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THE WORLD BANK AND THE QUESTION OF IMMUNITY

"Naught is more hostile to a city than a despot; where he is, there are first no laws common to all, but one man is tyrant, in whose keeping and in his alone the law resides, and in that case equality is at an end. But when the laws are written down, rich and poor alike have equal justice, and it is open to the weaker to use the same language to the prosperous when he is reviled by him, and the weaker prevails over the stronger if he has justice on his side."

- Euripides, *The Suppliants*, 422 BC

Injustice anywhere is a threat to justice everywhere.... An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal.

- Martin Luther King, Jr. *Letter from Birmingham Jail*, 16 April 1963

Large parts of the public no longer believe that their interests are represented in institutions such as the IMF, World Bank... or those institutions are adequately accountable for what they do.

- *Human Development Report 2002*, p112

The doctrine of immunity originated with the maxim that the king can do no wrong.

- Annon.

The Cabinet in an unprecedented move approved on 4 July 2004 a draft bill to provide blanket immunity to the World Bank in Bangladesh by seeking an amendment to the International Financial Organisations Order 1972. It means that the Bank as an institution shares no responsibility to answer to the people it is meant to 'serve'. The Bank cannot be taken to court, it cannot be held liable for its actions by the people and the government. Reportedly, the International Financial Organisations (Amendment) Act, 2004 will be placed before

the Parliament in its forthcoming session for enactment, barring any legal jurisdiction over the World Bank in Bangladesh, with grave implications for sovereignty, constitution, citizenship, accountability, participation and the legal regime of Bangladesh. The World Bank, since independence, has been steering the economic policy making in Bangladesh as part of aid conditionalities. During 1972-1986, the government of Bangladesh contracted 13 Import Programme Credits (IPC), amounting to a total of \$1165 million.

The first three IPCs supported post-independence rehabilitation needs. All other credits had conditionalities addressing sectoral, microeconomic and institutional reforms.¹ The government adopted a medium-term adjustment programme in 1986-87 administered under a three-year arrangement of the Fund's Structural Adjustment Facility (SAF) and by various sector adjustment and investment credits from the Bank. Negotiations took place in August 1989, February 1990, and May 1990 on a further three-year programme under the Fund's Enhanced Structural Adjustment Facility (ESAF) and that became effective on July 1, 1990. Here, again, Bangladesh was among the first 29 countries that have recourse to the ESAF, initiated by the Fund in December 1987.² Chronologically, the government has prepared the interim Poverty Reduction Strategy Paper (PRSP). At aegis of the Bretton Woods sisters – the World Bank and the IMF, Bangladesh, thus, has been pursuing the neo-liberal agenda as its core of development strategies. Their influence over national policy has increasingly encroached upon developing countries' national sovereignty, as identified in the 2002 *Human Development Report*: 'The institutions are being called on by their powerful members to intrude much more deeply into areas previously the preserve of national governments – especially in developing countries.' (UNDP 2002:112). The Bretton Woods institutions are believed to have played a dominant role in strengthening and sustaining the lopsided process of globalisation that has made poor countries poorer and richer countries richer (Stiglitz, 2002).³ The policies of these institutions have led to great suffering on the people, society and economy. An indicative example of resultant of unsuccessful development strategies of the Bank is given in Box-2.⁴ The failure of the policy-based lending by the Bank has been adequately documented. (See Box-3 that summarises the main findings of a review, jointly carried out by a host of CSOs, the governments at the Bank). Box – 4 illustrates how fallacious the Bank's

Box– 1: Ordeal of Ms. Ismet Zerin Khan

Ismet Zerin Khan, a former External Affairs Officer in the World Bank Dhaka office, sued a case against the World Bank on August 6, 2001. She pursued, because of her tremendous truculent spirit, up to Ombudsman's office, the appeal division and then the administrative tribunal. The administrative tribunal granted her compensation but not reinstatement. She resorted to law of the land. The first assistant Judge's court asked the Dhaka office of the Bank to show cause by July 15, 2002. The office ignored 14 summonses, with the Bank's pretension of enjoyment of legal immunity. A full bench of Appellate Division of the Supreme Court, presided over by Chief Justice Syed JR Mudassir Husain, on July 25, 2004 granted a petition filed by Ismet Zerin Khan. Earlier Ms. Khan filed the petition seeking leave to appeal against a High Court verdict that had directed the trial court to decide on the maintainability of her case in consideration of the bank's plea for immunity. The Appellate Division decided in her favour.

- January 16, 2000 – She joined the World Bank
- May 03, 2001 – She received the non-conformation notice from the World Bank
- June 2001 – She filed an appeal (no.600) with the Bank's Appeal Committee.
- July 2001 – She filed an appeal (no. 607) on reassignment of her predecessor Mr. Subrata Dhar
- May 2002 – The Appeal Committee within the Bank dismissed her case.
- The administrative tribunal granted her compensation but not reinstatement. It observed that treatment of the former External Affairs officer of the Bank "fell short of appropriate standards of procedural justice which caused her harm for which she is entitled to be compensated." Therefore, the Bank's internal administrative structure acknowledges the violation of her rights.
- July 15, 2002 – She filed an application in the first assistant Judge's court in Dhaka, Bangladesh.
- August 2001 - The first assistant Judge's court asked the Dhaka office of the World Bank to show cause.
- Early 2003 - Bank filed an application for immunity with the second senior assistant judge's court in Dhaka
- May 2003 - The court rejected the Bank's plea and observed that the case was not barred as the Bank had no immunity under the existing laws
- August 12, 2003 - Bank submitted a revision petition and pleaded the trial court to decide whether or not the suit filed by the plaintiff in respect of the relief sought for in the suit is maintainable before recording the evidence.
- July 25, 2004 - The trial court decided that the case was not barred. A full bench of Division, presided over by Chief Justice Syed JR Mudassir Husain granted a petition filed by Ismet Zerin Khan.
- Now, Ismet Zerin Khan will have to file a regular appeal, which will be heard by the Appellate division.

argument in portraying the RMG as a success story of trade liberalisation. Box – 5 and 6 capture the glimpse the human sufferings caused by Bank-Fund-advised privatisation.

