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The American University in Cairo
School of Global Affairs and Public Policy

**THE FALL AND RISE OF BENGALI MUSLIM
CONSCIOUSNESS: CONCEPTUALISING THE IDENTITY OF
THE BANGLA UNIVERSAL**

A Thesis Submitted by
Habibur Rahman Khan
To the Department of Law

Spring 2023

**in partial fulfilment of the requirements for (the degree of
Master of Arts in International Human Rights Law and Justice)**

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Hani Sayed (Supervisor)
Associate Professor
Law Department
The American University in Cairo

Martina Rieker (First Reader)
Assistant Professor and Director
Institute for Gender and Women's Studies
The American University in Cairo

Jason Beckett (Second Reader)
Assistant Professor
Law Department
The American University in Cairo

Graduate Program
Director

Date

School Dean

Date

Hani Sayed

Dean: Dr.Noha El-Mikawy

DEDICATION

*For all the Bengali souls who fought and still fight for their place in this world,
preserving their land, language, culture and faith, no matter how their lives unfold.*

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All praises are to God, the most Merciful, who has graced me with this life to travel this Earth to a place that enabled me to reconnect with my roots and aid my journey of self-discovery. Whoever recognises himself, most certainly, recognises his Lord.

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ABSTRACT

The emergence of modern-nation states saw the end of the empirical era of exploitation and exercise of inherent racist tendencies towards the 'other'. However, the effect of that colonial system is still ever-present in the creation and governance of these newly independent states. While every new state aims to be 'modern', they adopt the international legal framework of the West as their own - a system they had initially wanted to escape. The concept of Muslim universality in the form of the *ummah* should have freed Pakistan from the shackles of its former colonial masters. Instead, this phenomenon was replaced by European universalism, aiding the subtle colonial expansion in a postcolonial world and further division in the Indian subcontinent. Bangladesh recently entered the 50th anniversary of its independence; Bangladeshis worldwide enshrine this historical significance through annual celebrations commemorating its saviours. Nevertheless, the question of belonging still lingers despite liberation from British, Indian, and Pakistani rule as they seek to heal from the colonial trauma which has caused various identity shifts concerning their 'Bengaliness' and 'Muslimness'. This thesis aims to problematise and provoke discussions around what the Bangladeshi identity currently represents and whether the idea of Bengali Muslim consciousness goes beyond the postcolonial framework of nationalism. Historically, European epistemology has played a significant role in the self-image a person or group creates for themselves. There is a need to revisit and dismantle those frameworks to, ultimately, understand and conceptualise the identity of the Bangla Universal.

KEY WORDS: *Bangladesh independence, identity-politics, Muslim ethno-nationalism, postcolonial states, international law, Bengali history, colonialism, Muslim ummah, genocide.*

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I – INTRODUCTION

As Bangladesh reaches just over its 50th anniversary since its formation as a nation-state, it is vital to revisit the factors that played a significant role in generating the Bangladeshi identity. The historical moment in 1971 and the events leading up to it since the Indian-Pakistani division is a testament to what the country represents – the liberation of a land, language, culture, and people. The identity and struggle to acquire it was etched into the history books of sovereignty through the very name of the country itself – Bangladesh: the land of the Bengali people or ‘Bangla World’. *Bangla Universal* is more apt here since it became a particularised universal to relate to the self-determination of its language and people. They were primarily considered an outsider in an attempt to universalise the Pakistani identity within the borders of the two territories. Like with any socio-political movement revolving around the establishment of identity, there are always deeper elements and influences which contribute toward the inevitable violence and hostile behaviour between the *self* and the *other* to create these social imaginaries or *imagined communities*.

Subjective readings of history can also allow the events that transpired before and after to become lost in its over-simplification or tactful neglect. Thus, it is essential to understand how the Bangladeshi struggle fits into the higher universal of maintaining the *ummah* in a postcolonial world. When international law is involved, it is not merely following the rules of a legal system; it is also, which Mignolo alludes to, an acceptance of what it currently represents and the historical context and philosophies that form this coloniality of power.¹ This piece will look at various inter-connected concepts behind ‘Bengaliness’ and ‘Muslimness’ and how the mechanics of colonialism enabled those concepts to become entangled in a battle of superiority and domination over the *other*. Ideas and phenomena such as universality, modernity, progress, nationalism, racism, and colonialism are all inherent within the character of international law and form rights to freedom and self-determination. As a result, these nuances open the door to explore essential questions: How did ‘Bengaliness’ impact Bangladesh’s creation and identity? With various interpretations – which will be discussed in detail – of the events surrounding Bangladeshi independence, is the Bangladeshi identity then a construct

¹ Linda Martín Alcoff, *Mignolo's Epistemology of Coloniality*, *New Centennial. Rev.* 81, 79-101 (2007)

through their liberation or a result of colonialism and international law? How did the concept of universality result in the Bangladeshis being subjugated to internal racism about their identity? Nevertheless, it is essential to begin by discussing some critical ideas surrounding identity while simultaneously demonstrating how it impacts international law and Bangladesh as a free, independent nation.

A. THE HISTORY & CONTEXT OF BANGLADESH: A SUMMARY

The logistics to accommodate the people during the partition of India and Pakistan that took place in 1947 meant that instead of there being one piece of land to form the state of Pakistan, there were two parts – West and East Pakistan – with India in between over a stretch of 2000 km.² Despite a so-called unified Pakistan – history will attest to the significant differences in treatment and the economic and socio-political inequalities – East Pakistan was made up of people with their own language, culture, and traditions specific to them. Thus, when Muhammad Ali Jinnah and other leaders of West Pakistan decided to initiate and legalise Urdu as the main or state-language for both parts of Pakistan, there were, unsurprisingly, grievances from the East, which later led to the ethnolinguistic movement for Bengali to also be recognised as a state language.³ The Bengali language, compared to the languages spoken in the West, such as Punjabi and Sindhi, was used by the majority of Pakistan – making up 55 percent of the population.⁴ In light of this context, it is pretty evident that Bengali being recognised as a state language would have no harm. Yet, the initial proposal was rejected by West Pakistan, which had all the ruling power. Thus, it set in motion the fight, not just for language, but to form their own ‘limited imagined community’.⁵

“Bengali nationalism again became stronger due to language conflict and began to supersede any possible religious similarities between the East and West.”⁶ You had one group of Muslims – the East – embracing their culture and language, and the other

² Siegfried O. Wolf, *The International Context of Bangladesh Liberation War*, Panorama, March 29, 2013 at A1.

³ *Id.*

⁴ Aamir Hussain, *Bangladesh: A Case Study in the Rise of the Nation-State*, Cornell Int’l A. Rev. 40, 39-45 (2013).

⁵ *Id.*

⁶ *Id.* at 41.

forcing their own language on the Bengalis under the guise of religion. Although there were clear sentiments regarding this, it did not stop West Pakistan from trying to enforce the language yet again. In 1952, the Muslim League declared that Urdu was now the official state language of Pakistan, with Bengali, once again, overlooked.⁷ In retribution for that decision, a protest by Dhaka University students on February 21, 1952, was conducted. This date will forever be remembered as ‘Martyr’s Day’ since, in retaliation to this protest, the police fired into the crowd, killing twenty-six and injuring another four hundred. A column was built at the university as a memorial for the fallen called the Shaheed Minar and a stark reminder of the Bengalis’ oppression under a West Pakistan government.⁸

Meanwhile, East Pakistan did have a political party to represent their people, the Awami League, formed in 1948. Being a minority in government, they planned to serve the Bengali people who were often overlooked, neglected, racially discriminated and treated as inferior and their mission and resolve only became stronger after numerous conflicts of language led to the martyrdom of innocent students and protesters. By December 1970, the move for independence was very much in the reckoning as the Awami League won the majority of the seats through a new voting system of proportional representation. However, in fear of losing East Pakistan, the procedure to convene the assembly was postponed to March the following year to give West Pakistan and their army time to occupy East Pakistan. On March 25, 1971, ‘Operation Searchlight’ saw the West Pakistan army open fire, kill numerous protesters, and arrest Sheikh Mujibur Rahman. East Pakistan declared itself independent on March 26 under the name of Bangladesh.⁹ The bloody beginning to their independence was only going to continue for another nine months under the notion of occupation, war and liberation.

With Bangladesh only representing around 10 percent of the army, they did not stand a chance to mount a defence. Instead, Bangladesh’s fight rested on the shoulders of the ‘freedom fighters’ mainly consisting of student and youth volunteers that were not military trained. With hardly any military resources available, Pakistan used their

⁷ *Id.*

⁸ *Id.* at 42.

⁹ *Id.* at 43.

military supremacy to suppress the will of the Bengali people through rape, murder and massacre – more accurately, genocide¹⁰. It was not until December 1971 that someone from the international community formally intervened to help Bangladesh. It so happened to be India. Irrespective of their motives, it was clear that the Indian intervention helped stop the massacre the Bangladeshi people were facing. On December 16, 1971, Pakistan surrendered, and it has since been hailed as the victory day in recognition of Bangladesh's freedom.¹¹ Nevertheless, the quest for independence came at a considerable price, with many massacred, raped and displaced. During the nine months, 3 million people were killed with an estimated 50,000 to 200,000 killed in 'Operation Searchlight' alone, between 200,000 and 400,000 women raped, 10 million Bengali refugees had to flee to India and up to 30 to 40 million citizens were internally displaced.¹²

B. LITERATURE REVIEW

The formation of Bangladesh and recognition of the Bengali people that made up was only achieved through international law in the postcolonial era. However, in doing so, Bangladesh inadvertently became complicit in the idea of nationalism being the only route to escape the trauma of colonialism and finally achieved the freedom of rights and equal status that their people had been denied while as a minority in East Pakistan.¹³ Thus, this Bengali movement, outwardly becomes somewhat of a postcolonial ideology about power and the mode of governance, suggesting that one can only exercise and enjoy rights as recognised citizens should they represent the homogenous image of a nation closely under the framework of a system postcolonial states tried to escape from.

¹⁰ In recognition of the Bangladesh Genocide, Genocide Watch declared “Conclusive research by internationally recognized genocide experts indicates that the nature, scale and organization of the Pakistani Military operations demonstrates planning and intentional design by the Pakistani junta leadership and military command to destroy a substantial part of the Bengali ethnic and national group and a substantial part of the Bengali Hindu religious group.”

¹¹ Hussain, *supra* note 2, at 44.

¹² Imtiaz Ahmed, *RECOGNISING THE 1971 BANGLADESH GENOCIDE: AN APPEAL FOR RENDERING JUSTICE* (2022), 4.

¹³ One may argue that we must acknowledge that the Bengali movement made a conscious decision to become a nation-state yet consciousness does not equate to freedom of choice – it is merely a means to an end. One can make the conscious decision to go to work even if it amounts to cheap labour because the circumstances dictate that the family needs to be provided. They have no choice in the matter.

Mohammad Shahabuddin¹⁴ argues that Bangladesh, as a nation and a state, is an ideology as they exercised their right to self-determination through international law, which was built on the foundation of power relations and governance. He opposes the postcolonial state on ideological grounds. Thus, Shahab asserts that the postcolonial state's ideology, whether as a state that has realised its right to self-determination or as an independent state with developmental goals, is a form of political ideology. To prove his argument, he provides two ways through which the ideology materialises – and since Bangladesh adopted that ideology, it became the postcolonial ‘national’ state and the postcolonial ‘liberal’ state.¹⁵ Though the argument is valid, the assessment does not provide the greater context in which Bangladesh politicised this postcolonial ideology to form its own country after having agreed to become a part of a so-called Pakistani Muslim universal. His robust agenda against colonialism and the aftermath of the postcolonial era is evident. Yet, his sole fixation on the ideology causes him to leave out the traumas which essentially caused the Bangladeshis to be stuck between their ‘Bengaliness’ and ‘Muslimness’.

