

ROLE OF TRADE UNION IN IMPROVING THE OCCUPATIONAL HEALTH AND SAFETY OHS CONDITION IN THE RMG INDUSTRY IN BANGLADESH

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Abstract

Ready-Made Garment (RMG) industry in Bangladesh has started its rapid growth since the 1980's establishing itself as second highest exporter of RMG products in the world. This industry has made a substantial contribution to the economy of the country by creating employment opportunity for approximately above four million workers of which mostly women. However, working conditions in this vital sector are poor. RMG industries fall short of OHS compliance in relation to the labour practices that ensure the social welfare of their employees. This article investigate current status quo on working conditions in RMG sector and the failure of its existing labour laws. It will examine three different authorities (Bangladesh Garment Manufacturers and Exporters Association (BGMEA), The Government and its relevant agencies and International buyers and brand retailers) who shall be responsible for any shortcoming of maintaining the rules and practices in the RMG industries in Bangladesh. Further, it will discuss the reason behind the major incidents and will provide probable solutions towards improving the situations in the RMG industry in Bangladesh.

Keywords: RMG, Occupational Health and Safety, BGMEA, ILO, Fair Labour practices, Working environment, Labour Law.

1. Introduction

Ready Made Garment (hereafter called RMG) industry has been key export industry of Bangladesh and a main source of foreign exchange for the last 30 years. Government of Bangladesh is very supportive to RMG industry; consequently, it attained a high profile in terms of earning foreign currencies, exports, industrialisation and contribution to the GDP within a short period. Within less than a decade, it increased its exports, foreign exchange earnings, and contribution to the GDP by 4.39 %. RMG exports reached a steadfast figure of USD 6.29 billion in the fiscal year 2014, counting more than 78% of national export earnings, which was about 5% of total global exports in the RMG sector.

It further contributes 10% to the country's GDP.¹³⁷ RMG products are exported mainly to the United States of America and the European Union. Bangladesh's garment industry provides employment to about than 3.6 million workers, which 2.8 million are women.¹³⁸ Workers in these garment factories are almost always illiterate. They have very limited knowledge of human rights, working conditions and labour standards. Despite tremendous success of the RMG sector, poor working conditions in the factories and a lack of Social compliance are serious concerns which led to labour unrest and damage to institutions and property. As a result, there is a rising fear in Bangladesh that the readymade garments sector may face a decline in demand, especially after the tragic incident at Rana Plaza near Dhaka in April 24, 2013.

Social compliance in the RMG industry is a key requirement for most of the world's garments buyers. It ensures labour rights, labour standards, fair labour practices and a Code of Conduct. This article is an attempt to identify workers' knowledge and realization about occupational health and safety practices in RMG industries from direct interviews and analysing the overall situation of current occupational health and safety practices in accordance with compliance in RMG industry of Bangladesh. The research also tries to reveal the progress and improvements done in occupational health and safety standards as well as maintaining social compliances in RMG sector by the Government of Bangladesh, RMG owners, Bangladesh Garment Manufacturer and Exporter's Association (BGMEA) and foreign stakeholders after Rana Plaza disaster.

2. Working Environment in the RMG Industry in Bangladesh

Most of the RMG garment factories do not provide proper working environment in Bangladesh to meet the minimum standard of health and safety regulation. Health and Safety regulations, as prescribed in Factory Rules 1979 of Bangladesh¹³⁹ are not considered in the RMG sector and are hardly enforced by government. Most factories do not have adequate ventilation and exhaust fans that leave the garments workers exposed to toxic substances and dust. Raw materials contain dust and fiber particles that are hanging in the air. Dye, a toxic substance emitted from coloured cloth, spreads in the workshop. As a result, many workers suffer from constant fatigue, headaches, anaemia, fever, chest, stomach, eye and ear pain, cough and cold, diarrhoea, dysentery, urinary tract infection and reproductive health problems due to overwork which is a clear

¹³⁷ Parvez, Ekramul & Redwan, 'A study on occupational health and safety practices in RMG factories of Bangladesh in accordance with compliance after Rana Plaza' International Journal of Business and Management (2015) Vol. 3 Issue 5, p.214.

¹³⁸ Parvez, Ekramul & Redwan, p. 214.

¹³⁹ Absar Syeda Sharmin, 'Problems surrounding wages: the ready-made garment sector in Bangladesh' (2001) Labour and management in development journal 2, p. 7; Pratima Paul-majumder & Anwara begum, 'the gender imbalances in the export oriented garment industry in Bangladesh', policy research report on gender and development working paper series (2000) no. 12, p.3.

labour law violations. In fact the Factories Act of 1965 sets the occupational safety and health standards in Bangladesh, but it is rarely enforced.¹⁴⁰

Moreover, many of the factories do not meet the minimum standards prescribed in building and construction legislation.¹⁴¹ As a result, fire is common, buildings often collapse and faulty building design results in the death of workers. Compensation following an incident is rare. Before Rana Plaza disaster, the Spectrum Factory building collapse of April 2005 killed 64 workers, injured over 70 and left hundreds jobless.¹⁴² Furthermore places of employment in the garments sector are vulnerable for fire, which are said to have claimed thousands of lives in the past two years. Frequent garments factory fires taking many of lives due to lack of safe fire exits.

The two recent devastating tragedies pathetically indicate the poor development of occupational health and safety situation in RMG factories of Bangladesh. In November 24, 2012, a fire broke out at Tazreen fashion in Ashulia, Dhaka, killed 124 RMG workers.¹⁴³ The fire which started on the ground floor and was found to be caused by faulty wiring, blocked off all three stairwells within and hard to believe the factory had no emergency exits. Within six months in April 24, 2013, another tragic incident happened at Rana Plaza in Savar, Dhaka which had shaken the whole world. An eight story building housing several garment factories collapsed killing over 1,133 people.¹⁴⁴ At least 2000 RMG workers were severely injured and some of them had permanent physical damage.¹⁴⁵ These two very incidents brought the issue of social compliance and its maintenance and monitoring in RMG factories of Bangladesh. Moreover, violations of the occupational safety and health codes are flagrant, as evidenced by the types of tragic and preventable accidents that occur in Bangladesh factories.¹⁴⁶

Currently 60% of the factories are stationed in purpose-made buildings and 40% in shared and converted buildings though the situation was opposite before Rana Plaza incident in April, 2013.¹⁴⁷ International buyers and retailers do not want to place work orders in factories stationed in shared and converted buildings and as a result, owners in the coming years would require shifting in purpose-made

¹⁴⁰ Doshi, G., 'Textile and Apparel Industry in Turkey' (2009) <http://ezinearticles.com>; viewed on 27/3/09

¹⁴¹ The Factory Rules of Bangladesh 1979.

¹⁴² Alam M.J., Mamun, M.Z. and Islam, N. (2004). "Workplace Security of Female Garments Workers in Bangladesh", *Social Science Review*, Volume 21, No. 2, pp. 191-200.

¹⁴³ Ahme S, Ray R, 'Health consequences of child labour in Bangladesh' (2014) *Demographic Research* 4: 111-150; Parvez, Ekramul & Redwan, p.215.

¹⁴⁴ Parvez, Ekramul & Redwan, p.215.

¹⁴⁵ ILO 'Creating Safe and Healthy Workplaces for All' (2014) International Labour Organization pp: 1-18; Parvez, Ekramul & Redwan, p.215.

¹⁴⁶ Paul Majumder, 'Health status of the Garment workers in Bangladesh; Findings from a survey of employer and employees', Bangladesh Institute of Development Studies (BIDS), (1998) Dhaka, Bangladesh.

¹⁴⁷ Parvez, Ekramul & Redwan, p. 215.

structures. An inspection in 2013 revealed that faults related to workplace safety and other compliance issues were found in at least 700 export-oriented apparel units out of 2400 factories in Dhaka and Chittagong.¹⁴⁸ Bangladesh still cannot claim that even one of its 4000 active garment factories is 100% safe or compliant, even after three and half years of Rana Plaza disaster.

3. Responsible Parties involved in maintaining the RMG Sector in Bangladesh

There are three different authorities who shall be responsible for any incident such as Rana Plaza or Tazreen Fashion in particular in the garment factories of Bangladesh. They include a) Bangladesh Garment Manufacturers and Exporters Association (BGMEA) b) The Government and its relevant agencies c) International buyers and brand retailers. As an umbrella organization of garment owners, BGMEA has the responsibility of monitoring compliance and advocating for high industrial standards.¹⁴⁹ They have record of negligence in this regard; even the scale of Rana Plaza disaster could not change their attitude. On the contrary, this organisation appears as the collective muscle of the influential owners to protect them from enforcement of law and order. Regarding occupational health and safety practice in RMG factories, international buyers and retailers are not supposed to be unknown of the malpractices. Factories often accept abnormally low prices in an effort to attract buyers and grab orders. In order to maintain a profit rate, low cost suppliers often ignore safety measures and reduce the wages of labour.

Besides, a chain of subcontractors and agents work beside global brands and approved factory owners are also responsible for the tragic disasters happening in RMG factories of Bangladesh. Research on RMG sector found the largest factory groups in Bangladesh is featuring 'Showcase' factories with less compliant facilities as the productive engine of their operations.¹⁵⁰ It is also found that some of the largest multi-national companies are heavily relying on agents and brokers to establish connection between buyers and factories to outsource their products.

Finally only the government has the legal authority and obvious responsibility to ensure safe environment in factories, job security of the workers, to carry out

¹⁴⁸ Raymond Robertson, Rajeev Dehejia, Drusilla Brown, International Labour Organization, 'Working conditions and factory survival : evidence from Better Factories Cambodia' (2011) International Labour Office. - Geneva: ILO, to be found at <http://betterwork.com/global/wp-content/uploads/Session-7-Working-Conditions-and-Factory-Survival.pdf> (accessed on 15 August 2016); Parvez, Ekramul & Redwan, p. 215.

¹⁴⁹ The Bangladesh Garment Manufacturers and Exporters Association (BGMEA), 23/1 Hatirjheel Link Rd 2, Dhaka 1215, Bangladesh. BGMEA is one of the largest trade associations in the country representing the readymade garment industry, particularly the woven garments, knitwear and sweater sub-sectors with equal importance. Starting its journey in 1983 today BGMEA takes care of an industry that is at the backbone of Bangladesh's economy. <http://www.bgmea.com.bd/home/about> (last visited on 16 September 2016).

¹⁵⁰ Parvez, Ekramul & Redwan, p.216.

regular monitoring and when necessary bring parties to justice when they fail to follow the rules. If any disaster happens, the government as the sovereign authority must bear the responsibility to find out the wrongdoers, ensure compensation and work for necessary reforms. In practice, the government has played very little to change current situation and irresponsible attitude towards workers towards ensuring proper health and safety regulation and compensation policy. Several studies show that with some of the world's lowest wages and no job security for its workers exists in the RMG industry of Bangladesh.¹⁵¹ Inhuman working conditions, low wages, verbal and physical abuse, irregular or non-payment of dues and the inability to organize are still common in many of the factories supplying world-class garment throughout the world.

Bangladesh is committed to securing labour rights for the well-being of workers by virtue of ILO membership. In response, the Bangladesh government formed a Social Compliance Forum (SCF) and also constituted two task forces on a) labour welfare, and b) occupational safety in the readymade garments (RMG) sector along with a Compliance Monitoring Cell (CMC) to encourage compliance in the RMG sector. In addition BGMEA also formed a Safety Cell to protect fire-related emergency problems which monitor ensuring the implementation of minimum wages and other basic labour rights and the application of Labour Law in RMG factories.¹⁵² But the concern is that both agencies are below the standard to perform their activities due to a lack of trained staff and labour inspectors, rigid structure. Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA)¹⁵³ set standards for compliance like factories must have alternative stairs, basic fire equipment, approved layout plan from concerned authority for ensuring safe building construction, group insurance for workers, hygienic sanitation facility and first aid appliance, as well as ensuring minimum wages and flexible jobs for the workers.