The Bank is a cooperative of member states with differentiated voting structure, in contrast to the "one country one vote" rule of the United Nations. The organization's constitution requires it to make decisions on the basis of technical and apolitical considerations, without regard to the political character of the member state which is the potential beneficiary. But the organization is *highly silent* to the interests of the most powerful states. The United States is the preponderant member and has the largest single share of votes in the board of directors (large enough for it to exercise a veto on certain constitutional issues, the only member state able to do so, and it selects the president, who is an American citizen (Wade, 2001).⁵

¹ Salient features of the past thirteen Import Credits, as compiled from the various IPC, documents are given in Bhattacharya and Titumir (2001).

² For a discussion on the Bank's structural adjustment policies, see Bhattacharya, D and Titumir, R A M (2002), *Reforms and Consequences: Stakeholders' Perception*.

³ Stiglitz, J. (2002), *Globalization and its Discontents*, W. W Norton, USA

⁴ For an understanding impact of the neo-liberal policies in Bangladesh, see *Bangladesh Public Policy Watch 2004*, Dhaka: The Innovators www.unnayan.org.

⁵ Wade, Robert Hunter (2001), "The Us Role in the Malaise at the World Bank: Get Up, Gulliver!," 2001.

The official narrative about the World Bank's policies is strikingly self-congratulatory. Government officials and donor representatives are virtually unanimous about how their pro-poor policy partnerships have been empowering local stakeholders, enhancing national ownership of key policies, and deepening consensus among the core actors. But, questions have been raised as to the extent to which the core principles have found their way into the current creditor-led main document, Poverty Reduction Strategy Papers (PRSPs). For example, how can a PRSP be "country-owned" if the IMF and World Bank have the final sign-off? Why, if PRSPs are really country-owned and widely supported, are new loans and debt relief made conditional on their implementation? How can developing countries be given greater decision-making power in the Bank and the Fund if the US, with its veto, is opposed?⁶

The question of World Bank's immunity has to be looked in this context, since it is not a mere accident rather a shield to which it wants resort to for escaping accountability and security by the people.

A Simple Beginning

The question of the World Bank's push for 'legal immunity' in Bangladesh arose with a court case initiated by Ismet Zerín Khan, a Bangladeshi national and a former employee of the World Bank. She filed an injunction suit and, later, a miscellaneous suit against the World Bank at the 2nd Senior Assistant Judge's Court of Dhaka in Bangladesh. The matter for the suits primarily pertains to the internal administrative practices of the World Bank towards its own employees. In April 2002, the World Bank filed an objection under Order 7 Rule 11 Civil Procedure Code (Bangladesh) for rejection of the complaint, claiming

immunity. However, in May 2003, the 2nd Senior Assistant Judge's Court of Dhaka rejected the World Bank's claim for legal immunity and decided to proceed with the hearing of the case. The World Bank then filed a revision petition to the High Court Division of the Supreme Court of Bangladesh and was successful in obtaining a stay order for a period of six months. On 12 August 2003, the High Court directed the 2nd Senior Assistant Judge's Court of Dhaka to first decide on "whether or not the suit is maintainable" before recording the evidence. A full bench of Appellate Division of the Supreme Court with the chief justice in chair ordered the maintainability of the case. Soon after Ms Khan initiated the above legal proceedings, the World Bank, besides claiming legal immunity in the court, started pressurising the government of Bangladesh to take necessary steps to stop the said legal action.

The Bank's Mounting Pressure

The Bank started pressuring two ministries, the Ministry of Law and the Ministry of Finance to provide blanket immunity. The World Bank Country Director in Bangladesh, Frederick T. Temple, on August 28, 2001, in a letter to M. Hafiz Uddin Khan, the Adviser for the Ministries of Finance and Planning, of the caretaker administration of Justice Latifur Rahman even warned that the smooth relationship between Bangladesh and the World Bank would be adversely affected if the latter were not granted the proposed privilege. "I would like to stress that the Bank considers this matter of great importance that touches upon the foundation of the Bank's relationship with Bangladesh".⁷

The Finance and Planning Advisor sought the opinion of the Ministry of Law. The law ministry referred it to the Attorney General (AG) of the State, the principal law

Box- 2: World Bank's Policies Promoting Inequalities in Bangladesh

The World Bank has remained on driving seat in the formulation of economic policymaking since independence. The policy packages and associated credit arrangement have evolved from the Import Programme Credits (IPC) to Structural Adjustment to Poverty Reduction Strategy Papers.