This is not to say that he is wrong to focus on the ideology. However, neglecting critical historical events in this narrative that has significant impacts on the people and the generations to come allows for the trauma experienced to be internalised and, consequently, becomes generational. It plays a significant role in how former minority groups treat minorities when they become the majority and, more importantly, when they are in a position of power and rule. One only needs to look at the attitude of the Bangladeshi government towards Rohingya Muslim refugees to see they are subconsciously re-enacting colonial trauma despite going through their own experience as a Muslim minority with limited or no rights at all. The colonialists used intellectualism to strip away the ‘humanness’ of their colonial subjects; we must be careful not to do the same when analysing why Bangladesh became a nation-state.

While Bangladesh did take a step towards self-determination themselves, giving the impression that they were in control of what they were doing, they were

¹⁴ He is an international legal historian of Bangladeshi origin who has written extensively on Bangladesh concerning international law.

¹⁵ Mohammad Shahabuddin, *The Ideology of the Postcolonial State in Indian Constituent Assembly Debates (1946-50)*, Dhaka L.J., 266-276 (2021).

somewhat coerced in voicing their existence through such ideologies. While it is easy to wish for the entire doctrine of postcolonial states to be eliminated, this is sadly the reality of the world we live in, in which, despite the pre-existing ‘community’ of the Bengali Muslims, they were only recognised as a nation-state within the international legal system. This lack of recognition was primarily responsible for implementing the postcolonial state ideology. The establishment of Bangladesh would have been unnecessary had they been treated as equal Muslims by West Pakistan. Thus, religious minorities being addressed in the early stages becomes an important dimension before its national inception. Consequently, they had to become a component of the ideology of the postcolonial state. So, while Shahab may describe the steps taken to create Bangladesh in what is a postcolonial ideology, I put those events into a greater context that allows the essential thing to be highlighted: their Muslim identity and how, under the circumstances, it was necessary to create their own universal to survive and, subsequently, a unique case of Muslim ethno-nationalism.

Shahab’s theory on the formation of Bangladesh and consequently the identity of the people who identify themselves as ‘Bangladeshi’ falls under a more extensive discussion of how Bengali Muslim imagined themselves. Benedict Anderson’s view on nationality or nationalism is that these concepts do not simply represent a community but also describe what he terms ‘cultural artefacts’.¹⁶ He explains a context under which a community became a nation-state. To utterly understand them, the history and the events leading to the nature of their existence must be considered. ‘Nationalism is not the awakening of nations to self-consciousness: it invents nations where they do not exist.’¹⁷ So, while this is in line with what Shahab is saying, that Bangladesh is a postcolonial state – a state created where it should not exist, it also does allude to what Shahab is not saying, which is that the Bengali Muslims did not create this state because they became conscious of who they were and felt the need to have their own space, they already knew who they were. They made it because they were not given the freedom and space to be who they were. That lack of freedom is

¹⁶ Benedict Anderson, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (2016), 4.

¹⁷ *Id.* at 6.

crucially missed out in this particular discussion of Bangladesh which I intend to provide.

The Bengali Muslims, much like their Pakistani counterparts, had imagined themselves free from the religious discrimination they were facing while they were part of India. Bengalis were very much at the forefront of leading this charge to create an Islamic republic where Muslims could freely practice their religion. However, what they did not imagine was to be treated unequally because of their 'Bengaliness'. The concept of a Muslim nation was conceived as horizontal, yet the Bangladeshis found it vertical and hierarchical, with 'Pakistanis' at the top of the societal food chain. While the concept of Pakistan may have had 'horizontal' and religious intentions to begin with in the form of an *ummah*, because they had adopted a postcolonial ideology to have that freedom, they abandoned the Muslim concept of universality and adopted the European model containing colonial traits of treating minorities differently and unequally. Subsequently, Pakistan re-enacted the brutality they went through on Bengali Muslims despite sharing religious affiliations that enabled the state of 'Muslim' Pakistan to be formed. Thus, Pakistan's trauma while separating from India can be seen being replicated when East Pakistan decided to become Bangladesh. It is not far-fetched to say that the Bangladeshi government has similar tendencies towards minorities in Bangladesh today. We are in a continuous cycle of trauma from when the British invaded India.

Interestingly, Shahab also makes the following statement when referring to adopting postcolonial ideology: "Postcolonial states are more vulnerable to this phenomenon for a variety of reasons, such as the continuation of the colonial political order, the class character of the economic organisation, and the hegemony of nation-building projects."¹⁸ To draw a somewhat similar parallel, Mahmood Mamdani's research examines how African countries were governed throughout the colonial period and how this affected the development of those countries after the colonial period. With his legal background, he focuses on the increased role of ethnic groups in postcolonial Africa, which ultimately resulted in the genocide in Rwanda. This can be attributed to colonial rulers in the contemporary African scene and the legacy of how they governed

¹⁸ Shahabuddin, *supra* note 13, at 266.

and evolved, particularly given the legal perspective.¹⁹ The project will undoubtedly add further weight to his arguments by providing Bangladesh as another case study and illustrating how international law enabled another genocide to occur, this time in the Bangladeshi context. Thus, the significance of Bangladeshi history should also be acknowledged. We find that in Neilesh Bose's *Purba Pakistan Zindabad: Bengali Visions of Pakistan, 1940-1947* that although many Muslim-populated regions shared the vision of Pakistan in India, the contributions of Bengali Muslim intellectuals to the struggle to conceptualise Pakistan – a land for all Muslims – in their language using traditional Bengali idioms appear to have been neglected in any existing nationalist historiography, whether it is Indian, Pakistani, or Bangladeshi.²⁰

C. RESEARCH QUESTIONS & AIMS

The primary goal of this thesis is to problematise and provoke a sense of self-consciousness surrounding Bangladeshi identity and allow others to rethink and engage with conceptualising the Bangla Universal. Notions, which were primarily responsible for the events leading up to the formation of Bangladesh, existed a long time ago, long before India and Pakistan gained their independence. We have a colonial history rooted in Europe but achieving freedom does not always imply gaining our independence. Even today, the notions once used to oppress ethnic minorities still exist. This thesis demonstrates how the international legal framework was manipulated to facilitate Bangladesh's genocidal trauma yet also how Bangladesh used it to essentially salvage something from their previous Bengali Muslim identity. Freedom begins with the decision to be free of Pakistan's atrocities of one's own volition. As a result, we assert exclusive ownership of the Bangladeshi identity, though this is inaccurate. There is a larger story about the struggle between conceptions of universality which led to racism being justified without realising that they were executing power of coloniality to Bangladeshi identity. Pakistan may have committed these heinous atrocities on their own, but they were essentially reliving the agony of their separation from India at the

¹⁹ Mahmood Mamdani, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* (2018).

²⁰ Neilesh Bose, *Purba Pakistan Zindabad: Bengali Visions of Pakistan, 1940–1947*, *Modern Asian Stud.*, 1-36 (2013).

time of their crimes. They began to embrace European universalism, denying Bengali Muslims the right to speak in their language, live by their culture, and have access to resources. After all, if Pakistan was established on the presumption of being a Muslim state, what happened to the concept of *ummah*? When Bengali Muslims were denied recognition or viewed as inferior and unequal to Pakistani Muslims, what was the cause of this discrimination?

As a result, the fight is far more significant than the war in 1971, the linguistic war in 1952, or even the partition between Pakistan and India during the division of 1947. Both Bengalis and non-Bengalis must understand the larger story to comprehend the true meaning of Bangladeshi identity. While Bangladeshis commemorated the 50th-anniversary last year, how many international community members learned about the extent of these struggles? Most Pakistanis, in general, do not express regret for or acknowledge the genocide because they believe that the past has been erased from their consciousness. While the establishment of Bangladesh in 1971 was a reaction to the homicidal practices of the Pakistani ruling elite, it carries the risk of the same happening within Bangladesh. That was the only way to bring the conflict to a close because once one begins establishing countries based on race, one automatically includes the possibility of exclusion and genocide as a possibility in the equation. As a result, it is possible to interpret the research as stating that the establishment of Bangladesh was a political mistake.

However, without the foundations in place to understand trauma and, consequently, heal, one reproduces the problem of inequality rather than addressing the underlying causes when attempting to solve the problem. When considering whether or not to replicate certain practices, one only needs to look at how the Bangladeshi government treats minorities and Rohingya Muslim refugees, despite being in a comparable situation. According to Shahid:

The government of Bangladesh continues to squander international goodwill by denying refugees access to education and other basic rights. Bangladesh has not signed multilateral agreements recognising the rights and protections of international refugees, depriving the Rohingya of formal refugee status,

stymying efforts to integrate the population and limiting freedom of movement beyond temporary camps.²¹

We do not want to limit our understanding of the true nature of events contributing to Bangladesh's struggle; investigating the causes of its inception allows one to explore and comprehend the concept of the self and the other concerning the multiples changes the Bangladeshi identity went through and reconnect with elements that make up who they are as a community.

In the case of Bangladesh, the struggles led to replicating a traumatic response by forming a state through a colonial network of law and ideology to essentially survive. Part of reliving that trauma could also stem from the injustice they felt. So, while Shahab discusses their efforts, there is a need to revisit them, understand them, and let go of the trauma that has almost become a part of how Bangladeshis identify themselves. This project aims to bring about healing and a sense of justice to allow the people affected to let go, move on and stop the colonial cycle of manipulation, exploitation and mistreatment of minorities. This research looks to explore the shifts of identity between 'Bengaliness' and 'Muslimness' during the precolonial, colonial and postcolonial periods and how that impacted the formation of Bangladesh as a nation state.

D. METHODOLOGY

Using the self and other theory – “that the existence of an ‘other’, a not-self, allows the possibility or recognition of a self”²² – raises the question and argument that the research may be employing the same liberal colonial framework concerning the self and the other. To put it differently, a significant obstacle to using the self and other concepts associated with ethnicity in international law, for instance, is the desire to live within a universality in which particulars no longer exist because the hegemon or those in power can exploit the particulars of certain minorities and groups. By choosing to abolish all of these distinctions, on the other hand, we risk jeopardising the current

²¹ Rudabeh Shahid, *ASSESSING THE TREATMENT OF ROHINGYA REFUGEES IN BANGLADESH* (2019), 1.

²² Sami Schalk, *Self, Other and Other-Self: Going Beyond the Self/Other Binary in Contemporary Consciousness*, *J. Comp. Res in Anthropology & Sociology*, 197 (2011).

privileges that minorities enjoy. Although all of these points are valid, because of the inherent conflict between them, it is critical to consider these particularities and universalities and work hard to present a comprehensive picture and understanding of the events in the world. Because there is no such thing as an objective understanding of definitions, they will always be a matter of subjectivity. Thus, in the same way that the international legal system can be interpreted, ideas in the social sciences can be interpreted in light of the events in Bangladesh.

These social classifications are frequently used in decolonial ideologies to empower rather than suspend people's rights. A particular vision of oneself, one's behaviour, and one's being cannot be avoided, and one's ability to resist this is limited. The battle for Bangladesh was far more extensive than we perceive it to be, and thus, Bangladesh's liberation is rooted much deeper beyond the structures we identify people in. It is fundamental to understand the realities of history through the eyes of the 'other' for the significance of independence to be fully appreciated. Thus, in light of the above, using the 'self and other' as a framework allows us to conceptualise the identity born out of the consequences of social, political and legal conceptions and the institutional structures that enable these concepts to manifest. The thesis will first lay the foundations of these concepts, then demonstrate how these concepts manifested, leading to the creation of Bangladesh, while engaging with how the clash of Muslim and European universalities contributed to the identity Bangladeshis embrace today.

E. DISSERTATION OUTLINE

This study divides into three chapters reflecting on integral parts that contribute to a holistic understanding of the formation of Bangladesh as a nation-state and how the identity in light of Muslim universality goes beyond the colonial framework of international law to provide a deeper understanding of the Bangla Universal.

The first chapter, *Conceptualising Identity*, acts as a theoretical foundation to fully embrace the story of the Bangla Universal. The chapter begins by introducing the various concepts of the social identity theory and the categorisations produced through the 'self and other' framework, both of social and political relevance, followed by the implications of such social constructs in a postcolonial context. The chapter ends with

a discussion on how the Bengali identity is much more than the formation of Bangladesh by engaging debates in different disciplines about the nature of identity; and attempts to advance a conception of identity through indigeneity of the Bengali Muslim prior and during British India rule.

