

## Third Amendment, Transfer of South Berubari and Achievement of Bangladesh: A Modest Study

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### Abstract

South Berubari was an integral part of independent Bangladesh. In 1974 under the India-Bangladesh Border Demarcation treaty Bangladesh transferred sovereignty over South Berubari to India. In order to make the handover absolute government passed third amendment to the Bangladesh Constitution. On the contrary India did not carry out her treaty obligation. This article is intended to find out the reasons led the then Bangladesh government to surrender sovereignty over South Berubari to India, constitutional sanction behind the transfer, and the achievement of the people of Bangladesh after her compliance with treaty obligation.

**Keywords:** Awami League, India, South Berubari, Dahagram and Angarpota, Exchange, Sovereignty, Territory.

### 1. Introduction

The relationship between state, government and people is that of a trust- state as trust property, people as the beneficiary and the government as the trustee of state to serve the people. In a democratic polity if the government as the trustee of norms and values of statehood fails to carry out its duties and responsibilities has no legal or moral footing to further proceed with responsibilities of trustee. Awami League under the leadership of Sheikh Mujib took the governance of post independent Bangladesh and proved its failure in every sphere of the government from economic disorder to devastating lawlessness. Thus peoples' support for the Mujib government disappeared and opposition started dictating the politics of the streets from second half of 1973. AL government arrested political opposition by first and second constitutional amendments. These amendments could not stop its declining popularity of the government. In order to keep India's support upon the regime AL government brought third amendment to the constitution.

### 2. Contribution of India to Awami League

Because of exploitative, oppressive and dominating policies of West-Pakistani rulers against the East Pakistanis anti-West Pakistani as well as nationalist feeling developed in East Pakistan. India fueled the feeling to weaken its arch rival Pakistan. As a result amity developed between India and Awami League. It is heard that Sheikh Mujibur Rahman along with other 34 Bangalee military and civil servants at Agartala, India under the auspices of Indian government conspired to separate East Pakistan from West Pakistan by armed revolt.<sup>59</sup>

India tried her best to direct the liberation war by the Awami followers only. With this end in view special policy with regard to the recruitment, training, and logistics was strictly observed. Without the approval of Awami League leaders (particularly Abdur Razzak, Sheikh Moni, Tofael Ahmed and others who spent their time in India during war) no new man could join the *Mukti Bahini*.<sup>60</sup> Indian government in order to keep all credits of liberation war to Awami League raised a special cadre of freedom fighters after *Mujib Bahini*.<sup>61</sup> Political analysts held that they were indoctrinated by India.

### 3. Gratitude of Awami League to India

Bangabandhu Sheikh Mujibur Rahman praised the impeccable behaviour of Indian troops in Bangladesh.<sup>62</sup> But India faced embarrassment in world arena because of her troops' presence in Bangladesh soil. Pakistan and her allied countries were claiming that Bangladesh was under the occupation of Indian forces and India was forcefully occupying a part of Pakistan.<sup>63</sup> For international pressure India withdrew all her troops from Bangladesh under an arrangement agreed upon by Bangladesh and India. According to the arrangement Bangladesh and India made the Treaty of Friendship, cooperation and peace for a period of 25 years on 19<sup>th</sup> day of March, 1972.<sup>64</sup>

In pursuance of the Indo-Bangladesh Friendship Treaty, 1972 Bangladesh Prime Minister Sheikh Mujibur Rahman and Indian Prime Minister Indra Gandhi signed an agreement on May 16, 1974 in Delhi concerning border demarcation between two neighbours.<sup>65</sup> According to the agreement Bangladesh agreed to

<sup>59</sup> *Ibid*, pp. 101-107

<sup>60</sup> *Ibid*, p.183

<sup>61</sup> See chapters 1.4.18 and 5.1.11

<sup>62</sup> *The Daily Ittefaq*, March 13, 1972. See also *the Guardian*, June 21, 1972

<sup>63</sup> *The Dawn and the New York Times*, December 16, 1971 to March 15, 1972.

<sup>64</sup> *The Morning News*, March 20, 1972

<sup>65</sup> *Ibid* May 17, 1974

transfer South Berubari Union amounting to 2.64 square miles approximately to India and get back Dahagram Angarpota, Lathitila, and Pathuria forest from India in return.<sup>66</sup>

#### 4. Third Amendment to Constitution

In pursuance of the Indo-Bangladesh Friendship Treaty, 1972 Bangladesh Prime Minister Sheikh Mujibur Rahman and Indian Prime Minister Indra Gandhi signed an agreement on May 16, 1974 in Delhi concerning border demarcation between two neighbours.<sup>67</sup> According to the agreement Bangladesh agreed to transfer South Berubari Union amounting to 2.64 square miles approximately to India and get back Dahagram Angarpota, Lathitila, and Pathuria forest from India in return.<sup>68</sup> It is said Bangladesh only wanted free access to these areas. These areas are part of Bangladesh but Indian central authority put a bar on Bangladeshi citizens to enter these areas.