The legacy of Bank's development formulations have resulted in, for example:

- Bangladesh has found it difficult to force a faster rate of poverty reduction beyond the average of 1% throughout the 1990s. Absolute numbers of poor people continue to rise, as do the denial of their rights. Bangladesh has many poor people than the year of war of liberation.
- 49.8 % of the total population live below the poverty line, i.e., take less than 2,200 kcal a day per head.
- 19.98 % of the population suffer from hard-core poverty, i.e. take less than 1,800 kcal a day per head.
- The national income share of the bottom five per cent of the population has declined from 1.03 per cent to 0.67 per cent, while that of the top five per cent increased from 18.85 per cent to 30.66 per cent; and that of the bottom 20 per cent declined from 6.52 per cent to 2.21 per cent, while that of the top 20 per cent increased from 44.87 per cent to 55.02 per cent.
- The richest 10 % of the population control 40.72 % of the total national income while the poorest 10 % of the population had access to only 1.84 % of the national income in 2001 - 2002. The gap has widened since 1995-1996 when the richest 10 % of the population controlled 34.68 % of the national income while the poorest 10% had access to 2.24% of the income.
- Joblessness increased by 3.3 percent a year throughout the nineties and has had a crippling effect on the economy.
- 90 million do not have access to primary health care, 100 million lacks access to adequate sanitation.
- 12 million under-five children are malnourished, two million infants have low birth weights.
- 110 million are denied access to electricity.

The Bank has, since its inception systematically spawned and promoted inequality. Inequalities within the country have been widening to levels seldom before witnessed. Unemployment, landlessness, loss of assets, and deprivation are increasing in a widening share. At the same time absolute number of people living in poverty has not made any perceptible change. Such indications are not an accident, but the consequence of the way in which structures of ownership, production and distribution of the wealth have been systematically changed over the last two decades. Displacement, immiserisation and a loss of livelihood opportunities of affected communities have been the result.

⁶ For a discussion on PRSPs, see Titumir R A M (2004), *PRSPS – The Mystic and the Maze of Solutions*

⁷ Most of the information of this section was taken from "Temple threatens, ministers bickers," by Nurul Kabir, *The Holiday*, February 2, 2002.

officer of the land. The AG, Mahmudul Islam, observed that according to the Article of Agreement with the WB, “the officers of the Bank have immunity but the Bank itself does not have immunity from the legal process.” Barrister Ishtiaq Ahmed, the then Advisor for the Ministry of Law, Justice and Parliamentary Affairs of the caretaker Government, echoed the Attorney General in a ministerial note signed on September 6, 2001.

Even after such opinion the country director of the Bank wrote his second letter to the Finance and Planning Advisor of the Caretaker Government on September 16, 2001. Besides, immunity, the Country Director reminded the Government of an ‘Establishment Agreement’ submitted by the Bank to the government a few years ago for the latter’s ‘consideration and agreement’. “I believe that the execution of such an establishment agreement is

Box – 3: World Bank – the Policy Roots of Economic Crisis and Poverty: Findings of a Tripartite Structure, comprising a global network of civil society organisations, governments and World Bank

The structural adjustment policies (SAP) undertaken by the World Bank group has so far brought the most devastating results in most countries. These are some of the results actually found in the countries SAP was implemented in:

- Indiscriminate import liberalization and financial-sector policies that have attracted investment away from productive investment and deeply hit domestic manufacturing sectors and employment.
- Small farmers and women have been affected more negatively by the differentiated access to resources for production. Reforms have directly and indirectly affected the ownership, control and use of productive land, further skewing the distribution of wealth and incomes in rural area.
- Real wages have deteriorated, Unemployment and job insecurity have increased, family incomes decreased generating an increase in child labor as a result of labor-market reforms and other adjustment measures, particularly among the lowest income groups.
- The privatization of public utilities and services has usually resulted in significant price increases for the public, paralleled by little improvement or education in access and service. The quality of education and health care has generally declined.
- The policies have in general circumstances yielded generation of increased current-account and trade deficits and debt; disappointing levels of economic growth, efficiency and competitiveness; the misallocation of financial and other productive resources; the “disarticulation” of national economies; and the destruction of national productive capacity; and extensive environmental damage.

Source: The Structural Adjustment Participatory Review International Network (SAPRIN), The Policy Roots of Economic Crisis and Poverty, Based on Results of the Joint World Bank/Civil Society, Structural Adjustment Participatory Review Initiative (SAPRI) and the Citizens’ Assessment of Structural Adjustment (CASA). www.saprin.org

even more necessary so as to prevent the Bank from being subject to any further litigation in future.”

Meanwhile, being ordered by the local court to submit a ‘written statement’ on the case, the Country Director of the

Bank wrote to the Caretaker Government on September 29, 2001: “I would ask the Government kindly to intervene in the above referenced matter before October 10, 2001 and stay all proceedings for at least 60 days.” The letter once again threatened that the issue of granting the Bank the privileges and immunity is a ‘matter of great importance that touches upon the foundation of the Bank’s relationship with Bangladesh’.

The chapter re-opened with the political government in power. Again the Ministry of Law sought opinion of the current attorney General, A. F. Hassan Arif, who found his predecessor’s observation right. He categorically state: the World Bank as a body does not enjoy immunity from legal process, so the suit by its employees on the count of immunity is not barred. “The government of Bangladesh does not suffer obligation under any international instrument to provide legal assistance to World Bank. The officers/employees of The World Bank, however, enjoy immunity.”

Subsequently, the law minister informed the finance minister of the AG’s legal opinion on the issue.

Barrister Moudud Ahmed, the law minister agreed with the AG. But the finance minister, in a letter to the law minister, on January 29, 2002 further requested the latter to ‘engage the state lawyers’ for the Bank authorities, although the former agreed ‘in principle’ with the legal position taken by the law minister. The finance minister reminded his counterpart in the law ministry that the matter was very ‘sensitive’ and ‘if the World Bank does not get legal assistance from the Government, the relationship between Bangladesh and the World Bank would be strained, which is not desirable at the moment’. “As the government is not providing the World Bank with state lawyers, the Bank is pressing for signing the proposed Establishment Agreement without delay. But it cannot be done at the moment as the proposed document is still being scrutinised.”