The second chapter, *The Universal Difference*, aims to then demonstrate the difference between Muslim and European universality and how colonial ideologies are still present within the institutional structure that former colonies adopted in the postcolonial era when determining their self-image. The chapter begins by discussing the concept of ummah, the concept of universality under the Eurocentric epistemological framework, followed by exploring its effects on Pakistan as a postcolonial state and the treatment of Bengali Muslims. The chapter ends by exploring how the Muslim concept of universalism, which was the framework that Pakistan had initially intended to adopt to engage with the colonial framework, essentially was replaced causing the ummah to fall into further division when the Muslims in Bengal adopted the Pakistani Muslim universal.

In the closing chapter, *Constructing Identity through the Other?* aims to highlight how international law, was also a primary cause through its indeterminate laws in legalising Western social conception of the 'other' which enabled genocide, profoundly impacting the formation of Bangladeshi identity. The chapter begins by discussing the various interpretations of the Bangladeshi fight for freedom, followed by highlighting a much-neglected understanding of its formation in the form of genocide. The chapter ends by exploring how this cultural genocide ensured there was an identity shift for the Bengalis to form the Bangla Universal and what its contemporary identity looks like and what became of their Bengaliness and Muslimness after living through three colonial periods of rule.

II – CONCEPTUALISING IDENTITY

There are many components that a person is subjected to when trying to identify who they are. Not only are they subjected to the image that they themselves have created, but they are also subjected to the image others see them as.²³ The formulation of the images, be it historical, cultural, social, political or legal, all begins with the mindset of the one formulating this idea of who one is. Thus, to understand an individual or a nation whether, through the eyes of the ‘self or the ‘other’ and how they came into existence, it is essential first to conceptualise and understand the philosophies and ideas that led to the political and legal conception and the presence of an individual and nation. Every action is a manifestation of an initial statement of the idea that influences an individual or group to act in a particular way to acquire the peace that comes with knowing who one is and practising that self-conception. Bangladesh is no different. The political relevance and manifestation of the Bengali people as a nation-state was not a mere occurrence as part of the remaking of the new world order but as a consequence of a continuance of the colonial world order which was used to maintain their Muslimness.

This chapter will highlight and build the theoretical framework surrounding identity as a foundation for understanding the Bangladeshi identity and the narratives surrounding the formation of such a significant event in history. Having this foundation will help create an intellectual environment where a person can develop the consciousness of the ideas and events born out of the Bengali Muslim consciousness. To understand consciousness, one must have the skills and understanding of what that is. Thus, this chapter will explore identity through the ‘self and other’ framework on a social level before discussing how these social theories take political and legal forms. However, it is essential to understand how this political relevance is juxtaposed with the colonial philosophies present within the legal framework that allowed Bangladesh to become a ‘postcolonial’ state. The chapter will then discuss the idea of indigeneity of the Bengal to explain how the identity of their ‘Muslimness’ and ‘Bengaliness’ played a significant role in describing who they are today.

²³ Oded Balaban, *SUBJECT AND CONSCIOUSNESS: A PHILOSOPHICAL INQUIRY INTO SELF-CONSCIOUSNESS* (1989), 67.

A. WHAT IS IDENTITY? THE 'SELF & THE OTHER'

According to Weigert and his colleagues, the question of identity is a multi-layered phenomenon since a person's understanding and sense of who they are is always open to change as many micro identities contribute to the making of the self.²⁴ Identity plays a significant role in how one is perceived in society. Thus, finding the reason for self-belonging in a world governed by social constructs and power relations becomes somewhat of a complexity as we begin to imagine our community within those constraints.²⁵ As part of understanding the more robust framework for social identity theory, Tajfel and Turner define social categorisation primarily referring to it as the idea of self-image and the process of people classifying individuals into specific groups of belonging within a society based on similar characteristics.²⁶ While this may be a self-exercise to see where an individual fits in in the community, it also has the power for the categorisation to be made on your behalf by others in society. It has the potential to establish significant barriers between one another psychologically. Hence, social categories also serve as an essential identity function, shaping the person's sense of belonging and connection to – or alienation from – others.²⁷ Thus the 'other' is a significant element of a person's standing in society, a signifier that may play such a minor role in who you, in essence, are as a person from a personal point of view yet have an enormous impact on your social perception. This reality then affects a person's identity and the idea of belonging in society.

Internal questioning of identity becomes common because others constantly question theirs based on external perceptions. The social differentiation gradually becomes internalised to the extent that one's relation with other groups in society dictates how they perceive themselves. For instance, Ahmed says that “the skin performs that peculiar destabilising logic, calling into question the exclusion of the

²⁴ Weigert, A. J., Teitge, J. S., & Teitge, D. W., *SOCIETY AND IDENTITY: TOWARD A SOCIOLOGICAL PSYCHOLOGY* (1986), 27.

²⁵ James E. Cote & Charles G. Levine, *IDENTITY, FORMATION, AGENCY, AND CULTURE: A SOCIAL PSYCHOLOGICAL SYNTHESIS* (2002), 44.

²⁶ Henri Tajfel & John C. Turner, *The Social Identity Theory of Intergroup Behavior* in Stephen Worchel & William G. Austin, Eds., *PSYCHOLOGY OF INTERGROUP RELATION*, 7-24 (1986)

²⁷ Galen V. Bodenhausen, Sonia K. Kang, & Destiny Peery, *Social Categorization and the Perception of Social Groups* in Susan T. Fiske & C. Neil Macrae (ed.), *THE SAGE HANDBOOK OF SOCIAL COGNITION* (2012)

other from the subject and risking the subject becoming (or falling into) the other.”²⁸ In Tajfel and Turner’s social identity theory, the principle of self-concept plays a significant role in the identity issues an individual may face when they begin to internalise the group membership.²⁹ The West, for instance, is the standard and level of aspiration that the ‘other’ must reach to have any chance in society – an illusion which many of the ‘others’, unfortunately, begin to believe falsely and fetish over. Thus, to become familiar with – in this instance, the homogenous white community – the ‘other’ starts to aspire and conceptualise themselves as the ‘self’ that is imposing themselves on the ‘other’.³⁰ This has two possible outcomes; either they struggle to balance their identity to the extent where they find themselves trapped in the middle of becoming a stranger to the familiar ‘other’ and remaining a stranger to the ‘self’ - this leads to an internal crisis of belonging since they are conflicted in who they are, or they become assimilated and lose their identity utterly such that they believe that they are now the ‘self’ and begin to inflict the violence and discrimination they experienced on to the ‘other’ and impose the ideals of the ‘self’ onto them. This creates another outcome; one may not relate to any of the categorisations to claim their autonomy. Their identity crisis leads them to identify themselves as their own group – the *other* to the ‘other’. “The emergence of Bangladesh as a sovereign nation-state represented the tragic transition from sameness to else (less) ness that has invariably left deeper psychological wounds than the contradictions defining otherness.”³¹

On what grounds should the Bangladeshi identity be recognised for still remains unclear since ethnicity, language and religion are all deeply intertwined.³² However, defining and understanding the variants that contribute to one’s identity can help individuals and groups decipher how they desire to be recognised in any circumstance without one element of their identity negating the other. The paradox of identity allows

²⁸ Sara Ahmed, *STRANGE ENCOUNTERS: EMBODIED OTHERS IN POST-COLONIALITY* (2000), 45.

²⁹ Tajfel & Turner, *supra* note 24.

³⁰ In other words, the *colonised* begin to adopt the *coloniser* culture and practises, gradually becoming ‘white’ inside.

³¹ Ayesha Jalal, *SELF AND SOVEREIGNTY: INDIVIDUAL AND COMMUNITY IN SOUTH ASIAN ISLAM SINCE 1850* (2000), 570.

³² James M. Wilce Jr, *The Kalimah in the Kaleidophone: Ranges of Multivocality in Bangladeshi Muslim's Discourses*, 237.

for one to be recognised under the social framework of the ‘self’ and the ‘other’. How that translates into reality and whether more than one particular element of one’s identity can be recognised and accepted is the consequence of self and social consciousness. The idea of consciousness can be manipulated and filtered to meet the demands of the constructs we create, whether ideological, social or political.³³ For instance, post 1971, the Bangladeshi identity has been switching between Bengali nationalism-secularism and Bangladeshi Muslim-nationalism with the latter as a response to the former.³⁴ Nevertheless, this consciousness becomes more complex when belonging in society is explored and whether it assimilates to the heteronomy or changes it due to the exploitation and discrimination constructed minorities face in a dominant culture or environment.

The process to become an anticolonial movement while establishing one’s own identity was complex in the case of the Bengal where its people veered between emphasising the self as a Bengali and a Muslim.³⁵ The choice to belong no longer becomes an individual and personal quest, but a collective effort since humans are social beings and imagine themselves in a community. While the Bangladeshi identity, in its essence, is pre-colonial, these concepts provide the foundation for the legal conception of identity and becoming politically relevant. Bangladesh's rise gained support from a growing Bengali ethnic consciousness. The Muslims of East Pakistan felt deprived as Bengali Muslims compared to the non-Bengali Muslim counterparts, who used religion to suppress Bengali aspirations. The real battle in both cases was for economic independence. However, the formation of new ideologies and identities mobilised popular support and offered legitimacy for the battle that resulted in the emergence of new imagined nations. In both situations, such reformulations resulted in a shaky unity.³⁶

³³ Marilyn Mandala Schlitz, Cassandra Vieten & Elizabeth M. Miller, *Worldview Transformation and the Development of Social Consciousness*, J. Consciousness Stud. (2010).

³⁴ Akhand Akhtar Hossain, *Islamic Resurgence In Bangladesh’s Culture and Politics: Origins, Dynamics And Implications*, 167

³⁵ Firdous Azim, Perveen Hasan, *Language, literature, education and community: The Bengali Muslim woman in the early twentieth century*, 105

³⁶ Ian Talbot & Gurharpal Singh, *REGION AND PARTITION: BENGAL, PUNJAB AND THE PARTITION OF THE SUBCONTINENT* (2001), 350.

B. BECOMING RELEVANT IN THE POLITICAL PLAIN

Due to the diversity and complex nature of identity³⁷, these theoretical ideas of identity provide a foundation for the political and legal conception of identity as social groups develop from the sedentary lifestyle to a more urban and ‘civilised’ standard of living.³⁸ ³⁹ Thus, it is unsurprising for such identification to be translated into something legal and politicised as part of the social construct of one’s identity. Drawing on the social concept of self-categorization, self-determination acts on the same parameters under which a minority group can navigate the international plain as a recognised entity without assimilating to the homogenous nation they were expected to represent.⁴⁰ ⁴¹ The legal concept of self-determination embodies the idea of national identity, and its realisation is related to becoming a sovereign state without which one cannot become politically relevant. Thus, political relevance becomes an integral part of ‘identity’. While we can agree with Gellner and Hobsbawm that nationalists seek congruence between national and state bounds, this is frequently illusory. A state has a defined territory and is managed by a system of legal or political institutions that keep order. On the other hand, a nation may lack such formal structures yet share a shared history, language, or other cultural markers of identification, symbolic or otherwise, despite being geographically separated.⁴²

³⁷ Diversity and complexity are actually fundamental to its essence because it demonstrates flexibility and interchangeability in one’s identity; a reflection of the everchanging nature of the human self. If by essence it means to be fixed, then one cannot ever become politically relevant which then leads to ambiguity in a world of postcolonial states.

³⁸ Ibn Khaldun, *THE MUQADDIMAH*

³⁹ The inclusion of Ibn Khaldun may come as a surprise, yet it coming as a surprise, itself, is a testament to what this paper highlights – that Western philosophy is revered to be superior to those of the East when in reality it provides value to the essence of identity taking political relevance than any other philosopher could. While Ibn Khaldun’s focus was on the dichotomy between city and the outskirts, by contextualising his analysis of Bedouins embracing the sedentary lifestyle, it tells us how civilisations and their understanding of who they are fell after becoming ‘civilised’ and ‘politically relevant’ through the postcolonial network. The social dynamic between the desert and the urban is akin to the nations before they became nation-states; the barbarians and the civilised.

