposition. In 1986-87 India approved the development of INSAT series of satellites. This was relatively heavier and had much more capability and capacity in terms of putting the payloads into GTO (Geostationary Transfer Orbit) or higher orbits. For achieving this, acquisition of next generation technology was required. India initiated the cryogenic programme in 1986, following the Chinese acquiring the technology in 1984. Indian needed technology from outside. However, India rejected the offers for cryogenic technology from the USA and France due to the high cost, and low value addition. Besides, their proposals were silent on transfer of technology clauses. India accepted the offer by Soviet (later Russia) space agency Glavkosmos because of its lower cost (an average one-third of what the other powers offered) and the provision of transfer of technology. But the victory of the US in the Cold War left the US as the sole superpower and restricted Indian access to space technology even more. The scuttled cryogenic technology transfer between India and Russia should be viewed against this backdrop. The Indo-Russian cryogenic deal saw US tightening export controls on high-technology items. In May 1992 US imposed sanctions on ISRO citing violation of MTCR, and prohibited the transfer of advanced US space, nuclear and missile technologies to Indian companies. This has not only waylaid the transfer of technology but also retracted the progress of India in terms of space technology, which took more than two decades for India to overcome. The acquisition of cryogenic technology would have significantly enhanced the payload capability of India's space launch (Kumar 2014).

Technological Oligarchy

The denial of technology transfer is also attributed to thwart India emerging as a major competitor to the developed nations, whose pricing is comparatively higher for launching communication satellites at GEO. Gaining cryogenic technology would have been a major commercial feat for India. The space commercial prospects were galloping at a higher speed following growth on mobiles and fixed telecom and television. This makes launching of GSLV more attractive and enticing. Only five nations –US, France, Russia, China and Japan – that control the space market are capable of sending satellites to the GEO using cryogenic engine. The commercial vehicles of US that take satellites to the GEO are Titan IV, Delta and Atlas; France Ariane 4; Russia, Proton, China Long March 3 and Japan H2. India's proposed vehicle is GSLV. The cost-per-kg of payload offered by the vehicles is : \$43,000 for Titan IV; \$ 31,000 Delta; \$ 35,000 Atlas; \$28,000

Ariane-4; \$22,000 Proton, \$33,000 H2; and \$20,000 Long March 3. For GSLV (proposed) it is below \$18,000. The comparative cost difference would have helped India clinch many deals in the space market posing threat to the American and French commercial interest.

The maintenance of technological oligopoly enables only few powers to operate, and maintain advantage in dictating power. Global space economy is currently valued at \$330 billion (expected to double by 2030) with the US as the world leader in manufacturing. In a globalized world, the diffusion, dissemination and flow of knowledge and technology that promoted technology transfer and innovation systems across the world did not reach the space innovation system, as technology here is perceived as a handmaid of power politics. Three factors contributed to the restrictive transfer of space technology – the cold war and the technological oligopoly reinforced by the US leadership (Politics), discriminatory international regimes like MTCR that forbid space technology transfer (Law), and the huge investment required for space sector necessitating government support creating lesser number of buoyant and innovative private sector capable of developing cutting-edge technologies (Economics).

India's Space Insecurity

The UN Committee on Peaceful Uses of Outer spaces identifies seven nonmilitary uses for the geostationary orbit: communications, earth resources and environment, meteorology, navigation and aircraft control, testing of new systems, astronomy, and data relay (Finch 1986). During the Cold War, the space race between U.S. and Soviet Union was so intense each one looking at the possibilities of using nuclear weapons to take out satellites and stop ballistic missiles fired by the other. Though they carried out high-altitude nuclear tests in the late 1950s and early 1960s, the test turned out to be futile eventually forcing them to sign the Partial Test Ban Treaty of 1963. It banned the testing of nuclear weapons in the atmosphere, outer space and under water. The Cold War further concluded that outer space could be used for 'non-aggressive' military purposes. Nevertheless, the use of satellites to support conventional warfare has grown considerably. Its effectiveness was validated in the first Gulf War of 1991 with dominance in space playing a key role in U.S. military operations. However, it may increase dependence on space assets as well as guarding one's own satellites. To achieve supremacy over the rival power its military capabilities be disabled from having access to satellites. To meet this end the superpowers tested a range of anti-satellite (ASAT) weaponry during their Cold War, later both reaching a moratorium.

In 2007, China revived it by destroying one of its aging weather satellites, which was responded by U.S. a year later by blowing up one of its dying spy satellites with a modified version of a missile interceptor developed for ballistic missile defence. Ballistic missile defence systems, be they are ground-based, or airborne or space-based, can also

potentially target satellites, leading to an arms race targeting space assets. The withdrawal of US from the Anti-Ballistic Missile (ABM) Treaty in 2001 by George Bush is attributed to hypothetical scenarios like “space Pearl Harbour” – explosion of a small nuclear device of 10 kilo tonnes at an altitude of between 160 km to 600 km in space could jeopardise satellites in Low Earth Orbit for up to two years. Interestingly, the US had the most number of satellites. Terrorist strikes of 9/11 compounded to this dystopic view further. The changed approach with emphasis on space control, and limiting space access to others contravened the spirit and the *res cummnis* doctrine of the Outer Space Treaty of 1967 (Raj 2008).

The failure of global space governance structure to ensure security to the smaller powers very often create a space security dilemma forcing them to respond fire with fire. China’s ASAT test forced India to build building blocks for the same and develop Agni-V that has the capability to target satellites in space. “Today, India has all the building blocks for an anti-satellite system in place. We don't want to weaponise space but the building blocks should be in place. Because you may come to a time when you may need it. Today, I can say that all the building blocks (for an ASAT weapon) are in place. A little fine tuning may be required but we will do that electronically. We will not do a physical test (actual destruction of a satellite) because of the risk of space debris affecting other satellites” said DRDO chief Vijay Kumar Saraswat in an interview (Unnithan 2012). However, there are provisions in OST that are intended to create international peace. Articles III and IV aim reads:

States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding (Article III OST).

“States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner. The Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the Moon and other celestial bodies shall also not be prohibited (Article IV OST).

Despite worldwide criticism, in 2008 China sent two astronauts into space on the Shenzhou-7, the third human spaceflight mission. China's space ship came unusually close to the International Space Station that could "inflict serious damage on the \$100 billion space station, which at the time had two Russians and one American aboard". Shenzhou-7 launched a 40-kilogram maneuvering microsatellite called BanXing-1 or BX-1. The "launch of the BX-1 so near to the space station also could be considered a test of 'co-orbital' antisatellite interception technology". "As China's military and space programs mature, Beijing will inevitably test more sophisticated technologies in orbit. If Beijing wants to be a responsible power in space, it needs to behave with a greater degree of care and transparency. The Shenzhou-7 mission is a troubling sign that some in Beijing have yet to reach this realization" (Fisher 2008). OST's failure to contain rising Chinese aggressiveness in outer space spells more trouble for India and place India in a space security dilemma.

Given India's reputation as a responsible space power and its contribution in the Inter-Agency Space Debris Coordination Committee (IADC), especially in crafting that organization's mitigation guidelines, an ASAT test and the resulting debris would seriously erode its integrity. The international response to Indian ASAT explosion would not be the same as happened for China in 2007. But India's space security dilemma with China place India policy-makers in a precarious Catch-22 position.

4. CONCLUSION

Though OST declares the outer space as the province of all mankind and calls for the exploration and use of outer space for the benefit of all countries, the benefits are cornered by the advanced nations alone, India being the sole developing nation among the space faring nations. The developed nations through various export control regimes limit the transfer of technology to the technology have-nots, making the wish to keep outer space "free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies" a pipe dream. The complex nature of space technology and the restrictions that limit the use of space technology restrict the benefits to the most powerful alone. However, India is caught in a space security dilemma with China following the latter's ASAT in 2007. Given India's reputation as a responsible space power and its contribution in the Inter-Agency Space Debris Coordination Committee (IADC), especially in crafting that organization's mitigation guidelines, an Indian ASAT test and the resulting debris would seriously erode its integrity. The treaty failed to contain the militarization or weaponisation of outer space by the great powers. However, it may also be noted that outer space treaty was able to create a mood that the celestial bodies should not be subject to exclusive appropriation by any claims of sovereignty, and outer space should be made use for the common interest of all mankind,

outer space as “province of mankind” implying all nations to have the nonexclusive right to use and explore space, some what a *res communis*, an international commons.

End Notes

¹ UN Resolution 2222 (XXI) *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies* was opened for signature by the three depository Governments – the Russian Federation, the United Kingdom and the United States of America) – in January 1967, and it entered into force in October 1967. =

² The dual use of Space technologies – particularly missile guiding satellites – can be attributed to the loopholes that can be seen in the phrasing of the treaty. Article IV requires those signatory parties, in their own capacity, to prevent – the placement of weapons of mass Destruction in outer space; attack of a nation’s satellites or critical Infrastructure; and the establishment of military bases, installations, and fortifications.

³ The Space Race began on August 2, 1955 – the day the Soviet Union that it would launch a satellite ‘in the near future’. USSR was responding to the US announcement of its intention to launch artificial satellites for the International Geophysical Year. But USSR beat the US on October 4, 1957 by orbiting *Sputnik 1*. It beat the US again on April 12, 1961 by sending Yuri Gagarin, the first human to space. The race reached its zenith with the US landing of the first humans on the Moon on July 20, 1969 with Apollo 11. But Soviet efforts to make lunar missions failed, and subsequently cancelled them. Later they focused on Earth orbital space stations. The costly expeditions in space made co-operative endeavours possible. The 1972 agreement on Apollo-Soyuz Test Project set forth détente and saw a US astronaut crew with a Soviet cosmonaut crew. With the disintegration of USSR a new partnership ushered in between US and Russia in space. The race, nevertheless, left a great legacy in scientific experiments in outer space.

⁴ Both the superpowers were fraught with suspicion and mistrust. But after signing the Limited Test Ban Treaty both thought about drafting a treaty on outer space. The Soviet proposal by Foreign Minister Gromyko to the General Assembly on September 19, 1963 that the Soviet Union wished to ban the orbiting of objects carrying nuclear weapons. Ambassador Stevenson of US stated that neither US had the “intention of orbiting weapons of mass destruction, installing them on celestial bodies or stationing them in outer space.” The General Assembly unanimously adopted a resolution on October 17, 1963, greeting the Soviet and U.S. statements and calling upon all states to refrain from using weapons of mass destruction into outer space. But signing a similar treaty in modern times is unlikely as US is sole super power, whose National Space Policy, 2006,

states that the OST is adequate and the US “will oppose the development of new legal regimes or other restrictions that seek to prohibit or limit US access to or use of space”. However, this position may change with more competitors emerging with more number of satellite launch. (Moltz, 2014)

⁵*Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water* was signed in Moscow, 5 Aug. 1963

⁶ Declaration of the First Meeting of the Equatorial Countries, Dec. 3, 1976, I.T.U. Doc. WARC-BS81-E(1977) [hereinafter Bogota Declaration] quoted in Michael J. Finch, “Limited Space: Allocating the Geostationary Orbit”, 7 *Northwestern Journal of International Law & Business* 788 (1985-1986)

⁷India was an original signatory to the treaty establishing ITU. However, Great Britain’s accession to the conference is owed to its administration of telegraphs in British India and the British Government would have represented India (Savage 1989). Also see Henry J. Meyerhoff, “Paper Satellite Contribution to Congestion of the Geostationary Satellite Orbit Spectrum” available at <http://www.intercomms.net/AUG03/content/satellite.php>

⁸Radio spectrum refers to the parts of electromagnetic frequencies that are available for wireless transmissions. Different parts of the spectrum are used for different technologies and applications. A spectrum frequency band is a small section of the spectrum in which channels are used for a defined purpose.

⁹India has established International Satellite Monitoring Earth Station (ISMES) at Jalna, Maharashtra under the Ministry of Communication & IT, Department of Telecom, Wireless Monitoring Organisation in 1992. The station was established with the help of Space Application Centre, ISRO, Ahmedabad. It was to protect the Indian Satellites getting interfered from Foreign Satellites located in the geo-synchronous orbital arc over India. See <http://jalna.nic.in/html/ismes.html>

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Determining the Limits of Patents: A Biotechnological Perspective

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Abstract

Limits to patents in the form of patent exclusions are as important as patents as they may promote public good in contested areas such as biotechnology, where ethical and moral considerations form the public policy. However, differences in the interpretation of the morality exclusion within as well as between the legal systems create legal uncertainty as to the patentable subject matter. Moreover, with the advancements of genetics and genomics, the limits to patentable subject matter become fuzzy. Research exemptions also play an equally important role as patents in encouraging the progress of science and technology and promoting social good by enabling accessibility to research tools and improvement over patented invention. However, in biotechnological field countries struggle to draw a line that defines a proper balance between patentee's rights and the exemptions granted for research. Against this backdrop, the present paper analyses the limits of patents as to the patentable subject matter and research exemptions in the light of biotechnological inventions.

Key Words: biotechnology, patent, patentable subject matter, research exemptions

1. INTRODUCTION

Patent system is based on sound national policy to promote innovation and scientific growth in a nation. The framework of patent not only includes exclusive rights but also accommodates certain exclusions or limits as granting patent in all the circumstances may not promote the scientific growth and public good. The limits in the form of exclusions as to the patentable subject matter and patent rights are either explicitly embodied in the patent laws or recognized through judicial interpretations in different nations. However, their application and interpretation by the administrative

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offices and courts vary from one jurisdiction to another, creating enormous confusion. The patentable subject matter criterion respects the limits of patents and draws a line which ensures genuine patent practices that promote innovation and social good. However, the current patent practices largely ignore the importance of such limits by expanding the patentable subject matter boundary to accommodate new entrants. Given the collaborative nature of biotechnology, patent exclusivity on research tools may hamper the research and innovation in biotechnology. A straightforward solution to the accessibility problem is found in research exemptions but the scope of research exemptions depends upon the interpretation by the courts and application by the patent offices. Against this backdrop, the present paper examines the limits of patents as to the patentable subject matter in general and in the form of research exemptions in particular by adopting a comparative approach.

2. LIMITS TO PATENTABLE SUBJECT MATTER: AN OVERVIEW

Determining the boundary of subject matter through limits and patentability of an invention pertaining to a technology involves complex mix of legal, cultural political and social questions. Different factors contribute in defining the limits of patentable subject matter. The prime factor is drawing a distinction between discovery and invention and qualifying a subject matter as an invention when it is reduced in physical form through human intervention (Bently & Sherman 2014:438-439). Considering the patent policy in tune with national demands, a variety of exclusions are being defined under different jurisdictions: patent exclusions as to medical and veterinary treatment, non-exclusive list of the inventions that are not patentable, animal/plant variety, essentially biological processes for the production of animals or plants not being a microbiological process/product of such a process, immoral inventions or inventions that is contrary to public policy.

In defining the limits to the patentable subject matter, the international patent regime also influences the national systems. Article 27.2 permits member states to exclude from patentability inventions “the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment”. Countries utilized this flexibility by incorporating such exclusions in their patent legislations; however, the practices and interpretation of exclusions vary from one country to another. The current trend is to interpret the exclusions in a flexible manner to accommodate more and more inventions under the umbrella of patentable subject matter.

Determining the Limits to Patentable Subject Matter in the United States

In the United States, the decision of *Diamond v. Chakrabarty* has a great impact on patent policies and practices around the world. The case recognized the patentability of

living organisms in the form of genetically modified bacteria. The U.S. Supreme Court held that genetically modified organisms could be patented. In giving the wide interpretation of the terms ‘manufacture’ and ‘composition of matter’, the Court looked into the prior decisions. *Perrin v. United States* guided that in making statutory interpretation ‘unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning’. *United States v. Dubilier Condenser Corp* indicated that courts ‘should not read into the patent laws limitations and conditions which the legislature has not expressed’. Berger C. J. had provided a much broader scope to the patent laws by referring to the Committee Reports accompanying the 1952 Act, which maintains that the Congress intended statutory subject matter to “include anything under the sun that is made by man” (Chakrabarty 1952).