Meanwhile, the Bank’s Country Director in a ‘confidential letter’ to the law minister on February 3, 2002 asked him to take steps to engage state lawyers for the Bank by February 14, 2002.

In response to the finance minister’s January 29 letter, the law minister wrote a letter on February 11, 2002, asserting that ‘there are legal bars in providing legal assistance to the WB’. As for signing of the Establishment Agreement, Moudud Ahmed informed Saifur Rahman, the finance minister that such a step would require prior amendments to certain laws of the land. The law minister also informed the WB’s Dhaka office of the government’s ‘legal inability’ to engage government lawyers in favour of the Bank.

Moudud Ahmed in his letter of 11 February 2002, to Fred Temple, however opined that “if the Bank desires to enjoy the immunity as the Asian Development Bank does, the

only option is to amend the Articles of Agreement and correspondingly our own law (Bangladesh).” Buoyed by such suggestion the Bank started pressuring the government to amend the International Financial Organisational Order 1972. Reportedly the Bank succeeded when its President Wolfenshon pursued the Prime Minister when she attended a conference as one of the key-speakers in a Bank-sponsored event in China.⁸ Soon after her return, the amendment process started and the cabinet approved the draft Bill.

The Bank’s ADB Case

In his letters, the former country director of Bangladesh Frederick T. Temple repeatedly cited the immunity enjoyed by Asian Development Bank. A comparison between the two can not be made since they function on the basis of two different Articles of Agreement. The relevant section of the Bank’s Articles of Agreement states: “Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities (Art. 7, Sec. 3. Position of the Bank with Regard to Judicial Process, IBRD, Articles of Agreement).”

Articles of Agreement of the Asian Development Bank under which it operate states clearly that: “The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities.”⁹

The Bank is not privileged with immunity as an institution. The laws differ significantly between itself and the Asian Development Bank, thus to compare its rules and regulations with ADB and claim for immunity on this basis is unfounded and contradictory to the bank agreement itself, portraying once again the unsubstantiated reasoning of the Bank.

On a fundamental note the ADB enjoys the immunity as it was created for the members in Asia region and which are the former colonies and also as a vehicle to continue the subjugation. On the contrary, the World Bank was established for the war-ravaged Europe who are the allies of the US – so the difference is obvious.

The lawyers for the World Bank group have constantly referred to the case *Mendaro vs. World Bank* (1983) to draw conclusion. The case was filed in the United States Courts of Appeals (USCA). This case is of little relevance to the question of immunity raised in Bangladesh by the World Bank group. The judgement in the USCA is based upon the *International Organizations Immunities Act 1945*

⁸ Weekly 2000,

⁹ Articles of agreement- The Asian Development Bank, Article 50.1 Immunity from Judicial Proceedings.

legislated by the Congress of the United States of America and the question of immunity of World Bank hinges on this act only.

The Double Standards

The World Bank is interested to enjoy immunity from every form of legal process, but it maintained the waiver of “Sovereign Immunity” which allows lenders (including the Bank) to sue the borrowing sovereign (i.e. governments) in foreign courts and for pre-judgment and post-judgement attachments. Under a pre-judgment attachment, a foreign court may order the seizure of the assets of the borrower located in its territory. The “order can be obtained without notice to the sovereign whose assets are to be seized”. A post-judgment attachment enables a judgement to be enforceable. The United States and Britain are the two principal jurisdictions to which sovereign borrowers are required to submit.

It also enjoys the waiver of the fungibility of financial credit: this implies that project loan is actually a flow of goods and services procured from the G7 at uncompetitive prices (some are 100% higher than international prices) and even if cheaper local resources are available. In other words, the borrowing nation must accept high cost of goods and services and it must discriminate against its firms and service providers even if they are cheaper.¹⁰

The World Bank acknowledges that transparency and accountability are critical dimensions of development effectiveness.¹¹ This is a standard dialogue that the Bank likes to say every now and then, yet despite the Banks’ recognition of the importance of transparency the bank deliberately:

- rejected G-7’s calls for the release of *draft* versions of the Bank’s core business plan for borrowing countries although the public is being asked to participate in that document’s preparation.
- refused to require the disclosure of Bank-generated key structural adjustment lending documents, let alone drafts.
- denied the release of *any* of the key documents produced during project implementation, effectively shutting out communities although they are increasingly involved in project implementation.

The Bank in its work singles out the critical importance of an “effective legal and judicial system.” It states that: “Without the protection of human and property rights, and a comprehensive framework of laws, no equitable

¹⁰ Garba, A.G (2000) “The Economics of the Relations Between Official Lenders and Governments of SSA Countries”, presented at the millennium conference of the Nigerian Economic Society, Abuja, Nigeria. 11-12 September.

¹¹ Transparency and accountability are part of the rating criteria the Bank employs to determine overall lending allocations to borrowers.

development is possible. A government must ensure that it has an effective system of property, contract, labour, bankruptcy, commercial codes, personal rights laws and other elements of a comprehensive legal system that is effectively, impartially and cleanly administered by a well-functioning, impartial and honest judicial and legal system.¹² But it wants to remain immune from its activities which affect lives of millions.

The Bank proudly states: “a well-functioning legal system protects individuals and their property, and it gives the poor recourse against powerful interests, public or private. The link between legal institutions and poverty therefore is direct and fundamental. Without laws that protect basic rights and legal institutions to enforce these laws, the poor will often have no way to defend themselves or their

an accountable process; it wants to remain out of people’s jurisdiction in the name of, that ‘it would lead to chaos’ if people resort to courts. But the World Bank itself wants to evade the security of the judiciary. The World Bank Bangladesh office in its report, *Taming Leviathan* eulogised the Supreme Court of Bangladesh, why does not it want to be scrutinised by the same Supreme Court?