There are many recognised compliance bodies worldwide like ILO, ISO 14001, WRAP, BSCI, ETI, SAI, FLA. Foreign buyers and brand retailers specially European and North American group even though imposes obligatory compliance policies like WRAP or BSCI in RMG factories, unfortunately those are not properly implemented or monitored according to policies. In this paper, the existing compliance practices of RMG factories in Bangladesh, particularly factories located in Dhaka city are examined. This paper also tries to reveal the acceptability of compliance provisions to the employed workers and analyses

¹⁵¹ Parvez, Ekramul & Redwan, p.216.

¹⁵² R.S. Choudhury and G. Hussain, 'Post-MFA issues and challenges: Social Dimension: Enhancing Employment and Global Competiveness through Decent Work' (2005), DWPP Bangladesh, <http://www.bgw-info.net/DMS/member/files> (last visited on 14th September 2016).

¹⁵³ Bangladesh Knitwear Manufacturers & Exporters Association (BKMEA), Planner's Tower (4th floor), 13/A Sonargaon Road, Banglamotor, Dhaka-1000, 13/A Sonargaon Road, Dhaka 1000, Bangladesh. <http://www.bkmea.com/BKMEA-at-a-glance.html> (last visited on 14th September 2016)

different aspects of occupational health and safety situations in overall RMG sector in Bangladesh.

4. Occupational Health and Safety (OHS)

Health and safety at workplace are considered to be very important issues as they are intrinsically linked with the overall well-being of working people. Occupational Safety and Health have been repeatedly mentioned as a fundamental right of every worker, and are referred in many multilateral conventions and documents along with the National Labour Law of Bangladesh.¹⁵⁴ However, status of occupational health and safety in developing countries like Bangladesh is especially problematic, with workers bound to work in an unsafe working environment where there is little regard for safety issues and inadequate monitoring from any public body or civil society agency.¹⁵⁵ Poor safety and health record of locations where poor people are 'employed' also contributes to worsening the situation. Hence, occupational health and safety is very important irrespective of the type of employment, or size or sector or location of the workplace because of its strong connection with extreme poverty and wellbeing.¹⁵⁶

A safe and healthy workplace is considered to be a right for any worker or employee in any sector especially in the RMG industry. Since people spend significant portions of their days in workplaces, the nature and scope of safety and security remain a major issue for discussion and debate. The question of a worker's safety is not only based on considerations of productivity but also on to the ability of employees to sustain and earn for their family.¹⁵⁷ RMG in Bangladesh is often cited as "sweatshops" which operate in developing countries provide poor wages; risky working environments with few safeguard mechanisms; unhygienic working environments with no or little air flow, no daylight, high temperatures, excessive noise, and poor indoor air quality; and both verbal and physical abuse.¹⁵⁸ These sweatshops can result in long or short term work related sickness to the workers which can have significant economic consequences in the society.

¹⁵⁴ The Alma Ata Declaration on Primary Health Care (1978), the WHO constitution, the UN's Global Strategy on Health for All (2000), the ILO Convention (1919).

¹⁵⁵ Tasnim F, Rahman I, Rahman MS, Islam R, 'A Review on Occupational Health Safety in Bangladesh with Respect to Asian Continent' (2016), *Int J Pub health safe* 1:102. doi:10.4172/ijphs.1000102; Owasim Akram, 'Occupational Health and Safety in Urban and Peri-Urban Bangladesh: An Important Cause and Consequence of Extreme Poverty' (2014) Working Paper, Swiss Agency for Development and Cooperation SDC, p. 4.

¹⁵⁶ Alli BO, 'Fundamental Principles of Occupational Health and Safety' (2008) International Labour Office Geneva, pp: 1-227.

¹⁵⁷ WHO 'Occupational Health', A manual for primary health care workers (2001), World Health Organization 1-168.

¹⁵⁸ Robertson, R., R. Dehejia and D. Brown, 'Working conditions and factory survival: Evidence from better factories' (2011), Cambodia: ILO, Geneva.

Expecting employees to work excessive overtime is common practice in RMG sector in Bangladesh.¹⁵⁹ There is evidence that worker who work long hours show poorer performance and suffer an increased rate of accidents, due to the strong connection between working time and fatigue.¹⁶⁰ Health and safety at workplace is strongly affected by overtime, and several studies have found a high correlation between excessive overtime and higher incidences of cardiovascular disease, high blood pressure, on-the job injuries and repetitive strain injuries due to poor occupational health and safety conditions.¹⁶¹

4.1. Worldwide Trend

Workplace injuries are increasingly becoming a public health concern in all developing countries as they cause insecurity, poverty, and sickness. Occupational injuries alone count for more than 10 million disability-adjusted life years lost each year globally.¹⁶² On the other hand, quantifying the global burden of disability due to occupational injury and illness is difficult because of the fragmented and often anecdotal nature of the data from developing countries.¹⁶³

ILO estimates death of 2.3 million workers as a result of occupational accidents and work-related diseases. 337 million occupational accidents and 160 million occupational diseases occur each year globally. Financial losses of occupational health related death, injuries and diseases could rise even up to 10-15% of the country's national product if all the factors are taken into account.¹⁶⁴ Conservative estimates show that occupational risk factors are responsible for 312,000 fatal unintentional occupational injuries globally and 8.8% of the global burden of mortality. Fatal and non-fatal occupational injuries resulted in about 10.5 million DALYs; which means that about 3.5 years of healthy life are lost per 1,000 workers every year globally.¹⁶⁵

¹⁵⁹ Devadasan, N., & Von Damme, W. 'Payments for health care in India' (2006) *The Lancet*, 368 (9554), 2209.

¹⁶⁰ Harrington, 'Health effects of shift work and extended hours of work' (2001) *Journal of Occupational and Environmental Medicine*, Vol. 58, No. 1, pp. 68 - 72.

¹⁶¹ Spurgeon, 'Working time: Its impact on safety and health, International Labour Office, Occupational Safety and Health Research Institute' (2003) Korea Occupational Safety and Health Agency.

¹⁶² Disease Control Priority Project, 'Developing Countries Can Reduce Occupational Hazards', (DCP, 2007) Retrieved from- <http://www.dcp2.org/file/139/DCPP-OccupationalHealth.pdf>, (last visited on 18 June 2016)

¹⁶³ Emmett, T & Alant, E, 'Women and disability: exploring the interface of multiple disadvantage, Development Southern Africa' (2006) 23:4, pp. 445-460.

¹⁶⁴ Niu S, 'Ergonomics and occupational safety and health: An ILO perspective', *Applied Ergonomics*, Issue 41 (2010), pp 744-753.

¹⁶⁵ Concha-Barrientos M, Nelson DI, Fingerhut M, Driscoll T, Leigh J., 'The global burden due to occupational injury', *American Journal of Industrial Medicine*, (2005) Vol. 48, Issue-6, Page: 470-81.

Developing countries' population bear more than 80 percent of the global burden of occupational disease and injury¹⁶⁶ and less than 10 percent of the working populations in these countries are covered by occupational safety and health standards at workplace.¹⁶⁷ Much of this issue is related to the major RMG export oriented countries in Asia and Bangladesh is the second largest in this regard.

4.2. Bangladesh Context of Occupational Health and Safety

According to the latest labour force survey,¹⁶⁸ 60.7 million people are employed in Bangladesh in various sectors. Most of these employees operate under poor working conditions, where occupational health and safety standards are below the required standard. A study conducted on occupational health and safety in Bangladesh revealed that 79.52% of the injured workers were in the 40 - 59 age group; and 73.26% of accidents caused injury to hands, feet, torso, arms and eyes resulting in different forms of disability,¹⁶⁹ This study covers a small sample size which might not be actual representation of the global data but still gives us an impression of the vulnerability of the workers.

The real picture of occupational health in Bangladesh can be inferred if we take into account the regular media reports concerning workplace accidents. A media scan report of 2007 showed that almost half of all workers deaths took place in the construction sector, with 164 separate incidents resulting in a combined total of 222 deaths. Another report revealed that at least 388 workers were killed in workplace accidents across the country in 2011. The reports excluded deaths of workers outside the workplace or deaths of workers as a result of road traffic incidents. Electrocution at workplace was the cause of the highest number of deaths followed by falling from heights.¹⁷⁰ But the number is significant in the RMG industry compared to any industry in Bangladesh.

Statistics from the Bangladesh Occupational Safety, Health and Environment Foundation (OHSE) revealed that with the growth of industrialization work related injuries are increasing because occupational safety is not implemented in line with industrial expansion.¹⁷¹ The booming RMG industry, which employs about 3.6 million factory workers,¹⁷² is increasingly becoming an unsafe working

¹⁶⁶ DCP, 2007.

¹⁶⁷ LaDou, J., 'International Occupational Health', International Journal of Hygiene and Environmental Health. 206 (2003):303-313.

¹⁶⁸ Bangladesh Labour Force Survey 2013.

¹⁶⁹ Khan MMA, Halim ZI, Iqbal M 'Attributes of Occupational Injury Among Workers in the Chemical Industry and Safety Issues', International Journal of Occupational Safety and Ergonomics (JOSE) (2006) Vol. 12, No. 3, 327-341

¹⁷⁰ Safety and Rights (2012), 388 die in workplace accidents in 2011, Available at- <http://www.safetyandrights.org/pram/mr/162-wa2011.html> (last visited 17 Sep. 16)

¹⁷¹ ILO (2014) "Creating Safe and Healthy Workplaces for All", International Labour Organization pp: 1-18.

¹⁷² McKinsey & Company, 'Bangladesh's ready-made garments landscape: The challenge of growth', (2011) to be found in

environment. Unsuitable domestic premises, overcrowding and improper storage of flammable materials, frequently creates serious fire hazards. Inadequate exit points, inadequate fire extinguishers and no proper training make the workplace more dangerous. The Rana Plaza incident in 2013 in factories in Savar highlights the extreme danger and immeasurable costs of a lack of workplace safety. In November 2012 a fire caused the death of 111 workers, and just five months later, in April 2013, a building collapse killed a further 1143 workers while leaving thousands injured.¹⁷³

All this evidence describes the overall situation of the occupation health and safety issue in the RMG industry, yet it is strongly suspected that the numbers of work related injuries or illness in Bangladesh are higher than those reported or published. Employers in Bangladesh show little or no responsibility to protect workers, especially in the RMG industry. As long as a worker gives their consent to work it is assumed that they are willing to risk their lives without any compensation.

4.3. Occupational safety in garment sector

In Bangladesh RMG sector is providing employment to approximately 2million workers among those 80% is female.¹⁷⁴ From a survey conducted with 90 random correspondents in three garment factories in Bangladesh it was found that working condition of those three garment factories severely affected worker's health because of unhealthy environment in the workplace.¹⁷⁵ In the study the particular nature of work created various types of health hazards among the selected respondents such as sleep deprivation, headache, malnutrition, and musculoskeletal pain, eye strain, less appetite, chest pain, fainting, diarrheal disease, hepatitis (jaundice), food poisoning, asthma, fungal infection, helminthiasis and dermatitis. Results of the study also showed that at most 95.6 percent of the workers were experiencing headache. In total 90, 58.89 percent respondents implied that their extent of headache was severe. About 52.22 percent of the respondents opined that they suffered from severe malnutrition, followed by 78.89 percent by musculoskeletal pain, 72.22 percent by eye strain, 68.89 percent by less severe malnutrition, respectively.¹⁷⁶ The following illustrates the patterns of diseases and illness among the respondents.

http://www.mckinsey.de/sites/mck_files/files/2011_McKinsey_Bangladesh.pdf on 1st September 2013.

¹⁷³ Fabiha, Imon, Monica and Ridwan, 'A Review on Occupational Health Safety in Bangladesh with Respect to Asian Continent' (2015), Int J Pub health safety Volume 1, Issue 1, 1: 102. doi: 10.4172/ijphs.1000102.