While interpreting the scope of the statutory subject matter broadly to include ‘anything under the sun made by man’, the Supreme Court did not rule out limitations to such scope. The court recognized certain exclusions such as the laws of nature, physical phenomena and abstract ideas, which have been held not patentable in several cases (Chakrabarty 1978). However, the limitations were construed liberally to accommodate biotechnological inventions which resulted in the patentability of genetically modified plants and animals.¹ The patentable subject matter criteria had not been contested delimiting its boundary to accommodate anything. In order to test the extent of patentable subject matter and ethics of patenting, Professor Stuart Newman of the New York Medical College and biotechnology opponent, Jeremy Rifkin, filed a patent application in the USPTO seeking a patent on a technique combining human and animal embryonic cells to produce a single hybrid mouse-human embryo (the so called ‘humouse’) (Linda & Fellmeth 2002). Responding to this application, USPTO issued a media advisory by observing: It is the position of the PTO that inventions directed to human/non-human chimera could, under certain circumstances, not be patentable because, among other things, they would fail to meet the public policy and morality aspects of the utility requirement.² Recently, the approach adopted by USPTO towards patenting of human organism has been given the backing of law, by Leahy-Smith America Invents Act 2011 (AIA). Sec. 33(a) of the said Act reads: ‘Notwithstanding any other provision of law, no patent may issue on a claim directed to or encompassing a human organism’ (AIA 2011). The tightening of the patentable subject matter criterion came into limelight when patentability of human gene was contested. As regards to the patentability of human gene, the U.S. Supreme Court held that ‘[a] naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated, but cDNA is patent eligible because it is not naturally occurring’.

Position of European Union on Limits to Patentable Subject Matter

Article 52 of European Patent Convention (EPC) provides, ‘European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step’. In European Union, though there was no prohibition as to biotech patents however, the actual scope of patentability of biotechnology was clarified through the introduction of the Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (hereinafter Biotechnology Directive) (Dutfield 2009). The passing of Biotechnology Directive certifies biological inventions as patentable subject matter by creating presumption in favour of it (Palombi 2003). Though the European Patent Convention (EPC) contains explicit exclusions to patents but they are not properly regarded in practice and loosely interpreted to expand the boundary of patentable subject matter (Drahos 1999). Despite the explicit provision of *ordre public* and morality under Art. 53 (a) of the EPC, the European Patent Office has adopted a narrow approach to it. The EPO, in its guidelines, pointed out that it would be likely to be invoked in only “rare and extreme cases”. The case law also suggests a narrow reading of Article 53 (a). It was observed in the *Relaxin* case, that Article 53 (a) is an exception to patentability and “Boards of Appeal have repeatedly found that such exceptions are to be narrowly construed”. The tests developed regarding the application of the morality are like to be applied by the EPO in a way that may exclude very few patents on such ground. The tests qualified with the terms “abhorrent to the overwhelming majority of the public”, a “contravention of the totality of the accepted norms”³ or a “weighing up”⁴ of advantages and disadvantages enable patent office with a plenty of options to narrow down the scope of morality criterion. The Onco-mouse case itself reflects “a formalistic treatment of the morality criterion that did not really engage with the matters of principle that the opponents in that case were raising” (Warren 1998).

Patentable Subject Matter and Its Limits: Indian Perspective

In India, the Patent Amendment Act 2002 has recognised the patentability of biotechnology inventions. Prior to this Amendment, in *Dimminaco v. Controller of Patents*, the Calcutta High Court held that a process for preparation of a vaccine, the end product of which contained a live virus, was an ‘invention’ eligible for protection under the Patents Act. As of now, the Patent Act 1970 (as Amended in 1999, 2002 and 2005) contains numerous exclusions relevant to biotechnology field. One of the exclusions, relevant to biotechnological invention is found in Sec. 3(c) of the Indian Patent Act which prohibits patents on discovery of any living thing occurring in nature (Patent Act 2002). Further, Sec. 3(j) provides that plants and animals in whole or any part thereof including seeds, varieties, species, and essentially biological processes for production and propagation of plants and animals are not patentable subject matter (Patent Act

2002). By implication of Sec. 3 genetically modified multicellular organisms including plants, animals and human beings, and their parts are not patentable in India.

Sec. 3(i) contains a list of non-patentable inventions in India which includes ‘any process for the medical, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process of a similar treatment of animals to render them free of disease or to increase their economic value or that of their products (Patent Act 2002). As genetic therapies are therapeutic and are meant for rendering an animal or human being free of disease, they may not be patentable in India.

Similar to Europe, India also recognises public order and morality exclusion under Sec. 3(b) of the Patents Act (Patent Act 2002).⁵ An additional criterion is found in Patent Act in the form of Sec. 3 (d), which enhances the standard of inventive step and filters the subject matter having no substantial inventiveness.⁶ As regards to biotechnological inventions, uncertainty persists as to whether isolated genomic DNA would fall within the scope of the exclusions under Sec. 3(c) and or 3(j). Prior to 2013, the Indian Patent Office had granted patents that claim isolated genetic sequences. However, under its 2013 Indian Biotechnology Guidelines, nucleic acid sequences, proteins, enzymes, compounds etc. which are “directly isolated from nature” will be treated as a discovery and are not patentable subject-matter.⁷ Based on these Guidelines, it seems that isolated genomic DNA which are “directly isolated from nature” will also be excluded from patentable subject-matter on the basis that they are discoveries under Sec. 3(c). However, this is not without controversy. If the court endorses the guidelines, the legal position over gene patent would be aligned to the US approach (Siew- Kuan 2015). In the light of Sec. 3 (d) if the term “substance” includes human genes, then the genomic DNA sequence in its “isolated form” may be broadly considered as a “mere discovery of a new form of a known substance”. This consideration under Sec. 3 (d) may exclude isolated and purified human genes from patentability unless it results in the enhancement of the known efficacy of such substance. How enhanced efficacy can be contextualized in the field of human genetics and genomics remains unclear.

3. RESEARCH EXEMPTIONS IN BIOTECHNOLOGY

Biotechnology is an interdependent technology which needs collaboration and sharing in the first place, excessive monopolies through patents would not be conducive for its growth. The potential researchers require access to research tools or platform technologies to develop new technologies and accelerate the growth of innovation. The patenting and exclusive licensing of research tools may impede the accessibility of the same to potential researchers, generating an adverse impact on R&D of the next generation. A solution to the problem can be found in the patent system itself in the form of research exemptions. Countries vary as to the protection of research exemptions under their respective patent systems. While a large number of countries recognize it through

statutory provisions; others developed it through case law as common law research exemptions. The scope of research exemptions remains problematic as the imprecision of language used to define it makes it difficult for courts to ensure judicial stability. A variety of research exemption clauses are found in patent systems world over: general exception of “experiment or research”; exception of “experiment or research” that is only applicable to clinical experiments of generic drugs; and exception of “experiment or research” at universities and research institutes.

Research “On” and “With” the Patented Product/Process

There is a distinction between research “on” and research “with” the patented product or process. In the former case, research is permitted on the patented product/process in order to advance it. For example, in the case of chemical/pharmaceutical compound, researchers can make study on the “same compound” to develop another chemical/pharmaceutical candidate. Whereas the latter case i.e. research “with” the patented product/process relates to the use of the invention, which could be a “research tool” or simply an ingredient in the new drug formulation (Masti & Adachi 2010). Given the collaborative nature of biotechnology, the research exemptions pertaining to research tools are more important. The aggressive assertion of patent rights and exclusive licensing strategies over platform technologies may obstruct the proper exercise of research exemptions. Myriad’s patent on BRCA1 and BRCA2 genes and its practices and exclusive licensing prove this fact.

The research pertaining to scientific experiments could be permitted in both the cases if it results in the commercial benefit in long run and in tune with patent objectives. This trend is not seen in the continental European exceptions, which are generally not intended to cover research “with” the patented product/process. For instance, the revised Swiss patent law of June 2008 exempts research done for both noncommercial and commercial purposes, “as long as the objective of the research is to generate new knowledge about the patented invention” (Swiss Patent Act 2008). However, it maintains a distinction between research done “on” the patented invention and research “with” the patented invention. It exempts research “on” the patented invention but permits the same for research “with” the patented invention through non-exclusive license. Therefore, access to patented research tools can be ensured through a right to claim a nonexclusive license to use the patented invention. However, there is dearth of case law that explains the applicability of the research exemption for research “with” a patented product, and other research tool patents.

Research Exemptions in the United States

In the United States, the statutory provision as to the exemption relating to regulatory approval was introduced by the Hatch-Waxman Act in 1984. The Act contains

a limited industry-specific experimental use exception for testing drugs and medical devices for purposes reasonably related to regulatory data gathering. The Court of Appeal for Federal Circuit (CAFC) had limited the scope of this statutory exception to the experiments carried out for the purposes of facilitating expedited marketing approvals for generic drugs only in *Integra v. Merck*. The Court maintained that extending such an exception to new drug development would be contrary to the purpose and language of Hatch-Waxman Act (Silverstein et al 2009). The Act established the right of generic pharmaceutical manufacturers to make use of the patented product prior to the patent expiry date and without the approval of the patent holder, for the purpose of engaging in preparatory acts with a view to obtain marketing approval from drug regulatory authorities upon expiry of the patent (Hatch-Waxman Act 1984).

In addition to the regulatory exemption under Hatch-Waxman Act, the common law experimental use exception was conferred to U.S. patent law by Justice Story in *Whittemore v. Cutter*, who maintained that it could never have been the intention of the legislature to punish a man, who constructed a machine merely for philosophical experiments, or for the purpose of ascertaining the sufficiency of the machine to produce its described effects. *Sawin v. Guild* expanded the scope of experimental use beyond machines and introduced the concept of non-commercial use. The court established that the exploitation of a patented invention does not amount to infringement unless it is done with intent for profit, and not for the mere purpose of philosophical experiment, or to ascertain the verity and exactness of the specification. The scope of experimental use was narrowed down in *Roche v. Bolar*, where the Court held the slightest commercial purpose or intention for carrying out an experiment is a patent infringement. Such narrow interpretation of the experimental use exception made an impact on non-state university research. In *Madey v. Duke University*, the CAFC refused to apply the experimental use exception to exempt university research activities from infringing a patent on the ground that these research activities ‘unmistakably further the institution’s legitimate business objectives, including educating and enlightening students and faculty participating in these projects’. The court also disregarded the non-profit status of Duke University. Therefore, the experimental use exception to patent rights in the United States is truly narrow and non-state academic institutions are not exempted from patent infringement liability as such. Though U.S. patent law established through a series of cases that only non-commercial research is exempted from patent infringement liability, in practice it is difficult to delineate between commercial and non-commercial research and experimentation. The distinction becomes more problematic in the biotechnology field given its collaborative nature.

European Position on Research Exemptions

European Union gives the flexibility of defining patent rights and infringement to individual member states as it is ultimately enforced and determined by them. Article

64 (3) of the EPC provides that any infringement of a European patent shall be dealt with by national law. Therefore, no specific provision regarding research exemption is found in the EPC. However, in due course of time, European Union has made significant efforts to harmonise the patent law and practices relating to research exemption. The harmonizing effort has been made under Community Patent Convention (CPC) 1975, which aims at harmonizing the relevant provision. Though it has not been ratified by all signatories, the Member States moved to harmonise their laws in tune with the CPC. Art. 31 of the CPC stipulates that a right conferred by a Community patent does not extend to acts done for experimental purposes relating to the subject matter of the patented invention. As a result of the harmonization efforts, all members of the EU with the exception of Austria, have introduced into their patent legislation provisions on experimental use exceptions that substantially mirror the language of Art. 31 (Singh 2015).

Despite the harmonization, the interpretation as to the scope and application of research exemptions vary from one country to another due to significant variations in jurisprudential construction of patent claims. The interpretation of the research exemption clause by the German court is worth mentioning. Sec. 11 No.2 of the Patent Act of Germany maintains: the effect of the patent shall not extend to Acts done for experimental purposes which are related to the subject matter of the patented invention. The provision was interpreted by the German Federal Supreme Court in two cases propounding a theory that argues that the experiment or research shall be exempted from liability for patent infringement if it contributes to an improvement of the patented invention *per se* or some other technical progress, whereas it shall not be exempted if it does not contribute to any special technical progress, for instance, it is conducted only for the purpose of obtaining information to be submitted to the regulatory authorities in order to obtain approval for the production or sale of the patented invention.” This theory is focused on technical progress and industrial development, which is the prime objective of the patent law. According to this theory, the clinical experiment of a drug constitutes patent infringement, if it is conducted only for the purpose of obtaining approval for the production or sale of the generic drug. Considering this, a special exemption of clinical experiments of generic drugs has been included in the European Community (EC) Directive 2004/27/EC, with the intention of achieving the objective of increasing the competitiveness of European companies in the development of generic drugs. The European Union Directive 2004/27/EC exempts acts done for regulatory approval purposes (European Union Directive 2004). Many member countries adopted a separate exception for pharmaceutical trials, popularly known as the ‘Bolar’ exception, referring to a case involving a party of the same name. Art. 9(b) of the draft Community Patent Regulation of 2004 states, ‘Community Patent shall not extend to acts done for experimental purposes relating to the subject matter of the patented invention.’⁹⁷ Unlike the USA, all the member states of the European Union, except Austria, have introduced a general non-industry specific experimental use exception in their patent statutes.

Indian Position on Research Exemptions

Similar to USA, India also provides two types of research exemptions under its patent law: first, the exemption for submitting data to drug regulatory authority and second the exemption for research and experiment. India, being the largest supplier of generic medicines, also maintains a Bolar exception in Sec. 107 of its Patent Act. Sec. 107 A clause (a) provides that any act of making, distributing, using or selling of a patented invention would not be an infringement if such activity is solely for uses reasonably related to the development and submission of the information required under any law for the time being in force, in India, or in any country other than India that regulates the manufacture, construction, use or sale of any product. The provision extends to all activities relating to development and submission of information under any law, not only to laws relating to drug approval process. In addition to this the Section provides exemption to meet requirement under foreign law also. In *Bayer Corporation (Bayer) v. Union of India & Ors (NPL)*, the High Court of Delhi (Court) examined the scope of India's Bolar exemption and highlighted its importance as "India is one of the largest producers of generic versions of drugs around the world. Given the economic realities of our country, providing cheaper medicines is a necessity. The Parliament in its wisdom has, thus couched the exclusion to a patent, as provided under Sec. 107A, in wide terms." Sec. 47 (3) stipulates: "any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils". Sec. 107 (2) states: "In any suit for infringement of a patent by the making, using or importation of any machine, apparatus of other article or by the using of any process or by the importation, use or distribution or any medicine or drug, it shall be a ground for defence that such making, using, importation or distribution is in accordance with any one or more of the conditions specified in section 47." Sec. 47 has a general language, giving space for a very wide interpretation. It permits the use of patents merely for research and experiment including instructions to pupils. The term 'experiment' or 'research' has not been defined anywhere in the Patent statute. This ultimately widened the scope of research exemption in India and any activity may fall under the scope of Sec. 47. However, dearth of case law makes the scope of Sec. 47 unclear.

It is clear from the above discussion that diversity persists among countries regarding the scope of research exemption. USA provides a very narrow research exemption in the form of idle curiosity and philosophical inquiry while India has very broad research exemption, exempting any kind of research and experimental activity irrespective of whether the activity is commercial or not. The potential risk attached with a very narrow scope of research exemption is that it may impede legitimate research activities, while a broad research exemptions as in India runs the risk that it dilutes patent

protection and takes away the incentive to create, invent and invest (Chakravarthy & Pendsey 2004). A balance of approach is needed in the exercise of research exemptions paying much heed to the nature of a specific activity in hand. This must be seen in the light of scientific progress of the concerned field, which is one of the ultimate purposes of patents too. Applying research exemptions to activities carried only for commercial gains would impair the objectives of patents and also the research exemptions too. A distinction between commercial and non-commercial motive of researcher is pertinent to be established but with collaborative reality of biotechnology and changing university-industry relationship. There is no doubt that an ideal research exemption and its proper exercise ensures scientific progress through research and innovation as it strikes a balance between patent rights and public good.

Research Exemptions under the International Patent Regime

International patent regime exerts great influence on the patent laws and practices of member countries. Research exemptions under the international patent regime are provided under the TRIPS agreement subject to certain conditions. Art. 30 of TRIPS provides:

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

It gives an inference that while applying any exceptions to patent rights under the TRIPS Agreement, the member countries of the World Trade Organisation (WTO) have to ensure that the exception must pass three prong test: (1) it is limited; (2) it does not unreasonably conflict with normal exploitation; and (3) it does not unreasonably prejudice the legitimate interests of the patent holder. The exact scope of the exceptions allowed under the TRIPS Agreement is yet to be explained as the provision pertaining to it has not been tested directly under the WTO Dispute Settlement procedures for its compliance with Article 30 of the TRIPS Agreement.

Research exemptions conform to the objectives of the TRIPS Agreement contained in Art.7, which states:

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner

conducive to social and economic welfare, and to a balance of rights and obligations.