⁴⁰ Adina Preda, *The Principle of Self-Determination and National Minorities*, *Dialectical Anthropology* 27, 2003 at 208.

⁴¹ Though the author is engaging with the fact that there are legal articulations of what the principle of self-determination means; there are different ways to actualise that principle, which do not necessarily require the existence of a state, in the case of Bangladesh, their self-determination preceded their political identity as a nation-state.

⁴² Talbot & Singh, *supra* note 30 at 349.

However, in the greater context of this political plain, the concept of nationalism and the formation of national states is supposedly an escape from a colonial era – a way to find solidarity with fellow colonial subjects and access to rights and power deprived during the colonial period. The relationship between an individual and a group lies with the interaction one has with the other, which may or may not define someone as a person and grant a sense of belonging to something. “The nationalist campaign had to work through prevalent semi-conscious perceptions of self-identification, often based on primordial attachments among people, and transform those into a notion of collective identity.”⁴³ ‘Community’ then offers individuals the opportunity to express themselves as part of a particularised universal social group through representation or as a singular individual through self-affirmation appearing to reflect unity.⁴⁴ While this phenomenon exists, it is not necessarily the individual that dominates; it is the thing that a person identifies with since the absence of that ‘identifier’ results in a lack of representation or affirmation for any particular individual. Thus, the unity is not reflected in the people – who are all individuals – but in the concept or identifier, so the real question is that when a person represents a nation, are they representing the people that reside there or the cause which united them in the same place, to begin with?

Thus, in the context of exploring manifestations of Muslim consciousness, assessments of Islamic political movements have been influenced by two basic views of Islam. One is a consensus-based or subjectivist understanding of Islam, which is a set of views about society and governance shared by Muslim activists. This idea, along with the activists' emotional devotion to the movement's purpose, is believed to generate a powerful socio-political force. The unity and firmness of the Islamic movement are therefore internal; it is part of Islam's psychological purpose in generating a strong bond of attachments among Muslims. This paradigm, however, becomes difficult in a scenario like the Revolution, where multiple political organisations with opposing views on Islam are participating.⁴⁵ Another viewpoint saw

⁴³ Mohammad Shahabuddin, *MINORITIES AND THE MAKING OF POSTCOLONIAL STATES IN INTERNATIONAL LAW* (2021), 26.

⁴⁴ Dina Khorasane, *'Resistance as Creation': A New Sociability in Argentina*, *Development in Practice*, 2008 at 769.

⁴⁵ Mansoor Moaddel, *The Study of Islamic Culture and Politics: An Overview and Assessment*, 379.

Islam as a language, a collection of common intellectual frameworks, rituals, and symbols. According to this viewpoint, Islam has an objective existence in the language derived from generic Islamic principles but altered by the unique socio-political environment, as well as in a variety of ritualistic activities and metaphorical behaviours found in Islamic organisations. Political Islam, far from being a set of common ideas, became a powerful revolutionary force precisely because it meant diverse things to different individuals. External influences such as the ideology of the secular state influence Islamic political unity.⁴⁶

Thus, the concept of self-affirmation negating external influences is also an illusion where people believe they make their own decisions. Despite being physically free, the formerly colonised are psychologically enslaved to their colonial masters since they relied on international law for a sense of freedom and recognition. “Though freed, the slave retains a slave consciousness precisely because this freedom is not a consequence of a liberation struggle but a result of being acted upon by the master.”⁴⁷ Such behaviour has been internalised, resulting in a terrible cycle of accepting one's inferiority. This has resulted in formerly colonised countries obsessing over becoming ‘politically relevant’ as a nation-state according to Western ideals — not because they are modern and progressive, but because the colonised have been brainwashed and trained to believe so. While there may be an element of a person actively deciding on themselves without a leader, it is still part of the human condition to mirror those we have come to know or interact with. Thus, there are external influences, but a person is more aware than blindly following or putting their reliance and trust into someone else. Self-affirmation itself is made of two components: The ‘self’, which implies an inward reference and the ‘affirmation’, which means an outward concern. Despite being conceptually distinct and opposites at face value, both are part of the same process to the extent that they would appear false if treated separately.⁴⁸ Thus, the affirmation of something does not come from within. Instead, what they affirm comes from an

⁴⁶ *Id.*

⁴⁷ Mabogo Percy More, FANON AND THE LAND QUESTION IN (POST)APARTHEID SOUTH AFRICA IN NIGEL C. GIBSON (ED.) LIVING FANON: GLOBAL PERSPECTIVES (2011), 175.

⁴⁸ Wendell Kisner, *The Concrete Universal in Žižek and Hegel*, Int'l J. of Žižek Stud., 20-21, 1-38 (2008).

external source that shapes how they think or act. Essentially, everyone establishes a representation of something, whether through themselves or a collective.

Yet the very framework under which this legal conception of self-determination materialises also ensures that the idea consequently embodies the indeterminacy of the international legal system. While international law claims that each group has a right to self-determination, the countries which supposedly abide by that rule – which is all states since you cannot be a sovereign without accepting international law as the legal standard – do not aspire for everyone to assert self-determination and reach the same level of international standard. Thus, an apparent contradiction between the law and the legal actors or founders of the system suggests that they are more invested in preserving the status quo for their benefit and gain. The current legal system does not cater to the demands of national, religious, cultural and linguistic minorities as it refrains from granting them rights of internal and external self-determination while simultaneously providing no feasible alternative.⁴⁹ While international law is supposedly the epitome of postcoloniality – that colonialism has ended, and the legal system allows for the colonised to essentially move on – “the rule on the external self-determination of colonial peoples does not include any freedom of choice for ethnic groups living in a colonial country; only the colonial people as a whole can opt for independence or association or integration with another country.”⁵⁰ The irony and hypocrisy within those sovereigns who champion such self-identification in the international legal plain is evident when one considers how they are responsible for the literal drawing of lines and boundaries on the modern world maps we see today. Thus, self-determination is another means to articulate the same division and domination prominent during the colonial era. It is simply a continuation of exploitation.

1. STATING THE NATION IN THE POSTCOLONIAL ERA

There were two approaches to how one could become a postcolonial state: the national and the liberal. In both cases, the objective is to become a homogenous nation, yet one relies on assimilation, and the other relies on fragmentation. “The term “fragmentation”

⁴⁹ Antonio Cassese, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* (1995), 71.

⁵⁰ *Id.* at 331.

suggests a passing or lost unity among the emerging fragments, and it is generally approached as a problem to be managed.⁵¹ M.R. Masani, in 1946, said the following concerning his vision for a national state:

The conception of a nation does not permit the existence of perpetual or permanent minorities. Either the nation absorbs these minorities, or it must break up in the course of time. Therefore, while welcoming the clause in this Objective Resolution which promises adequate safeguards for the minorities, I would say that it is a good thing that we have these legal and constitutional safeguards, but that ultimately no legal safeguard can protect small minorities from the overwhelming domination of big masses unless on both sides an effort is made to get closer and become one corporate nation, a homogeneous nation.⁵²

In this scenario, the minorities become part of the homogenous and dominant nation. They do not seek a new nationality per se, but they seek the rights of protection and safeguard from the country they are hoping to assimilate with. However, just like any other dominating ideology, it neglects the minorities and opens up possibilities for state impunity without any repercussions. The situation leads to various groups becoming marginalised.⁵³ Events like this led to the ‘postcolonial liberal state’ where minorities break away from the homogenous nation to become a homogenous nation of their own. However, that model was also problematic for religious minorities; for instance, they would have to become secular to be recognised as a state. “The minorities have been guaranteed freedom of religion and freedom to develop their culture, language and script, but in matters of political rights, there is no discrimination either in their favour or against them. The minorities, therefore, should have nothing to fear or be apprehensive about their future. In that sense, we have established what is popularly known as a secular State.”⁵⁴ So they were given the freedom of religion but simultaneously could not advocate being a religious state. In both instances, the identity of minority groups is lost and reinvented. This was the case for Bangladesh. They became part of a Pakistani ‘National’ state, later becoming a Bangladeshi secular

⁵¹ Alejandro Lorite Escorihuela, *Humanitarian Law and Human Rights Law: The Politics of Distinction*, Michigan J. Int'l, 302 (2011).

⁵² Shahabuddin, *supra* note 13 at 267.

⁵³ *Id.* at 271.

⁵⁴ *Id.* at 273.

‘Liberal’ state. They were denied their rights as a minority and had to settle for becoming a secular state despite facing religious persecution.

Returning to the framework of the ‘self’ and the ‘other’, the emergence of this phenomenon creates a nation’s self-image. With resistance against colonial powers on the rise, and the urge to become independent spreading among the colonies, people in regions like Asia, Africa, and the Middle East mobilised for freedom, with some even taking up arms.⁵⁵ Many of the so-called sovereign states began to realise by 1957 that their plans and attempts to deviate from their imperialistic nature due to the Cold War left them vulnerable to communist subversion. Thus, in their understanding, the best way to ‘save’ Africa from communism was granting independence to ‘co-operative nationalists.’⁵⁶ Thus, this illustrates that ‘independence’ is not the freedom one may want to understand it to be. It is a means for the Western colonial imperialists to continue serving their best interests by hiding under the flag of ‘saving’ Africa and the false portrayal of people escaping from colonial rule. Furthermore, independence is to be ‘granted’, showing these sovereign states’ control and power over their former colonies. However, the struggle to attain independence is also based on the condition of being ‘cooperative nationalists’⁵⁷.

India, for instance, was regarded as an economic superpower before the British empirical era owning 23 percent of the world’s economy, equalling the economy of the whole of Europe put together.⁵⁸ After the colonial period, it was feared that India could restore itself to their former glory despite being exploited and looted of its riches. Thus, to prevent that, the formation of the Islamic Republic of Pakistan proved to be effective because if the colonial powers could no longer actively conquer the lands, then ensuring that these aggrieved people would never have a chance to regroup and come back stronger, dividing land and creating this powerful sense and desire for their own identity – after having annihilated their previous identity under colonial rule – goes a long way to maintaining superiority over their former colonies. Britain had exacerbated

⁵⁵ Sundhya Pahuja, *DECOLONISING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY* (2011), 44.

⁵⁶ *Id.* at 44-45.

⁵⁷ The term *co-operative nationalists* could be understood to be denoting the idea that people are of acceptance of the notion that concerns creating borders and dividing communities that had historically and culturally lived side by side.

⁵⁸ Shashi Tharoor, *INGLORIOUS EMPIRE: WHAT THE BRITISH DID TO INDIA* (2017), 2.

divides between the Hindu majority and the Muslim minority because ‘divide and rule’ is one of the most effective methods of retaining control; they had effectively created the conditions for ethnic violence to occur, resulting in the loss of over 1 million lives.⁵⁹

While it may seem that the construction of Pakistan was solely based on creating a state for Muslims where they could practise their faith openly without persecution from the Hindu majority population and government, the British also saw this as a method to divide them and keep them disunited. The British were not only instrumental in reinscribing the caste system to their colonial benefit but also in fermenting hostility between Muslims and Hindus, which resulted in the catastrophic partition of India and Pakistan along religious lines.⁶⁰ However, the effects of this ‘independence’ and ‘nationalism’ did not stop there. Instead, the discrimination that the Muslims had faced at the hands of the Hindus was projected onto the Bengali Muslims of East Pakistan. Since most of the population from both West and Pakistan shared the same religion – on paper, at least, since the Muslims in the Eastern territory were considered inferior – nationalism and the fight to be ‘Bangladeshi’ became the sole plan and purpose behind their quest for independence. If Pakistan was created as a Muslim country, why didn’t the Bengali Muslim identity fit? What happened to the concept of Muslim universality? From a British perspective, it helped their cause with further division, while Pakistan’s internalised colonialism led them to treat East Pakistan as an internal colony. As a result, it prolonged British colonial and racial exploitation and discrimination of the people of Bengal.