The World Bank’s public sector team points out that, courts hold governments accountable through their power to review the actions of the legislature and the executive. This power is at its zenith when a court can declare a law passed by parliament or an action taken by the executive null because it conflicts with the nation’s constitution. When a court declares an action unconstitutional, the only way its decision can be overturned is through an

Box – 4: Revisiting a ‘Success’ Story of Trade Liberalisation: The Bangladesh RMG

The increase in exports of Bangladesh readymade garments (RMG) and employment of women workers in the sector has been portrayed as a success story of trade liberalisation.

The international restructuring of the garment industry is a product of the international division of labour. The rising cost of labour in advanced industrialised countries drove their production processes to relocate to low-cost labour locations in the South. Like other labour-intensive products the ready-made garment (RMG) industry moved to East Asia in the 1960s, under an environment of active government support for export-oriented manufacturing. The systematic crisis of the prevailing system led to desperation between the search for ever-cheaper sources of labour and the rising level of import penetration in the markets of developed country. The corporatist sway over policy-making led to the adoption of the Multi-fibre Arrangement (MFA)¹ in 1974. The MFA was designed to regulate exports of textiles and clothing from the developing world in the interest of ‘orderly trade’ through quantitative restriction or quota (not a free trade, but a distorted one) so that developing world cannot penetrate the developed world more than the decided levels.

RMG industry were relocated at the lower end of the chain, like Bangladesh. The captive market on the one hand and the cheap labour, the engine of making profit, on the other led to the reallocation.

The rising share for women in the labour force is sometimes referred to as the *‘feminisation of labour.’* Although women are entering the labour market in increasing numbers, their employment is concentrated in a relatively small number of ‘female’ areas and occupations which tend to attract lower rewards and wages. Guy Standing (1989) has hypothesised that the increasing globalisation of production and the pursuit of flexible forms of labour to retain or increase competitiveness, as well as changing job structures in industrial enterprises, favour the “feminisation of employment” in the dual sense of an increase in the numbers of women in the labour force and a deterioration of work conditions (labour standards, income, and employment status).

A great deal of critical feminist scholarship says that the ‘comparative advantage of women’s disadvantage’ (Arizpe and Aranda, 1981) explains why women are preferred in labour-intensive industries like RMG. The disadvantageous cultural construction of the female labour force in terms of nature and inheritance works to the advantage of the manufacturers. They say that the “nimble fingers” (Elson and Pearson, 1981) of young women workers and their capacity for hard work facilitated the recruitment of women for unskilled and semi-skilled work in labour-intensive industries at wages lower than men would accept, and in conditions that unions would not permit.

These women workers transfer their submission of patriarchal authority from family patriarch to the capitalist patriarch (Safa, 1990; Salaff, 1981).

Global accumulation, as the driving force of the world-system, not only hinges on class and regional difference

Source: Titumir, R A M (2003), *“Spinning the Chain, Lost in the Queue International Restructuring and Bangladesh Women Garment Workers, Dhaka, 2003*

interests.” But it does not want to give the poor the access to hold the Bank accountable to them by accessing the court of law for any deed committed by the Bank.

The Bank’s sermon goes like this: “not only does the rule of law protect the poor directly, but it also fosters economic growth, the surest way to raise living standards. The rule of law is also necessary too if the assistance provided by the World Bank is to help reduce poverty. The Bank works primarily with governments, and to the extent that governments are not bound by law, there is no way to be sure that aid is used for the purposes intended. The Bank is so thoughtful about bringing the governments to

amendment to the constitution, a process that by design is usually difficult and time-consuming.

Far Reaching Implications

The blanket immunity, if the Parliament enacts such provisions, will have a far reaching consequences on the sovereignty of state, citizenship, rights to development, and the whole legal regime of Bangladesh.

The sovereignty¹³ that a nation state asserts is a cornerstone of democratic system is infringed upon by

¹³ Arguably in this phase of globalisation (imperialism) the sovereignty has already been encroached upon. This being one of the main reasons by which the Bank has succeeded in conceding

granting blanket immunity to the Bank. Article- 7 of the Constitution of Bangladesh states that all powers in the Republic belong to the people. It also adds that all powers of the people will be exercised by the authority of the Constitution. As the state's sovereignty originates from the people's sovereignty, if the sovereign (i.e. the people) are barred from exercise of their power, the sovereignty of state is thus circumscribed.

The said amendment provides a significant blow to the citizenship. The Constitution, a contract between the State and its citizens, is ignored and the provision of immunity is not in conformity with the Constitution. The Constitution, the solemn expression of the people and the supreme law of the republic [Article 7(2) of the Constitution of Bangladesh], clearly states that if any law is inconsistent with the Constitution, the inconsistent one will be void. Immunity debars a citizen from the right to access to court and right to protection of law (Article 31 of the Constitution of Bangladesh). The Article states: "To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law." Thus the case of blanket immunity is situated fundamentally opposite to the directions of the Constitution.