Bangladesh government exhibited very much enthusiasm about the transfer of South Berubari to India immediately after the signature of the agreement without protecting the interest of Bangladesh under the treaty. Since the territory of Bangladesh was defined in Article 2 of the Constitution of the People's Republic of Bangladesh<sup>69</sup> the Appellate Division in the case of *Mr. Kazi Mukhlesur Rahman v. the State*, (1974) imposed restriction upon government's enthusiasm. The petitioner challenged the Delhi Treaty signed on May 16, 1974 on the ground that Prime Minister had no right to transfer Southern half of Berubari Union No-12 which was an integral part of Bangladesh. Accepting the petition Court gave following observations:-<sup>70</sup>

- 1) Executive has power to make treaty under article 55(2).
- 2) Prime Minister alone by using his executive power under article 55(2) can't transfer any territory of Bangladesh by making any treaty with foreign territory.
- 3) The power of determining the boundary of the territory of Bangladesh resided with the Parliament under article 143(2).
- 4) Treaty involving the determination of boundary and more so involving cession of territory can only be concluded with the concurrence of Parliament by necessary enactment; in case of determination of boundary by an enactment under article 143(2) and in case of cession of territory by amending article 2(a) of the Constitution by taking recourse to article 142.

In order to give effect the Bangladesh India Border Demarcation Agreement signed on May 16, 1974 Law and Parliamentary Affairs Minister Mr. Monoranjan Dhar introduced the Constitution (Third Amendment) Bill to the House on 21<sup>st</sup> November, 1974.<sup>71</sup> The Law and Parliamentary Affairs Minister Mr Dhar said this bill would enable the country to transfer an area of 2.64 square miles approximately of Berubari union to India and bring in Dahagram and Angarpota enclaves from territory of India in exchange. Mr Dhar said this bill would give effect to the historic agreement signed between Bangladesh and India on May 16, 1974. He observed this bill would help strengthening further friendly relations between the two countries.<sup>72</sup>

Mr. Dhar argued that empowered by the Constitution the Prime Minister had the authority to sign an agreement ceding a part of the country's territory to a foreign country. The Prime Minister was within his right to do it, he added.<sup>73</sup>

Opposition demanded a referendum over the bill.<sup>74</sup> Refuting the opposition demand for referendum Mr. Dhar said that the *Sangsad* had the mandate to pass the bill to amend the constitution for the ratification of the agreement. He denied unequivocally that Bangladesh had surrendered any part of her territory under any threat. He said Prime Minister had signed the agreement in the best interest of the country.<sup>75</sup>

Dr. Kamal, Foreign Minister, said that since Bangladesh had no control over the Southern half of the Berubari we should cede this to India in exchange of Angarpota and Dahagram enclaves.<sup>76</sup> He noted with satisfaction that India as per agreement had agreed to give a corridor for passage of the people of the two enclaves.<sup>77</sup> Dr Kamal ridiculed the opposition demand for a referendum on the amendment bill and said the government party

<sup>66</sup> See the treaty provision published in *the Morning News* on May 17, 1974

<sup>67</sup> See the treaty provision published in *the Morning News* of May 17, 1974

<sup>68</sup> *Ibid*

<sup>69</sup> See Appendix-1.

<sup>70</sup> See the observation of the Appellate Division in *Mr. Kazi Mukhlesur Rahman v. the State*, (1974) case published in the *Morning News* of September 4, 1974

<sup>71</sup> See the Parliamentary proceeding of November 21, 1974 published in *the Morning News* of November 22, 1974

<sup>72</sup> See the Parliamentary proceeding of November 23, 1974 published in *the Morning News* of November 24, 1974

<sup>73</sup> *Ibid*

<sup>74</sup> *Ibid*

<sup>75</sup> *Ibid*

<sup>76</sup> *Ibid*

<sup>77</sup> *Ibid*

had gone in for referendum number of times and won them.<sup>78</sup>

On the bill opposition member Mr. Ataur Rahman Khan contended that Dahagram and Angarpota were very much within former East Pakistan, now Bangladesh. Bangladesh wanted free access to these areas. These areas are part of Bangladesh but Indian Central Authority put a ban on Bangladeshi citizens to enter these areas. Therefore it was not correct to say that Dahagram and Angarpota had been exchanged for Berubari. He said under the agreement signed by the Prime Ministers of Bangladesh and India a part of the territory of Bangladesh had been ceded to India.<sup>79</sup> He further said Prime Minister had no right to do that. He, therefore, demanded a referendum over it to ascertain the wishes of the people. He argued sovereignty vests in the people and on nobody else.<sup>80</sup>