In accordance with the above objectives, research exceptions/exemptions “on” or “with” patented subject matter could result in better products or processes. These exemptions are important as “it is rarely in the interest of the holder of exclusive patent rights to voluntarily allow research that could potentially undermine the economic value of the patent.” Similarly, the regulatory review exception allows generic pharmaceutical companies to enter the market as soon as possible after the expiry of the patent, thereby lowering the price and helping to assure greater access to medicines. This is well in tune with the objectives of the TRIPS Agreement to promote technological innovation, transfer and disseminate technology to the mutual benefit of both the producer and users in a way that encourages social and economic welfare and establishes a balance of rights and obligations.

4. CONCLUSION

Determining the limits of patents is complex because numerous factors are involved in defining the scope of patentable subject matters and patent rights. Legislative, interpretative and administrative processes along with the influences of TRIPS Agreement play a vital role in this determination. Developed countries interpret patent exclusions regarding biotechnology inventions loosely to accommodate more and more inventions. However, in the recent past tightening of subject matter criterion is visible in USA, which has made legislative effort to set the moral standards through Leahy-Smith America Invents Act and judicial effort to declare isolated and purified human gene is not patentable. Along with this, USPTO guidelines have also been issued to filter the subject matters with minimal invention. European Union and India contain explicit legislative provisions regarding patent exclusions. Given the economic potential of biotechnology both had to adopt pro-patent policy regarding biotechnology inventions. India has maintained a rigorous patentable subject matter standard for biotechnology patents by enhancing the criteria of inventive step and broadening the scope of exclusions. All the countries recognize morality in their patent laws either in the form of legislation or through judicial construction but the term “morality” has not been interpreted in a way that may restrict inventions from being patentable. Research exemptions are vital for biotechnology research given its interdependent and collaborative nature. The countries opted for the study maintains research exemption clauses but their degree of protection and scope varies from one country to another. The uncertainty as to the distinction between commercial and non-commercial research, gives courts enough space to narrowly interpret the research exemptions under the laws of various countries. In the pro-patent environment, there is a continued push for aggressive assertion of patent rights with minimal exceptions and the trend to invoke research exemptions has been slow. The commercial pressure exerts great influence on

administrative offices and courts to interpret research exemption clauses loosely, giving way to excessive monopolies. There is a need to recognize and apply research exemption provisions in relevant cases as they are as important as patent rights given their potential contribution in promoting technological progress by ensuring access to platform technologies and research tools.

End Notes

¹*Ex parte Hibberd*, [227 U.S.P.Q. 443 (Bd. Pat. App. & Interferences 1985)]: plants produced through conventional cross-breeding but relied on new techniques such as cell culture and genetic analysis (but not recombinant DNA) held patentable; *Ex-Parte Allen* 2 U.S.P.Q.2d,1425, 2 (1987): genetically modified unicellular organisms held patentable; and Harvard Oncomouse: USPTO issued patent on genetically modified multi-cellular organisms.

² United states Patent and Trademark Office ‘Media advisory: facts on patenting life forms having a relationship to humans’, (1998).

³ PLANT GENETIC SYSTEMS/Glutamine synthetase inhibitors [1995] E.P.O.R. 357 at 366

⁴ HARVARD/Oncomouse [1990] E.P.O.R. 501 at 513.

⁵It provides that ‘an invention, the primary or intended use or commercial exploitation of which would be contrary to public order and morality or which causes serious prejudice to human, animal or plant life or health or to the environment’ is not patentable.

⁶ Sec. 3 (d) maintains that “the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.”

⁷ For example, a claim to an isolated *Bacillus* occurring in nature which will be treated as a discovery of a living matter occurring in nature and hence, not patentable under section 3 (c).

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Religion and State in Pakistan in the Post-Cold War Period

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Abstract

The nexus between religion and the state is an age-old phenomenon in Pakistan. The state itself was created in the name of religion; though the debate still goes on regarding the nature of the state its founders wanted to establish. The Soviet Union's invasion of Afghanistan in 1979 and the support extended by the US to the Islamist forces through Pakistan against the Soviet invasion during the Cold-War period emboldened the religious forces not only in Afghanistan but also in Pakistan. Islamisation, with state patronage, was rampant in Pakistan during this period and did not subside even after the Cold War. But, the US, in the post-Cold War period, with the spread of Islamophobia in the West, equated Islam with terrorism. The terrorist attack in the US in September 2001 by the Islamists and the US declaration of "War on Terror" created a new crisis in Pakistan – an ally of the US in its fight against the Soviet Union during the Cold War. Pakistan is neither in a position to withdraw all the support it had been given to the Islamist forces nor in a position to antagonise a superpower like the US due to its own national interests in the post-Cold War period. Pakistan is confronting a tight rope walk between the US and the Islamists in the era of Islamic radicalism and global 'war on terror' which is more complicated than the Cold War period.

Key Words: Religion, State, Pakistan, Cold war

1. INTRODUCTION

The relationship between religion and the state in Pakistan is highly complex in the post-Cold War period compared to the previous decade. The withdrawal of the Soviet forces from Afghanistan and the end of the Cold War brought the danger of Islamism within than without, compared to earlier. The Islamists' struggle against the 'infidels' shifted from Afghanistan to Pakistan. This resulted in the eruption of a civil-war-like situation in a country, which is internally more diverse when compared to many other

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Muslim countries in the world. Along with that, Pakistan's entry into the camp of the US-led global 'War on Terror', without effecting any fundamental change in the attitude of the state towards religion brought the state into a new dilemma of aligning with one or the other or losing both. The present study is an attempt to examine the complexities of the relationship between religion and the state in Pakistan and analyses how religion has been used by the state as an ideology to maintain power in the post-cold war Pakistan. The study also focuses on the present international developments that complicated the religion-state nexus in Pakistan with the US-led 'War on Terror' and Pakistan's response to it.

Regarding the religion-state nexus in Pakistan and its impact on the present conflicts in the country, Saigol observes that:

The two-nation theory has led to serious conflicts and violence, which have plagued Pakistani society from its inception. The conflicts ensuing from, and related to, the foundational myth are primarily of two types: one, Pakistan's failure to develop a just and viable federal structure in order to accommodate ethnic minorities, and two, the theory has produced the ideology of Islamisation that lies at the heart of the sectarian and jihadi struggles (Saigol 2006: 104).

If the state used religion as its ideology to keep its boundaries secure against its external enemies as well as against the assertion of regional identities within during the Cold War period, the state is aligning with the sectarian elements within Islam in the post-Cold War period, though such activities from the part of the state was not completely absent in the past. Though the state appeased religious orthodoxy in Islam by declaring Ahmadiyyas 'infidels' in the past, the former's use of sectarian elements got strengthened in the post-Cold War scenario in which the 'jihad' against the Soviet Union in Afghanistan played a significant role. In the present context, instead of containing sectarianism, the state is promoting sectarian elements and attempts to get the most benefit out of such activities. In the post-Cold War period, the state not only projects its external enemies like India, but also the internal enemies like religious minorities as well as minority sects within Islam like Shias as a challenge to Pakistan.

2. RELIGION AND THE STATE IN PAKISTAN

With the end of the Cold War and the disintegration of Soviet Union, the Soviet forces withdrew from Afghanistan. This external transformation intensified the crisis in Pakistan (Talbot 1998: 289). The struggle against the 'infidels' lost its relevance due to the withdrawal of the Soviet forces from Afghanistan. With the end of the Cold War, the US lost sustained interest in the region; though they did not abandon their 'Mujahideen' allies completely. As a mark of its waning interest in the region in strategic terms, the US

reduced its aid to Pakistan in the form of economic and military assistance and the relationship between the two countries also reached its lowest point in comparison to the past decades; though engagements between the two countries continued. Similarly, the relationship between Islamist groups in Afghanistan and the Pakistani state continued even though there were changes in the international field. It was basically through Pakistan that the US gave aid and assistance to the Taliban in Afghanistan during the Cold War period against the Soviet Union. The indoctrination and military training imparted to youth to fight the communists carried special significance for the Zia regime in Pakistan. Madrasas- Islamic religious schools- were the breeding grounds of Islamists during Zia-ul-Haq's time. The impact of his policies could be seen in Pakistani society even after the Cold War. The war against Soviet troops and the continuing civil war in Afghanistan has 'spawned dozens of militant Islamist groups in Pakistan' (Rashid Ahmed 1996: 160).

The end of the Cold War created an enemy-vacuum for the Islamists in Afghanistan and Pakistan as the Soviet Union withdrew from Afghanistan. This prompted Pakistan to give much more attention to its enemy at the eastern front, India than in the recent past. The attention received by the Kashmir issue in the foreign policy of Pakistan and the surge in militant activities in the Kashmir region with the aid of Pakistan army was an immediate after-effect of the disintegration of the Soviet Union, though the Kashmir issue was the major bone of contention between India and Pakistan ever since their independence in 1947. The Pakistani state used the same kind of tactics of 'fight against infidels' that it employed in Afghanistan for its campaign of projecting Kashmir against India and it projected Islamist militants as 'freedom fighters' in Kashmir in much the same way that the Mujahideen were in Afghanistan.

In Pakistan, conflicts on the basis of ethnicity reached new heights after the Cold War. Sectarian conflicts between Sunnis and Shias have received greater attention in recent times and they shifted the focus of the society from the religion-state nexus to non-state actors like religion. The unprecedented escalation of Shia-Sunni conflict in Pakistan in the post-Cold War period is closely connected with the use of religion by the state for its ideological purposes. The developments in neighbouring countries of Afghanistan and Iran and their relationship with Saudi Arabia also have had an important bearing on the present developments in Pakistan. The crisis within religion is reflected in the fact that the fight is not confined to different sects in Islam but against anyone who is following a faith other than that of a group of believers. Each group privileges its own belief system as the only legitimate form of Islam and considers everyone else as infidels. The conflict between the Barelvi and the Deobandi schools within the Sunnis in Pakistan is a manifestation of this new trend (Jalalzai 2003: 173)

3. SECTARIAN CONFLICT IN PAKISTAN IN THE POST-COLD WAR PERIOD

Sectarianism and sectarian conflicts are one among the major threats the society is facing in the post-Cold War period in Pakistan. On the nature of sectarianism in Pakistan, Nasr observes that:

Sectarianism in the Pakistani context refers specifically to organized and militant religio-political activism, whose specific aim is to safeguard and to promote the socio-political interest of the particular Muslim sectarian community, Shi'a or Sunni, with which it is associated. Its discourse of power promises empowerment to that community in tandem with greater adherence to Islamic norms in public life, as the religious sources and authorities of that community articulate them. These goals are to be achieved through mobilization of the sectarian identity in question and the marginalization of the rival sectarian community, largely through prolific use of violence (Nasr 2000: 171).

The state has an important role in the radicalisation of different sects in Pakistan, especially the Sunni sect.¹ With the withdrawal of the Soviet forces, the Afghan 'Mujahideens' found a new significance in the religious and political milieu of Pakistan as the defenders of the one true faith against the different 'infidel' sects of Islam who do not follow their norms, particularly the Deobandi sect of Islam (Asghar 2005: 232). The Sunni majority considers the Shias as infidels as their practices are 'un-Islamic' as per their beliefs. Even though the sectarian movements/conflicts in Pakistan had their origin in the anti-Ahmadiyyas campaigns of the Sunnis in the initial years of Pakistan's independence, they got a new fillip in the post-Cold war Pakistan in the form of Sunni-Shia conflicts. Even though such conflicts are termed as fights 'between' the sects, they are basically attacks of the dominant sect i.e., the Sunnis over the minorities, whether religious or sectarian, in the country. Thus, the Islamists redefined their enemies and started their 'holy war' against the minority sects, especially the Shias in Pakistan.

The intimacy between the Afghan 'Mujahideens' and the sectarian groups, especially Sunnis in Pakistan, on the one hand and their relationship with the state in Pakistan complicated the sectarian movements in country. Though the Cold War came to an end, the state in Pakistan failed to sever its ties with the Islamists either in Pakistan or in Afghanistan. It is ironical that it is basically with the aid and assistance of the Pakistani state that the Islamists are waging a war against its own society in the new era. The state's support to the sectarian groups and the Madrasas run by them in Pakistan is intensifying the already existing segmentations in society.² The governments in the post-1990 period, whether democratic or military, continue this policy without much difference. In fact, they followed the footsteps of the Zia regime in their attitude towards

religion. The governments did nothing to stop the growing influence of the Islamists. “Zia-ul-Haq and both the Pakistan Muslim League and the PPP in their over twenty years in office from 1977 to 1999, did nothing to curb this trend” (Asghar 2005: 232). The impact of this policy could be seen in the militarisation of Pakistani society in the post-Cold war decade. According to Haqqani, ‘The mass mobilisation for jihad throughout the 1990s had geared up in the society for war and the nation was militarised even under the civilian rule’ (Haqqani 2005: 30). The increased militarisation not only widened the gulf between different groups in the country but also resulted in threatening the religious harmony within Pakistan (Kukreja 2003: 183). According to Chenoy, the newly empowered religious sects target not only religious minorities but women as well (Chenoy 2002: 84).

The Soviet-Afghanistan war had resulted in the influx of refugees to Pakistan since 1979. They were the carriers of arms and narcotics between the two countries. Along with that, their close relationship with the Madrasas in Pakistan gave them enough opportunity to recruit people, especially the youth along Islamist lines. “The first Pakistani jihadist group emerged in 1980 when thousands of volunteers, mainly students from religious seminaries, joined the anti-Soviet resistance in Afghanistan” (Hussain 2007: 52). In the case of the educational system in Pakistan it can be seen that, ‘no other area of Pakistani society has been penetrated by radical Islam to a greater extent than the educational system and the influx of the impoverished rural population to the Madrasas was a major reason for their growth, with Punjab and the North West Frontier Province having the highest number of religious seminaries’ (Alexiev 2003: 48). The growth of Madrasas in Punjab shows the nature and distribution of resources even within Punjab. It can be seen that, it is the impoverished population, by sending their children to Madrasas, who is at the receiving end of religious radicalisation in Pakistan. “[T]he students who are going for Madrasa education are generally the students who were poor, from broken homes, or were orphans” (Hussain 2007: 78). Rather than the matter of their faith, it is the impoverished socio-economic conditions that compel these students to go to such institutions. Madrasas are highly popular in Pakistan “having less to do with public sympathy for Deobandi doctrine than with the fact that the schools are free of charge, covering not only tuition but room and board and even providing pocket money. These religious institutions, divided by sectarian identities, were driven by their zeal to outnumber and dominate rival sects and the literature produced by their parent religious organisations promoted sectarian hatred. It is aimed at the rival sects and these institutions indoctrinate the students that the rival sects as ‘infidels’ and so, it is necessary to wage ‘Jihad’ against them (Hussain 2007: 79). Among the sectarian groups in Pakistan, the SSP (Sipah-e-Sahaba Pakistan) is one which played a dominant role in promoting sectarian violence in the country. The cadres of this group are drawn mostly from the Muhajir community and in terms of class, “they belong to the emergent ‘under-class’, semi-urban, often unemployed, who are at the margin of the middle class, and whom the SSP has empowered by giving them an aggressive Sunni identity” (Zahab

2004: 146).

The lack of social spending by the state in sectors like education and employment plays a significant role in the spread of Madrasas in Pakistan. “In a country that spends only \$8 per capita on education, and where the government is unable to offer even the most basic education to the masses of poor – 60 per cent of Pakistan’s children are denied a chance to enrol in primary school, and in literacy Pakistan occupies a place at the very bottom of the list of developing countries – the alternative to a Madrasa education for many destitute parents is no education at all, plus an extra mouth to feed” (Alexiev 2003: 48). However, the students who come out of these institutions do not fare well in employability because of their exclusively religious education, and are, therefore, recruited into religious groups and parties and the religious zeal which is inculcated in them is used to crush all un-Islamic practices which, in their opinion, are prevailing in the society (Ali 2002: 260).

The growth of Madrasas in Pakistan was very drastic and it is considerably so in the capital of the country, Islamabad. ‘In the federal capital more than 88 seminaries belonging to different sects are imparting religious education to more than 16,000 students. Even during the period of the liberal democratic governments (Benazir Bhutto and Nawaz Sharif governments), the religious seminaries especially the Deobandi seminaries grew at a much faster pace in the federal capital. Since 1990, 34 seminaries were set up in Islamabad. However fourteen seminaries were setup during the initial eight years of Musharraf regime.