The immunity given to a particular section should be in conformity with the Constitution. Even if immunity is given to any particular sector, there must have a separate legal procedure where the people of Bangladesh will have a legal redress and remedy. For example, the Constitution provides that disciplinary forces shall be otherwise treated i.e. violation of fundamental

rights caused to the members of disciplinary force cannot be enforced under the Constitutional remedy. But the

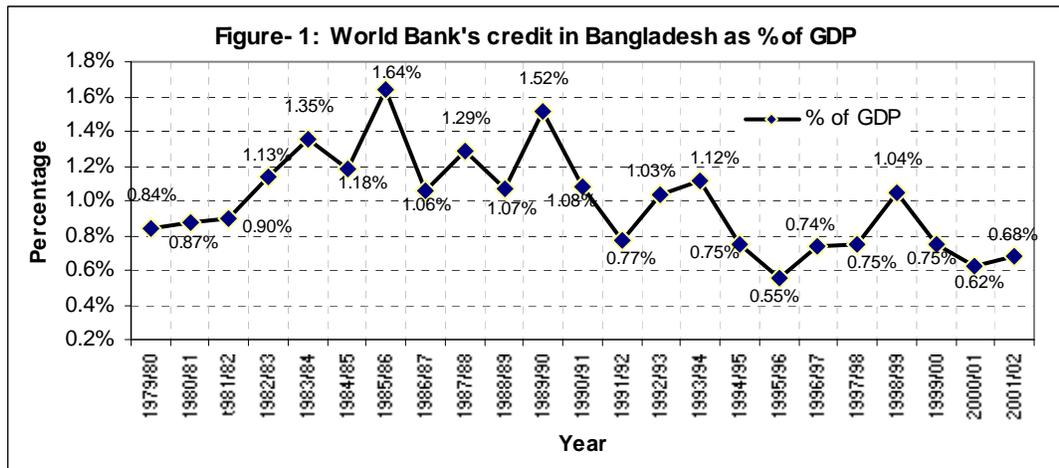
the government to provide blanket immunity to it. Imperialism has led to a truly global economy. The WTO along with the IMF and the World Bank have emerged as a significant global political power wielded by international capital directly over sovereign nation-states, including even the imperialist states. Adhering to conditionalities of the Bank-Fund is a sign of erosion of the sovereignty.

members of the disciplinary forces have their rights to be defended in their own legal jurisdiction within their statutes. But the World Bank does not fall into that category. The World Bank has recently established Inspection panels to redress their policy failings, but that does not have the power to prosecute and provide sentences.

The World Bank work in the field of development and its policy-based lending has enormous implications for the citizenry. If development is conceived as a right to development and is acknowledged, the process of development cannot be immune. An infringement of such rights can only trigger fascism.

The immunity would detract the process of people's participation in development decision-making, as people are faced with no remedial process at hand. It would have a devastating impact as the involvement of IFIs such as the Bank often move the locus of decision making further away from affected communities, making policies less-transparent, non-participatory and less-accountable to traditional democratic processes.

Thus the whole move will lead to further erosion of national sovereignty and democratic control over local economic process and resources, while it would strengthen Bank's dominance on domestic policy decisions which conclusively affect economic, social and cultural rights of the people in Bangladesh, although total aid (credit by World Bank, IMF, ADB etc. and other assistance received from bilateral and multilateral sources) as a percentage of



GDP has decline to around 2 (two) per cent.¹⁴ The World Bank's share is a meagre 0.68 per cent of GDP (Figure – 1).

¹⁴ *Bangladesh Public Policy Watch 2004*, Dhaka: The Innovators www.unnayan.org.

While the Bank concedes their policies have impact on human rights, the granting of immunity will further their refusal to hold it accountable to human rights standards.

It is well known that the activities of the World Bank and IMF, through their lending policies infringes on the ability to implement internally cohesive macroeconomic policies for developing countries since they are to adhere to the basic rules of the international economic system. There is lack of policy autonomy as a result of *tying the hands of weak countries*. There are therefore two main sources of the challenge to economic development that underdeveloped countries are contending with; one is to identify the needs of their society and motivate the society towards providing these needs in a sustainable development process; second is to absorb the increasing pressure from international lenders to adopt certain prescribed policies, which are in conflict with the needs of their society. In order to be able to establish a process for attaining economic development, underdeveloped countries need to extricate themselves from the vestiges of external creditors so as to be able to initiate and implement far reaching macroeconomic policies that are suitable for their circumstances and developmental needs. But the quest of such policy autonomy would be further squeezed through this blanket immunity.

The resultant immunity is a reflection of a *transboundary entente* which has been successfully engineered by a core group of players who share a commitment to a specific 'way of doing business.' Apart from their close personal contacts, these players have many characteristics in common: educational background (often in American or British universities), lifestyle and vocational habits – socialisation into a professional culture that shares analytical predilections, a vocabulary of policy discourse, an understanding of what constitutes authoritative knowledge, and a sense of the 'rules of the game' guiding policy processes, since there has been a convergence of running of the economy through policies indoctrinated in neo-liberalism. The convergence of politics and economics of the elites has reduced the economic policy making to 'managerially' (a faith in the expertise of the professionalized 'new public manager' to achieve optimal policy outcomes), and 'budgets' (a faith that the optimal allocation of public resources through official budgetary mechanisms constitutes the government's main tool for addressing social issues). This transnational policy elite exercises its considerable power through its hegemonic control of the budgetary process. Their source is the international aid industry, which sustains the global accumulation on behalf of their paymasters – corporations and their titular government (Gould and Ojanen, 2003).

A defining characteristic of the new policy elite is its effort to alienate political processes, due to its conscious framework of ensuring that masses never united

in solidarity in nativistic reactions to the hegemonic national and global relations or create their republic. Generally, the omnipresence of such fear in consciousness also led donors to commonly avoid engagement. This fear is the *root cause* for the immunity.

The Democratic Deficit

The current system of governance in the World Bank is clearly unjust and undemocratic.