¹⁷⁴ Tasnim F, Rahman I, Rahman MS, Islam R, 1:102. doi:10.4172/ijphs.1000102.

¹⁷⁵ Birmingham DJ, 'Overview: Occupational Skin Diseases' (2008) in Encyclopedia of Occupational Health and Safety, France: International Labour Office 6: 4-240; Tasnim F, Rahman I, Rahman MS, Islam R, 1:102. doi:10.4172/ijphs.1000102.

¹⁷⁶ World Cancer Report WHO, (2008) Geneva. Available at <http://apps.who.int/bookorders/anglais/detart1.jsp?codlan=1&codcol=76&codcch=26>

It is also observed from the study that, 45.56 percent respondents mentioned that they had severe diarrheal diseases and 36.67 percent replied that they had not affected by diarrheal diseases yet. The study also showed that amount of absenteeism of diarrheal diseases was high on those who were involved in the garments sector less than two years. This is may be due to the transmission of diarrheal diseases by faecooral route and its relation to poor sanitation and poor socioeconomic status.¹⁷⁷

Apart from these, asthma, a Chronic Obstructive Pulmonary Disease (COPD) is also commonly found in the garment workers due to the production of excessive dust like, cotton during preparation and handling of garments product in the working place. The disease progresses very slowly over many years and commonly occurs due to inhalation of dust particle which ultimately causes chronic irritation of lungs. From the table it is clear that 41.11 percent of the garment workers experienced severe asthma severity of which was related to the duration of work. The explanation of their relation to duration of work is also similar to fungal infection, helminthiasis and dermatitis. It is predicted from different observation that those who had less work experience the existence of these disease was absent in them, on the contrary who are involved in the garments sector for over a long time the existence of these diseases was severe.¹⁷⁸

Although there are number of evidences of these severe diseases among garment workers in Bangladesh, the most painful fact is relating to the injury or death from the accidents occurred in the industries. The deadliest recent accidents occurred in four industries of Bangladesh among which three are garment industries.¹⁷⁹ Unlike Bangladesh the garment workers of the developed world are safer and no recent fatal incident could be found among them, except some news reports which mentioned the workers turning violent due to the recent harassments abuses and death of some workers in India.¹⁸⁰ It obviously explains the lack of righteous, secured work environment among garment workers not only in Bangladesh but also in other countries.

4.4. Impact of Occupational Hazard in Bangladesh

Poverty may increase the risk of disability through several pathways; one of the important pathways is unsafe work environments and injuries.¹⁸¹ On the other

¹⁷⁷ Tasnim F, Rahman I, Rahman MS, Islam R, 1:102. doi:10.4172/ijphs.1000102.

¹⁷⁸ World Cancer Report WHO, (2008) Geneva. Available at <http://apps.who.int/bookorders/anglais/detart1.jsp?codlan=1&codcol=76&codcch=26>

¹⁷⁹ Siriruttanapruk S, Anantagunathi P (2004) Occupational health and safety situation and research priority in Thailand. *Ind Health* 42: 135-140.

¹⁸⁰ Hancock DB, Martin ER, Mayhew GM, Stajich JM, Jewett R, (2008) Pesticide exposure and risk of Parkinson's disease: a family-based case-control study. *BMC Neurol* 8: 6.

¹⁸¹ Mitra S, Posarac A, Vick B, 'Disability and Poverty in Developing Countries: A Multidimensional Study' (2013) *World Development*, Volume 41, January 2013, Pages 1-18.

hand, workplace injuries not only incur ill-health, disability and death, but also have several negative economic consequences.¹⁸² Research shows that irrespective of the severity of injuries, victims in rural Bangladesh spent an average of US \$4 on each injury. This is in a country where 17.6% of the population lives below the lower poverty line.¹⁸³ Thus out of pocket expenses for treatment in developing countries often generate cataclysmic household expenditure, acute debt and a higher level of poverty among poorer people.¹⁸⁴ With a poor public health care system, insufficient health insurance and social safety nets, injured victims and their families are forced to cover the cost of treatment through their own means.¹⁸⁵

Individuals with work related long-term injuries and their families are often overburdened by additional costs resulting from the accident. Such costs include special medical care, rehabilitative and restorative equipment and services, and provision of special needs, as well as costs incurred for or by care providers, including opportunity costs related to foregone income. Medical costs for disabled people can be up to four times greater than those incurred by people without disabilities.¹⁸⁶

Occupational hazards thus increase the risk of extreme poverty, by severely impacting the income capacity of the family, as a result of debilitating injury or even death of key earning members. A multiplier effect can easily have long term consequences, for example, when children are taken out of school to provide care. In this way a vicious circle starts marked by poverty and disability,¹⁸⁷ which can be reproduced from one generation to another. Hence, the complex relationships between occupational hazards and its consequences need to be seen within the context of the dynamics of extreme poverty and disability.

5. Findings and Analysis of two major incidents in RMG sector in Bangladesh

Tazreen Fashions Limited is a sister organisation of Tuba Group, which is a large business corporation in Bangladesh. Situated in the Ashulia district on the outskirts of Dhaka, the factory was established in 2010 and employs 1,500

¹⁸² Hadley, J. 'Insurance coverage, medical care use, and short-term health changes following an unintentional injury or the onset of a chronic condition' (2007) *Journal of the American Medical Association*, 297(16), pp. 1773 -1784.

¹⁸³ Report of the Household Income & Expenditure Survey (HIES) 2010 to be found at <http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/LatestReports/HIES-10.pdf> (last visited on 21 September 2016)

¹⁸⁴ Devadasan, N., & Von Damme, W. 'Payments for health care in India' (2006) *The Lancet*, 368 (9554), 2209.

¹⁸⁵ Roy, K., & Howard, D.H, 'Equity in out-of-pocket payments for hospital care: Evidence from India' (2007) *Health Policy*, 80, 297-307.

¹⁸⁶ Emmett, T & Alant, E, 'Women and disability: exploring the interface of multiple disadvantage' (2006) *Development Southern Africa*, 23:4, 445-460.

¹⁸⁷ Emmett, T, 'Disability and poverty' In Alant, E & Lloyd, L (Eds), *Augmentative and alternative communication interventions: beyond poverty* (2005) London: Whurr, pp. 68 - 94.

workers. It produces apparel for British, American, German, Italian, Spanish and Swedish buyers including Carrefour, Delta Apparel, Dickies, Disney, Edinburgh Woollen Mill, El Corte Ingles, Enyce, IKEA, Karl Rieker, KiK, Piazza Italia, Sears, Teddy Smith, Walmart, and the U.S. Marine Corps.¹⁸⁸ On 24 November 2012, fire broke out in the factory at around 7 p.m. while it was in operation. Although the total number of people who were killed and injured in the accident cannot be verified due to the inconsistent reports of the media, researchers and investigators later estimated that it could be 111-124 deaths and 200-300 people injured.¹⁸⁹

According to the report of the Asian Network for the Rights of Occupational and Environmental Victims, it is believed that more than 1200 people were working inside the nine-storey building when the fire began.¹⁹⁰ Eyewitnesses and fire defence officials mentioned that the fire broke out on the ground floor, where piles of fabric and yarn were stored in an open space when they should ideally have been stored in a room with fireproof walls. The blaze quickly spread across the ground floor and fire and toxic smoke spread to the upper floors. Many employees tried to escape via the interior staircase, as the factory lacked a sprinkler system or fire exit.¹⁹¹ However, it was also reported that the managers on a few floors ordered workers to continue working despite hearing the fire alarm, assuming it was a fire drill. With the locked gates on most of the floors of the nine-storey factory, this initial refusal to evacuate left many workers trapped inside when the fire engulfed the entire building.

Rana Plaza was a nine-storey commercial building, located in Savar, a sub-district of Greater Dhaka. Five separate RMG factories were inside it, employing around 5,000 people on different floors, several shops, and a bank. The first three floors of the building contained around 300 shops and the bank whereas the five RMG factories occupied the higher floors, and the ninth floor was under construction. These RMG factories had been manufacturing apparel for 28 retailers from Canada, Italy, Ireland, Spain, the UK and the USA, including brands like: Benetton, Bonmarché, El Corte Ingles, Joe Fresh, Mango, Matalan, Primark, The Children's

¹⁸⁸ David Bergman, and Muktadir Rashid, 'Bangladesh factory fire kills 111 garment workers' The Daily Telegraph, 5:52PM GMT 25 Nov 2012; CCC - Clean Clothes Campaign, 2013.

¹⁸⁹ Ahmed, Bergman and Rashid, '2013 Report of Asia Monitor Resource Centre (AMRC)'.

¹⁹⁰ Fabiha, Imon, Monica and Ridwan, 1: 102. doi: 10.4172/ijphs.1000102; AMRC, 2013.

¹⁹¹ Parvez, Ekramul & Redwan, p. 214; CCC - Clean Clothes Campaign, 2013.

Place, and Walmart.¹⁹² The building was owned by Sohel Rana, a leading member of the local wing of the ruling political party, the Awami League.¹⁹³

The building collapsed at about 9 a.m. on 24 April 2013, with a death toll of 1,129 lives and approximately 2,512 injured.¹⁹⁴ According to the report by the Centre for Policy Dialogue, 1,129 dead bodies were recovered, 2,438 workers were rescued alive from the rubble, and a large number of people remain missing since the accident took place.¹⁹⁵ It is estimated that a total of 332 people who were working in different factories located in the building could not be identified. The preliminary results of a government inquiry found that heavy machinery, high-capacity generators, and the use of substandard materials during the construction of the building were largely responsible for its collapse. The investigation officers also suggested that the top three floors of the nine-storey building were added without the permission of the planning authority and that the building had been constructed on marshland which, in turn, could have been the root cause of its faulty structure.¹⁹⁶

After analysing fire in Tazreen Fashions, it appears that the main reason for the accident was the negligence of the owner and the midlevel managers of the factory in practicing the OHS provisions properly. Despite hearing the fire alarm, the managers prevented the workers from evacuating the workplace by locking the collapsible gates on several floors. This caused many workers to become trapped inside the building. Another reason for the accident is the lack of

¹⁹² Luckerson, V., 'Bangladesh factory collapse: Is there blood on your shirt' (2013). Available at <http://business.time.com/2013/05/02/bangladesh-factory-collapse-is-there-blood-on-your-shirt/> (last visited on 15th September 2016);

O'Connor, C., 'Extreme pricing at what cost? Retailer Joe fresh sends reps to Bangladesh as death toll rises; 2013. Available at <http://www.forbes.com/sites/clareoconnor/2013/04/30/extreme-pricing-at-what-cost-retailer-joe-fresh-sends-reps-to-bangladesh-as-death-toll-rises/> (last visited on 15th September 2016).

¹⁹³ Muhammad Faisal Chowdhury; Tasnim Rezoana Tanim, 'Industrial Accidents in Bangladesh Apparel Manufacturing Sector: An Analysis of the Two Most Deadliest Accidents In History' (2016) *Asian Journal of Social Sciences and Management Studies*, 3(2): 115-126. DOI: 10.20448/journal.500/2016.3.2/500.2.115.126.

¹⁹⁴ Hossain, F. and J. Alam, 'Bangladesh building collapse death toll tops 500. Engineer Whistleblower Arrested' (2013). Available at http://www.huffingtonpost.com/2013/05/02/bangladesh-death-toll-tops-500_n_3199568.html (last visited on 15th September 2016); Butler, S., 'Bangladeshi factory death sparks action among high-street clothing chains' (2013). Available at <http://www.theguardian.com/world/2013/jun/23/rana-plaza-factory-disaster-bangladesh-primark> (last visited on 15th September 2016).