Other opposition members Barrister Mohammad Kamrul Islam and Mohamed Salehuddin submitted this constitution amendment seeking to negate the sovereignty over a part of the country's territory.<sup>81</sup> Barrister argued that Parliament, therefore, could not ratify this amending bill.<sup>82</sup>

The House rejecting the motion of opposition passed the Constitution (Third Amendment) Bill, 1974 with 261 in favour of the bill and seven against, to give effect to the agreement between Bangladesh and India providing for delineating their undemarcated border on November 23, 1974.<sup>83</sup> The President assented to the bill on 28<sup>th</sup> day of November, 1974.

#### 4.1 Transfer of South Berubari to India

By third amendment Awami League government ratified the Bangladesh-India Border Demarcation Agreement 1974 surrendering sovereignty of Bangladesh over the territory of South Berubari to India. As a result of which article 2 of the Constitution was rewritten in the following sentences-<sup>84</sup>

“2. The territory of the Republic shall comprise-

- (a) the territories which immediately before the proclamation of independence on the 26<sup>th</sup> day of March, 1971 constituted East Pakistan and the territories referred to as included territories in the Constitution (Third Amendment) Act, 1974, but excluding the territories referred to as excluded territories in that Act; and
- (b) Such other territories as may become included in Bangladesh.”

By this change the trustee had tried to legalise its illegal transaction of trust property. Because it did not get back transit to Dahagram Angarpota, Lathitila, and Pathuria forest from India under the Delhi Treaty. It appears that on this particular issue the motive of the concerned authority can be questioned by the nation.<sup>57A</sup>

#### 5. Achievement of Bangladesh:

Though Bangladesh handed over the South Berubari to India immediately after the third amendment to the Constitution yet Indian Parliament did not take any step with regard to the transfer of a corridor for passage of the people of Dahagram and Angarpota to Bangladesh. India did not take any initiative regarding the handing over of Lathitila and Pathuria forest to Bangladesh. It is argued that by third amendment Bangladesh did give 2.64 square miles territory to India but got nothing in return. Scholars uphold that Awami League government did hand over the South Berubari to India in order to express her gratitude to India for what India had done for Awami League during liberation war and after.<sup>85</sup>

Later on in the year 1982 Bangladesh government signed an agreement with Indian government concerning a permanent lease of Tinbigha corridor for the passage of the people of Dahagram and Angarpota enclaves to Bangladesh.<sup>86</sup> But on June 26, 1992 during the reign of Khaleda Zia India gave Tinbigha corridor to Bangladesh on lease for a limited use temporarily.<sup>87</sup> Experts consider that by third amendment Bangladesh had given 2.64 square miles approximate of territory to India but got a lease of tinbigha of land for limited use in return in the year 1992. This amendment, to some extent relegate the sovereign entity of Bangladesh in the world community, it was argued.

#### 6. Conclusion

Awami League government under the chairmanship of Sheikh Mujib hastily tried to hand over South Berubari to

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<sup>78</sup> *Ibid*

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<sup>81</sup> *Ibid*

<sup>82</sup> *Ibid*

<sup>83</sup> *Ibid*

<sup>84</sup> See Act No. LXXIV of 1974 published in official gazette on November 28, 1974

<sup>57A</sup> See map of South Berubari at p.354

<sup>85</sup> *The Protham Alo*, October 12, 2011

<sup>86</sup> *The New Nation*, June 26, 1992

<sup>87</sup> *Ibid* June 27, 1992

India immediately after the sign of 1974 Indo-Bangladesh Treaty without securing Bangladesh sovereignty over the territories stipulated in that treaty. However, for securing Indian sovereignty and discredited Bangladesh sovereignty over South Berubari Awami League government passed the third amendment to the constitution curtailing Bangladesh sovereignty over her territory. Awami League leadership deluded the people in this regard by asserting India would fulfill her part by giving up Dohgram Angarpota to Bangladesh. But reality is that tin bigha corridor through India to Dahgram Angarpota for passage has not yet been handed over to Bangladesh. Such type of one sided sacrifice in the name of national obligation revealed subservient and slavish character of Awami League towards India. Awami League did never admit this but it is not seen vocal against non-performance of Indian obligation stipulated in the 1974 Indo-Bangladesh treaty. Therefore, third amendment to Bangladesh Constitution diminishing Bangladesh sovereign power created Indian sovereignty over South Berubari. It is rarely found in the political history of any country that government of an independent country squeezed her subjects' interest to show her partisan gratitude for early contribution to other country.