The World Bank in its rhetoric is champion of democracy, openness and accountability. The governance, an issue which the Bank masters in recent time in the wake of their failings, of their Board reflects that of a rich man's club. Instead of one country member one vote is allocated according to the wealth of a member, meaning that poor nations – where the World Bank and IMF wield the most power – have the least say in the way the institutions are run and the decisions they take. The US is the only country with enough votes to block board decisions on its own. By contrast, the world's poorest countries cannot block a decision even if they all join together. For example, 15 per cent of votes are required to block a decision made in either the World Bank or IMF board. The US is the only country to have more than this threshold, giving it the power of veto. By contrast, the world's poorest 80 countries have a combined voting share of ten per cent.

Box– 5: An Epitaph for Adamjee

The Adamjee Jute Mill was closed down on the 1st of July 2002, on the alleged accusation of being a loss-making venture. It made at least 26000 workers redundant; thousands of children were thrown out of school, lifecycle of thousands of families were destroyed. The closing of mill originates from the Bank's diktat of privatisation.

We know the names of the super stars, the prizes, the quizzes and the whole carnival that has accompanied the Cup. But we have forgotten the names of the girl who broke down and fainted learning that her school was losing down. She's no star; she is just a school girl. She has been held guilty for the loss sustained by Adamjee Jute Mills. She has been punished along with her family. That girl, like many like her, will have to pay for official inefficiency, corruption and lack of planning. This is also called 'good governance' and 'economic reform.' "Adamjee closure will be good for the economy." A friend said on the phone. "We are forced to pay for the loss." He is a millionaire and pays less tax than I do.

The government and its sponsors, the donors, have said it all. The State-owned enterprise was losing money, more money than it was possible to sustain. It was always losing money. Yet those connected with Adamjee have almost all become rich.

There is something strangely perverse about the general estimate that the last general election campaign cost was Taka 300 crores to 500 crores apart from the administrative cost of running the elections failing to generate industrial projects from concerns and closing them down.

- "But this is the price you have to pay for democracy?"
- "A democracy which can't give enough to the people to eat?"
- "You don't want elections?"
- "What about food for the hungry and schools for children?"
- "Soon, soon. We shall have it all. It's by closing Adamjee that we can...."

Source: Afsan Chowdhury, An Epitaph For Adamjee: How Come The Rich Always Decide What Happens To The Poor? <http://www.drishtipat.org/activists/Afsan/adamjee.html>

Countries are grouped into what are called 'constituencies'. The five largest vote holders are allocated one seat each

only make up one-fifth of the total members of the IFIs. If allocated fairly according to proportions of members, high-

Box- 6: The Saga of the Bank Sponsored Privatisation Policy

Some might argue that the disinvestment of the 'loss-making' industries helps develop a strong private sector, which in turn could contribute to the 'improvement in the material and cultural standard of living' of an increased 'productive force'. But, unfortunately, the picture is not that rosy.

The government/s are always reluctant to speak about the predicaments of the disinvested factories and their retrenched workers, while the country's donor-funded 'think tanks' hardly undertake any such studies. Under this circumstance, a recent media report, carried by New Age on June 28, might help the readers understand the situation.

The report reveals that the Fouzi Jute Mills was set up on 52 acres of land at the Ghorasal Industrial Area in 1966 at a cost of Tk 100 crore. With 250 looms and production capacity of 28 tonnes of jute goods per day, the mills went into production in 1968. In early 1973, the government took over its management. The mills, worth Tk 50 crore, with a running capital of Tk 15 crore, were sold in 1984 at a price of only Tk 1 crore. Since then, it was closed down for the third time in April this year, making about 2,000 workers and 250 staff jobless.

Earlier, in 1997, the private owners terminated 1,000 workers without any prior notice and without any payment. Meanwhile, the owners received a loan of Tk 19 crore from the Janata Bank, but they did not pay a single penny of the workers' due, which was about eight crore takas.

Finding no alternatives, some of the workers have taken to begging, some have turned into rickshaw-pullers and day labourers, while many of them have stopped sending their children to school.

Source: Nurul Kabir, "National (!) Budget for 2004-2005: Some people are above law, others are below it," <http://www.newagebd.com/2004/jul/07/edit.html>

Accounting for Privatization in Bangladesh: Testing World Bank Claims¹

A soap and cosmetics enterprise, anonymised as PC, was founded in 1959 by private West Pakistani owners. PC was nationalized after independence in 1971 coming under strict scrutiny at various government levels. PC's productivity from 1979-1988 was good compared to similar enterprises in Bangladesh (BBS 1993). Up to 1988-89, PC increased sales and never incurred a loss.

From 1982 -1988, 78% of value added (an average of 139m. TK pa) was paid by the government. The workers received 22% (an average of 40m. TK). PC was a profitable concern under the state with many of the benefits flowing to government. In 1988, the government nominated PC for partial privatization at the behest of donor agencies including the World Bank.

The result was a dramatic decline in performance. By 1993 sales had declined to 247 m. TK producing a loss of TK. 60.36 m. Over the five years of partial privatisation PC accumulated a loss of TK. 173 m. Government receipts decreased and there were marked decreases in production.

Capacity utilisation dropped from 53% in 1988-89 to 14% in 1992-93: In 1988, the total workforce was 1261, by 1991, it was 1100. PC was fully privatised in August 1993. The government sold their shares (51%) to a single family. The 1993-94 annual reports were not published until 1995.

Three cases have been filed against PC to date:

- By the Securities Exchange Commission (SEC) for not holding AGMs.
- By banks for non-repayment of a loan;
- By the Commissioner of Customs and Excise for not paying duty and taxes amounting to US\$26,000.