¹⁹⁵ CPD - Centre for Policy Dialogue, 2013. 100 days of Rana plaza tragedy: A report on commitments and delivery. Available from <http://cpd.org.bd/wp-content/uploads/2013/08/100-Days-of-Rana-Plaza-Tragedy-A-Report-on-Commitments-and-Delivery.pdf> (last visited on 15th September 2016).

¹⁹⁶ Campbell, C., 'Dying for some new clothes: Bangladesh's Rana plaza tragedy' (2013), Available at <http://world.time.com/2013/04/26/dying-for-some-new-clothes-the-tragedy-of-rana-plaza/> (last visited on 15th September 2016); Watkins, T. and F. Ahmed, 'Report: Heavy machinery blamed for Bangladesh collapse' (2013) Available at <http://edition.cnn.com/2013/05/03/world/asia/bangladesh-building-collapse/> (last visited on 15th September 2016).

adequate fire exits. Moreover, the storage of raw materials like fibre and yarn in an open space near the high voltage electric transformers accelerated the spread of the flames. Also, the lack of sufficient fire extinguishers and inadequate preparedness and training to handle accidents contributed considerably to the incident.

The analysis of case of Rana Plaza suggests that the main reason for the accident was the negligence of the owner of the building and the owners of the RMG factories in practicing the OHS provisions adequately. Despite noticing the cracks in the building the day before the accident, the owners neglected the risk factor and forced the workers to return to work. Other reasons that contributed to the accident included the violation of the original building design and specifications by adding additional higher floors, the use of substandard materials during the construction on marshland, the installation of heavy generators on the rooftop, setting up heavy machinery in the factories, and, the complete absence of security and safety measures within the building.

Other reason behind the accident is the lack of the factory owners 'understanding of the OHS provisions and practices and their negligence in administration of the OHS provisions. They have little or no knowledge about the new national labour law, and also possess very little understanding of the terms and conditions of the CoCs provided by the foreign retailers. There is no training centre or institute from where a person can learn safety and security related issues to practice OHS in RMG industries. They rely on our common sense and instinct when it comes to safety measures. Furthermore, the cost of implementing a strategic OHS plan is also seen as a major hindrance by the factory owners. Because of the worldwide improvement in health and safety issues¹⁹⁷ which significantly improved the OHS conditions in advanced nations.¹⁹⁸

It is important to note that a large number of outsourced garment factories are involved in subcontracting'. This process of subcontracting occurs without the knowledge of the foreign retailers and is unauthorised by them. For example, Rana Plaza housed 5 garment factories, most of which were subcontracted factories. None of these factories received any direct orders from foreign retailers, however, they were found to be manufacturing products for 28 European and American brands. Similarly, Tazreen Fashions was also found to be

¹⁹⁷ Janicak, C.A., 'Is history repeating itself? Safety circle of American society of safety engineers' No. 668. (last visited on 20th September 2016); Sousa, V., N.M. Almeida and L.A. Dias, 'Risk-based management of occupational safety and health in the construction industry' (2014) part 1: Background knowledge. *Safety Science*, 66: 75-86. DOI 10.1016/j.ssci. 2014.02.008.

¹⁹⁸ Bjerkan, A.M., 'Health, environment, safety culture and climate - analysing the relationship of occupational accidents' (2010) *Journal of Risk Research*, 13(4): 445-477. DOI 10.1080/13669870903346386; Noweir, M.H., M.M. Alidrisi, I.A. Al-Darrab and M.A. Zytoon, 'Occupational safety and health performance of the manufacturing sector in Jeddah industrial estate' (2013), Saudi Arabia: A 20 years follow-up study. *Safety Science*, 53: 11-24. DOI 10.1016/j.ssci.2012.09.005.

manufacturing products for Walmart during the fire, whereas, Walmart afterwards denied their involvement with Tazreen Fashions.¹⁹⁹

Most important reason behind the accident is factory owners' negligence in administration of the OHS provisions. If the factory owners and the authority would check all factory buildings time to time, a disaster like Rana Plaza could have been avoided" ... "the recent fire in Tazreen Garments, Chowdhury Knitwear, KTS Mill, all could have been avoided if the authority and the owners could monitor the fire safety plan on time".²⁰⁰ These subcontracted factory owners are highlighted by the respondents as being highly-motivated by profits and, "...do not think twice to put the live of the workers at stake to generate more profit", commented one respondent.²⁰¹ Similar concern is also reflected in the following comments from other respondents, "These law breakers are never caught, and do not face any punishment for their unacceptable business practice. The government is too busy to pay attention to this sector" ... even if it is difficult to practice all the OHS provision, it is not impossible. Many factory owners and the BGMEA are less interested to do so because they know no one cares about the way they do business".²⁰²

However, this assertion of the government and BGMEA has exposed the deep tension among many researchers and investigators, as they also claim that the severe negligence and carelessness of the factory owners have been contributing to the disastrous industrial accidents in Bangladesh for decades.²⁰³ Given the proliferation of the use of the OHS provisions as a deterrent to workplace accidents, the factory owners' unwillingness to act rationally is resulting in a havoc in the overall apparel manufacturing sector of the country.

6. Step to Improving the OHS condition in the RMG industry in Bangladesh

Despite the unique success of the RMG sector, the poor working conditions in the factories and the lack of Social compliance are serious concerns. Most of the RMG factories do not practice the HR and IR activities, and have no well-defined HR or Personnel unit, ineffectively address labour rights and ignore labour standards, discarding fair labour practices, overlook health and safety issues and disallow trade unions. As a result, workers' rights are grossly violated in the RMG

¹⁹⁹ Burke, J., 'Bangladesh factory collapse leaves trail of shattered lives' (2013). Available at <http://www.theguardian.com/world/2013/jun/06/bangladesh-factory-building-collapse-community> (last accessed on 25 August 2016).

²⁰⁰ BBC, 'Bangladesh tazreen factory fire was sabotage – inquiry' (2012) Available at <http://www.bbc.co.uk/news/world-asia-20755952> (last accessed on 25 August 2016).

²⁰¹ ILO (2014) 'Creating Safe and Healthy Workplaces for All', International Labour Organization pp: 1-18; Tasnim F, Rahman I, Rahman MS, Islam R, 1:102. doi:10.4172/ijphs.1000102.

²⁰² Fabiha, Imon, Monica and Ridwan, Volume 1, Issue 1, 1: 102. doi: 10.4172/ijphs.1000102.

²⁰³ Ahmed HO, Newson-Smith MS, 'Knowledge And Practices Related To Occupational Hazards Among Cement Workers In United Arab Emirates' (2010) Journal Egypt Public Health Association, pp. 85: 3-4; Ahmed and Hossain, 2009.

sector which has led to labour unrest.²⁰⁴ It is clear that most of the workers do not have the minimal knowledge about occupational health and safety standards to be maintained in RMG factories. Even though some of the workers seemed to be concerned about the unhealthy working condition and unfair welfare provision, they are unwilling to disclose the real situation due to the fear of losing job.²⁰⁵

The RMG sector is important for Bangladesh, but it should grow in a proper way by following rules and practices of business. Factory buildings should be constructed as per the Building code and risk assessment should be done in a periodic way. All the buildings should have emergency fire exit and fire safety mechanism.²⁰⁶ The industries should organise simulation for emergency fire exit on a regular basis while the fire service and Civil Defence should supervise the entire process. Every organization should develop its contingency plan and execute it periodically. Unfortunately, there is no monitoring authority for effective implementation of the Bangladesh National Building Code. An authority should be established for the implementation of the factory building code along with execution of its framework. Rana Plaza incident is a lesson for Bangladeshi RMG industry. It should always be a warning for the RMG industry in Bangladesh.²⁰⁷

To improve working conditions the Bangladesh Government needs to conduct a thorough review of labour regulation. The working environment and working conditions need to be brought into line with the country's current realities and should be backed with the resources necessary to ensure compliance. Also, the government should protect RMG workers' rights by creating a system for complaints concerning violations, adjudication, remedies, and punishments. International buyers are already exercising their purchasing power on the Bangladesh RMG industry to comply with the ILO labour standard similar to existing standard in Cambodia.²⁰⁸ Monitoring and surveillance of human

²⁰⁴ Ahmed, J.U. and T. Hossain, 'Industrial safety in the readymade garment sector: A developing country perspective' (2009) Sri Lankan Journal of Management 14(1): 1-13. (last accessed on 25 August 2016)

²⁰⁵ Arboleda, A., P.C. Morrow, M.R. Crum and M.C. Shelley, 'Management practices as antecedents of safety culture within the trucking industry: Similarities and differences by hierarchical level' (2013), Journal of Safety Research, 34(2): 189-197. DOI 10.1016/S0022-4375(02)00071-3.

²⁰⁶ Afsar, R., 'Gender, labour market, and demographic change: A case study of women's entry into the formal manufacturing sector in Bangladesh' (2004) In B. Garcia, R. Anker, A. Pinnelli (Eds). Women in the labour market, in changing economies. New York: Oxford University Press.

²⁰⁷ AMRC - Asia Monitor Resource Centre, 'Tazreen fire – the ground realities' 2013. Available at <http://www.amrc.org.hk/> (last accessed on 25 August 2016); Arboleda, A., P.C. Morrow, M.R. Crum and M.C. Shelley, 'Management practices as antecedents of safety culture within the trucking industry: Similarities and differences by hierarchical level' (2003) Journal of Safety Research, 34(2): 189-197. DOI 10.1016/S0022-4375(02)00071-3.

²⁰⁸ ILO 'Creating Safe and Healthy Workplaces for All' (2014), International Labour Organization pp: 1-18.

resources by the above-mentioned three authorities in relations to RMG industry shall be ensured.

The European Union (EU) has suggested a set of short and medium-termed plan of actions, including framing regulations for the Year 2013 labour law reforms and ensuring workers' right to exercise trade union in apparel industry of Bangladesh. The most urgent action needed for the government is to pass the implementing regulations for the 2013 labour law reform.²⁰⁹ The government should effectively investigate and prosecute unfair labour practices in the RMG sectors that include antiunion discrimination and reprisals and violence against trade union members. As long as workers who organise to defend their rights do not feel secure, poor conditions in the RMG sector will remain.²¹⁰ The government shall declare that violence and discrimination in the RMG industry are not acceptable. Further, the EPZ law should be brought in line with international standards so that workers in EPZ factories can enjoy similar freedom of association and collective bargaining as other sectors in the country.²¹¹

7. Conclusion

A better work environment can enhance productivity and profitability.²¹² Although most South Asian countries already have some occupational health and safety laws and regulations but the cultures lack motivation to comply with laws and strict compliance especially in the RMG industry in Bangladesh.²¹³ On the other hand, the lack of willingness of the employers to provide an environment in compliance with fair occupational health and safety standards also lacks comprehensive understanding about the benefit of having such an environment. It is essential to invest on institutionalising occupational safety and health issues. However, despite having an obvious link with poor working conditions, impairment/disability and poverty; very few researches have been done on these interlinked issues. This dearth of knowledge is also an important indication of less attention paid to this most important agenda that results in frequent reported and non-reported hazards in the workplaces in countries like Bangladesh.

²⁰⁹ Parvez, Ekramul & Redwan, p. 214.

²¹⁰ Baral, Lal Mohan, 'Comparative Study of Compliant & Non- Compliant RMG Factories in Bangladesh' (2010), International Journal of Engineering & Technology, IJET-IJENS, Vol. 10, No: 02. pp. 93-94.

²¹¹ Parvez, Ekramul & Redwan, p. 214; Apu, A. Abrar, 'Compliance in Textile & Clothing Sector in Bangladesh: difficulties in understanding and implementation' (2012) Bangladesh Textile Today. Available at: <http://www.textiletoday.com.bd/magazine/508> (last accessed on 25 August 2016).

²¹² Raymond Robertson, Rajeev Dehejia, Drusilla Brown, (2011) International Labour Office. - Geneva: ILO.