The relation between space and culture is often more complex than the maps we use to determine a person’s identity. Several factors have led to the manufactured ‘spaces’ we all experience – each having evolved away from the ‘natural’ under the rule of colonialism. Nationalism became the modern method of dividing space, leading to their identities becoming more attached to the boundaries created for them. Thus, identity became about not who they are but who they are not. Anyone who fell under a particular territory became associated with that ‘culture’ since the idea of shared space previously was constructed by simply speaking a similar language. “While ‘nation-

⁵⁹ Kehinde Andrews, *THE NEW AGE OF EMPIRE: HOW RACISM AND COLONIALISM STILL RULE THE WORLD* (2021), 101.

⁶⁰ Hamid Dabashi, *CAN NON-EUROPEANS THINK?* (2015), 213.

state' clearly refers to such standard elements as territory, people, and an organised 'sovereign' state structure, it is often given additional content regarding people sharing a common culture, sometimes even ethnicity. The concept suggests a substantive differentiation from other nation-states."⁶¹

The India and Pakistan split is an example of how it led to problems for those situated in East Pakistan as they were people with cultural differences and their language yet still found themselves having to accept the 'plurality framework of a national identity' preserving the idea of the possibility of there being subcultures within a locality while adhering to a more dominant culture with the same region. This, however, led to the creation of Bangladesh since the identity of culture and identity now became related to the imaginary – but now genuine – space that colonisers created. Whether colonial encounters led to a new culture can be debated depending on what angle one wants to explore the cultural imaginaries created by colonialism. With postcoloniality came the migration of the colonised to the spaces inhabited by the colonisers as part of the post-modernism scheme. However, the idea of subcultural only exists if the 'other' now subcultures in Pakistan acknowledge that they are Pakistani. To become Pakistani meant that a part of the colonised's identity had to be neglected to adapt to their new surroundings to integrate or assimilate. The Bengali Muslims had to accept being identified as Pakistani to fit in. This allows the premise of spaces being hierarchically interconnected. "Cultural and social change becomes not a matter of cultural contact and articulation but rethinking difference through connection."⁶²

2. THE IMPLICATIONS OF ADOPTING SUCH AN IDEOLOGY

Colonialism is embedded within the Western philosophy of what it means to be modern and human, which has continued through the introduction of international law. Postcolonial states also inherit the colonial traits and baggage of the system. In the postcolonial context of newly formed independent nation-states, the social imaginary of one's identity and belonging also extends to the understanding of who one is not –

⁶¹ Gerhard Casper, *The Concept of National Citizenship in the Contemporary World: Identity or Volition?*, Bucerius L. Sch, 1, (2008).

⁶² Akhil Gupta & James Ferguson, *Beyond "Culture": Space, Identity, and the Politics of Difference*, Cultural Anthropology, 1992 at 8.

these boundaries allow people to become subject to a particular image and social status. In many cases, violence has been used as a tool and means to attain this sense of identity since it is the other preventing one from being their true selves.⁶³ With former colonies being subjugated to such violence and forced to suppress their identities during the colonial era, liberation and freedom of that trauma must also be met with more or, at least, equal resistance.⁶⁴ The idea of race has always been used to address the other, particularly the difference between social groups, to create these boundaries as part of the social imaginaries constructed to create this hierarchy. Where race may have been used to identify which part of the world a person came from, the racial terms with which one became identified became a more transnational reference to domination over the other. The race then developed into a tool to impose colonial domination through social classification allowing the European identity to be superior while creating this power structure. However, this coloniality of power has developed further into a more effective method of exploitation. The hierarchy created meant that a social categorisation of a group led to specific labour social identities that corresponded to their social status – the lower the rank, the likelier subject of exploitation.⁶⁵

US General Tasker H. Bliss said at the 1899 Hague Conference that “[t]he United States ... should demand its right, the right of civilisation, that ... millions of men of savage races shall not be trained to take part in possible wars of civilised nations.”⁶⁶ This attitude towards those who are not ‘civilised’ – white, Western or European – brought about the war and terror on those who did not conform to their standards under colonial rule. As a result, West Pakistan also treated the Bengali Muslims unequally even though East Pakistan was under their authority and power. They did not allow them to join the army or the government to serve the so-called unified country of Pakistan. To the West Pakistanis, they spoke a more elite language which was deemed more Islamic since it had many similarities to the Arabic alphabet. They even went as far as trying to Islamicise Bengali to get rid of any Hindi influence.

⁶³ Daniel Hoffman, *VIOLENCE, JUST IN TIME: WAR AND WORKING CONTEMPORARY WEST AFRICA* (2011), 37.

⁶⁴ B K. JHA, *Fanon's Theory of Violence: A Critique*, *Indian J. Pol. Sci.*, 360 (1988).

⁶⁵ Anibal Quijano, *Coloniality of Power, Eurocentrism, and Latin America*, *Nepantla: Views from South*, 2000, at 535-537.

⁶⁶ Frederic Megret, *FROM ‘SAVAGES’ TO ‘UNLAWFUL COMBATANTS’: A POSTCOLONIAL LOOK AT INTERNATIONAL LAW’S ‘OTHER’* (2006), 9.

The discrimination and mistreatment did not just stop there. Bengalis were deemed inferior because they were short in height and were into language, poetry, and art. In contrast, the Punjabis and Sindhis in West Pakistan had Afghan ancestry, which meant that they were naturally big and strong.⁶⁷ As a result, Bangladeshis struggled to have any political say or action based on being Bengali despite being more numerous than Pakistan and being referred to as a region that will provide necessary stimuli to make Muslims in Bengal among the best fighters in the military; this also happened to be a dream that was not fulfilled by the Pakistani elite.

With varied concepts that allow European domination over the other, it is no surprise that in the making of the 'League of Nations, there were no non-Europeans involved. Thus, International law has its roots in colonialism. The founders of international law were colonisers, including the likes of Henry Dunant. Though colonialists share the same principles and actions, the differences lie in the type of colonialist they fall under, White Western European or former colonies with internalised colonialism. In any case, the cycle continues and sees countries like Pakistan, which the likes of the British had exploited, allow and be responsible for the same atrocities against the Muslims of Bengal. Since the legal system sought only to serve Europeans, only a minority is catered for in comparison to the non-Europeans not included. Yet the language used by the international law and the Europeans dictates that everyone other than them is the minority. International law is, essentially, European law for Europeans. Nevertheless, in an attempt to universalise this system and forego any real criticisms and flaws, the inclusion of minority rights under the term 'ethnicity' is another questionable move that needs further scrutiny since 'ethnicity remains a peripheral issue in international legal discourse.'⁶⁸ The normative liberal framework for international law does not cater for those conservative ethnic to keep them marginalised unless those ethnic minorities adopt the liberal culture and thus allow colonial terrors to continue through the laws of the system or lack thereof.

Yet one only needs to assess the term 'ethnicity' to understand the attitude toward 'ethnic' people and why ethnicity in international law remains on the periphery.

⁶⁷ Hussain, *supra* note 4 at 43.

⁶⁸ Mohammad Shahabuddin, *ETHNICITY AND INTERNATIONAL LAW: HISTORIES, POLITICS AND PRACTICES*, (2016), 2.

Ethnicity derives from the Greek word *ethnos*, referring to non-Greeks. In other words, *others*. The Greeks, however, were given the term *genos*, with Plato believing that all Greeks were natural friends and closely related and that the *genos* should not be treated harshly nor taken as slaves. On the other hand, the *ethnos* were considered natural enemies, and there were no such restrictions on how one could deal with them. According to Bhiku Parekh, “Such a distinction between Greeks and non-Greeks implied that different principles governed relations among the former from those regulating their relations with non-Greeks.”⁶⁹ The very usage of ‘ethnicity’ depicts the meaning and attitude towards others regarding international law. Therefore, any conflicts between ethnicities are not given the same attention, leaving either weaker than before or the minorities at the mercy of the oppressive state with no protection. So, when it comes to the right to self-determination, what kind of rights do minorities have under international law? How does it translate from one context to another? The indeterminacy of the international legal discourse and its Eurocentrism set precedence for genocide to go unnoticed or unpunished, as was the case of Pakistan v Bangladesh in 1971. This significantly impacts how international law affects ethnicities finding their place in the world when seeking freedom and independence, especially when the minority is of a sub-culture within a formerly colonised state. The argument that independence has set the Bangladeshis free in this post-colonial period, with the subject above, cannot escape from the postcolonial ‘freedom.’

C. INDIGENEITY OF THE BENGAL

The identity of the Bangla Universal is much more than the formation of Bangladesh as a nation-state. Bangladesh's appearance and identity are usually associated with war, liberation, and genocide. As Shahabuddin alludes to in his works, the formation was founded on these liberal interpretations of postcolonial ideology. Nevertheless, despite adopting the postcolonial model of independence, the Bengali identity existed before the appearance of Bangladesh, which is free from the generational and colonial trauma inflicted by the international legal system. While their recognition may have become

⁶⁹ *Id.* at 22.

politically relevant as a social and a legal construct, it is essential to understand that identity and recognition of others are not contingent upon each other hence why social identity frameworks evaluate individuals through self and social categorisations. The legal conception of identity or lack thereof does not negate whether an identity existed before its inception. Any attempts to do so make one complicit in the idea that the colonisers are responsible for giving people an ‘identity,’ implying that the people they colonised had no identity. This understanding is particularly when indigeneity is regarded as a social construct.

The indigenous, from one perspective, is defined as communities that share a deep connection to the land and territory that they once inhabited predating colonisation; their relationship with their roots becomes complex, facing the horrors of either losing autonomy or being displaced from the only place they knew as home and continue to be prime targets of active colonisation.⁷⁰ Yet it is also seen as a political construct in opposition to colonisation. “Indigeness is an identity constructed, shaped and lived in the politicised context of contemporary colonialism... This oppositional, place-based existence and the consciousness of being in the struggle against the dispossessing and demeaning facts of colonisation by foreign people fundamentally distinguishes Indigenous peoples from other people in the world.”⁷¹ In other words, they are a population created by being subjected to contemporary and historical colonial exploitation, which overwhelms the culture and traditions connected to the region while resisting genocide and assimilation to preserve the culture and practises of the indigenous.⁷² These factors play a significant role in defining indigeneity – an identity before colonial intervention and subjugation.

In light of this definition, those who identify as Bangladeshi have this deep-rooted love and connection to the homeland, which they now call Bangladesh, and its culture and language. They were active subjects of colonisation, not once but twice – the first being under British rule as India, and the second time when they were under

⁷⁰ Terry Mitchell, *Colonial Trauma and Pathway to Political Healing* in Suzanne L. Stewart, Roy Moodley & Ashley Hyatt (ed.), *INDIGENOUS CULTURES AND MENTAL HEALTH COUNSELLING: FOUR DIRECTIONS FOR INTEGRATION WITH COUNSELLING PSYCHOLOGY* (2019) 142-3.

⁷¹ *Id.* at 143.

⁷² *Id.*

Pakistani governance. While West Pakistan may not be seen as ‘colonisers’, they were the afterburn effect of colonial trauma – defined by Evans-Campbell as “both historical and contemporary events that reflect colonial practices to colonise, subjugate, and perpetrate ethnocide and genocide”⁷³ – which continued from the India and Pakistan division, resulting in West Pakistan replicating colonial tendencies with their East Pakistani counterparts. “Trauma is therefore experienced not just by individuals but also by the collective. This collective trauma signifies an external agent and the political nature of the crimes against Indigenous people.”⁷⁴ This attitude towards Bengali Muslims resulted in the population experiencing genocide, resisting assimilation of their oppressors and fighting for liberation to preserve their identity. Bonded by trauma, the 1971 independence war was not a quest for power; it was instead a quest for survival.