The dangerous character of the indoctrination in these Madrasas can be seen in the recent Lal Masjid incident in Pakistan: the institution which was indoctrinating students in Islamist ways. The clergy of the institution had argued that, the implementation of Islamic system in the country is their objective and to fight against 'vulgarity' is their religious and constitutional right. They also threatened suicide bombings throughout the country to save their religion and to bring the government under their control. However, the government in Islamabad not only gave them the liberty to move freely in the country but did not take any initiative to curtail the activities of the clerics despite the blatant challenges issued by them. The government was forced to take action against them eventually when they turned against their own patron, the state. The state's lethargic attitude towards controlling Islamists should be contrasted with its attitude towards the sub-national movements in different parts of the country demanding more autonomy in Baluchistan or Waziristan where the state never refrained from suppressing such movements with a mighty hand.

The radicalisation of Islam with state patronage resulted in the popping up of militant Islamist parties in Pakistan. The processes of militarisation and Islamisation are promoting each other and the state “not only supports but also protects the religious

fundamentalists in their attempts to terrorise and harass society in the name of religion” (Ali 2002: 260). The main agenda of the Islamist groups in Pakistan is “to oppose religious pluralism and advocate the homogenisation of culture under Islam” (Chenoy 2002: 81). The problems with the democratic governments in Pakistan in the post-Zia regime gave an opportunity to the Islamists gain considerable influence among different sections of the society. Similarly, as the governments did nothing to curb the Islamists, the influence of the latter in different structures of the state widened and the policies pursued by the state during the Zia regime had a profound influence in the infiltration of the Islamists to different branches of the state with sectarian overtones.

4. THE STATE, RELIGION AND THE SECTARIAN MOVEMENT: 1988-1999

The end of the military regime of Zia-ul-Haq with his death and the formation of a democratic government under the leadership of Benazir Bhutto coincided with the end of the Cold War and the eventual withdrawal of the Soviet forces from Afghanistan. Even though the democratisation of Pakistan is considered a part of the ‘third wave’ global democratic revolution, the power centres in Pakistan -- the army and religion -- remained unchallenged even after the restoration of democracy (Talbot 1998: 291, 292). No profound change could be seen in the attitude of the democratic government towards religion or the sectarian politics in the post-1990 period. In the case of sectarian politics, Rieck argues that, “while the emergence of militant sectarianism in Pakistan can be blamed to a large extent on the policy of the late General Zia-ul-Haq, its further growth after 1988 has been much facilitated by an all too lenient approach of the civilian governments which have succeeded the dictator” (Rieck 1995: 448). While the economic condition of Pakistan slowed down in the decade of democracy in the 1990s, “[w]ith the failure of the ruling classes to deliver the goods to the people, religion is exploited to cover their corruption and bad governance” (Ali 2002: 260). On the other hand, the security agencies also promoted sectarian and ethnic violence in the country with the objective of intervening in politics and to dismiss the democratic governments, if they try to act more independently, on the ground that politicians failed to handle the law and order situation (Talbot 2007: 164). As a result, the massive increase in the Islamisation process and sectarian violence in Pakistan remained unchecked even during the democratic regime (Kukreja 2003: 181). The legacy of the Zia regime in the post-Cold War can be seen at the constitutional level also, as opined by Ian Talbot. To him, “[t]he legacy of the Zia era can be clearly discerned not only in the debilitating effects of the Eighth Amendment³, but also in the heightened Islamic sectarian sentiment and the continuing political influence of the army and the intelligence services” (Talbot 1998: 289).

The law related to religion remained unchallenged which was reflected in the case of Hudood ordinances⁴ and the persecution of Christian and Ahmadiyya minorities - an act that besmirched Pakistan’s human rights record among the international

community (Talbot 1998: 289). During its first time in power (1988-1990), the Benazir Bhutto government could not contain the growth of sectarian conflicts or Islamic radicalisation as Bhutto was more preoccupied with trying to remain in power than to tackle the sensitive issues of sectarianism and fundamentalism (Rieck 1995: 434).

The policy followed by the Nawaz Sharif government was much more severe compared to the Bhutto government in terms of the radicalisation of religion as he openly supported the Islamist forces for political gains (Haleem 2003: 470). He even accommodated religious parties in his government and 'ruled between 1990 and 1993 in coalition with religious parties – although losing their support one by one – and remained more inclined to court religious fanatics when it suited his interests' (Rieck 1995: 448). This was the result of his strong base in Punjab as well as his acceptance among Islamists. 'The support of IJI senators for a Shari-at bill in the closing Benazir Bhutto's government together with the presence of religious parties in the subsequent government meant that Islamisation which had been in abeyance since 1988 would re-emerge during Nawaz Sharif's premiership' (Talbot 1998:37). The promotion of religion by the Sharif government could be seen at the constitutional level also. Following the path of Zia-ul-Haq, he added more Islamic provisions to the constitution. The Blasphemy Law has become a draconian weapon to humiliate or take revenge against non-Muslim minorities and added death penalty to the law, which made the life of the minorities even worse in Pakistan (Ali 2002: 259).

To counter the appeasement of Islamist by the Sharif government, Benazir Bhutto started wooing religious political parties when she came to power for the second time (1993-96). She turned to political parties like Jamaat-e-Islami and the militant Sunni organisations like Sipah-e-Sahaba Pakistan (SSP) to bolster her Islamic legitimacy (Talbot 2007: 164). She failed to crack down on the Islamist groups and failed to contain sectarian violence because of the fact that her government, just like Nawaz Sharif government, too was dependent on the Islamist political parties (Rashid Ahmed 1996: 161). 'She did not make any decisive move against the SSP, the single most political party which was responsible for sectarian violence in Pakistan' (Rieck 1995: 448). Regarding the kind of political compromises Bhutto had made with the Islamists and sectarian parties, Vali Reza Nasr argues that: "She followed the policy of exchanging immunity from prosecution and freedom of activity for sectarian forces for their support but began more directly to use sectarianism to the advantage of her own government. At the same time, her party still enjoyed strong support among Shi'as, and the TJP was tacitly allied with her party. Confident of Shi'a support, she began to explore the possibility of making inroads into the Sunni vote bank. Her main success in this regard was the Party of Ulama of Islam (*Jamiat-i Ulama Islam*, JUI). The JUI made a deal with the PPP as a result of which it received access to important aspects of government policy making. The JUI has had close organisational and political ties with the SSP; its prominence in government therefore translated into protection for SSP activists" (Nasr

2000: 185). The bitter political rivalry between the two prominent parties in Pakistan -- the PPP led by Benazir Bhutto and the PML (N) led by Nawaz Sharif -- only promoted the sectarian and fundamentalist parties and they began to reassert themselves in Pakistan' (Malik 1996: 684). 'The sectarian tensions grew and became violent resulting in many deaths, and some extremist groups in central Punjab started an anti-blasphemy campaign also against the minorities' (Malik 1996: 684, 685).

The militant organisations belonging to the Sunni sect play a key role in sectarian conflicts and are closely connected with the Islamists in Pakistan. This is "a new phase in Islamist ideology and politics, especially among the Sunnis, the one that is more militant and combines the demand for an Islamic state with a drive to marginalise religious minorities, especially the Shi'as" (Nasr 2000: 172). Regarding the relationship between political parties and the sectarian and Islamist groups in Pakistan, Ahmed Rashid observes:

In the National Assembly and the provincial assemblies of the NWFP and Baluchistan, the PPP is allied to the JUI, which has been bitterly opposed to the Jamaat-e-Islami. Bhutto has also treated the extremist Sipah-e-Sahaba (SSP) with kid gloves because she needs its support in the Punjab provincial assembly. The SSP is a militant offshoot of the JUI, and because of its strong Wahabbi beliefs it is lavishly funded by Saudi Arabia (Rashid Ahmed 1996: 161).

In a social milieu comprising well organised, well-armed and well-financed political and religious parties along with the patronage given by the government and the military establishment, preventing religious and sectarian forces is difficult in Pakistan. When the Benazir government supported the Taliban government in Afghanistan in collaboration with JUI and the Deobandi mullahs, the Sharif government appointed an official with Islamist leanings as director general of the ISI, and contributed in no small measure to the growing infiltration of extremist elements into Pakistani military (Alexiev 2003: 48). Along with that, a sharp increase in military spending, economic liberalisation and decline in investment in social sectors created a situation of unemployment and social distress that ultimately helped the militarisation of Pakistan.

5. ROLE OF THE WEST IN ISLAMIC RADICALISATION IN PAKISTAN

The growth of religious extremism and militarisation in Pakistan and Afghanistan is closely linked with the policies pursued by the Western powers, especially the United States during the Cold War period. In fact, 'it was the US and its allies who sowed the seeds of Islamic radicalism through hijacking the Afghan resistance against the Soviet intervention in Afghanistan' (Jalalzai 2003: 170). But even after the Cold War, "the Taliban had found support not only from their original sponsors, the

Saudis and the Pakistanis, but also from the United States. The United States tacitly supported the Taliban because they appeared to have brought a degree of stability to Afghanistan. The American policy was also encouraged by the lobbying of some powerful American oil companies that were actively seeking to build gas pipelines across Afghanistan from the central Asian states to Pakistan” (Jalalzai 2003: 182). The impact of the rise of Taliban in Afghanistan can be seen in the neighbouring Pakistan that the jihadi activities of the ISI and Pakistan Islamists were greatly helped by the Taliban establishment along with promoting sectarianism in Pakistan (Haqqani 2005: 299). “The Taliban have in addition strengthened SSP’s ideological position and strategic importance, greatly enhancing the significance of the organization and expanding its potential role in Pakistan politics in general and the Islamist circles in particular” (Nasr 2000: 164-165). To Haqqani, ‘by the time Nawas Sharif government was deposed by the military, Pakistan had become a fully militarised society’ (Haqqani 2005: 300).

6. RELIGION, THE STATE AND THE KASHMIR ISSUE

Kashmir issue has occupied an important place in the history of India-Pakistan relations. While India considers Kashmir as an integral part of India, Pakistan considers it as a betrayal from the Indian side at the time of the Partition in 1947. Pakistan considers Kashmir as an integral part of it and believes that the nation’s integration will be completed only with the integration of Kashmir with Pakistan. In the words of Ashutosh Varshney:

For Pakistan, thus, Kashmir continues to represent the unfinished business of partition. Since East Pakistan has already broken away, getting Kashmir back cannot but restore pride. Pakistan supports a plebiscite in Kashmir but not Kashmir’s independence, even if Kashmiris want it. The only alternatives offered to the Kashmiris are: either India or Pakistan (Varshney 1991: 1001).

The two neighbouring countries engaged in at least three wars during the Cold War period in the name of Kashmir. The amount of money spent for military and other defence equipment in these two countries is mainly against each other. Because of the nexus between religion and politics in Pakistan, it was able to give a religious colour to the Kashmir issue in the country for mobilising public support against India. The state even used the religious extremist forces for the promotion of its foreign policy interests against India. Because of the absence of a Soviet enemy in Afghanistan in the post-Cold War period, Pakistan started to divert the attention of the ‘army of Mujahideens’ to Kashmir to liberate it from the hands of ‘infidels’ (Asghar 2005: 233). The aid and assistance given by state agencies like ISI to these ‘Mujahideens’ played an important role in keeping the Kashmir issue alive in the affairs of the state.⁵ At the same time, the

Kashmir issue played an important role in mobilising public opinion and broadening the support base of political parties in both the countries. During Bhutto's second tenure, Pakistani Islamist groups organised openly for jihad in Kashmir and raised funds from the public (Haqqani 2005: 298). The role of army is very significant in this context. It can be seen that, the army has occupied a dominant position in determining the Kashmir policy of Pakistan throughout the past.⁶

However, the aid and assistance given by the Pakistani state is largely determined by its foreign policy objectives rather than its commitment to separatist movements in India. The attitude of Pakistan towards its own separatist movements in Baluchistan betrays its position on the question of secession of different nationalities. The granting of independent status to Kashmir through the investiture of complete autonomy after liberating it from the Indian Union is a vexing question for the Pakistani state and the power centres wanted simply to keep the issue as continuing one rather than trying to resolve it by granting self-determination status to the people of Kashmir.

But it can be seen that Pakistan's options for providing a military solution to the Kashmir issue remained central to them even during the Cold War. 'The resumption of Pakistan's security relations in the aftermath of the Soviet invasion of Afghanistan gave Pakistan the confidence to consider seriously the military options for securing Jammu and Kashmir' and the "Pakistan's two track policy – clandestine operations to weaken India while simultaneously appearing to seek a durable peace – remained in operation throughout the period of Zia-ul-Haq was in power as well as in subsequent years" (Haqqani 2005: 267). Even though Pakistan was not responsible for all the insurgencies in different parts of India in 1980s and 1990s, the ISI, in its effort to encircle India, setup operations in Bangladesh, Nepal and Sri Lanka and that enabled Pakistan to monitor and possibly to assist the separatist movements in India (Haqqani 2005: 270). In the post-Cold War period also, different governments in Pakistan – whether democratic or military -- wanted to sustain the issue without many changes.

During the Sharif regime, a free hand was given to the military in the affairs of national security. At the same time, the military gave support to the ISI for fostering insurgency in Kashmir. The Jamaat-e-Islami's position on these issues was also in tandem with the policies of the military establishment (Haqqani 2005: 280). After the victory in 1997 national elections, Nawaz Sharif, instead of breaking the military-bureaucracy nexus, subverted established political institutions (Hasan 2002: 395). He also attempted to gain legitimacy through religion and 'instead of diffusing widespread social unrest used the rhetoric of Islamisation to buy peace' (Hasan 2002: 396). The deterioration of political and economic conditions of Pakistan also played an important role behind Nawaz regime resorting religion; quite similar to that of the earlier Benazir regime. Once his attempts to improve the economy and the law-and-order situation failed, he turned his attention to religion and announced the implementation of the

'Shariat-i-Muhammadi' instead of the 'Nizam-i-Mustafa' of Zia in the country (Ali 2002: 259, 260).

The defeat of the Pakistan Army in the Kargil War and their early withdrawal from Kargil War due to the American pressure played an important role in the growth of anti-government sentiments among the people of Pakistan. The sectarian groups, the Islamists and the main opposition party in Pakistan of the time, the PPP united in their opposition against the Nawaz government that led the intervention of the army in politics. According to Haleem:

Perceptions of betrayal were heightened in the minds of sectarian groups when Sharif's acquiescence to the USA had him denying any prior knowledge of the operation. Groups such as Jamaat-I-Islami, as well as their *Jihadi* counterparts in Kashmir, thus took a lead in the anti-Sharif agitation. This alienation from Sharif's policies and actions led to the formation of a formidable multi-ethnic and sectarian opposition to his administration which, in July 1999, saw the participation of over 40000 people in a rally led by the Jamaat-I-Islami. Although this rally was initially organised by as a reaction to Sharif's action in the Kargil war and was expected to be sectarian in nature, various ethnic groups such as the PPP and as well as the MQM nonetheless joined in (Haleem 2003: 472).

The dissatisfaction with the government's approach to the Kargil conflict could be seen within the Pakistani army itself and it was the Kargil debacle that gave legitimacy to the military establishment to oust the civilian government in Pakistan. "The withdrawal from the LOC and the restoration of status quo in the Kargil conflict increased the army's insecurity which led to dissatisfaction with the elected leadership and ultimately prompted the coup of October 1999" (Chenoy 2002: 92).

7. MILITARY TAKEOVER AND THE MUSHARRAF REGIME

Increasing problems within the Pakistani society and the lack of consensus between the two main political parties on solutions once again brought the military to power in the name of restoring peace and stability in the country. The military also had the support of the religious extremist groups to capture power. "The civil-military alliances, in addition to being an initiation of the army for its political interests, have also been an initiation of ethnic and/or sectarian groups disgruntled with incumbent civilian governments. Such alliances have inevitably been pro-military, thereby legitimising praetorianism" (Haleem 2003: 471). Military coup against the Nawaz Sharif government in 1999 shows the unholy alliance between the sectarian/ethnic groups and the military establishment, though the reasons behind their anti-government feelings against Nawaz

regime were varied; his dictatorial type of rule, discriminatory distribution of resources, weak and ineffective administration, and the feeling of betrayal by the Sharif administration in the Kargil war. "This unlikely inter-ethnic alliance, united only in its opposition to Sharif's government, inevitably provided greater legitimacy for a coup in 1999" (Haleem 2003: 471).

8. SEPTEMBER 11, 2001 AND THE 'WAR ON TERROR'

The terrorist attacks on Washington DC, Virginia, and New York on 11 September 2001 and the US declaration of the 'War on Terror' changed the political equations in Pakistan in a dramatic manner. The new threat of Islamism and the 'Islamophobia' which was gradually gaining momentum in the post-Cold War period among Westerners reached its apogee with the terror attack in the US and the incident provided an opportunity for the US to lead the world once again against the enemies of the West. What they had to do was to replace Communism with Islam and "Islamophobia" as the new threat to the Western civilization (Sattar 2007: 258).