²¹³ Fahian Anisul Huq, Mark Stevenson, and Marta Zorzini, 'Social Sustainability in Developing Country Suppliers: An Exploratory Study in the Ready Made Garments Industry of Bangladesh' (2014) Vol. 34 Iss: 5, International Journal of Operations & Production Management, pp.610 - 638.

This article has shown two recent industrial accidents namely the collapse of Rana Plaza and the fire at Tazreen Fashions and to found out the reasons behind these accidents. The research has found that in both cases, non-compliance with the OHS provisions and the evasive nature of the factory owners and government authorities were the main causes behind the accidents. It is also discovered that lack of understanding about ensuring safety and security in the factories is very high among the RMG factory owners. However, their knowledge of the existing OHS provisions is very low. A severe level of negligence from factory owners of the outsourced and the subcontracted factories in following the OHS provisions was observed in the two deviant cases in this article. The subcontracted factory owners were found to be less compliant with the required OHS provisions compared to their counterparts. This evasive tendency among the subcontracted factory owners were further reasoned in the complex situation of the existence of and compliance with multiple standards of OHS requirements, specifically from the Bangladesh government, from the ILO, from the BGMEA, and most importantly, from the foreign retailers.

It is the responsibility of government, BGMEA and other related authorities²¹⁴ to ensure a proper environment and amend the labour law by adding special provision for RMG industry.²¹⁵ The international buyers also have to stop unethical practice of collecting huge profits from RMG products at extra-low manufacturing cost while ignoring possible noncompliance. As per McKinsey's summer 2014 report, Bangladesh remains at the top of the list of apparel sourcing market expected to grow in importance in the next few years. Their forecast in 2011 mentioned Bangladesh on the radar-screen of all European and US apparel buyers and likely to grow nearly triple USD 45 billion by 2020. The "Benchmarking Study" published by US Fashion Industry Association (USFIA) forecast June 2014 shows that apparel retailing companies are not leaving Bangladesh and are committed to enforce compliances in export oriented RMG factories of Bangladesh. Despite the recent tragedies in different RMG factories, Bangladesh still regarded as a popular sourcing for global apparel industries. If we take into consideration the above global giant's report then what should we do immediately is to ensure OHS standard²¹⁶ in every RMG industries that will regain the global image of the RMG sector in Bangladesh.

²¹⁴ Akram, O., 'Occupational health and safety in urban and peri-urban Bangladesh: An important cause and consequence of extreme poverty' (2014) Available at <http://www.shiree.org/wp-content/uploads/2012/02/23-Occupational-Health-and-Safety-in-Urban-and-Peri-Urban-Bangladesh-ADD.pdf>. (last accessed on 25 August 2016). Parvez, Ekramul & Redwan, p. 214.

²¹⁵ Afsar, R., 'Gender, labour market, and demographic change: A case study of women's entry into the formal manufacturing sector in Bangladesh' (2004), In B. Garcia, R. Anker, A. Pinnelli (Eds). Women in the labour market, in changing economies. New York: Oxford University Press; Chowdhury, N.J. and M.H. Ullah, 'Socio-economic conditions of female garment workers in Chittagong metropolitan area - an empirical study' (2010) *Journal of Business and Technology*, 5(2): 53-70.

²¹⁶ Alamgir, M. and M. Haque, '730 RMG workers killed in fires, factory collapses in 11 years' (2013) Available at <http://newagebd.net/> (last accessed on 25 August 2016).

THE IMPACT OF GLOBALIZATION ON ISLAMIC LAW IN MALAYSIA

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Abstract

The implementation of Islamic law in Malaysia has many times been questioned and challenged. The Islamic authorities and scholars are not only faced with criticisms with regards to its implementation and enforcement locally but also internationally. There are two clear examples whereby the implementation of Islamic law through Shariah court has been negatively criticized by the public namely the case of Lina Joy and the recent case of Indira Gandhi. It is pointed out that globalization has played a major role in causing an uproar relating to Islamic law in a secular state. The purpose of this paper is to understand the relationship between globalization and Malaysia. In doing so, the paper will highlight the consequences of globalization focusing on the issues of migration, education, culture and human rights groups. This paper will highlight that these issues (amongst many) are the cause of tension between the non-muslims and the Islamic authorities. By understanding the root of the problem, this paper will seek to propose solutions in clearing the negative perceptions on Islamic law.

Keywords: Globalization, Islamic law, Migration, Education, Culture, Human Rights, Conversion.

Introduction

“Globalization is the closer integration of the countries and peoples around the world ... brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and people across borders.”

Joseph E. Stiglitz²¹⁷

Globalization is not a novel concept as it has continually evolved since time immemorial. Looking back through history; from wars to conquer lands, revolution and advancement of computer technology, all of these antecedences are examples of the advent of globalization. It is undeniable that globalisation has brought plethora of benefits to the world but one must bear in mind that changes caused by globalization has a domino effect on all aspect of life. As globalization continues to evolve, so does the needs of the society which demands more from the government in order to adapt with the social changes.

²¹⁷ Joseph E. Stiglitz is a winner of the 2001 Nobel Prize in Economic Sciences. See: Shahdad Naghspour and Joseph J. St. Marie, *Globalization Discontent: The Effects of Globalization on Ethnic Protest* (2008) 14 (3) *Peace Economics, Peace Science and Public Policy* 1 at 1.

With respect to Malaysia, it is interesting to note that the relationship between Malaysia and globalization has somewhat been paradoxical. Malaysia has been perceived to embrace, redefine and reject globalization throughout time²¹⁸. These contradictory approaches are manifest particularly in relation to development of the Islamic jurisprudence. The issue of conversion of Lina Joy and the children on Indira Gandhi's will serve as illustrations for this paper. These matters encourage Shariah and Civil courts to expand its jurisdiction in relation to conversion. Nevertheless, despite such intention, globalization has presented Shariah courts with many challenges with regards to the adaptation of Islamic jurisprudence in the 21st century. Due to various controversies and criticisms brought against Shariah courts domestically, it has attracted the attention of human rights activists at an international level. Whilst the long term consequences of globalization in relation to the development in Islamic jurisprudence are not clear, the events that took place in the recent years indicate that Islamic law will continue to develop regardless whatever impacts that globalization may have on its progression.

This article begins by introducing the decisions of the courts in relation to Lina Joy's conversion and the unilateral conversion of Indira Gandhi's children which drew wide-reaching attention in relation to the development of Islamic law. This article will focus on the relationship between globalization and Malaysia in an attempt to discover the social problems associated with globalization. The issues pertaining to migration, education and culture will be examined in this article. In addition to that, this article will touch upon criticisms presented by the human rights groups which generated heated arguments amongst the Islamic scholars. Lastly, this article will also examine the implication of Lina Joy and Indira Gandhi's case in relation to globalization and the society as a whole.

The Lina Joy case²¹⁹

Azlina binti Jailani was born a Muslim but she subsequently converted her religion to Christianity in 1997. She applied to the Malaysian National Registration Department (NRD) to change her Muslim name in her identity card to a Christian name, namely Lina Joy, so that she could wed her ethnic Indian Catholic fiancé²²⁰. Her application to change her Muslim name was approved but the word 'Islam' was inserted in her identity card even though her application form stated that she is a Christian²²¹. This is because during that period of time, there were some amendments made to the National Regulations which requires the identity cards of Muslims to state the word 'Islam' as their religion²²².

²¹⁸ Bridget Welsh, 'Malaysia and Globalization: Contradictory Currents', in Samuel S. Kim, *East Asia and Globalization*, Rowman & Littlefield Publishers, Inc, USA, 2000, p. 233

²¹⁹ *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor* [2007] 4 MLJ 585

²²⁰ *Ibid* at 593

²²¹ *Ibid* at 560

²²² *Ibid* at 560

The amendments have defeated her purpose of changing her name and therefore, it presented another obstacle to her marriage. This is because in Malaysia, a Muslim woman cannot marry a non-Muslim man unless he converts to Islam²²³. In her case, since her fiancé refused to convert to Islam, she then applied to NRD to have the word 'Islam' to be deleted from her identity card. The NRD contested her application on grounds that she failed to produce a certificate of apostasy from Shariah court which will certify that she is no longer a Muslim. As a result, Lina Joy has brought her matter to the High Court and subsequently to the Court of Appeal on the grounds that her right to freedom of religion based on Article 11(1) Federal Constitution of Malaysia has been infringed. However, in both hearing stages, the courts rejected her application. She fought for her religious freedom in the Federal Court, which is the highest court in Malaysia, but only to find herself a similar judgment rejecting her application. It was held that the issue of removing the word 'Islam' in her identity card falls under the jurisdiction of Shariah courts. Furthermore, Article 121 (1A) of the Federal Constitution of Malaysia states that the civil court does not have jurisdiction to hear matter in relation to Islamic law hence she has no choice but to seek recourse at Shariah court.

The decision was not unanimous as there was one non-Muslim judge on the panel whom sided with Lina Joy. Richard Malanjum CJ in his dissenting noted that the sole reason as to why Lina Joy did not apply for a certificate of apostasy from Shariah Court is because she could face criminal prosecution for renouncing Islam²²⁴. This case is said to relate to globalization as it involves the element of migration, culture and education which has resulted in the judgment given. This case differs from Azmi Mohamed Azam, Roneey's case whom has received a court declaration from the High Court of Sabah and Sarawak compelling the National Registration Department to change his name to Roneey Rebit and his religion from Islam to Christianity in his identity card²²⁵. In this case, the applicant was initially a Christian before he converted to Islam by virtue of his parents' conversion when he was a minor²²⁶. The High Court judge, Datuk Yew Jen Kie, a non-Muslim has held that Azmi@Roneey's case deals with his constitutional right to freedom of religion even though same principles should be afforded to Lina Joy. It remains to be seen whether the case will remain as a good law or will be challenged in the future.

²²³ Yusuf Al-Qaradawi and Muhammad Ali Al-Hanooti, 'Why a Muslim Women is not allowed to marry a Non-Muslim Man' (2003) World Fatwa Management and Research Institute, Malaysia Islamic Science University, <<http://infad.usim.edu.my/modules.php?op=modload&name=News&file=article&sid=10576>> accessed on 31st December 2015

²²⁴ *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor* [2007] 4 MLJ 585 at 632

²²⁵ Sharon Ling, 'Court Declares 41-year-old Muslim can be a Christian again' *The Star* (Kuala Lumpur, 2016) 3

²²⁶ *Ibid*

The conversion of Indira Gandhi's children

There is also another controversy case involving Islamic law pertaining to the conversion of Indira Gandhi's children. Indira Gandhi a/p Mutho underwent a Hindu marriage ceremony with Pathmanathan a/l Krishnan and had their marriage registered under the civil law in 1993. Her husband subsequently embraced Islam in 2009 and has unilaterally converted their three children without her knowledge and consent. When she discovered that her husband has converted the children, she applied to the High Court for an order of certiorari to quash the certificates of conversion for non-compliance with ss99, 100 and 101 of the Administration of the Religion of Islam (Perak) Enactment 2004. Her application was successful on grounds that the children were not present before the *Pendaftar Muallaf* to utter the clauses of the Affirmation of Faith and that the act of her husband to convert the children without her consent was unconstitutional, illegal, null and void²²⁷. The matter was then brought to Court of Appeal whereby the three-judge panel had in a majority judgment reinstated the children's conversion to Islam²²⁸. Justices Balia Yusof Wahi and Badariah Sahamid held that Syariah court has the exclusive jurisdiction to hear matters concerning Muslims conversions²²⁹.