Thus, the argument that Bangladesh is a result of a postcolonial ideology only alludes to the effect without touching upon the chain of causes leading up to that point. This perspective reduces the severity of the struggle to only the events surrounding the war. Problems relating to the duality of self-perception and the need to reconcile the disparity between the ideal and the practice with social origins, not to mention the trauma of forging new states out of old territories twice, each time is requiring the need to redefine the nation, nationhood, and national boundaries.⁷⁵ As an Indigenous community, they have been suffering since the inception of Pakistan – a supposed safe haven for Muslims. Therefore, to preserve and revive their identity, Bangladesh was formed as a nation-state on the land that belonged to the Indigenous since ‘nation-ness is the most universally legitimate value in the political life of our time.’⁷⁶ The very name itself indicates that there is a history that is associated with Bengal. Thus, there is a need to contemplate deeply how they came into existence to understand them wholesomely.⁷⁷ The idea of trauma is often neglected in such academic historical analysis, painting a very different narrative as it is a product of modern rational discourse resulting in the West has engaged in mass violence, exploitation, colonial

⁷³ *Id.* at 147.

⁷⁴ *Id.* at 146.

⁷⁵ Talbot & Singh, *supra* note 30 at 353.

⁷⁶ Anderson, *supra* note 14 at 3.

⁷⁷ *Id.* at 4.

subjugation, racism; crimes that they choose to conceal and avoid taking any responsibility and accountability for.⁷⁸ It hides the impact colonial trauma has on indigenous communities as they were exposed and subjected to systemic and institutionalised violence legalised by international law, policymakers and governmental institutions.⁷⁹

1. BENGALINESS IN QUESTION

While exploring the indigeneity of the Bengal, one will find that despite religious differences among the Bengalis, they were all able to co-exist before the arrival of the British, due to the common culture, land, language and history they shared. During the nationalist struggle, this concept of "home" was expanded into the concept of the "motherland," with Bengal being the name given to the place deemed sacred by the habitation of the Bengali people's ancestors. Throughout the struggle, however, there were conflicting messages with regards to who was actually Bengali. The image of Hindu-Muslim solidarity in the face of British persecution was utilised to launch a boycott of British goods, and much was made of Bengal's cultural and linguistic homogeneity.⁸⁰ In the process, communally defined homelands for Hindu and Muslim populations became the dominant method of conceptualising the relationship between identity and geography, and were portrayed as the only places that could give each people with the required security. The portrayal of the people and territory as a single entity that has been suppressed throughout history as it awaits its destiny as an independent state is one of the most powerful homeland-making narratives. The region is portrayed in this homeland story as a metaphorical home for the entire community, providing a sense of belonging, security, and a shared purpose.⁸¹

H.S. Suhrawardy, the premier of the Bengal Assembly and the most vocal supporter of what became known as "the United Bengal Scheme," desired "an independent, unified, and sovereign Bengal." Yet it became evident that the British had influenced

⁷⁸ Bashir Bashir & Amos Goldberg, *THE HOLOCAUST AND THE NAKBA: A NEW GRAMMAR OF TRAUMA AND HISTORY* (2018), 4.

⁷⁹ *Id.* at 7.

⁸⁰ Reece Jones, *Dreaming of a Golden Bengal: Discontinuities of Place and Identity in South Asia*, *Asian Studies Rev.*, 378.

⁸¹ *Id.* at 379.

the Hindus, creating tensions to the extent where the congress leadership feared for the large Hindu minority group in a Bengal which was largely populated by Muslims and had been a Muslim stronghold since 1204.⁸² Historically and culturally, Bangladesh's huge Muslim community has retained a distinct identity that distinguishes it from the Arab world's diversified Muslim population. Bengali Muslims have blended local cultural idioms and customs into Islam, what some may consider as unorthodox. Islam began to expand with a significant Sufi legacy in Bengal that played an essential role in opposing puritanical Islam's periodic excursions, such as Wahhabi influences in the early nineteenth century. From the mid-eighteenth century, when the British East India Company began to solidify its dominance in Bengal, the cultural environment grew increasingly heterogeneous.⁸³ While this approach initially helped the Bengal to co-exist, with British intervention and Hindu/Muslim tensions rising, the Pakistani view was to take a hard-line approach leading to creating their own Muslim state.

Muslims in Bengal were made to be treated as second-rate citizens as most worked as peasants and were deprived of education which the British had made available for the elite. Soon Bengali Muslims worked on (re)modernising their language to reflect their own heritage and reality as Muslims in Bengal since the language previously had been adapted within the framework of colonisation by Sanskrit pundits and British linguists – William Carey was the first grammarian of modern Bengali - ultimately combining the Hindu language with western thought with the agenda of ‘civilising discourse’ – the colonial term for officially modernising.⁸⁴ Thus, the United Bengal project was essentially rejected and since Muslims were not able to co-exist peacefully with the Hindus as they were not viewed as true Bengalis due to their faith, their identity and sense of belonging shifted from ‘Bengaliness’ to ‘Muslimness’ which consequently motivated to form their own Muslim state under the banner of Pakistan as a united ummah.

⁸² Alefi ya Tundawala, *Multiple Representations Of Muslimhood In West Bengal: Identity Construction Through Literature*, 140.

⁸³ Habibul Haque Khondker, *The Curious Case of Secularism in Bangladesh: What is the Relevance For The Muslim Majority Democracies?* 186-88

⁸⁴ Azim, Hasan, *supra* note 35, at 106-8.

III – THE UNIVERSAL DIFFERENCE

The understanding of nation-states discussed in the previous chapter essentially stems from the concept of decolonisation that colonialism has ended. Previous colonies now seemingly had the independence and autonomy to govern their own people in a manner that befitted their traditions, culture and identity. So long as these laws did not oppose the rules of international law, the system allowed them to be applied universally.⁸⁵ However, the ‘universality’ that is alluded to is merely an illusion to make people believe they have such freedom. Otherwise, why is a euro-centric law system used as a guideline or the manual from which others can draw? Therefore, the principles of international law become a tool for limitation and damage control since their absolute superiority cannot be maintained any longer – in the apparent sense at least. Furthermore, Angie elaborates that “The challenge to universality posed by the new states arose, not because of differences in culture, but differences in interest: the difference between the developed and developing states.”⁸⁶ With the system inherently designed to maintain the sovereignty of colonial powers in the era of the modern states, the exploitation is not only cultural but a socio-economic one, an interest serving and benefitting only the sovereign through the idea of difference. This idea of difference shapes various collective identities and categorises one group from an[other], ranking some superior over others.

Thus, the definition of universality, as far as international law is concerned, is, in fact, conformity to and assimilation to the imperial West and its methods. It does not allow the manifestation of the other to be considered on the same level. Pahuja alludes to this legalised ‘universality’ that provides for international projects of manipulation such as nationalism and postcolonial states to continue to ensure that any rival jurisdictions are suppressed by ‘misrecognising’ it when encountering the ‘other’ and that their set of rules is seen as ‘the law’.⁸⁷ It is evident that the concept of decolonisation does not exist; it is merely a smokescreen for the ongoing colonisation

⁸⁵ Anthony Angie, *IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW* (2005), 196-197.

⁸⁶ *Id.* at 201.

⁸⁷ Sundhya Pahuja, *Laws of Encounter: A Jurisdictional Account of International Law*, (London Rev. Int’l L., 65-66 (2013).

legalised by the laws the colonisers themselves created. While people assume that 'former' colonial 'states' are free to govern and merely require aid, the so-called international standard cements the colonising state reaches beyond the borders of their own territories and jurisdictions. Thus, the only thing international law develops is the strength of its hold over these 'former' colonial states as it encounters and overwhelms rival jurisdictions of the 'other' with the establishment of their 'universal' colonial law as 'the law'.

However, before understanding how international law enables such colonial projects to continue, it is crucial to know how specific philosophies such as Muslim ummah and European universalism allow for identities to be reflected in historical events. Thus, this chapter will demonstrate how Bangladesh became subject to inferiority due to the colonial framework Pakistan adopted to create their Muslim state. Since European universalism also develops a hierarchy of social groups measured by how close they are to being human – as in European, it allows subcultures to emerge. They are then forced to accept the supposed more excellent representative of the human model without recognising their own. With this trauma now internalised, this colonial mindset would continue with Bangladesh essentially becoming an inner colony of India and Pakistan. This chapter will demonstrate why colonialism is still in motion by initially explaining the concepts of the different universals, how the Eurocentric epistemology dominated such discussions and attitudes and why there was a gradual shift to Pakistani nationality in the Bengali Muslim consciousness, effectively bringing the idea of the Muslim universal into question.

A. THE CONCECPT OF UMMAH

The concept of identity is somewhat multifaceted in the different categorisations an individual can be determined by. Yet, it is often under the framework of the 'self' and the 'other' that the debates of identity-based politics take place or, instead, are designed. At the same time, it can be argued that identity is something that we choose and create ourselves. It is inherent within us that there will always be a social actor who will seek to classify the 'other' as a particular social group limiting the politics of recognition. However, the Muslim concept of *ummah*, as alluded to previously, provides a very

different understanding of universality compared to the European model and it is important to understand perhaps what the manifestation of Muslim universality may have looked like had Pakistan not been influenced by the colonality of power. It is necessary to explore the premise of Muslimness through the ‘self’ and ‘other’ before delving into the thoughts that derailed Pakistan’s initial attempts to create a Muslim community, in other words a Pakistani Muslim ummah.

“The concept of ummah embodies the universalism of Islam and provides a framework for religious unity, which accommodates the cultural diversity of believers. It is an important part of historical as well as contemporary discourse on Islam.”⁸⁸ This is considered the ‘higher’ universal since this is a Godly concept designed to help create a sense of equality between humans irrespective of one’s background. The imagination of this universal community stems from the Qur’an; the primary source of guidance and faith where the word *ummah* is mentioned over 60 times with various meanings derived from this word representing the diversity of the people this Muslim universal seeks to represent. This diversity in the concept of Muslimness allows for it to manifest in various political and social contexts; it plays a major role in uniting communities, both internal and external, consequently, constructing a social religious identity which transcends the boundaries of territorial states. This, therefore, becomes a framework for differences to be submerged by this sense of collective consciousness only achieved through the shared beliefs of its members; it is what Muslim scholars would consider a spiritual and non-territorial community.⁸⁹

However, the concept of ummah becomes further nuanced when establishing an understanding of the ‘self’ for it can be viewed either as a community or as a collective identity. The former is characterised by social homogeneity often established through common understanding and interpretations of religion. The latter is characterised through the vessel through which Islam manifests and how one can incorporate this in their Muslim consciousness, which is developed primarily on an individual level but also constitutes as part of a collective identity.⁹⁰ What can be understood here is that while the law of God exists, essentially, shared belief in its

⁸⁸ Riaz Hassan, *Globalisation’s Challenge to the Islamic Ummah*, 311

⁸⁹ *Id.* at 312-313.

⁹⁰ *Id.* at 314.

teachings and the implementation of its law is central to what constitutes as an ummah.⁹¹In other words, for the concept of ummah to be truly realised, it has to be manifested through the people who are representing the ummah. “In the Muslim imagination, the ummah lives under a divine law whose protector is the ummah itself.”⁹²

Despite the nuances of the word ummah, God mentions very clearly that “this community of yours is one single community and I am your Lord, so serve Me.”⁹³Thus, there is no doubt in the idea of ummah resting on the foundations of unity being connected to the principle of oneness of God; the existence of one God should therefore translate to the unification of one community, without which the essence of that divine command cannot be reflected as al-Faruqi says that “there is no Islam without the ummah,” and since Muslims are judged on both the individual and collective level, the concept of unity becomes even more paramount to uphold.⁹⁴

Al-Faruqi in further explaining the term ummah actually highlights one of the key differences between Muslim and European universality when he explains, “the term ummah is not translatable and must be taken in its original Islamic Arabic form. It is not synonymous with "people," "the nation" or "the state;" expressions that are always determined by either race, geography, language and history, or any combination of them.⁹⁵ Another key difference to note is that on a societal level, unity manifests itself in the tremendous integration of human society that Islam has accomplished. Politically, it reveals itself in Islam's reluctance to accept anything less than the entirety of the Islamic community, or ummah, as the ultimate unit of the body politic. There is only one Muslim community, no matter how dispersed and distant its people are. Only the entire ummah makes up the circle that is Islam, and no portion of the Muslim community has more right to claim to be the ummah than anybody else.⁹⁶

⁹¹ *Id.* at 311.