In the changed international context, the state in Pakistan came under severe pressure because of its closeness both to the US as well to the Islamists. Once the "patron" changed their attitude towards Islamist forces, the "client" was also compelled to change their strategy, due to fears of being isolated from the network of western powers; an act that would be suicidal for Pakistan. Yet, the Pakistani state did not stop its support to the religious extremists groups due to domestic compulsions. In the new international context, to placate the US but at the same time to not alienate the Islamists, Pakistan developed a new strategy by segregating the militant Islamists as 'terrorists' and the 'freedom fighters' (Haqqani 2007: 150). While the term 'terrorist' was applied mainly to the Al-Qaida members of foreign origin, freedom fighter status was given to the Kashmiri militants who fought against the Indian state along with remaining tolerant of the remnants of Afghanistan's Taliban regime.

Regarding the contradictory approach of the state, Haqqani argues that, the "contradictions in Pakistani policy is a structural problem, rooted in history and ... state policy. It is not just the inadvertent outcome of decisions by some governments (beginning with that of General Muhammed Zia-ul-Haq in 1977), as is widely believed" (Haqqani 2007: 150).

9. ISLAMISM AND THE WAR ON TERROR IN PAKISTAN

The US led War on Terror opened new opportunities for the Islamists forces in Pakistan too, as the anti-American sentiments among the people also grew with the US declaration of war on Islamic forces. Though they had always tested their luck in the elections, they had consistently failed to draw the attention of the people towards them.

The percentage of the total votes cast in favour of religious parties in the last three elections which were conducted in 1990, 1993 and 1997 were not very encouraging standing at only 1.76 per cent, 6.75 per cent, and 1.83 per cent, respectively (Tanwir 2002: 252). The general public in Pakistan was always in favour of secular parties rather than religious parties irrespective of the attitude of the establishment towards religion. In the case of general elections, “whenever Pakistanis exercised their right of vote in general elections, they always voted for parties that had broad political manifestos, which went beyond religion and religious agendas. The rule of the country by religious leaders was totally ruled out in the past” (Tanwir 2002: 251). But in the present context, finding faults with the secular parties, the religious parties are trying to occupy the space vacated by them. ‘They, through the institutions of mosques and the friday sermons were able to formulate a national platform and cultivate support for their positions’ (Fair 2005: 98-101). The MMA, a conglomeration of religious parties constituted on the eve of the General Elections in 2002, exploiting anti-American sentiments of the people ‘performed well in the election especially in the areas where the anti-US sentiment was high and the militant organisations also gave support and mobilised people especially the youth for the election’ (Fair 2005: 104). However, it is also true that anti-Americanism was not the only one reason for the increased visibility of religious parties in Pakistan. The army kept the two major secular parties (with all its failings), PPP and the PML-Q, at bay from the whole elections process and ‘played an important role in the electoral victory of MMA in the 2002 General Election in Pakistan’⁷ (Fair 2005: 98-101, Aziz 2008: 24). Siddiqui, on the other hand, gives a class perspective to the growth of religious parties in Pakistan. To him:

In the united Pakistan, the politicians from East Pakistan were predominantly from the middle classes, and after the separation of East Pakistan, politics became the game of feudal lords, industrialists, and those with black money. So there was a gap that has now been filled by the middle-class Religious Alliance elected members. He has also argued that the nationalist parties have also been defeated by the Religious Alliance. All this shows that the Religious Alliance’s success was not just a reaction to American policies but was also a reaction against the socioeconomic and political deprivations prevailing in the country. He has emphasized the point that the Religious Alliance has to show a balanced behavior now and should not exhibit extremist policies while in power (Siddiqui quoted in Tanwir 2002: 260).

The military regime under Musharraf made no attempt to prevent the spread of Islamist forces in the country. The government did not give due importance to those Madrasas which spread militant Islamist ideology even though they are continuously involved in jihadist politics’ (Hussain 2007: 85). At the same, Musharraf followed a pro-Western, Pro-American foreign policy by keeping the interests of the military

establishment in mind. In the post-Cold War era, he presented all generals as pro-Western like the Generals of the Cold War period such as Ayub and Yahya (Haqqani 2005: 281). “The military regimes have historically adopted the dominant discourse and adapted policies to maximise advantage within the international community. For instance from being a front-line state against communism to a front-line state in the war against terror (led by General Ayub Khan, Zia ul Haq and Parveiz Mushrraf), the military in Pakistan has shown a remarkable consistency in pursuing its institutional interests, regardless of the terms of debate” (Aziz 2008: 24).

General Mushrraf’s military regime was less apologetic than any previous Pakistani military governments and openly committed to continuing the militarisation of society. The approach of the Pakistani state towards the religious extremist forces is very much clear, especially in its dealings with India. “Although Musharraf was building his image as America’s dependable ally against terrorism, he was unwilling to turn away completely from the Pakistani military’s consistent support of jihad against India” (Haqqani 2005: 304). Though Musharraf spoke about ending the religious extremism, he made a distinction between the Kashmiri freedom fighters and the domestic religious extremists’ and promoted the Islamist forces operating in Kashmir (Haqqani 2005). Along with that, he was supporting the religious forces within the country also against India. “Since taking over the helm of the country, General Musharraf has actively used the country’s religious establishment to promote Pakistan’s agenda vis-à-vis India, particularly furthering the concept of strategic depth in Afghanistan and giving impetus to terrorism in Jammu and Kashmir” (Kukreja 2003: 188-189). Even after the declaration of the war on terror, the support of the state to the Islamist groups in Pakistan continued and the state’s action to crack down these groups were only superficial except for the initial changes in Pakistan’s ISI and army leadership⁸ (Aziz 2008: 24).

However, the growing strength of the Islamist groups should not be reduced to the patronage of the army in Pakistan. The credit of the electoral victory of the Islamists should not be given to the Pakistani army only. The 2002 general election results in Pakistan were a reflection of the increasing popularity of the Islamist forces among the people of Pakistan. The impact of the war on terror has great significance in the internal politics of Pakistan especially along ethnic lines because of Pakistan’s affinity with Afghanistan. Farooq Tanwir argues that:

The events of 9/11 not only affected American society but also brought far-reaching consequences for Pakistan. The moment America planned its military operations in Afghanistan, the government of Pakistan was asked not only to provide logistic support to American forces in Afghanistan but also to seal its borders with Afghanistan to enhance the effectiveness of American operations. It is important to mention here that people of Baluchistan and the North West Frontier Province –

Pakistani provinces adjacent to the Afghan border – have kin in Afghanistan and belong to the same ethnic group (Tanwir 2002: 253).

In the years following 9/11, with the US war on terror in Afghanistan, there was an influx of well-trained and well-experienced Islamist militants to Pakistan, especially in the border regions and it enhanced the "organisational skills, leadership quality and resourcefulness of the Pakistan militants operating in the tribal territories." (Abbas 2014: 151) The support received by the Taliban in Pakistan's border regions close to Afghanistan especially in the NWFP and Waziristan is highly significant. The MMA, once they came to power in the NWFP, did nothing to prevent the spread of Taliban influence in the region because of their proximity with the Taliban Islamist ideological outlook. The ANP, in spite of their progressive claims, that came to power in the 2008 general elections, by ousting the MMA from power, also continued the policy followed by the MMA towards the Islamists (Abbas 2014: 147).

The attitude of the Pakistan's security and intelligent establishments are not different either. In 2008, they even went to the extent of declaring Taliban leaders like Baitullah Mehsud and Fazlullah as "patriotic" as a warning to India that the differences between the state and the Islamists could be reconciled at will. Due to external compulsions, though the army ventured to clear the militancy in the border regions through military operations in 2009, the displacement and refugee problems following the incident ended in providing new recruits to the Islamists (Abbas 2014: 148).

Even though Pakistan returned to democracy with the 2008 general elections ending the military rule under Pervez Musharraf, the Islamist threat to Pakistan did not subside. The TTP, a militant Islamist organisation is spearheading terror campaigns in Pakistan, especially with its suicide attacks. Thousands of innocent Pakistanis were killed in the suicide attacks that they carried out between 2007 and December 2013. The figures include military and law enforcement officials (Abbas 2014: 158).

10. PAKISTAN BETWEEN OBAMA AND OSAMA

The entry of Pakistan as a frontline state in the US-led war on terror opened the floodgates of the US military and intelligence operations, covert and overt, not only in Afghanistan but in Pakistan too. The unilateral military operations conducted by the US in Pakistan's territory is a major source of rift between the US and Pakistan. Pakistan's military and intelligence establishments along with the Islamists criticised such operations and demanded their withdrawal by the US. The major reason was that the militant Islamist organisations patronised by the political and military establishments were the targets of such operations (Fair 2012: 101). Though it is a fact that many such organisations were the remnants of the Islamists in Afghanistan, which were actively promoted by the US itself in their campaigns against the Soviet Union during the Cold

War, they had turned against the US once they proclaimed a war on terror in Afghanistan with the 9/11 incident. The rift reached its peak with the covert US operation in May 2011 that killed Osama bin Laden in the capital of Pakistan itself, which was a great shock not only to the Pakistanis and Americans but the whole international community (Fair 2012: 102). The US military operation within Pakistan's soil without their knowledge not only humiliated Pakistan within and outside but raised serious doubts about the efficiency of Pakistan's intelligence and military establishments in protecting its boundaries from external forces. Demands were made from the political, military establishments as well as from the general public to review the bi-lateral ties between Pakistan and the US and to demand the withdrawal of US military bases from Pakistan. The killing of 24 Pakistani soldiers by mistake in a US drone attack in November 2011 added fuel to the fire of anti-Americanism in Pakistan among the Islamists and the public alike. In the present context, the US fight against the Islamist militants is extremely difficult due to the proximity and support given by the Pakistani state to the latter and the growing anti-Americanism among the people.

11. CONCLUSION

The nexus between religion and the state is very complex in Pakistan in the present scenario. At the one level the state is promoting the religious extremist forces and considers religion as a tool in its foreign policy. At the same time, because of the compulsions from the Western countries, especially from the US, the governments in Pakistan are compelling to take measures to curb the Islamist forces. But the encroachment of the Islamist forces to different arenas of the Pakistani state is creating a lot of confusion among the decision makers of the state. The support given by the Pakistani state along with the support of the Western countries, especially the US, played an important role in creating such a kind of situation in the country. The present situation in Pakistan shows that the Islamists forces are becoming a strong force in the country at par with the military. At the same time, the centralising tendencies of the state are growing faster than in the past, especially in the case of Pakistani army. The tensions going on in the country in the name of ethnicity, sectarianism, or the demands for regional autonomy are considered as threats to the state in which the state is oppressing any kind of separatist tendency brutally. Here the state is considering Islamists as less threatening than the claims for regional autonomy. In the present context, the nexus between the army and the religious forces are not only promoting authoritarian tendencies within the country but also hindering the evolution of a strong democratic culture and society in Pakistan.

End Notes

¹ The Sunni-Shia conflict in Pakistan has different aspects and is happening at different levels. The conflict has levels like the feudal versus the emerging middle class, the Shia versus the Sunnis, the local Shias versus the Muhajir Shias, local Sunnis versus the Muhajir Sunnis etc. Here in this dissertation only the role of the state in the promotion of the conflict and the impact upon the society is considered rather than the different dimensions of the sectarian conflict in Pakistan. For more details regarding the nature of Shia-Sunni conflict in Pakistan.

² “The number of Pakistani madrasas has grown from 250 in 1947 to around 10,000 in 2002 with over 1,500,000 students attending them. Currently there are 13,000-15,000 madrasas with the highest concentration and highest rate of growth in number of schools in Southern Punjab” Rohan Bedi, “Have Pakistanis Forgotten Their Sufi Traditions?”

³ The Eight Amendment of the constitution made several changes in the constitution of Pakistan. It transformed the parliamentary system into a presidential form of government and gave excessive powers to the president against the 1973 constitution. In the case of Islamist policies, it created a new institution of federal Sharia court, which was given the power to examine and decide whether or not any law or provision of law was repugnant to Islam, as laid down in the Holy Quran and the Sunnah of the Prophet. In case the court finds to be repugnant to the Islamic injunctions, it may ask to concerned government to have its point of view placed before the court. In case a law or a provision of a law is held by the court to be repugnant to the injunctions of Islam, the president or the governor, as the case may be, takes steps to amend the law so as to bring it to conformity with the injunctions of Islam.

⁴ Under the Hudood ordinance, if a woman is raped, the victim could face adultery charges unless she can produce four Muslim male witnesses of good character of her rape. Failing to do so entails a maximum sentence for adultery and is death by stoning. But in 2006, the parliament made some amendments to the Act and it dropped the death penalty and flogging for people convicted of having consensual sex outside marriage and give judges discretion to try rape cases in criminal court rather than Islamic court.

⁵ But ISI’s involvement in backing Taliban regime and in fostering insurgency in Kashmir is with the sanction of military and political establishments.

⁶ “The Pakistani military elite use the Kashmiri issue to justify high levels of defence spending. Many retired generals own the concessions to lucrative contracts in Pakistani

Occupied Kashmir. Many of the top jobs are reserved for the army and for representatives of the Pakistani ruling class. Occupation of Kashmir means millions of rupees are earned by the army officers as a result of smuggling goods to North Afghanistan and across the line of control. The natural resources of Pakistani Occupied Kashmir (particularly logging and hydro-electric power) are siphoned-off for use in Pakistan without any benefit to ordinary Kashmiris”.

⁷ Regarding the electoral victory of the Islamist groups in Pakistan, Fredic Grare in his article titled “Pakistan: The Myth of an Islamist Peril” (2006), explains the role of the army in the election process. He argues that it is the army which is the real threat in Pakistan rather than the Islamist groups. Regarding the pragmatic approach of the Islamists to the present approach towards politics, he explains that, “when Islamic parties get close to power, they often adapt their discourse to political realities, and sometimes they just drop Islamic rhetoric. Pakistan’s rapprochement with the United States following September 11, 2001, for instance, was criticized by religious parties on geopolitical grounds, not ideological ones: Islamist parties argued that siding with the United States would alienate China and Iran, more important friends to Pakistan”. He also argues that even though sectarianism is a serious law and order problem within the country, it is not a serious threat to the regime stability. The MMA won absolute majority in October 2001 regional elections. They now rule in NWFP and Baluchistan. In October 2002 elections, they formed their government in N.W.F.P. MMA is vehemently opposing the US and is supportive to the Jihad in Kashmir.

⁸ The military regime is continuously giving support to the Islamists in Pakistan. But Aziz argues that, though the army is supportive to the Islamist forces, “there is not a single Islamist organisation with the capacity to challenge the one and only centre power in Pakistan: the army” (Aziz, 2008, p.24). He also argues that there has never been any possibility of a Pakistani theocracy on the Iranian model, not even a theocracy under military protection (Aziz, 2008, p.24).

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Islamic Fundamentalism as Human Security Challenge in Bangladesh

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Abstract

Security is an ‘ambiguous symbol’ (Arnold 1962) and an ‘essentially contested concept’ (Galie 1962). In an objective sense, security measures the absence of threats to acquired values and, in a subjective sense the absence of fear that such values will be attacked. The term ‘human security’ underlines the necessary link between the ‘State-security’ and ‘Societal- security’, a concept which allows to analyse security in its multi-dimensional forms – political, economic, societal, military, environmental etc. This paper explores the notion of Islamic fundamentalism as a threat to Human security in Bangladesh. The first section traces the origins of human security and identifies Islamic fundamentalism as one major aspect of human security in the South Asian region, particularly Bangladesh. In the further sections, this paper sheds light on genesis of Islamic fundamentalism, nature of Islamic fundamentalism and the challenges raised by Islamic fundamentalism to human security in Bangladesh.

Key Words: Islamic Fundamentalism, Human security, Bangladesh

1. INTRODUCTION

The structural changes of monumental proportion in the Post-Cold War introduced revolutionary change in the security thinking as well. Unlike the past, the traditional security threats to the states dramatically decreased. Whereas, the new world was confronted with a series of violent conflicts of various types within the states. It suffices to mention that more than 90% of the wars since the end of the cold war have been fought within, rather than between states (David Preston and Don Hubert 2000: 345). The world today straddles between two ends of the security spectrum. At one end of the spectrum lies the military strength as demonstrated in Iraq. On the other end rests the needs of human societies, where military power is of limited utility (Raghavan 2000).