The issue of children conversion to Islam without the consent of other spouse has a domino effect on other matter as well, for example, the custody of the children. It was explained in great detail by Lee Swee Seng J that the matter pertaining to custody does not fall under the purview of Syariah Court as one of the parent is a non-Muslim²³⁰. This is explicitly stated under section 45 of the Islamic Family Law (Perak) Enactment 2004 which gives authorization to the Syariah Court to hear divorce cases only if the marriage satisfies the criteria under the provision²³¹. In a similar vein, Syariah Court has no jurisdiction to hear custody matter where the children were not born to Muslim parents in a Muslim marriage, or at least whose parents are both converted to Muslim²³². Based on these provisions,

²²⁷ *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors* [2013] 5 MLJ 552 at 561, 565, 582 and 583 per Lee Swee Seng JC

²²⁸ Nurbaitu Hamdam, 'Ministers to look into court's decision on Muslim conversion' <<http://www.thestar.com.my/news/nation/2016/01/10/ministers-to-look-into-courts-decision-on-muslim-conversion/>> accessed on 1st February 2016

²²⁹ Recently, the Court of Appeal has ruled that the issues regarding Muslim conversion are exclusively within the jurisdiction of the Syariah Court. See: Qishin Tariq, 'Muslim conversion issues exclusively Syariah Court's jurisdiction' <<http://www.thestar.com.my/news/nation/2015/12/30/muslim-conversion-issues-exclusively-syariah-court-jurisdiction/>> accessed on 1st January 2016

²³⁰ *Indira Gandhi a/p Mutho v Patmanathan a/l Krishnan* [2015] 7 MLJ 153 at para 30 - 41

²³¹ Section 45 of the Islamic Family (Perak) Enactment provides that "*nothing in the Enactment shall authorise the Syariah Court to make an order of divorce or an order pertaining to a divorce or to permit a husband to pronounce a talaq except:*

(a) where the marriage has been registered or is deemed to be registered under the Enactment; or
(b) where the marriage was solemnised in accordance with hukum syarak; and
(c) where the residence of either of the parties to the marriage at the time when the application is presented is in the State of Perak Darul Ridzuan.

²³² *Indira Gandhi a/p Mutho v Patmanathan a/l Krishnan* [2015] 7 MLJ 153 at para 44. See also: section 50 (3)(b)(iii) of the Perak Enactment.

Indira Gandhi was lawfully granted by the civil High Court with a full custody of all her three children.

It is worth noting that the custody issue contended in the Indira Gandhi's case is not novel and has been previously heard before the court²³³. Not long after the Court of Appeal judgment on Indira Gandhi's case, there was one comparable case which similarly concern with custody and conversion of the children. In *Viran a/l Nagapan v Deepa a/p Subramaniam*, the Federal Court held that the civil High Court has the jurisdiction to hear matter concerning divorce, custody of the children and other ancillary matters provided that the ex-husband and ex-wife had underwent a civil law marriage²³⁴. Similar point was reiterated that Syariah Court has no jurisdiction to hear application for divorce cases where the marriage was not solemnized under hukum syarak²³⁵. Nonetheless, in the circumstances where Syariah Court has somewhat given an order with respect to divorce or custody case, the order is a valid order but it has to be set aside before the party aggrieved can bring an action to the civil High Court²³⁶.

The ensuing legal battles have captured worldwide attention which brought many negative perceptions towards the so-called intolerant Malaysian court's decision towards other faiths²³⁷. There have been many calls for the government to amend the current statutes and state enactments in order to provide permanent solution to these conflict of jurisdictions²³⁸. It is pointed out that globalization plays a role in the development of Islamic law. Globalization can either create hostility amongst the people in a multi-cultural society or it could bring the people together²³⁹. This relates to the issue of migration which has an impact on the development of Islamic law in relation to conversion and apostasy.

²³³ *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147 (FC), *Tey Siew Choo v Teo Eng Hua* [1999] 6 CLJ 308 and *Tang Sung Moi v Too Miew Kim* [1994] 3 MLJ 117 (amongst many others.)

²³⁴ *Viran a/l Nagapan v Deepa a/p Subramaniam* [2016] MLJU 05

²³⁵ Section 45 of the Islamic Family Law (Negeri Sembilan) Enactment 2003 (Enactment 2003) provides that “*Save as is otherwise expressly provided, nothing in this Enactment shall authorize the Court to make an order of divorce or an order shall authorize the Court make an order of divorce or an order pertaining to a divorce (SIC) or to permit a husband to pronounce a talaq except:*

(a) *where the marriage has been registered or is deemed to be registered under this Enactment;*
(b) *where the marriage was solemnized in accordance with Hukum Syarak; or*
(c) *where the residence of either of the parties to the marriage at the time when the application is presented is in the State of Negeri Sembilan.*”

²³⁶ *Viran a/l Nagapan v Deepa a/p Subramaniam and other appeals* [2016] MLJU 05 at para 55

²³⁷ See: Wong Chun Wai, ‘Can Malaysia's Indira Gandhi expect justice?’ <<http://www.straitstimes.com/asia/se-asia/can-malaysias-indira-gandhi-expect-justice-the-star-columnist>> accessed on 1st February 2016 and ‘Malaysia's Sharia Law Keeps Non-Muslim Mothers From Their Kids’ <<http://www.foxnews.com/world/2014/11/10/malaysian-mothers-win-custody-but-dont-get-kids-thanks-to-separate-legal-system.html>> accessed on 1st February 2016

²³⁸ See: ‘Bar: Both parents must consent to child's change of religion’ <<http://www.thestar.com.my/news/nation/2016/01/14/bar-both-parents-must-consent-to-childs-change-of-religion/>> accessed on 1st February 2016 and Joseph Kaos Jr, ‘Conversion laws to be amended’ <<http://www.thestar.com.my/news/nation/2016/01/14/conversion-laws-to-be-amended-govt-seeking-permanent-solution-to-unilateral-child-conversions/>> accessed on 1st February 2016

²³⁹ *Shahdad Naghsour and Joseph J. St. Marie* (no 1) 4.

Migration

One aspect that should be looked into in Lina Joy's decision is migration. History has shown that migration to Malaysia has occurred since 14th century primarily either because to search for a better livelihood or was brought by the British colonies to work in Malaysia²⁴⁰. Given the fact that international migration is a global phenomenon, it has become the subject of many sophisticated studies to determine if it brings more harm than good. The nations around the globe encouraged migration as it promotes the nations' economy, diversity and multiculturalism. Despite the many benefits of migration, there is a fear of transculturation between the Islam and other religions around the world. The migrants relocating to Malaysia bringing not only themselves but also carrying together with them their unique philosophies, ideologies and values.

Before the establishment of independence in 1957, Malaysia was predominantly consisted of the native Malays or commonly known as *Bumiputras*. Malay is a person who was born locally, professes the religion of Islam, habitually speaks Malay and conforms to Malay custom²⁴¹. However, as a result of invasion by the British, Portuguese, Dutch and Japanese colonial power during 18th – 19th century, it has subsequently led to the escalation of other ethnicities due to migration. The Malay ethnic structure has changed dramatically when these colonial rules imported foreign labour from China and India to work at tin mines, rubber plantations and construction sectors in order to meet the needs of the colonial economy in the Malay Peninsula²⁴². These migrations have inadvertently led Malaysia to become a multi-racial country with a mix of people from different races namely the Malays, Chinese, Indians and many others. Although migration was recognized as one of the factors that infuse foreign investment resulting in high employment and economic growth, nonetheless in today's modern world, it has attracted many negative perspectives towards Malaysia's governance especially in relation to Islamic law.

The study conducted by Vlieland indicates that the population growth in Malaysia between the year 1931 to 1947 have increased more than 65 per cent that is approximately 940 000 immigrants came from India or China²⁴³. It is acknowledged that the dominant factor which led to the growth of more than half of the increase in the populations is not births but immigration²⁴⁴. Ten years later, after the census was conducted and when Malaysia achieved its independence, the founding fathers of the independence drew Federal

²⁴⁰ Wang Gungwu, 'Migration Patterns in History: Malaysia and the Region' (1985) 58 (1) 43 at 43-57

²⁴¹ Article 160 (2) of the Federal Constitution of Malaysia (1957)

²⁴² Tiffany Trimmer, 'Bring in Outsiders Who Will Do the Work: Migration and British Malaya's Imperial Labor Hierarchy 1900 – 1930' <http://worldhistoryconnected.press.illinois.edu/11.3/forum_trimmer.html> accessed on 30th December 2015 and Yusuf Abdulazeez, Ismail Bab and Sundramoorthy Pathmanathan, 'Migrant Workers' Lives and Experiences Amidst Malaysian Transformations' (2011) 6 (5) Social Sciences 332 at 332 - 343

²⁴³ C.A. Vlieland, 'The 1947 Census of Malaya' (1949) 22 (1) Pacific Affairs, University of British Columbia at 59-63

²⁴⁴ *ibid*

Constitution of Malaysia which acknowledges the rights of the migrants to citizenship²⁴⁵ as well as their rights to profess their religion²⁴⁶. However, no one at that time could foresee the problem arising today in relation to apostasy and conversion as seen in the Lina Joy and Indira Gandhi's case.

The ambiguities and lacuna in the Malaysian Constitution particularly with respect to freedom of religion has been subjected to many controversies and scrutiny. According to the tenets of Islam, an individual may profess any religion of his or her choice but with respect to an apostate, there is a penalty for a Muslim who converted from Islam²⁴⁷. It has been argued that since Islam is the religion of the Federation, the founding fathers should have included the text in the Al-Quran regarding the consequences of leaving Islam²⁴⁸. Nevertheless, upon closer examination of the Constitution as a whole, it can be seen that the intention of the founding fathers laying down the Constitution is to instil notions of pluralistic and equal rights in a society. The Constitution acknowledged the rights to freedom of religion and it is made out of respect to the Chinese and Indian migrants who came to Malaysia. The Constitution recognized the rights of the migrants to profess their religion such as Buddhism, Christianity and Hinduism but it implicitly does not allow for a Muslim to become an apostate given the fact that Islam is the official religion in Malaysia.

A prominent retired judge, Dato' Faiza Tamby Chik also recognized that the concept of religious freedom does not apply to Muslims in Malaysia²⁴⁹. His Honour voiced out his opinion that the clause towards freedom of religion in the Constitution is merely to provide a balancing clause so that other religions might practice in peace and harmony within any part of the Federation²⁵⁰. From these statements, it has been perceived that Islam is treated with utmost dignity to the extent that the renouncement of Islam is made impossible. The averment was made on the basis that the reason that the Constitution was rightly made after Malaysia gained its independence was to protect the rights of its citizen. There are many Chinese and Indian migrants that have already obtained citizenship hence their rights to live in Malaysia are also protected and enshrined in the Constitution²⁵¹. It is emphasized that it was the result of globalization that rendered the founding fathers to acknowledge the rights of the immigrants. The

²⁴⁵ Part III Chapter 1 of the Federal Constitution of Malaysia (1957)

²⁴⁶ Article 11 of the Federal Constitution of Malaysia (1957)

²⁴⁷ Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Ashgate Publishing Ltd, UK, 2004) at 51 and Ambiga Sreenevasan, 'Bar Council: Federal Constitution Must Remain Supreme', The Malaysian Bar Online, 31st May 2007, <<http://www.malaysianbar.org.my>> accessed on 30th December 2015

²⁴⁸ Article 3(1) of the Federal Constitution of Malaysia (1957)

²⁴⁹ 'Religious Freedom does not apply to Muslims here' The Malaysian Bar Online, 19th November 2008, <http://www.malaysianbar.org.my/legal/general_news/religious_freedom_does_not_apply_to_muslims_here_says_retired_judge.html> accessed on 1st January 2016

²⁵⁰ Ibid

²⁵¹ Part III Chapter 1 of the Federal Constitution of Malaysia (1957)

existence of globalization has rendered Malaysia not to be an Islamic state but a state that recognizes Islam as the official religion of the country²⁵².