Budgets and associated controls changed substantially after full privatization. Financial information became a preserve of the inner sanctums of the family controls over employees became coercive. The private owners established personalised and centralized controls through imposed arbitrary, physical budgets over a lowly paid but economically dependant labour force.

There was no evidence of any benefits of privatisation trickling down to labour: wages declined and an ill paid group of casual workers (often paid around one US \$ per eight hour shift) emerged.

The above facts sharply contradict World Bank (1995) predictions that privatization would improve the fiscal situation of Bangladesh, and improve the efficiency, productivity, costs and services of SOEs.

Source: Accounting for Privatization in Bangladesh: Testing World Bank claims: Shahzad Uddin and Trevor Hopper.

(the US, UK, France, Germany and Japan). A further three countries – Saudi Arabia, Russia and China – are also in single-seat constituencies and therefore automatically get their own representative. The remaining 176 member countries share just 16 seats between them.

Looking at it in a different way, there is currently about a 50-50 split between high- and low-income countries in terms of the seats they hold. But high-income countries

income countries would only get five seats out of 24 on the boards.

Despite some recent improvements, the IFIs are still not obliged to publish the details of board discussions, making it difficult to track decision-making on particular projects or loans. For example, although summaries of board discussions are sometimes published, the minutes of decision-making meetings are not. The extent to which

each executive director supports a proposal is therefore not made public, preventing citizens from holding their representatives to account.

Over the last 60 years, the staff of these institutions have succeeded in enhancing their immunity to the application of the normal rules of proper corporate governance and performance measurement of the kind that apply anywhere else. They have managed to evade the sanctions for non-performance that apply in national public sectors, through layers of multilateral insulation. They have the perks and privileges of international public office while taking very few of the employment risks of personal or institutional non-performance that their peers are obliged to take in other forms of employment.

Reasserting the Parliamentary Sovereignty

The activities of the Bank in Bangladesh and other IFIs have remained devoid of scrutiny by the Parliament. A people-centred legislative power should question and debate technical aspects and political implications of the operations of the IFIs.

In stead of providing blanket immunity, a people-centred parliament would amend the International Financial Organisations Order, 1972. The general objectives of the Bill may include defending national sovereignty in the design and implementation of economic and development policies; strengthening Parliament and civil society in decision-making processes on IFI programmes and

A people-centred parliament would embark upon:

- formulation of a new legislation providing the parliament with the binding oversight powers including holding the Bangladesh representatives at the IFIs accountable to such committees;
- enactment of legislation to ensure all information relating to projects is made public in a timely manner, and
- Creating mechanisms to facilitate the participation of the people, especially affected communities, and civil society in the design of IFIs' country strategies, programmes and projects.
- Establishment of a mechanism ensuring that affected person(s) receive remedy.

The *IFI Watch -Bangladesh* was prepared at the Unnayan Onneshan/The Innovators by its *Policy Analysis Wing*, under the guidance of Rashed Al Mahnud Titumir, Department of Development Studies, University of Dhaka.



The Innovators/ Unnayan Onneshan, an independent not-for-profit registered trust, aims to contribute to innovation in development through research, advocacy, solidarity and action. The Innovators works in the search for solutions to endemic poverty, injustice, gender inequality and environmental degradation at the local, national and global levels. The philosophy and models of the Innovators focus on pluralistic, participatory and sustainable development and seek to challenge the narrow theoretical and policy approaches derived from unitary models of development

The Innovators/ Unnayan Onneshan, established in 2003, works as a network of concerned individuals at the local, national and global levels in the search for solutions to endemic poverty, injustice, gender inequality and environmental degradation. Development philosophy and models of the Innovators focus on pluralistic, participatory and sustainable and seek to challenge the narrow theoretical and policy approaches derived from unitary models of development.

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LIST OF PUBLICATIONS

POLICY ANALYSIS WING	
	IFI Watch-Bangladesh , a regular periodical published on behalf of <i>Bangladesh Working Group on International Financial and Trade Organisations</i> , contains fact-sheets, opinion pieces and summaries of research reports that scrutinise and monitor the activities of the World Bank, the IMF, the WTO, the ADB, with special focus on their roles in Bangladesh.
	Bangladesh Public Policy Watch , annual in nature, provides an <i>update</i> on the state of economy and society. The aim of the <i>Policy Watch</i> is to examine development intervention strategies by exposing its underlying paradigms and the impacts on the people, and to explore alternative approaches to public policy questions.
	Primary Education Policy Watch (PEPW) , review policies, plans and programmes in order to provide perspectives of the citizenry. The PEPW Report 2003, <i>Encountering Exclusion</i> , focused on fair share and equal access to primary education. The theme of the PEPW in current year is <i>gender equality in primary education</i> . Associated publications include public policy audits , which examine different government and donor interventions in education, with a view to advancing people's priorities and promoting alternatives with reality check.
	Policy (in) coherence in European Union Support to Developing Countries gauges the impact of EU policies on the people and economies of Bangladesh and focuses to what extent the EC's development themselves form a coherent approach, examining EU policies and their impact on the poor.
	MDG and PRSP Watch , our professional staff and external fellows have extensively written and presented papers on PRSPs at home and abroad.
ACTION FOR CHANGE WING	
	Listening to the People Living in Poverty: Oral Testimony of Dhaka Slum-Dwellers captures experiences and perceptions of urban slum-dwellers in Dhaka city to understand: (a) processes and factors leading to the situation; (b) perception on and experiences of transactional relationship between citizens and state; and (c) conditions viewed by them as necessary to move out of the situation.
–	Ten thematic perspective building tool kits written in open learning modular format will soon be made available.
<i>For other reports including the abovementioned ones visit our website at www.unnayan.org since most of these are downloadable.</i>	