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To illustrate, hurricanes and tsunamis like Katrina, Rita and the recent Sandy have exposed the limitations of finding military solutions to human security; that security in its ultimate analysis is a human condition and remains vulnerable to powers beyond military solutions. Similarly, the attacks by terrorist organizations in several parts of the world, like New York, Madrid, London, Dhaka, Mumbai and Hyderabad, is a new security phenomena. All these emerging trends show that people in a state is vulnerable to military threats even when the state is not at war – a condition that flout the traditional meaning of security. There are economic, environmental, societal and political threats affecting the safety and security of the citizens where the traditional powers and state instruments are not enough to tackle the situation. Threats of such kinds do not follow the norms of the boundaries of the states. It well explains the limitations of the realist/neo-realist frameworks and the significance of the idea of human security to analyse conflicts in the post-Cold War period.

The origins of the idea of Human Security could be traced back to the growing dissatisfaction among the intellectual community with the prevailing notions of development and security in the 1970s and the 1980s (Bajpai 2003:196). A series of reports of multinational independent commissions consisting of prominent leaders, intellectuals and academics were published during this period. The Copenhagen School, through its securitization theory, also enriched the concept of human security. The Copenhagen school, which is best known for advancing the theoretical aspects of the concept, put it in this way, ‘the exact criteria and definition of securitization consists of the inter-subjective establishment of an existential threat with a significance sufficient to have substantial political effects’ (Buzan et.al. 1998: 25). The main proponents were Barry Buzan, Ole Waever and their associates such as J. De Wilde, P. Lemaitre, M. Kelstrup. The term ‘human security’ underlines the necessary link between the ‘State-security’ and ‘Societal- security’, a concept which allows to analyse security in its multi-dimensional forms – political, economic, societal, military, environmental etc. This imperative has been echoed in the words of eminent scholars. To illustrate, according to Buzan, “the idea of security is easier to apply to things than to people” (Acharya 2001). Further, Sheehan expressed that, “the calculated activities and policies of other human beings... human agency is fundamental to the definition of the security threat... within this definition all traditional military threats can be encapsulated”. Moreover, Booth discussed the dangers of the traditional orthodoxy in terms of what security means. For him, “the price for old thinking about world security is paid, daily, in the death, disease, poverty and oppression of millions” (Acharya 2001). Following the line, Thakur remarked that, “to insist on national security at the expense of human security would be to trivialize ‘security in many real-world circumstances to the point of sterility, bereft of any practical meaning” (Thakur 2000). He notes also the presence of “structural coercion so severe as to turn human beings into chattels...”

However, the articulation of a Human Security perspective is attributed to the United Nations Development Programme and Mahbub-ul-Haq. The first major contribution in this direction was the Human Development Report 1994 published by UNDP. Mahbub-ul-Haq outlined his approach in his paper, “*New Imperatives of Human Security*” (1994). In his opinion, the world is “entering a new era of Human Security” and “the entire concept of security will change dramatically”. In its new conception, security is equated with the “security of individuals, not just security of territory”. He writes, “[W]e need to fashion a new concept of human security that is reflected in the lives of our people, not in the weapons of our country”. Thus, whereas the traditional conception of security emphasizes territorial integrity and national independence as the primary values that need to be protected, human security pertains above all to the safety and well-being of “all the people everywhere- in their homes, in their jobs, in their streets, in their communities, in their environment” (Haq 1994:1). The UNDP Report urged that instead of giving exclusive stress on territorial security and security through armaments, much attention should be given to people’s security and sustainable human development (UNDP 1994:229).

The UN report sheds light on the wide range of threats to people like political security, economic security, environmental security, food security, health security, community security etc. Economic security emphasizes the role of the basic income of an individual, either through employment or social security measures, especially by the state. Access to food to an individual through assets, employment or income is the prime concern of food security. Health security, whereas means an individual’s freedom from different diseases and debilitating illnesses, and the access to health care. Environmental security signifies the viability of land, water and air to make proper conditions for humans to survive. Personal security attaches primacy to an individual’s freedom from crime and violence, especially the vulnerable sections of the society like women and children. Community security refers to the dignity of the culture of an individual as well as inter-communal harmony between different segments of the society within which a person nurtures his/her life. Finally, the protection against human rights violations is the prime motto of political security (UNDP 1994: 230-34). Thus, the concept of human security has two major components according to the UN report -- ‘freedom from fear’ and ‘freedom from want’, though it attaches more significance to the latter. The report was a reflection of the concerns raised by the people in the Third World on human security for the last several decades. The significance of the UN report could be seen from the fact that its publication was followed by several other perspectives on human security even in the developed world.

Canada, for example, has come up with a report on human security in which emphasis was given to ‘freedom from fear’. The report gave attention to the security of civilians in conflicting zones as well as to reach solutions to such conflicts through negotiated settlements. (Axworthy 1997:183-96). In the perspective developed by Japan

on human security, more attention was given to the economic aspects; unlike the Canadian perspective and is much closer to the UN report on human security (Ministry of Foreign affairs of Japan 1998). But it should be noted that even though all the reports highlighted the security of the individual, their emphasis varied from freedom from fear to freedom from want.

Thus, the concept of human security is closely connected with the protection of the personal safety of an individual as well as freedom from violence. Attention on human development and good governance are central to human security. Along with that, the use of sanctions and force, as and when it is necessary in managing human security also should not be neglected. The role of the state and non-state agencies along with international organisations and civil society groups are vital for strengthening human security in the globalised world.

2. SOUTH ASIAN CONTEXT

South Asia is a region where the concept of traditional security has miserably failed in its objective of providing any meaningful security to a very large chunk of its population in the continent. The diverging security concerns of the state and the people keep them often on opposite sides and the connecting link between them is missing. A re-examination of the security needs of the state and the security needs of its citizens are overdue in this region. Contrary to many other parts of the world, the graph of military spending is in an upward direction in South Asia though the social spending by the states is sluggish. The condition of human security in South Asia, in terms of both fear and want, is one of the worst in the world.

Human security threats come from the states as well as the non-state actors in the region, like intra-state conflicts, authoritarian regimes, human rights violations, misrule, corruption, atrocities against women and children, terrorist activities etc., are widespread and continues as a source of constant fear. Similarly, on the socio-economic side, the human development index of the people are abysmal as hunger, poverty, illiteracy, deprivation and many such issues are more severe than several of their African counterparts (Abdus Sabur 2006: 47-48).

Therefore, the new security approach for the South Asian region should combine the traditional and non-traditional aspects of security in order to achieve a healthy interaction between the state and its people possible. The different aspects of human security in South Asia can be identified as follows:

Environmental Security

This sector has been described as the 'ultimate security' in the twenty first century. Environmental changes are more drastic than earlier. A rise in temperature

would pave the way for the extinction of island states like the Maldives. The Exodus of people due to deforestation, destruction of agricultural land, floods and famines etc. most often compels people to cross international borders inviting military responses from the part of the states. The environmental hazards often lead to civil strife between people's of different origins as the societies in the region are mainly dependent on agriculture for their livelihood and majority of them live in villages.

Economic security

How to make a balance between the implementation of neo-liberal policies and to ensure economic security to its vast majority of poor is an important security dilemma faced by the governments in the South Asian region. The cost of neo-liberal globalization is enormous in the countries like India with more than a billion population, especially in the rural areas. The trickle-down effects of globalization have not been reached so far among its vast majority and the discontent among the people towards such policies are widespread.

Societal security

Even though societal security is closely connected to political and military securities, it is distinct from the latter in several respects. The multi-ethnic character of the states with large minority populations and their connection with people across the borders is a source of tension and often lead to violent conflicts. Ethnic cleansing, economic competition between various groups, migration/infiltration/refugee issues etc. are the sources of concern both of the state as well as the society.

Political Security

Political security refers to the threats emerged in a state from political or ideological factors against the intra-national or supra-national integration of people's and societies. The security threats posed by religious fundamentalist forces form a part of this problem.

Viewing security from all these aspects, it's quite clear that South Asia is deeply embroiled in the throes of conflict. And the cumulative effect of this is prone to have a bearing on the overall security and stability of South Asia. The present paper attempts to locate 'Islamic fundamentalism' as one aspect of the human security challenges in Bangladesh. Before dwelling on this problem, the main contours of human security in Bangladesh are outlined. Freedom from want includes economic security, health security, food security and environmental security. Freedom from fear includes personal security, security from misuse of drugs and alcohol, tenure security and political security.

Bangladesh is facing many such threats at the same time viz. natural disaster, environmental degradation, infectious diseases, poverty, small arms proliferation, human trafficking, but, Islamic fundamentalism has emerged as one of the major threat to human security in the country. Democracy and secularism are inter-dependent values. Being so, religion should be separated from the affairs of the state. But religious fundamentalism opposes the secular values and elevates the orthodox tradition; it sanctifies the priesthood as being the authorized agent for interpreting religious texts. Religious fundamentalism has different manifestations in Bangladesh – political, ethnic and nationalist. The dangers arise from its proclivity to narrow the space for debate and discourage the existence of multiple identities; these principles have imbued the regional culture of South Asia with its inherent vibrancy over the ages. Religious fundamentalism constitutes a direct assault on human rights and human security (P.R. Chari and Sonika Gupta 2006:10-11). In Bangladesh, Islam being the majority religion, it is manifested in the form of Islamic fundamentalism.

Islamic Fundamentalism has emerged as a worrying factor for Bangladesh. It is a lethal offshoot of the political use of religion. The power seeking leaders have resorted to religion for ideological purposes and facilitated the growth of Islamic fundamentalism in Bangladeshi society. Further, the political and religious competition along with socio-economic problems inherent in the society like unemployment, poverty, illiteracy etc. contributed to the growth of Islamic fundamentalism in recent years. Bangladesh is in a transitional phase as far as Islamic fundamentalism is concerned. In the light of fundamentalist activities, the fortunes of secularism in the country – the one which was born after a bloody war with Pakistani army in the name of language, breaking the myth of religious nationalism appears to be dwindling (Lintner 2002). And thus, Islamic fundamentalism has emerged as a major human security challenge in the South Asian region.

In the attempt to explore Islamic fundamentalism's frontiers in Bangladesh, the paper is divided into three parts – the first part sheds light on the genesis of Islamic fundamentalism, the second on nature of Islamic fundamentalism and the third part deals with how Islamic fundamentalism emerged as a human security challenge in Bangladesh.

3. GENESIS OF ISLAMIC FUNDAMENTALISM

The word fundamental has been derived from the Latin word "*Fundamentum*" meaning foundation. Literally, it means basic rule or principles. Fundamentalism means the strict obedience to the basics or fundamentals of a religion or a system of thought. However, most often, the term 'fundamentalism' is not used with any other ideology except religion. Whenever the term is used, the connotations are negative and as something dogmatic.

The term 'Fundamentalism' is said to have first seen the light of the day in 1920 when an editor of a prominent Baptist paper used the term to designate the Christians who were, alarmed at the 'havoc' wrought by 'rationalism' and 'worldliness', ready to fight for the fundamentals of Christian religion. American protestant churches coined the term and defined fundamentalists as 'those ready to do battle royal for the fundamentals of Protestants' (Caplan 1987:157). A high point of the movement was reached in 1925 at the famous Scopes Trial in Dayton, Tennessee, whereby teaching the theory of biological evolution was prohibited in the State subsidized schools¹ (Nazmi 2004:3). The few definitions are cited here to clarify the term.

Oxford Dictionary of current English defines 'Fundamentalism' as "maintenance, in opposition to modernism, of traditional orthodox beliefs such as the inerrancy of the scripture and literal acceptance of the creeds as fundamentals of protestant Christianity". American College Dictionary (ACD) explains the concept of fundamentalism as a "movement of American Protestantism which stresses the inerrancy of the Bible, not only in matters of faith and morals, but literal historical record and prophecy, e.g. of creation, the virgin Birth of Christ, his second advent etc". Further, According to Encyclopedia Britannica, the fundamentalists need not to be ascetics, though they may be found observing certain taboos. Most of them may be seen to evade the evils of the modern society, but at the same time they are not teetotaler in real sense of the term. Jere Van Dyke writes, "Fundamentalism is a yearning for certainty, for an answer to despair, a desire for community, for peace, purity, God, a home and for eternal life. While fundamentalists, no matter what their religion, can be self-righteous, judgmental, even totalitarian, they have found purpose in life, happiness, and love among their fellow believers" (Dyke 2007). Thus, fundamentalism may be defined as a movement that is radical in terms of its goals, extremist in terms of its methods and literalist in terms of its adherence to scripture.

As far as its relations and popular use with Islam is concerned, the use is treated as problematic because of its Christian origins. It is argued that there is no and there has never been any fundamentalist/non-fundamentalist differentiation in Islam during the past fourteen centuries and is an attempt to fractionalise the Islamic world. But one can trace the initiations of Islamic fundamentalism in the heightening of the Islamic consciousness characterised as revivalism, renaissance, and return to Islam or 'march of Islam' and in the frequently used expressions by its proponents like 'Baath-al-Islami' (Islamic renaissance) or 'Al Usuliyyah Islamiyyah' (Islamic fundamentalism); a call to return to the fundamental principles of Islam. It also connotes a search for the fundamentals of the faith, the foundations of the Islamic Polity (Ummah)², and the bases of the legitimate authority (Al Shariyyah Al Hukm). Such a formulation emphasises the political dimension of the Islam more than its spiritual aspects.

Thus, the term Islamic fundamentalism is used with reference to the use of religion by the groups and movements as a force to mobilise the people to attain political power and transform the state as well as societies as per their doctrines (Faksh 1997:73). They are aggressive in their political use of the religion (Tibi 1988:9). To their imagination, Islam is “as much a political ideology as a religion” (Roy 1994:7). Hence, Islamic fundamentalism is the aftermath of the reform (*Islah*) project brought out in the 19th and 20th centuries by Jamal-al-din-al-afghani, Md. Abduh, Rashid Rida; and Maulana Maududi (in the context of South Asia). To the Islamists, religion is a tool for political action at the individual as well as at the state levels. In the words of Oliver Roy, Islamism is “the perception of Islam more as a political ideology than as a mere religion... In this sense Islamism is a modern movement, the last wave of an anti – imperialist mobilization that dates back to the last century.” (Roy 2001:199)

Hence, it should be noted that Islamic fundamentalism in its present form is not something completely new but something which came to prominence by taking advantage of the tensions prevailing in the Muslim world; by making use of the Muslim belief that Islam provides the principles for the creation of a virtuous and just society (Nazmi 2004:7).

An analysis of Islamic fundamentalism in the context of Bangladesh as a challenge to human security in the region would be meaningful only in the light of the above mentioned facts.

This new phenomenon has brought to the forefront many hotspots where fundamentalist movements have emerged around the world. Bangladesh is one of them. Bangladesh is the third largest Muslim country and one of the poorest nations in the world, referred as ‘Basket-case’ of the world by Henry Kissinger. Though the country was known for its tolerance, sophisticated literary tradition and an exhilaratingly vibrant artistic milieu but is gradually falling into the grip of Islamic fundamentalism in the recent decades (Mukarji 2003:57). Bangladesh is going through transformational and transitional phase. In the words of Bertil Lintner, the 'Islamic revolution', which is flexing its muscles in Bangladesh, is a security threat that goes beyond the boundary limits of the nation and the region. Parallels could be made between the Islamists activities in Bangladesh and their counterparts in Pakistan; a hub of Islamists for more than three decades. But in the words of John L. Esposito, in spite of their similarities and linkages, the Islamists cannot be counted as one and the same as “they (are) the specific products of circumstances” of their own countries (Esposito 1997:23). In some cases, they may be the creations of the governments themselves whereas in some others the political, social or cultural settings in which they operate may help them to widen their net among the people (Ahmed 2006).

The rising trend of Islamic fundamentalist activities in Bangladesh has brought it to the forefront of global attention particularly in the post-9/11 period. Even though the government refuted the media reports as a calculated propaganda of the western countries to malign the government, there is a fear lurking in the neighboring countries and international community to take serious stock of the situation. In the light of this growing fundamentalism, the very secular spirit of Bangladesh liberation war based on linguistic nationalism seems threatened today.