Culture

As a result of globalization, the combinations of migration and mixed cultures have attracted many intensive debates amongst Islamic scholars regarding the cultures of Indian and Chinese on Islamic society. In today's modern world, there are many aspects of Islamic culture that has been affected by the external influences and hence, it has raised a lot of concerns whether the Muslim will depart from its Islamic tenets. From the way Muslims dress to the opinions that they present, it has brought significant changes to the way Muslims think. There are more Muslims becoming more liberal in their daily lives. One of the Islamic scholars in Malaysia, Datuk Sheikh Azmi Ahmad feared that the concept of an open-minded society in a young Muslims' thinking, for example Lina Joy, would gradually deteriorates their religious sentiments and enthusiasm²⁵³. As globalization continues to evolve, the Islamic scholars acknowledged that there is an urgent need to enhance the dynamism of jurisprudence in Islamic law in order to keep up with the rapid modernization in the human civilization.

Despite such intention, it is pertinent to note that it is not an easy task to develop the jurisprudence of Islamic law in Malaysia. The Shariah courts as well as the government of Malaysia have encountered many criticisms from the society criticising that the government are not sensitive towards other religions and cultures. For example, the practices of yoga were banned for Muslims as it comprises physical movements and religious element of Hinduism which is inappropriate for Muslims' faith²⁵⁴. Although the proscription does not affect non-Muslims in general, it has eroded the perception of Islam by other faiths around the globe. As a multi-racial and multi-cultural country, the prohibition has somewhat offended the Indian society in particular and as such, it has caused resentment towards the Malaysian government for indirectly portraying a negative image towards Indian practices²⁵⁵.

Another recent banning by the National Fatwa Council is the prohibition of e-cigarettes or famously known as 'vaping'²⁵⁶. Since the majority of Malaysia

²⁵² 'Malaysia not Islamic or secular, says Dr.M' The Star online, 19th June 2014 <<http://www.thestar.com.my/news/nation/2014/06/19/malaysia-not-islamic-or-secular-says-dr-m/>> accessed on 30th December 2015

²⁵³ Fauwaz Abdul Aziz, '10 000 Muslims Attend Forum on Apostasy', 24th July 2006, <<http://myislamnetwork.net/component/content/article/2-e-akhbar/27-malaysiakini-10000-muslims-attend-forum-on-apostasy.html>> accessed on 20th October 2015

²⁵⁴ 'Islamic Leader in Malaysia Ban Yoga for Muslims' Fox News Online, 21st November 2008, <<http://www.foxnews.com/story/2008/11/21/islamic-leaders-in-malaysia-ban-yoga-for-muslims.html>> accessed on 1st January 2016

²⁵⁵ 'Yoga Fatwa: Use *Silat* Approach' Malaysia Kini Online, 26th November 2008, <<http://www.malaysiakini.com/news/93747>> accessed on 1st January 2016

²⁵⁶ Adam Boulton, 'E-cigarettes forbidden in Islam: says Fatwa Council' The Telegraph, 23rd December 2015, <<http://www.telegraph.co.uk/news/worldnews/asia/malaysia/12065912/E-cigarettes-forbidden-in-Islam-says-Fatwa-Council.html>> accessed on 1st January 2016

population consists of 60.4% of Muslim²⁵⁷, the religious minorities are concerned whether the growth in the Muslim population would promote the Islamization process²⁵⁸. There have been many concerns that the emergent of Islamic law in the legal system would encourage Malaysia to deviate from a system of secular government into becoming an Islamic state²⁵⁹. Such solicitude has been said to be the result of globalization that has caused the world to be a competing place for cultures in order to enlarge their sphere of influence²⁶⁰.

By reason of globalization, it has also been perceived that the variety of cultures have produced much tension and friction²⁶¹. The globalization process has created difficult relations between the non-Muslims and Shariah courts particularly in relation to conversion. The non-Muslims often opt to challenge the decision of Shariah courts without considering the rationale behind such determination. It is examined that one of the underlying principles following the Federal Court's decision is that the courts want to prevent Lina Joy from removing her cultural specificity; that is being a Malay Muslim. This is the result of the active inter-penetration and combination of cultural element promulgated by globalization. These elements have inadvertently led Lina Joy to abandon her belief and Islamic tenets in order to adopt a more cosmopolitan worldview. This view is supported by the argument presented by Dr. Mahathir Mohamad, the former Prime Minister of Malaysia, whom acknowledges that cultural changes are the result of global interconnectedness²⁶².

Although globalization promotes harmonization and multiculturalism, many academicians argued that globalization presented a negative impact on the expansion on Islamic law. It is established that Malaysian government which is predominantly controlled by Muslims will continue to preserve traditional values even though it carries different notions of principles for the non-Muslims. For instance, the former Prime Minister Tun Abdullah Badawi who often promoted Islam Hadhari as a model for development in Malaysia has raised conflicting ideology between the Muslims and non-Muslims political leaders²⁶³. The intensity

²⁵⁷ 'Population Distribution and Basic Demographic Characteristics' Department of Statistics Malaysia, July 2010, <http://www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=54%3Apopulation-updated-31072009&catid=35%3Akey-statistics&Itemid=53&lang=en> accessed on 30th December 2015

²⁵⁸ Albert Sundararaj Walters, 'Issues in Christian-Muslim Relations: A Malaysian Christian Perspective' (2007) 18 (1) *Islam and Christian-Muslim Relations* 67 at 68

²⁵⁹ Joshua Neoh, 'Islamic State and the Common Law in Malaysia: A Case Study of Lina Joy' (2008) 8 (2) *Global Jurist*, Article 4

²⁶⁰ David Held and Anthony McGrew, *The Global Transformation Reader: An Introduction to the Globalization Debate* (Polity Press, Great Britain, 2008) at 235

²⁶¹ Kevin Robins, 'Encountering Globalization' in David Held and Anthony McGrew, *The Global Transformation Reader: An Introduction to the Globalization Debate* (Polity Press, Great Britain, 2008) at 240

²⁶² Bridget Welsh, 'Malaysia and Globalization: Contradictory Currents' in Samuel S. Kim, *East Asia and Globalization* (Rowman & Littlefield Publishers, Inc, USA, 2000) at 235

²⁶³ Mohamed Sherif Bashir, 'Islam Hadhari: Concept and Prospect,' *Islam Online*, 2 March 2005, <http://www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-Living_Shariah/LSELayout&cid=1158658521384> accessed on 22nd October 2015

of global cultural confrontations has decreased the confidence in the non-Muslims society as to whether the Malaysian government are capable of administering the country without taking into account Islamic principles. Such thinking would disrupt the positive development in Islamic law as the Shariah courts will often need to reassure the society of its recognition towards non-Muslims' right in relation to Islamic law. Where there is a failure to do so, it will generate abhorrence to some of the non-Muslims whom will create an uproar in order to show their discontent towards court's decision. An illustration can be seen in Lina Joy's case. The court's decision had an adverse social repercussion creating racial tensions between Muslims and non-Muslims whereby some 40 000 Malaysian rallied in the capital to demand political and judicial reform²⁶⁴. It is observed that these social changes were induced by globalization. It promotes citizens to think liberally and encourages citizen to fight for their rights. This has resulted Malaysia to be socially and politically unstable at that point in time.

Despite the uproar that occurred in Malaysia, its experience towards public discontent has encouraged Shariah courts to be more sensitive and responsive towards other religious cultures in developing its jurisprudence especially when the matter involves non-Muslim. In 2010, a significant decision by a civil court calling for a clearer divide between Malaysian secular and religious courts was seen to be a positive development in law²⁶⁵. Reflecting on Lina Joy's case, even though she had not obtained State's approval to renounce Islam but she has admitted and declared herself to be a non-Muslim. As such, she faces a quandary towards her rights to be heard in court whether she should bring her matter in secular court or Shariah court. Since she already admitted that she is a non-Muslim, she contended that she should be heard in the civil court. However, in the eyes of law she is still a Muslim therefore she must resolve her issue in Shariah court. Such a matter indicates that the society in a multicultural country is still confused towards the dual court structure in Malaysia. The perplexity on the jurisdiction of the courts to hear matter pertaining to apostasy came to light due to the hybrid state of Malaysia, that is being in-between the secular state and the theocratic state²⁶⁶. It has been perceived that hybridity is a product of global and local interactions which recognizes that transcultural relations are indeed complex and intricate²⁶⁷. Hence there is an urgent need for the government ministers to find a balance in the law by looking into the matter of conversion to Islam and also renouncing Islam. These changes would then facilitate Shariah courts to be more sensitive towards other religions and embrace the concept of freedom of religion.

²⁶⁴ 'Freedom in the World 2008 – Malaysia,' The UN Refugee Agency, 2 July 2008, <<http://www.unhcr.org/refworld/docid/487ca22482.html>> accessed on 30th December 2015

²⁶⁵ Sylvia Looi, 'Muslim convert's wife wins custody of toddler' The Star Online, 12th March 2010, <<http://thestar.com.my/news/story.asp?file=/2010/3/12/courts/5850157&sec=courts>> accessed on 30th December 2015

²⁶⁶ Lee Min Choon, 'Freedom of Religion in Malaysia' in Paul W. Chilcote (ed), *Making Disciples in a World Parish: Global Perspectives on Mission and Evangelism* (Pickwick Publications, Oregon, 2011)

²⁶⁷ Marwan M. Kraidy, 'Hybridity in Cultural Globalization' (2002) 12 (3) International Communication Association 317 at 317

Education

Another factor to be considered in relation to globalization is the evolving nature of the education system. The emergence of secular institutions in Malaysia which was introduced by the British has presented an overwhelming impact on Malaysian education system. The invasion by the British colonial is one form of globalization which contains numerous implications as to how the education system has changed and will continue to change, in response to the demand of the society. Burbules and Torres have observed that the implications of the educational process have become a public concern as it goes beyond the aim of developing the knowledge of an individual²⁶⁸.

There are few types of education institutions established in Malaysia namely secular schools, vernacular schools, Islamic religious schools and international schools. These institutions have diverse education policy whereby the instructors in vernacular schools teaches in Tamil or Mandarin medium with curricula from India and China respectively, English medium in international schools or Malay language in the national schools. There are currently 10,154 national schools, 1296 Chinese schools and 523 Tamil schools in Malaysia²⁶⁹. The numbers of Chinese and Tamils schools have increased since 2010 and extensive efforts have been made by the government to recruit more Chinese and Tamil language teachers in primary schools nationwide²⁷⁰. The problem with the diversity in the education system is that it detrimentally promotes ethnics segregation and racial polarisation²⁷¹. It was found that the enrolment choices and preferential policies have contributed significantly to the current state of ethnic segregation in Malaysia's educational system²⁷². In the absence of ethnic interaction, the individuals have been deprived of the opportunity to integrate, understand and appreciate the custom and values of other ethnicity.

Such nature and complexity of globalization that have impacted upon Malaysian education system raises fundamental issues whether the government should abolish the vernacular schools. The removal of religion based schools would encourage students to escape from their comfort zone; that is being able to interact and integrate amongst other ethnicities. It is emphasized that since the official religion of the Federation is Islam, it is suggested that the curriculum of Islamic studies should also be compulsory to non-Muslim students to undertake Islamic studies. The proposal is not intended to persuade the non-Muslims students to convert to Islam but it is anticipated that the field of Islamic study

²⁶⁸ Nicholas C. Burbules and Carlos Alberto Torres, *Globalization and Education: Critical Perspective* (Routledge, USA, 2000) at 3

²⁶⁹ Statistics were obtained from the Ministry of Education. See: 'Number of Schools according to Groups, Types and States' 31st March 2015 <<http://www.moe.gov.my/en/statistik-sekolah>> accessed on 30th December 2015

²⁷⁰ Richard Lim, 'More Chinese and Tamil language teacher to be recruited next year', The Star Online, 1st July 2010 <<http://thestar.com.my/news/story.asp?file=/2010/7/1/nation/6581416&sec=nation>> accessed on 30th October 2015

²⁷¹ Ibid at p. 124

²⁷² Supra note 41

would encourage the young Malaysians to understand better about the Islamic tenets and practices. In doing so, it is envisioned that in a globalized world, individuals with better knowledge in Islamic principle will call a halt to racial stereotyping. Furthermore, in advocating this notion of teaching, it will also enable Islamic law to be appreciated by the society. Such methodologies will restore the originality of Islamic law and also able to make Islamic legal system acceptable by the non-Muslims society²⁷³. As such, it will stimulate a significant shift in the process of interconnections in order for Malaysian to move forward in appreciating globalization.