⁹² *Id.* at 313.

⁹³ Quran, 21:92

⁹⁴ Ejaz Akram, Muslim Ummah and its Link with Transnational Muslim Politics, 384-5.

⁹⁵ Al-Faruqi, al-Tawhid, 105.

⁹⁶ Akram, *supra* note 94 at 397.

B. THE EUROPEAN MODEL

As the Muslim ummah rises above differences, the European model of universality thrives in creating them. According to Quijano, the coloniality of power creates the categories of difference – categories we all, subsequently, are compelled to inhabit when we experience each period of the 'modern'.⁹⁷ People are subjected to particularity in every designated passing time and space according to their relationship with power controlled by the state, its laws, the economy, and the historical circumstances surrounding their experience. Therefore, this process of subjectivity enables the naturalisation of power to become normalised among the subjects to the extent that they cannot recognise their own subjugation to power. Thus, it becomes hegemonic. The moment the hegemony becomes challenged, resulting in the lines of classification becoming blurred, questions of illegibility and invisibility become pertinent when defining the other, leading to further implications concerning one's identity, often evoking a condition experienced by minority groups where they are forced to submit to the hegemonic values and norms while simultaneously suppressing their own cultures and traditions.⁹⁸

This colonial domination creates the effect of globalisation, transcending the initial boundaries of such imagined nationalised communities. It means that the histories of such people and places have become paradoxically intertwined and contradictory to one another, creating this 'fragmented globality' phenomenon.⁹⁹ The Bengali Muslims were being subjected to colonial power through nationalism with the assimilation and integration of the identity of the normative Pakistani culture. While the difference between the histories and cultures of the Bengalis and the Pakistanis is palpable, the histories are somewhat shared as both Bengali and Pakistani Muslims were made to fight for their right to practise their faith freely by separating from India, consequently inheriting the colonial baggage that comes with their new nationality. The implications of such events were two-fold since to assume the identity of this so-called

⁹⁷ Quijano, *supra* note 55 at 534.

⁹⁸ Warren Smith, Matthew Higgins, George Kokkinidis & Martin Parker, *Becoming Invisible: The Ethics and Politics of Imperceptibility*, Culture and Organisation, 2015 at 7.

⁹⁹ Cindi Katz, *On the Grounds of Globalization: A Topography for Feminist Political Engagement*, Signs: Globalisation and Gender, 2001, at 1215.

new Muslim identity meant that the Bengalis either had to forget their own traumatic history and try to become the hegemonising 'other' whereby their former identity becomes almost invisible or remain on the periphery of such a society by being classed as the other 'other' taking place as the lowest social class since their racial inferiority implied that they were not worthy of the same economic freedom in this new Muslim state.¹⁰⁰ In both cases, the identity of the Bengali minority was illegible since, on the one hand, they were indeed part of the social group, yet, on the other hand, they were never entirely accepted because of their 'otherness'. The coloniality of power creates this social difference between the majority and minority despite sharing the same 'nationality'.

The concept of universality and humanity was used to justify the agenda of European global domination through colonial exploitation under the guise of modernity.¹⁰¹ This resulted in the colonised becoming subject to inferiority. While many debates around the continual existence and function of colonialism and the many forms through which non-Europeans were exploited for their intellectualism and their natural resources, there is no denying the impact it left on its former colonies to the extent that colonialism arguably remains a breathing entity through their former subjects with their nationalistic movements. The epistemological framework through which concepts such as universality and racism were used to maintain its superiority and dominance over others, consequently enabling colonialism to flourish globally, is still prevalent in the 'post-colonial' era among its former colonies. Bangladesh may be celebrating over 50 years since it was born, but it was by no means an easy birth after nine months of excruciating pain and suffering where a lot of blood was lost in the process. Before the pregnancy, Bangladesh was already subjected to constant socio-economic and political rape and violence. Thus, finally acting and leaving West Pakistan would undoubtedly have been liberating. However, the reality is that the events leading to the formation of the new nation- state in 1971 resulted from a generational trauma that the Bangladeshis became subjected to. This trauma can be

¹⁰⁰ Quijano, *supra* note 55 at 539.

¹⁰¹ Robert B. Marks, *THE ORIGINS OF THE MODERN WORLD: FATE AND FORTUNE IN THE RISE OF THE WEST* (2007), 3-4.

traced back to the India and Pakistan partition in 1947 when Muslims in India were the minority.

Universalism also develops a hierarchy of social groups, as opposed to it being boundary-orientated and horizontal.¹⁰² Measured by how close they are to being human – as in European – it allows subcultures to emerge. They are then forced to accept the supposed more excellent representative of the human model without recognising their own. With this trauma now internalised, this colonial mindset would continue with Bangladesh becoming an inner colony of India and Pakistan. The religious differences and violence between the Muslims and the Hindus meant that many felt that the only way to find peace was to create a separate state for Muslims. While this movement may have claimed to do it in the name of religion, the Pakistani dream of having a state for Muslims became polluted with the Western and secular ideology of nationalism as ‘international boundaries, no matter what their original rationale, tend to act like self-filling prophecies, creating divisions where none existed before’.¹⁰³ As a result, the Muslim Universal became the Pakistani Universal. This subsequently created the notion that, essentially, one must be Pakistani or accept the Pakistani Universal as part of their new identity. Otherwise, the minorities in Pakistan, in this case, the Bengalis, would be subjected to exploitation, racism and violence.

The concept of universality is not, however, alien to Islam. Thus, there is perhaps evidence to suggest that the Pakistani movement was based on the idea of the ‘Muslim Ummah’ before its formation. In other words, Muslim universality was found solely in the concept of human solidarity, as opposed to what Iqbal perceived as the factional brutalities of nation governments in particular. He believed that for nationality, or any other kind of collective identity, to coexist with other forms of self-definition within the human community, it had to transcend territory.¹⁰⁴ Iqbal famously said, “I am opposed to nationalism as it is understood in Europe, not because, if it is allowed to develop in India, it is likely to bring less material gain to Muslims. I am

¹⁰² Anderson, *supra* note 14 at 15.

¹⁰³ Richard D. Lambert, *Factors in Bengali Regionalism in Pakistan*, Far Eastern Survey, 1959, at 50.

¹⁰⁴ Faisal Devji, *The Language of Muslim Universality*, 42.

opposed to it because I see in it the germs of an atheistic materialism which I look upon as the greatest danger to modern humanity.”¹⁰⁵

Yet the events that took place in the decades leading up to the creation of Bangladesh would suggest otherwise. It is as though the Islamic concept of universality was replaced by the European idea of universality, therefore, losing the essence of why the partition between Pakistan and India took place, to begin with. Many questions undoubtedly arise from this eventual reality to which the Bengali Muslims set out to find answers. If Pakistan was created as a Muslim country, why did the Bengali Muslim identity not fit? Why were Bengali Muslims seen as inferior due to their language and culture? Does Islam not teach to embrace people from all backgrounds? The Muslims of Bengal had been at the forefront of materialising this dream. Yet, ironically, they were left out of any chance of achieving the Pakistani dream – very much akin to the Afro-Americans, who are the real reason a concept of an American dream exists. Yet, they remain on the periphery of any success. The idea of universality and the various historical and political circumstances resulted in the Bangladeshis being subjugated to internal racism and Muslim inferiority concerning their identity as ‘Bengali Muslims’ and how the idea of Muslimness or ‘Ummah’ was lost when the focus essentially became on being ‘Pakistani’. In other words, “universalism and discrimination are produced in the same place, in close proximity to one another and in constant tension”¹⁰⁶ and “does not necessarily involve, in practice, a recognition of the violent collision between regimes of difference.”¹⁰⁷

C. THE EFFECTS OF EUROCENTRIC EPISTEMOLOGY

“Orientalism is never far from . . . the idea of Europe, a collective notion identifying ‘us’ Europeans as against all ‘those’ non-Europeans, and indeed it can be argued that the major component in European culture is precisely what made that culture hegemonic both in and outside Europe: the idea of European identity as a superior one in comparison with all the non-European peoples and cultures.” – Edward Said.

¹⁰⁵ *Id.* at 45.

¹⁰⁶ Etienne Balibar, ON UNIVERSALS: CONSTRUCTING AND DECONSTRUCTING COMMUNITY (2020), 17.

¹⁰⁷ Ahmed, *supra* note 26 at 42.

The European mindset has always been to dominate, and that originates from their philosophers who laid down the foundations to grant people the understanding that they were superior. However, these epistemological reasonings were hidden under ‘progress’ and ‘modernity’. They promoted the idea that they were more intellectually advanced and physically superior to their Asian counterparts through that understanding. According to Kant’s philosophy of progress, the process of progressing would include diffusing from the West to the rest of the world. Thus, the only way others would be able to make any progress would be through the assimilation of European culture – the convergence model of the process. It insinuates the European development path as normative, suggesting that other cultures’ ability to think and develop is inferior.¹⁰⁸ Therefore, this establishes an ideological rationalisation and justification for exploiting non-Europeans either for their material resources or for their intellectual property and enables them to fulfil their global domination agenda.¹⁰⁹ Under the same vein, despite the vision of Pakistan being a shared dream between many Muslim populated regions in India, the contributions of Bengali Muslim intellectuals to the struggle of conceptualising Pakistan – a land for all Muslims – in their language using traditional Bengali idioms seems to have been neglected in any existing nationalist historiography be it Indian, Pakistani or Bangladeshi.¹¹⁰ Their Urdu speaking counterparts frequently ignored them despite forming the majority of Muslims of British colonial India and being the most active, laying the grounds for the Pakistani vision. They connected with peasants and workers in the Bengal relating to their needs. They even had communist radical non-Muslim support in the form of Adhikari the Communist, M. N. Roy, known as the Radical Humanist, and Gopal Haider.¹¹¹

To put it into further context, the Bengali Muslim intellectuals had contributed to one of the biggest and most successful national movements in history in a heavily populated with Hindu literature – the enemy’s language. However, their efforts have been disregarded, and the applauses for founding Pakistan have always gone to

¹⁰⁸ Amy Allen, *THE END OF PROGRESS: DECOLONISING THE NORMATIVE FOUNDATIONS OF CRITICAL THEORY* (2016), 17.

¹⁰⁹ *Id.* at 17-18.

¹¹⁰ Bose, *supra* note 18 at 4.

¹¹¹ *Id.* at 33.

Muhammad Ali Jinnah. While he may have been the lead instigator of such a movement, the Bengalis should have also been acknowledged for their significant part in spreading the message of 'Pakistan'. This is an example of how the notion of European intellectualism being superior to others that did not share the same culture filtered down to its colonies. The Pakistani elite was seen as superior, and thus, it is their philosophies celebrated. Since it was never acknowledged, it is unsurprising that this trend continued as the Bengali Muslims eventually broke away from their initial concept of Pakistan. Even today, Bengali intellectual and cultural history has been massively understudied compared to their fellow South Asian nations.¹¹²

The East Pakistan Renaissance Society below provide a vision of what Pakistan is and the ideals that it has for its people:

Pakistan is not just for the ten crores of Muslims and their 'community'—it is a claim for the thirty crores of minorities in India and their full religious, agricultural, geographic and territorial rights. 'Pakistan' has provided inspiration and hope for the common people of India to voice their own identities and aspirations and has given a language of freedom for jatis.¹¹³

It is pretty evident how strongly Bengali Muslims felt about this idea of Pakistan. They internalised the universal message of Muslims having the right to live freely and be able to voice who they were. This was a powerful sense of what they envisioned their identity would stand for. Yet, one can argue that the effects of colonisation led them to accept this newly founded 'nationality'. The Pakistani nation-state movement attempting to create homogeneity among the population meant that the process had two main side effects on the people. Either it subjected minority groups such as the 'Bengalis' to accept the identity of the 'homogenous' nation, so they became officially included within the Pakistani diaspora, or they found themselves marginalised to the extent that they felt they had no social belonging about their culture, language or religion. This eventually leads to the nationalistic urge and need to form their state with people that represent them as who they are.¹¹⁴ The frustrations of the Bengali Muslims stem from the 'fragmented globality' phenomenon, which sees transcending domination boundaries of imagined communities and subsequently causes the histories

¹¹² *Id.* at 4.