Historically speaking, the identity assertion in Bangladesh based on religion could be traced back to the colonial period, in the wake of the partition of Bengal in 1905 and during India's partition in 1947 on the basis of religion. Yet, the state of Pakistan which was formed in the name of religion was not 'religious' in the sense that it was constituted not on the basis of Islamic principles known as 'Shariat'. But the fundamentalism of the present type in Bangladesh could be traced back in the propaganda activities undertaken by the Islamist reformist groups in the 19th Century Bengal. Basically, it was the Wahabi and Faraizi movements in the 19th century brought about Islamic consciousness among the Muslim peasantry in Bengal (Chaudhary 2007). Most scholars concur to this view that the growth and rise of fundamentalism in the sub-continent is because of the activities of Jamaat-e-Islami party founded by Sayyid abul-ala-Mawdoodi way back in 1941 with an objective to introduce Islamic administration in Pakistan. Over the years, the organisation covertly and overtly expanded its sphere of influence and has become a formidable force not only in Pakistan but in Bangladesh as well, by pushing the secular and progressive forces on to the margins. It is the third largest party in Bangladesh at present.

The partition of India in 1947 on the basis of 'two-nation' theory led to the emergence of a new nation called 'Pakistan'. Religion got prominence in different aspects of state's institutions and people's lives. However, the Bengali Muslims of eastern part of Pakistan gave prominence and importance to their ethnicity over religion and maintain their distinct Bengali identity. This syncretistic tradition of people of eastern part of Pakistan reflected their secular spirit. However, their western counterparts gave primacy to Islam and in turn nurtured fundamentalism. The rulers of Pakistan promoted fundamentalist philosophy with cultural and political dimensions and tried to impose their Islamic ideology on the people. The large scale Hindu-Muslim riots in the 1950s, conspiracy to change the Bengali script and the persecution of the Ahmadiya community were examples of it.

The growing unrest among the Bengali Muslims because of the various pro-Islamic policies and growing dominance of rulers of Pakistan encouraged the Bengali nationalists to seek a counter ideology which would preserve their interests. As a result, they chose secularism over communal ideology, contrary to the position taken by them in 1947 in which they supported the formation of Pakistan on the basis of 'two-nation'

theory. In the changed circumstances, they shifted their allegiance to secularism in place of religious ideology.

Given the compelling circumstances, the Pakistani military unleashed its brutality by massacring innocent civilians of East Pakistan. This led to the realization among the people of East Pakistan that their interests could not be secured in an integrated Pakistan. Therefore, they fought liberation war guided by the principle of 'linguistic nationalism' and finally defeated Pakistani military regime on 16th December 1971. However, soon after gaining independence, Islamic ideology, overriding the secularist credentials of the liberation war, made its way in Bangladesh politics.

The ruling nationalists failed in their attempt to establish secular ideals in political and social realm which they cherished as the goals of liberation war. As a result, their legitimacy was threatened. Therefore, post-Mujib period, military rulers who usurped state power started using Islam as a political tool to overcome their legitimacy crisis and also to gain their support and loyalty. This patronization of Islam carved space for fundamentalist sections of society in Bangladesh.

Moreover, even after restoration of democracy in 1990s in Bangladesh, no serious effort was made on the part of either BNP or Awami League to reintroduce secularism in the State or the constitution. They followed the footsteps of their predecessors and so the process of politicisation of Islam continued. The worst part is that, now the Islamists occupy a significant position in the formation of government. This is clearly evident if one closely looks at the alliance partners of BNP which came to power after October 2001 elections. Jamaat-i-Islami, Islami Oikyo Jote (IOJ), Jatiya Party were the main alliance partners of the BNP government, the promoters of fundamentalism and the opponents of any syncretistic traditions in the country. The activities and the goals of these Islamic parties are also similar i.e. to establish a theocratic state and challenge the secular edifice of the nation. As a result, Bangladesh is confronting two opposing forces at present i.e. rationalism, secularism and democracy, the cardinal principles of liberation war on the one side and the religious extremism and fundamentalism posed by Islam on the other. This is a serious threat to the very identity of Bangladesh on which it emerged.

But the history of Islam in Bangladesh is different from that of the present situation and is quite unique in nature. Islam took its root in erstwhile east Bengal prior to 1947 under Sufism which stands in opposition to any fundamentalist philosophy. This paved the way for syncretism in Bengal. Even though this syncretism was challenged in different phases of its history, Bangladesh stood the test of time. Even today, though one is witnessing the disturbing trend of growing fundamentalist activities, secularism and syncretism is still vibrant in Bangladesh.

The rise of Islamic fundamentalism in Bangladesh is the result of many factors. The most worrying factor is the growth of clandestine extremist organizations which is further strengthened by the mushrooming of widespread Madrassas. These Madrassas are divided into two 'Aliya' (government funded) and 'Quomi' Madrassas. These organizations and Madrassas target poor and unemployed youth. They are indoctrinated and radicalized by these extremist organizations. Some of the organizations working in Bangladesh are Jamaat-e-Islami(J-e-I), Islamic Chhatra Shibir (ICS), Islami Oikyo Jote (IOJ), Rohingya Solidarity Organization, Jamiyatul Mujahedin(JM), Al-Qaeda, Students of Madrassa(SM) etc.

As a result, Islamic fundamentalism has emerged as a major human security challenge in Bangladesh and is threatening political stability. This is further substantiated by the various terrorist attacks which took place in Bangladesh after 17th August 2005, when synchronized terrorist attacks took place in 63 of 64 districts of Bangladesh organised by fundamentalist outfit, JMB. Even though no casualties were reported in these attacks, it sent strong message across the country that these non-state actors have the power to cripple the administration of state machinery and also showed the vulnerability of state power.

There has been stupendous rise in fundamentalist activities since the 2005 attacks organized by JMB. Religious minorities, intelligentsia groups, journalists, secularists are the major victims of these fundamentalist groups. They try to impose their Islamic ideology by coercing people to follow Islamic way of life. Social and cultural institutions reflecting syncretic cultural ethos and secular values are also attacked by the fundamentalist groups. With the assistance from Al-Qaeda and Pakistan's military establishment, Islamists are developing Bangladesh as a new base for their activities (Chaudhary 2007).

Many recent fundamentalist activities like the killings of secular bloggers like Rajib Haider in 2013, Avijit Roy, Washiqur Rahman and Niladri Chattopadhyay in 2015 shows the increasing trend of Islamic fundamentalist activities in Bangladesh and how it emerged as a major security challenge in the country. Many home grown Islamist terrorist groups along with outer terrorist networks like Ansar-al-Islam, Jamaat-ul-Mujahideen Bangladesh, Al-Qaeda, Islamic State (ISIS) have been held responsible for these attacks.

The government of Bangladesh launched massive investigations related to the 2005 terror attacks organised by JMB. It resulted in arrests and trials of many extremist leaders of various fundamentalist groups. The most significant trial was the execution of Maulana Abdur Rahman and Siddiqui Islam popularly known as 'Bangla Bhai' among top six JMB militants on 30 march 2007. Besides, these arrests and trials, government has formulated several new laws to check the various fundamentalist groups which are

posing a challenge to the political security. The government has taken firm steps to strengthen state machinery to meet the challenge of these non-state actors. The recent verdict against 1971 war criminals is a case in point.

But still the presence of the fundamentalist groups is significant in Bangladesh, which is a serious threat to the country. It is the result of the activities of state as well as non-state actors. It is driven by political objectives that they want to enforce through violence. It poses threat not only to the stability of the state but to the personal security of people also.

Thus, in the light of increasing activities of fundamentalist groups and clandestine extremist organisations, which are operating overtly and covertly in Bangladesh with their linkages both inside and outside, their position is gaining ground. However, the government's firm and strong stand to meet this challenge shows that it does not want to remain a mute spectator. Contrary, to its neighbour Pakistan, the efforts of government of Bangladesh is laudable. This also reflects the strong syncretistic ideals and values the country still cherishes even during the adversities.

4. CONCLUSION

Thus, it's quite clear that in post-Cold War period, the concept of security has undergone tremendous change. In the contemporary world, people's lives are threatened by non-traditional security factors. The countries in the South Asian region are cases in point. The non-traditional security approach, unlike the traditional approaches, is multi-disciplinary and comprehensive and is open to the pressing needs of the individual being. Such an approach alone can put an end to the culture of conflicts and violence prevalent in the societies as the conflicts only deepened over the last decade of the 20th century.

Today, the states in South Asia are waging a war with its own people due to an unbalanced approach to security. The states are largely confined to their age-old shell of traditional security, instead of trying to understand the multi-faced nature of human security issues. Prolongation of ethnic conflict or terrorist violence in one country of South Asia is bound to cast adverse impact not only in its own territory but in the neighbouring countries as well by promoting political instability, hampering economic growth or encouraging trans-border tensions. Such a situation is detrimental to the peace and security of South Asia. Thus, combating and defeating Islamic fundamentalism is clearly not a singular end in itself, but is essential to pursue the larger goal of advancing democracy, building civil societies, overcoming the crisis in governance, to overcome the challenges of globalization and the multitude of non-military threats excoriating international security.

Moreover, economically developed, politically stable and conflict-free South Asia is conducive not only for the members of the region but can be an asset for the international community and a sure guarantee for international peace and security. Moreover, though the war against fundamentalism seems to be complex, the optimism of the mankind to overcome it, through their resistance, in the near future cannot be ruled out.

End Notes

- ¹ In their speeches, rhetorics and behind the scene activities of their leaders, the fundamentalists often appear to have quite militant, trying to impose their ideology on other churches. For details see Firnis (1963), and Marsden (1980).
- ² It refers to the trans-regional definition of the Muslim collective which is bounded by religious affiliation. It stands for the just and equitable society and welfare of the community. The term umma can be used on two different levels simultaneously, one general and one specific, and then shows that both these understandings of the term have a solid foundation in the Qur'an itself (Pulungan 1994).

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Challenges to Peace Building in Afghanistan

* Mithila Bagai

Abstract

Afghanistan is in the process of a historic democratic transition and the elections of 2014 are expected to carve a new path for the country, free from years of foreign and domestic dominations. The Bonn Agreement signed in 2001, following the US-led international intervention of 2001 is said to have improved the social and economic indices of the country but the negative legacies of proxy wars, civil wars and authoritarian regimes are yet to be healed. The paper attempts to analyse the challenges to peace building in Afghanistan by assessing the gravity of issues like corruption, patrimonialism, Taliban resurgence, opium trade, and dependence on foreign assistance and the overall impact on socio-economic conditions. Attempt has also been made to understand the notion of 'lost decade' and suggests plausible solutions.

Key Words: Afghanistan, Taliban, US Intervention, Bonn Agreement, peace building, opium trade

1. INTRODUCTION

Presidential and provincial elections held in Afghanistan, on 5 April 2014, marked the first historic democratic transition in the country. Afghans braved the continuing violence unleashed by Taliban and turned out in large numbers to cast their vote. More than 7 million out of the 12 million eligible voters reposed their faith in the democratic system.

Political history of Afghanistan has been punctuated with three Perils or 3P's. And these are polygamic rivalries; power struggle among countries in the region; and superpowers which together led to the poor institutions in the country (Misdaq 2006, Saikal 2004, Dupree 1973). Though polygamic rivalries have given way to factionalism post Soviet's invasion in 1979, but the other two factors are still reigning. Afghanistan, popularly known as the 'land of routes', was exploited due to its geo-strategic location. In the 19th century, Russia and Britain converted Afghanistan into a buffer state. While the

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former wanted to preserve and expand its imperial empire, the latter was interested in protecting its newly acquired colonies. Pakistan has also shown interest in Afghanistan's internal affairs, because of the large numbers of Pushtuns who inhabit both sides of the border of Afghanistan and Pakistan. And it feared that if Afghans became independent and assertive it might lead to secessionism of Pashtunistan, taking away large size of Pakistan's land. Polygamic rivalries and factionalism among political parties at the helm in concomitance with power struggle among regional and super powers caused the weakening of political institutions. This has impacted the growth and prosperity, making it one of the worst countries on the Human Development Index.

The international intervention led by USA in 2001 has improved the social and economic indices of the country but the negative legacies of proxy wars, civil wars and authoritarian regimes are yet to be healed (Gopal 2008). Before we discuss about the challenges, let us have a brief overview of the Bonn agreements shaped by international community for reconstructing Afghanistan.

2. BONN AGREEMENT

Officially known as the 'Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Governing Institutions,' Bonn Agreement was an initial attempt to recreate the State in Afghanistan. Afghanistan was characterized by 23 years of ongoing military conflict since the Soviet Union invasion in 1979. As the Soviets left, Afghanistan was at the mercy of various resistance groups scrambling for power. Massoud and Abdul Rashid Dostum were ready to usurp power after fall of Najibullah's government. And Hekmatyar's forces remained in South to launch attack on other resistance groups to seize power. But they were aware that no single ethnic group can sustain power for long, therefore, Afghanistan needed a broad based coalition government. Peshawar Agreement was signed on 24 April 1992, in the presence of Pakistan Prime Minister Nawaz Sharif, to discuss the power sharing arrangement. Interim government was to be set up in two stages. In one stage, a two month long transitional government headed by leader of small Pashtun Mujahideen group, Sebghatullah Mujadedi, was to be formed. And in second stage, the interim transitional government would be headed by Rabbani. Mujadedi reluctantly stepped down and Rabbani defied the agreement after coming to power. This caused street to street fighting and various resistance groups scrambled for power. Pakistan during this period funded and trained Taliban and on 26 September, 1996, Taliban occupied Kabul. Notorious for its 9/11 incident, US invaded Afghanistan sending Taliban to mountains to hide.

After the commencement of military action on 7 October 2001, a power vacuum was created and the opposition led by Rabbani barged in to fill the vacuum. But they were made to participate in the Petersburg talks held in Bonn which started on 27

November 2001, under the chairmanship of UN Secretary General's Special Representative for Afghanistan, Lakhdar Brahimi. The 1964 Constitution was made applicable till the new constitution came into place. An interim government comprising 28 members, of which two were women, took over the authority from 22 December 2001 till 21 June 2002. Within one month of the establishment, emergency *Loya Jirga* was convened to chart out the future course of action. This system was based on the traditional open meetings for free debate within local Afghan communities- a system which at the national level had been a fundamental institution since 1747 (Gopal 2008). Combined with the strong role for local elders, this system had always moderated the central power of the state by ensuring that there was an organic connection with a network of local leaders and their communities or *Quam* networks. Although Pushtun groups have dominated the *Loya Jirga* at all times, it was the only institution that would and could give a local mandate to the interim administration (Gopal 2008). Election of Transitional Authority was established which was to take over from 22 June 2002, and a Constitutional *Loya Jirga* was to be called after 18 months of the formation of the Transitional Authority to draft a new constitution and organize free and fair elections.

But Bonn agreement was exclusionary. Taliban was excluded from the talks. This is in total contrast to the characteristic of peace making, where the actors fighting out in the war would be brought to the negotiating table to break the Mutually Hurting Stalemate (MHS). And therefore, the agreement was bound to fail, and it did. Taliban's exclusion led to the resurgence of violence. Between 2005 and 2006, suicide bombings increased by more than 400%. In January 2014, Taliban blew up the Kabul restaurant popular among foreigners and affluent Afghans, killing Americans, Britons, UN staff and others (Farmer and Babarkhey1 2014).

Similarly, Emergency *Loya Jirga*, though provided political forum for deciding the future of the country, was dominated by country's factional leaders, particularly Islamists, as intimidation, vote buying, and political appointments marred the confidence of Afghans. Framing of the constitution was not without meddling by foreign powers. The initial draft delivered by constitutional commission was approved by United States and the UN and minor changes were made by small, predominantly reformist bloc within the cabinet, led by Karzai and including several Western educated returnee ministers (Call 2009).

The early organization of simultaneous presidential and parliamentary elections has been criticized. Though the presidential elections were late by four months it could have been further delayed so that enough time would have been provided for the disarmament and strengthening of political institutions (Bennet et al 2003). Light footprint¹ by Joint Electoral Management Body (JEMB) led to limited presence of skilled UN international staff and more of unskilled Afghan electoral staff. This led to 'Afghanisation' in which the personnel were hired in large numbers in a short time

frame. Cases of electoral fraud like multiple registration cards, tampering of ballot boxes, vote buying and intimidation were also found.

Bonn Agreement provisioned a foreign security force to be deployed before the new Afghan security and armed forces are fully constituted and functioning. At the request of Bonn signatories, Security Council authorized International Security Assistance Force (ISAF), a non-UN led international security force. Though the presence stabilized the capital and reduced the risk of factional violence, crime and terrorism, but this security was not felt by the rest of the country. Calls for expansion of ISAF went unheeded until August 2003. Countries contributing ISAF troops were cautious of sending troops into potentially insecure areas but sizeable deployments from UK, Canada, Germany and others have enlarged since 2002. But since ISAF was ill-equipped, it was also unwilling to intervene to quell factional violence.