This is because, in the current national education system, there is a low level of Islamic studies undertaken by the non-Muslims. Therefore they are unable to comprehend the basis rule of a decision made by Islamic authorities. The case of Lina Joy serves an illustration whereby the non-Muslims are constantly undermining the decision made by the Shariah court; claiming that the institutions are not being sensitive towards the rights of a person to profess other religions. In fact, Shariah court is merely carrying out its duty based on the tenets of Islam and the decree pronounced by the law. All of the judgments made by the Islamic authority are based on the main text of the Al-Quran and since Lina Joy was born as a Muslim, she must adhere to the principles laid down by the Islamic law in renouncing Islam²⁷⁴.

It is further said that the current problem relating to Islamic law and education has somewhat been exacerbated by the government when it encourages students to pursue their education overseas. The encouragement has indirectly eroded the confidence in the national education system in a sense that the society is undermining the capability of the local authority to develop its literature in Malaysia. This has raised fundamental concerns whether globalization poses a threat to the continuity of cultural diversity. The advent of globalization has driven young Malaysians to forgo its nationality in exchange for foreign educations which is seen to be more advanced and developed. There is an apprehension that failing to adopt the trend towards globalization could run the risk of being excluded from the transnational world economy²⁷⁵. The merit of the argument has been further supported by academic scholars criticising globalization as a foreign invasion towards cultural values, destroying the rich diversity of human civilizations²⁷⁶. Despite such criticisms, it has been argued that someone has to pay the price of the obliteration of the cultural mixture in order to develop a better Islamic law for the benefit of future mankind. It is

²⁷³ Mohammad Tahir Mohammad, *Rights and Duties in Shariah and Common Law* (Ilmiah Publisher, Kuala Lumpur, 2003) at 334-335

²⁷⁴ Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor [2007] 3 CLJ 557 at 579 per Tun Dato' Sri Ahmad Fairuz CJ

²⁷⁵ 'Education and Globalization', International Institute for Educational Planning, April/June 1998, <<http://www.unesco.org/iiep/eng/newsletter/1998/apre198.html>> accessed on 22nd October 2015

²⁷⁶ Louis Hebron and John F. Stack Jr, *The Globalization Process: Debunking the Myths* (International Studies Association, Chicago, 2001)

emphasized that education play a very important role in educating the society on Islamic principles as well as in developing the Islamic law system in Malaysia.

Human Rights

Another significant effect of globalization is the existence of the human rights which provides a major challenge to the traditional administration in the Shariah courts system. There were ten non-governmental organizations (NGOs) that participated in Lina Joy's case in order to give pressure to the Federal Court judges²⁷⁷. This indicates that the impact of globalization on one's country is so potent and influential to the fact that it has caused a number of participation of organizations to be involved in the development of Islamic law.

Most of the arguments presented by the human rights organizations is based on one point - that Lina Joy's right to choose her religion which is enshrined in Article 18 of the Universal Declaration of Human Rights (UDHR) has been violated. Similarly in Indira Gandhi's case, her decisions towards the children's religion, welfare and education must be fully upheld and protected as reflected under UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC)²⁷⁸. These external pressures have placed the lawmakers in a dilemma, to determine whether the international human rights declaration has a place in Islamic law development and if so, is it compatible with Islamic principles? Malaysia has chose to preserve the Islamic practices and values in its governance and such decision is argued to be respected. The proliferation of human rights in international relations has been argued to be merely one of the globalization mechanisms in interfering with state sovereignty in handling its affairs²⁷⁹. The active promotion of individual rights without understanding the essence of Malaysia Constitution; being that Muslims are bound by Islamic law is just plainly ignorant and unacceptable. It is explicitly stipulated in Clause 1A of Article 121 of the Federal Constitution of Malaya (1957) that Shariah courts have exclusive jurisdiction to hear Shariah matters. The conceptions of human rights which are clearly based on hegemonic Western culture are therefore incompatible with the ideology of Islamic laws²⁸⁰. It is noted that the practice of human rights in claiming to all sorts of human dignity entitlement has somewhat influenced the process of globalization. Brysk perceived that where a cosmopolitan system liberalizing individuals to pursue their rights, it will caused large number of people to suffer from both long-standing state repression and new denial of

²⁷⁷ Namely the (1) Malaysian Bar Council, (2) Malaysian Women Power Organization, (3) Consultative Council of Religious Hindu, Christian, Buddhist and Sikh, (4) National Council of Women Organization, (5) All Women Action Society, (6) Sister in Islam, (7) Women Health Organization, (8) Women Council of Change, (9) Women Development for Change and the (10) Movement of Basic Needs of Malaysian citizens.

²⁷⁸ Ivy Josiah, Kuthubul Zaman Bukhari & A. Vaithilingam, 'Rights of Indira Gandhi and her children were overlooked', 12 January 2016 <<https://www.malaysiakini.com/letters/326430>> accessed on 1st February 2016

²⁷⁹ Jean-Marc Coicaud, Michael W. Doyle, and Anne-Marie Gardner, *The Globalization of Human Rights* (United Nations University Press, Tokyo, 2003) at 2

²⁸⁰ Francis Loh Kok Wah and Joakim Öjendal, *Southeast Asian Responses to Globalization: Restructuring Governance and Deepening Democracy* (Nordic Institute of Asian Studies, Singapore, 2005) at 112

rights linked to transnational forces²⁸¹. In order to avoid such event from occurring, there is a need for the non-Muslims society to embrace a broader perspective towards Islamic law and be tolerance with Shariah courts' decision making. In the absence of intention to foster globalization, the human rights movement will hinder the ability of Shariah courts to develop on its jurisprudence. This can be seen in Lina Joy's case where such movements have caused a various contradictory effects on the development of Islamic law.

The involvements of NGOs have definitely encouraged many opposition politicians to condemn the government and the judicial organization. One of the opposition leader, Lim Kit Siang said that the courts' decision on Lina Joy's case have caused a major blow and a grievous setback to Malaysia as a secular nation²⁸². Even the political analysts observed that the rapid growth of Shariah court system would undermine the country's reputation as a tolerant and progressive Muslim nation²⁸³. Notwithstanding such contentions, it has been revealed that main components of globalization such as freedom of speech and social movements have reinforced the administration in the Shariah courts. It has encouraged Shariah courts to take into account the laws and administration in other countries in order to ascertain how other secular countries would decides in such situation.

As such, the trepidation shown by the political analysts with regards to the inefficiency of Shariah courts is not entirely true. The Lina Joy's case has encouraged Shariah courts to develop Islamic laws towards adopting international standards in other areas as well. For instance, in relation to banking, where Malaysia has been successful in attracting foreign financial institutions to conduct Islamic banking business in which the banking system is regulated according to Shariah laws²⁸⁴. According to Tan Sri Dato' Dr. Zeti Akhtar Aziz, the Governor of Central Bank of Malaysia, the ability of the Islamic banking industry to adapt to international standards has led to more than 300 Islamic financial institutions to be launched worldwide across 75 countries²⁸⁵. The capacity of non-Muslims countries to engage and accept the intricacies of Islamic principles shows that the global dominant phenomenon of globalization has astoundingly allowed Islamic law to develop not only domestically but internationally as well. Undoubtedly, it is clear that globalisation has far-reaching effects and is embedded within the daily administration of the Shariah courts.

Conclusion and Suggestion

²⁸¹ Alison Brysk, *Globalization and Human Rights* (The Regents of the University of California, USA, 2002) at 1

²⁸² 'Malaysia rejects Muslim convert's bid to be recognized as Christian' The Associated Press, 29th May 2007, <<http://iht.com/articles/ap/2007/05/30/asia/AS-GEN-Malaysia-Religious-Rights.php>> accessed on 19th October 2015

²⁸³ *ibid*

²⁸⁴ 'Islamic Banking & Takaful' Central Bank of Malaysia, <http://www.bnm.gov.my/index.php?ch=fs_mfs&pg=fs_mfs_bank> accessed on 1st January 2016

²⁸⁵ *ibid*

In conclusion, it is undeniable that various problems have arisen in relation to Islamic law as a result of globalization. From migration to the movements of human rights organizations, this article has uncovered the complex challenges that the globalization presents to the development of Islamic law. Many of the obstructions in the growth of Islamic literatures emerged by the non-Muslims locally but subsequently have expanded worldwide. The negative criticisms brought against Islamic laws are one of the implications of globalization. Globalization has indeed changed the meaning and importance of culture and national identity in world affairs²⁸⁶. In addition to that, even the former Prime Minister of Malaysia, Dr. Mahathir Mohamed have acknowledged that the new thinking of liberalization caused by globalization has obliterated the Islamic traditional methods in administering Muslims' way of life²⁸⁷. Such sentiments are undoubtedly true as the thoughts of the non-Muslims society are heavily influenced by western culture promoted by globalization. In the absence of understanding how Islamic law works, their disparagements towards Malaysia's administration would impair Malaysia's identity as a progressive nation.

Nevertheless, it is noted that one cannot simply blame globalization for the plights suffered in the progress of developing better laws. Globalization has allowed Malaysia to develop a strong positive relationship with other countries such as India and China; being that the Malaysian government recognizes the Chinese and Indian immigrants' rights to adopt a better livelihood in Malaysia. Furthermore, the historical evidence of British endorsing common law principles into Malaysia civil law system and acknowledging the application of Islamic law to Muslims indicates that Malaysia are open-minded towards globalization²⁸⁸.

These consequences are just few examples that have highlighted the enormous benefits brought by migration to Malaysia as a whole. In an effort to develop a better Islamic jurisprudence, the Ministry of Education should consider to restructure the syllabus of the Islamic education in the national schools to include the current social issues pertaining to Islam at the primary level. By introducing the history and principles of Islamic law to both Muslim and non-Muslim students at primary school level, it would embed cultural sensitivity and understanding at a young age. Apart from that, the suggestion of preparing non-Muslim students with Islamic literature from a young age will allow them to keep abreast with the Islamic tenets and principles. It is nevertheless acknowledged that this recommendation may receive criticisms given the fact that many people would not agree with the notion to instill Islamic principles to the non-Muslims. It is argued that it is desirable for every individual regardless their race and religion to divest themselves from cultural stagnation. In an increasingly globalized world,

²⁸⁶ Jan Aart Scholte, 'Beyond the Buzzword: Towards a Critical Theory of Globalization' in Eleonore Kofman and Gillians Young (eds.), *Globalization: Theory and Practice* (London, Pinter, 1996)

²⁸⁷ Bridget Welsh, 'Malaysia and Globalization: Contradictory Currents' in Samuel S. Kim., *East Asia and Globalization* (Rowman & Littlefield Publishers, Inc, USA, 2000) at 233

²⁸⁸ Section 3(1) and section 5(1) of the Civil Law Act 1956 are known as the 'saving provisions' whereby English common law and equity is applicable in the absence of written law in force.

individuals should be encouraged to adopt a more judicious and moderate facets in order to understand Islamic jurisprudence.

It is submitted that the impact of globalization on Islamic law is two-fold; being that it has presented both positive and negative implications. Globalization has contributed to Islamic scholars to revising and updating Islamic jurisprudence in order to suit the current needs of the society. Nevertheless, globalization has also affronted the good name of Islam when it provides a window for the media to spread unpleasant news regarding Shariah courts' decision. It is noted that globalization will often presents changes and challenges to society especially when the world evolves on a daily basis. As such, whatever outcome of globalization will be at the end of the day, every individuals need to retrieve information with an open mind in order to integrate with other religions and faiths around the globe.