With many potholes in the Bonn agreement, Afghanistan was sure to face many hurdles. With the US forces departing by late 2014, Afghanistan needed to overcome myriad challenges to retain the trust and confidence of Afghans in the democratic system of the country.

3. POST BONN CHALLENGES IN AFGHANISTAN

Afghanistan was once a predominantly rural country, with 20 percent of its population living in cities and 80 percent in the countryside. However, long term warfare, mobilisation of rural male population and a large refugee exodus has undermined the traditions of village life and rural production, as well as destroyed the local infrastructure including rural roads, bridges and irrigation networks. With the return of refugees, especially from Iran, there is a need to rebuild a widely based agricultural system with suitable infrastructural input over the next several years (Gopal 2008).

The challenges which Post Bonn Afghanistan faces are:

a. Corruption

Karzai admits, “There is corruption in the whole system, whether it’s the ministries, the NGOs, the donor’s implementation of projects, in all spheres of the Afghan recovery” (CNN 2006). Afghanistan ranks 174 out of 176 countries according to the Transparency International 2012 Corruption Perceptions Index (US policy 2012). The major corruption scandal which rocked Afghanistan was the 2010-2013 Kabul Bank financial scandal involving Mahmood Karzai and others close to Hamid Karzai. They were accused of spending bank’s US\$1 billion for their own personal lavish lifestyle and for lending money under the table to family and friends. As of October 2012, the

government has recovered \$180 million of the \$980million fraudulent loans (US Policy 2012). The scandal heavily dented the image of Karzai and also the trust of Afghans who were looking towards rebuilding of the country.

Afghan National Police and Afghan National Army are considered as a source of fear rather than security. Incompetence and corruption have also plagued the police services. Low level corruption is rampant. The authorities even have to bribe each other to get the administrative work done. Karzai, to mute opposition, against the corrupt official would shift them but would not punish them. And this has generated lot of ill will against his government. Congressional Research Service Report 2013 mentions that: "Government processing of official documents (e.g., passports, drivers' licenses), in which processing services routinely require bribes in exchange for action. Other forms of corruption include Afghan security officials' selling U.S./internationally provided vehicles, fuel, and equipment to supplement their salaries. In other cases, local police or border officials may siphon off customs revenues or demand extra payments to help guard the U.S. or other militaries' equipment shipments. Other examples include security commanders placing "ghost employees" on official payrolls in order to pocket their salaries. Corruption is fed, in part, by the fact that government workers receive very low salaries (about \$200 per month, as compared to the pay of typical contractors in Afghanistan that might pay as much as \$6,500 per month)" (Katzman 2013).

b. Patrimonialism

If the 1990's era was free of cronyism in the form of dynastic politics, Karzai brought back the culture of 'it's all in the family.' He supported his allies and relatives with government jobs, money and aid, filling their coffers and they in turn, unabashedly, built and flaunted large houses amidst the dire social and economic condition of society.

Thomas Barfield accused Karzai of not being interested in institution building and, instead, focussing on tapping the country's resources for his personal well being. Despite the large sums that the international community was investing in "institution building," Karzai's model of government was patrimonial, in which the government administration and its assets were an extension of the ruler. In such a system, personal relationships determined everything from who would amass personal wealth to who would be thrown in jail. Karzai did not use the assets of the state to centralize power so much as he used them to create a patronage network of personal clients bound to him (Barfield 2012).

Karzai, in response to the accusation of promoting patrons said, "you have to carry the past in a way that will not hurt what you are building for the future - have a reasonable sense of inclusivity in order to protect the progress you want to achieve

tomorrow. And we have done it" (Katzman 2013). Karzai's administrative measures may have been oriented towards building the future of Afghanistan, but his policy of cronyism has surely undone the hopes and aspirations of millions of Afghans who have pinned great trust on him for bringing a democratic system of governance.

c. Taliban resurgence- Mission unaccomplished

Low violence and huge voter turnout of 70% (Katzman 2013) marked the first direct elections of President in 2005 and was credited as "mission accomplished". Though occupation of Afghanistan did temporarily send Taliban back into the mountains, but the smooth conduct of the election process added to the complacency amongst the foreign troops, and seems to have distracted them from focussing on eliminating Taliban. Thomas Barfield mockingly commented, "it was as if a patient stopped taking an antibiotic when the immediate symptoms had ended, disregarding his physician's warning that a full course was required to eliminate the infection."

What could have been achieved in 2005 became near to impossible in 2009. Upped by the success of Presidential elections, Washington reduced the budgeted aid request by 38% (from \$4.3 billion in fiscal year 2005 to \$3.1 billion in fiscal year 2006) and also announced in 2005 to reduce the troops to 3000 in the coming year, although it would be replaced by NATO forces (CBS News 2009). They also did not pay much attention to involvement of Pakistan in aiding Taliban, and the implications were felt later.

Afghanistan marred by lack of basic minimum necessities like safe drinking water, sanitation, housing, security, transportation and proper food, paved way to the resurgence of Taliban. Taliban also changed its ideology from being an orthodox and conservative imposer of Shari'ah law to being a nationalist with the aim of freeing Afghanistan once again from Western infidels. In this they received the support from Southern Afghanistan which remained mostly untouched by the developmental efforts, and Taliban was able to spread its tentacles in this part of Afghanistan.

Security started deteriorating more on the borders of Pakistan where the suicide bombers appeared for the first time (Barfield 2012). On 29 May 2006, a riot erupted due to the fatal traffic accident involving US troops and locals in Kabul. The riot was brought under control, but it showed the unpopularity of Karzai regime and distrustfulness towards the foreign occupiers. Later in the summer, the British and Canadian troops deployed in Helmand and Qandahar encountered an unexpected fierce attack by Taliban. Though the troops defeated it, since they could not eliminate it, trouble resurfaced in eastern Afghanistan which experienced cross border attacks from Pakistan's autonomous tribal territories, where Al Qaeda and Taliban forces were becoming dominant (Barfield 2012).

Suicide bombings increased manifold. Between 2005 and 2006, suicide bombings increased by more than 400 percent (from 27 to 139), the use of improvised explosive devices more than doubled (from 783 to 1,677), and armed attacks nearly tripled (from 1,558 to 4,542) (Barfield 2012). Non Pushtuns did not join the war of Taliban against Western infidels.

d. Opium Production

It is not wrong to say that Karzai's authority is practically unheard outside the Kabul and in rural areas. Basic conditions remained alienated from Afghans. When agriculture did not yield and foreign assistance also became insufficient Afghanistan began to resort to opium production. And since this was supported by Taliban, Afghans had sympathy for their objective. Darvesh Gopal (2008) writes in 'Challenges to Nation Building Process in Afghanistan',

"Available Data suggests that poverty had become endemic... Due to poor infrastructure, harsh winters, and lack of other markets, most farmers had returned to poppy cultivation, leading to the return of Afghanistan into the opium market through 2002."

With regard to production, World Drug Report 2013 ranks Afghanistan as the lead producer and cultivator of opium globally (74 per cent of global illicit opium production in 2012) (Jones 2008). Poppy cultivation increased nationwide by 18 percent between 2011 and 2012, with a similar increase in Helmand Province, the biggest opium-producing region, despite an aggressive campaign to eradicate the crop and promote alternative jobs (UNODC 2013). Opium trade has provided \$155million of tax to Taliban in the areas they control. A farmer rakes up \$120 per hectare and in a good year up to \$10,000 per hectare on raw opium (Rubin 2012). Drug trade works with complicity of warlords. Taliban and security officers have increased the drug addicts in the region and also spread the menace of HIV/AIDS. This is a burgeoning problem and the world is really taking interest to curb it. The eradication measures taken to eliminate poppy cultivation has led to killing of 102 Afghan police officers, soldiers and civilians by farmers and Taliban and injuring of another 127 people.

Karzai, in his interview, has admitted increasing production of poppy, but also emphasized that poppy constitutes 30% of Afghan economy and to eradicate it, there is a need of holistic measures of improving social and economic condition of Afghans rather than telling them just not to do it. Karzai said: "We have very good agriculture. But you can't tell me, 'well, grow pomegranates, grow grapes, grow cucumbers or watermelons, and I'm not going to buy it from you.' If the international community wants to help us get rid of narcotics, they must help us all around, buying our products" (Rubin 2012).

e. Dependence on Foreign Assistance

The drawdown of the US troops in 2014 and the donor fatigue shown by many donor countries has placed Afghanistan in a very precarious situation. Though Karzai has frequently asked the US to withdraw its troops from Afghanistan in order to earn reward from his political allies and not to project himself as a puppet of Western regime, he must have been well aware that his police force is ill-equipped to deal with civilian problems and contain the rising insurgency in the region.

Afghanistan historically has had problems with revenue. The country has depended on foreign aid to fuel its administration and its economy. Zahir, Daoud and Nader, to name a few, have lined up to the US and other neighbouring countries for funds. It was because of funding that the Soviet Union was able to increase the presence predominantly in the run up to their invasion in the Afghan land. The rulers have failed in pursuing a fiscal policy to strengthen the financial base to free it from dependence on others limiting the donors from running Afghanistan as a proxy country.

Afghanistan is in a rebuilding phase and it needs investment for recovering its agriculture, infrastructure, and troop build up. Many countries agreed to finance the development but it has largely ended as mere phantom aid. Firstly, total international aid pledged since 2002-13 stood at \$62 billion and the international aid spend from 2002-2009 is 43% of the pledged amount, that is, \$26.7 billion. The occupying country United States pledged \$38 billion from 2002-2013 but could disburse only \$10.9 billion (CNN 2006). Secondly, with less aid and ineffectiveness in implementing aid assistance, the situation only exacerbated.

Another interesting observation is that since the foreign donors prefer own people to take up the task of delivering services, the locals lose job opportunities. So the aid meant for Afghanistan basically gets channelled back to their donor countries in the form of salaries of foreign workers. The Agency Coordinating Body for Afghan Relief estimated that in 2008, of the \$15 billion in reconstruction assistance given to Afghanistan since 2001, “a staggering 40 percent has returned to donor countries in corporate profits and consultant salaries” (Poole 2011). Thirdly, corruption, undoubtedly, remained a significant factor for pocketing the left over aid.

f. Economic and social condition

Insufficient foreign aid has severely affected the social and economic developmental efforts. Infrastructure, schools, hospitals, roads, police services, food and nutrition continue to remain in pitiable state for most of Afghanistan. Business community face serious problems like lack of electricity, legal redressal mechanisms, insufficient access to land and capital, high levels of corruption and taxes and poorly

trained force. Although mobility and participation of women has comparatively increased in Parliament and work force, they continue living a life of fear and hopelessness. Since 2007, some 145 schools have been closed in Kandahar and in Southern Afghanistan, affecting more than 70,000 students. Nationally also, Taliban has threatened and torched schools forcing 2,00,000 children out of schools (Waldman 2008).

The developmental gap between rural and urban areas has increased. In Kabul, modern buildings have come up alongside private TV channels, shopping malls and Chinese Thai and Italian restaurants. Many young, urban Afghans have embraced international fashion, music, and movies from Europe and Asia. But outside Kabul, in rural areas, basic facilities are still not available. 36 million people continue to live below poverty line (Ghufran 2007). Social Security is still a distant dream for them.

4. A LOST DECADE FOR AFGHANISTAN?

After 12 years of war and foreign occupation in Afghanistan, doubt arises if it was a lost decade for Afghanistan with no improvements being made in their conditions? Kamrany says, “it is clear that Afghanistan is making a comeback, all they needed was some support along the way” (AIHRC 2011). Twelve years have made significant improvements with much more to be achieved. The position of Afghan National Forces vis-à-vis security has improved. The strength of the security forces including Afghan National Army and Afghan National Police has increased to around three lakh from several thousands in 2001 (Kamrany 2012). They have been professionally trained and educated and are also sent abroad to India, Turkey, the United Arab Emirates, Europe and the United States of America, where they get further training. Women have also been included at all levels and they are training other women. In 2002, eight lakh students were enrolled in primary schools. Now there are 8.2 million, of whom 40% are girls. Higher education at international level has also emerged (Kamrany 2012).

International aid financed the reconstruction of collapsed structures. Bridges, highways, local roads and irrigation system have been constructed. Central bank has come up and new afghan currency has allowed international and domestic banks to work. The World Bank has estimated Afghan GDP growth from under \$2.5bn in 2001 to over \$17bn in 2011 (Kamrany 2012). Media freedom was entirely banned by Taliban but 6 mobile phone carriers, 75 television channels, over 175 radio stations and hundreds of print publications have come up (Kamrany 2012, Arbabzadah 2011).

A reporter from The Guardian, Nushin Arbabzadah, on her visit to Afghanistan highlighted significant changes that have unknowingly crept into the lifestyle of Afghans. Use of mobile phones has become common and some own two or even three. This is in contrast to 1980s where few owned landline and mobile phones were just non-

existent. On her drive from Kabul to Panjsher, she writes, “The shops and stalls were bursting with goods, from foodstuffs to drinks to mobile top-up cards to soaps, shampoo bottles and DVDs”. She had to stay long hours in traffic and had difficulty in finding parking space for the simple reason of the large numbers of cars on roads. Resurfaced roads and highways, refurbished schools and new health clinics were commonly found. Returned refugees have opened their businesses, joined NGOs as translators or working as guards in international offices. The picture which Nushin has painted of Afghanistan, gives a ray of hope for Afghanistan and for international community as well.

What Next, Post NATO withdrawal?

“In Afghanistan, we do what we can. In Iraq we do what we must” (Burns 2007), the words of Adm. Mike Mullen, chairman of Joint Chiefs of Staff reflect the complacent and obstinate policy being adopted by United States for Afghanistan. But this was not mere rhetoric. USA has spent only 28.8% of total aid pledged by the end of 2009 (Poole 2011). And the half heartedness is evident in the poor social statistics of Afghanistan. The problem with Afghanistan is its political and institutional fragility. Accompanied with foreign interference, it has violated the sovereignty and integrity of the country (Misdaq 2006). Third is the deficit of aid and assistance for implementation of modernisation programmes. And lastly, the geo strategic position has made Afghanistan a ‘Land of Routes’ making it vulnerable to invasion and foreign meddling. The issue that remains unaddressed is that it’s just few months to go before withdrawal of the NATO troops and for Afghanistan to slip into oblivion. Urgent measures need to be taken for the consolidation of Afghanistan.

What needs to be done?

One may have to agree with Amin Saikal (2010), who has said that the only real solution to the problem in Afghanistan is the political one. Whether it was Geneva accords or the Bonn Agreement, the affected parties or the losers in the war were not included and the real issue was sidelined. The exit of US troops is nearing and the question is what needs to be done next to hold the country together in terms of security, economy and polity. An option open to the US is to initiate negotiations with the Taliban and other parties that represent interests of all sections.

Media in Afghanistan, though at nascent stage, is also strengthening its roots. Civil Society, if not pervasive, is able to take up relevant issues and is working towards it. Afghans would not like the reversal of progress made post 2001. It also constitutes significant young population. Afghanistan cannot remain isolated from globalisation for long. Hard core repressive policies of Taliban will not be accepted by Afghans for long. Taliban have also been seen to switching sides in terms of ideology.

Banking on International Community

Foreign interference has been the predominant scenario in Afghanistan. The country looks forward to a positive engagement by the international community to resolving conflict and building peace. The neighbouring countries need to realise that an unstable Afghanistan is a mess not only for Afghanistan but the crisis will also spill to their borders. The US also needs to play a positive and non hegemonic role to bring those countries, namely, Iran, Pakistan, Russia, Saudi Arabia, Tajikistan, Turkmenistan, Uzbekistan, and the SAARC, together in aiding Afghanistan.

5. CONCLUSION

The international community is closely watching the troop withdrawal drama in Afghanistan. But the unfortunate question is, for how long? Taliban is waiting and merry making the troop withdrawal. Peace process needs to be inclusive. On 5 December 2001 Bonn Agreement was signed for establishing the interim authority and setting the course for future action in the country. Before troop withdrawal there is a need to sign agreements, with the opposing forces in Afghanistan and, with the international community to pave the way for positive intervention and engagement in Afghanistan. Darvesh Gopal (2008), underlining the importance of conflict resolution and peace building in Afghanistan in his paper 'Challenges to Nation Building process in Afghanistan', says: "A successful, recovering state on the hinge of Central and South Asia could act as a stabilising factor for the entire region. It might also provide another example of a fragile but real accommodation between Islamic societies and democratic aspirations. Alternatively a failed democracy and further conflict with transnational spillover- effects into the greater Central Asia and South Asia would signal another round of costly Eurasian instability".

End Note

¹Light Footprint- Strong presence of Afghan staff and less presence of international staff.

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