¹¹³ *Id.* at 13.

¹¹⁴ Joya Chatterji, *THE SPOILS OF PARTITION: BENGAL AND INDIA, 1947-1967* (2007), 105.

of various people and places to merge become trapped in this paradox.¹¹⁵ In the case of Bangladesh, the Muslims of Bengal – with their own culture, language, and lifestyle – are suddenly being included in an overarching universal to which they aspired. Their particularities are becoming mixed with the more excellent notion of ‘Muslimness’. “Particularism and universalism were brought together in his new idealisation of a political future.”¹¹⁶ This alliance between the diverse groups of Muslims was formed to consolidate their mission to gain freedom from the Hindu Raj after the British had left. There was a common belief concerning the universality of the Islamic nation, which was to be embodied by the Pakistani territory to create this sense of community. Thus, the idea of partition and independence from India was seen as the route to conduct this ‘religious imperative’.¹¹⁷

Yet they were forced to experience the significant implications of their assimilation to the ‘Pakistani’ identity as firstly, assuming the identity of the coloniser meant giving up one’s cultural history by hegemonising with the other such that you become invisible or secondly, one became marginalised and placed on the periphery of the imagined community to take the place of lowest social class due to their racial inferiority.¹¹⁸ Chatterji bluntly describes this process of national statehood as a way of making minorities as he says, “Building new nations is a refugee-generating process.”¹¹⁹ As Bengali Muslims were the minority, their identity became illegible. They were simultaneously considered part of the Pakistani diaspora yet were never entirely accepted or treated due to their ‘otherness’. This continued coloniality of power created this social difference between the Bengalis and the rest of Pakistan created by this notion of universalism. This resulted in an identity crisis among East Pakistani/Bengali Muslims, for some believed they were Pakistani, and others believed that they were still Bengali. The following answers to a survey are an example of how the ‘modern’ has affected the identity politics in such regions:

¹¹⁵ Katz, *supra* note 75 at 1215.

¹¹⁶ Bose, *supra* note 18 at 23.

¹¹⁷ Elliot Tepper, *Pakistan and the Consequences of Bangladesh*, Pacific Affairs, 1972-1973 at 574.

¹¹⁸ Quijano, *supra* note 55 at 539.

¹¹⁹ Chatterji, *supra* note 88 at 105.

Answered by someone who identified as Pakistani

“I love Pakistan, and we got Pakistan as a kingdom. Because my village is part of Pakistan. I am a Muslim. I was Bengali now, this Bengal had become independent, and I had become Pakistani. I am the son of a Muslim, so I am a Pakistani.”

Answered by someone who identified as Bengali

“I speak and understand the Bengali language well and do not know any other. I read, write, and talk to Bengali. Bengal is my birth country. Pakistan is new. All East Pakistanis are Bengalis, and all in Barisal are also Bengali.”¹²⁰

According to Schuman, he felt that this meant that there was no actual conflict between being Bengali and Pakistani. This is quite a simple reading of the answers to the questions, effectively reducing the context's significance under which that survey was conducted. Perhaps conceptually, before the creation of Pakistan, there was no conflict in the terms since Pakistan was used to identify as Muslim. But in the context of Bengali Muslims being mistreated, it differentiates between those who internalised the Pakistani dominance and accepted it and those who were treated as a minority and left to feel marginalised. ‘Economic malfunctions, massive social unrest, fundamental political failures, and pervasive cultural alienation from the status quo are going to shake the very foundations of these societies and reshape the geopolitics of the region’.¹²¹ This was very much the case for East Pakistan as the Bengalis were alienated from the ‘Pakistani’ society in every respect hence why they were politically motivated to ensure that this would change. The grievances of the East Pakistanis were outlined below:

According to our manifesto, the appalling poverty of the people of East Pakistan and the disparity between the standard of living in the two wings of the country are calculated to create disequilibrium and instability. The people of East Pakistan have hitherto been deprived of their legitimate share in the country’s defence, in the administrative appointments of the federal government and the industrial and commercial activities are a contributory cause to this disparity.

¹²⁰ Howard Schuman, *A Note on the Rapid Rise of Mass Bengali Nationalism in East Pakistan*, *Am. J. Sociology*, 293 (1972).

¹²¹ Dabashi, *supra* note at 197.

Therefore, the present government in the Centre should guarantee a just and equal share of East Pakistan in all these spheres and the utilisation of available foreign exchange of the country based on parity so that the present disequilibrium is a menace to the stability of Pakistan, may be removed. The Central grants and aids for industrial, commercial, educational and agricultural developments in East Pakistan.¹²²

Thus, as seen above, when the foundations of superiority are laid through the mind, it begins to manifest in one's actions. The Pakistani treatment of Bengali East Pakistanis is not a mere coincidence or a manifestation of South Asian struggles between religious and cultural groups. It results from Pakistan wanting to be universalising the 'Pakistani' human model. The colonial impact of universality in this scenario must first be understood from the European mindset. According to Balibar, universality can be understood as creating a sense of normativity of the human essence regarding how a human should look, behave, and live their life. This concept ensures that certain groups are put in a hierarchy to illustrate which groups represent the 'human model' the closest. By doing so, acts of discrimination and exclusion of groups become necessary for those pushing this concept of 'human normativity'.¹²³ Thus, in this light, the coloniality of power also acted on this notion of the human model by looking at the masculinity of the 'other'. Europeans imposed themselves as the superior manly human while painting others as effeminate and irrational.¹²⁴

1. THE SHIFT TO PAKISTANI NATIONALISM

Nationalism was one of the colonial acts of continuance responsible for the likes of Pakistan and India dividing and, in turn, Pakistan dividing into Bangladesh. The concept of nationalism dictates and represents a powerful movement and tool to resist one's oppressor or colonial master. Simultaneously, it also accepts the premises upon which people would dominate others. The paradoxical nature of such a phenomenon proves that even though it paints the colonised as an inferior race, it does so by asserting that a 'backward' nation is now capable of being modern on its own without losing its

¹²² Lambert, *supra* note 79 at 53.

¹²³ Balibar, *supra* note 80 at 1.

¹²⁴ Freya Schiwy, *Decolonization and the Question of Subjectivity*, Cultural Studies, 2007, at 275.

cultural identity.¹²⁵ According to Chatterjee, ‘there is... an inherent contradict[ion] in nationalist thinking because it reasons with a framework of knowledge whose representational structure corresponds to the same form of power nationalist thought seems to repudiate.’¹²⁶ Similarly, Pakistan gained the power to rule and dominate all those within its dominion autonomously.

Thus, it is unsurprising that the Bengalis – having been forced to be referred to as East Pakistanis – chose to fight and liberate themselves from being subjected to Pakistani cultural domination and form the country of Bangladesh. This holds even more significance when considering how the partition between India and Pakistan was over a religious divide between Muslimness and Hinduism. The event saw many on the ‘wrong’ side of the border leading to a mass exodus – if they could leave their homes and families behind. Yet, despite being on the right side of the wall, the Bengalis were also made to feel that they did not belong there. This also assumes that all Bengalis were Muslims – in reality, Bengali Hindus also existed. Thus, the divide was not only between India and Pakistan but the Bengal itself. The partition, therefore, created the West Bengal, now situated in India and East Bengal, currently located in Pakistan. It would be interesting to explore perhaps how the Bengali Hindus fared in India compared to their Muslim Bengali counterparts in Pakistan, as 2 million Bengali Hindus fled to West Bengal after the 1946 Noakhali and Tippera riots and the 1950 Khulna riots– places in present-day Bangladesh.¹²⁷ However, it is reported that Bengali Hindus were not the only community that migrated to India. In what is referred to as ‘reverse migration’, the 1957 Secret Fortnightly Reports indicate that Muslim families were covertly entering West Bengal and settling in places where there were people of other religions. Many of these Muslim refugees were deemed destitute or economic migrants who believed that they would fare better across the border in India.¹²⁸ The question here is why the Muslims of East Bengal felt the need to leave Pakistan – a nation they had supposedly formed because of the need to practise their Muslimness – and return to a place they struggled to escape to begin with? By 1961, Muslims made

¹²⁵ Pahuja, *supra* note 46 at 55.

¹²⁶ *Id.*

¹²⁷ Chatterji, *supra* note 88 at, 111.

¹²⁸ *Id.* at 187.

up 65 per cent of the Kaliachak population –where the reverse migration was first discovered in 1949.¹²⁹

Thus, the effects of the events that took place meant that the Islamic concept of universality was replaced by the European idea, subsequently losing the essence of why the partition occurred. The European epistemological reasonings for universalism, in turn, became a nationalistic movement for Pakistan despite the call for separation being born out of the need to politically navigate a land for Muslims where they could practise their faith freely and not face the challenges they were subjected to as minorities under a Hindu majority government. With regards to self-identity and consciousness, the Bengali Muslims, as alluded to earlier, either believed in the concept of Pakistani and identified as Pakistani for religious reasons yet were not treated equally or from the beginning; they had always maintained that they were a Bengali Muslim but had to acknowledge the hegemony and accept the Pakistani identity due to political circumstances as it represented the religious aspect of who they were. However, in the case of Bangladesh, it is not that the essence of ‘Bengaliness’ was suddenly discovered and thus, there was a need for their own territory.

Bengalis had always existed, and the region itself became split due to Pakistan and India breaking, with East Bengal, essentially becoming East Pakistan. Yet the significance of East Bengal becoming East Pakistan shows how the Bengali Muslims were willing to initially give up their ‘Bengaliness’ to assimilate with their new Pakistani identity since the term ‘Pakistani’ became synonymous with being ‘Muslim’.¹³⁰ Religious identity overrode any cultural affiliations since, in the socio-political context of the Bengal in the Pakistan and India division, there were also Bengali Hindus, who were also part of the reason why Muslims in Bengal had to leave. With the Muslim and Hindu relations becoming very dangerously fatal at a national level, it was no longer safe for Bengali Muslims to remain part of India to live among their fellow Bengalis – albeit having no religious similarities – to maintain the region

¹²⁹ *Id.* at 188.

¹³⁰ Farzana Shaikh, *From Islamisation to Shariatisation: Cultural Transnationalism in Pakistan*, Third World Quarterly, 2008, at 594.

of Bengal as one cultural space.¹³¹ They were seen as inferior despite the Bengal region constituting the seventh-largest language group globally, missionaries being the most efficient in spreading the message of Islam.

The ‘inferiority’ complex is thrown into further ignorance and doubts when you consider that the Bengal interactions with Islam stem from coming into contact with Muslim Sufis such as Baba Adam Shahid of Rampal and Shah Sultan Rumi and places such as Sylhet and Chittagong attest to the fact that Islam in the Bengali region has been around since the 7th and 8th century. To put it into further perspective, the Prophet Muhammad passed away in the 7th century, so the initial interactions with Islam would have been with the companions of the Prophet and the generation after. This essentially means that the message of Islam was in its purest form, free from politicised agendas and because it was done through Muslim missionaries instead of political elites, the impact resulted in the masses becoming the first Muslim converts in the Bengal.¹³² Thus, since Pakistan was a politicised movement, their goal was not simply to create a Muslim safe-haven despite whatever pure intentions they may claim to, but to also impose their religious identity – or interpretation of it at least – onto other Muslims who had agreed to become part of the Pakistani movement. Thus, a Muslim’s affiliation to a region representing India or Hinduism was problematic. The questions that arise from these socio-political circumstances stem from the concept of ‘ummah’ that Islam propagates. Thus, If Pakistan was created as a Muslim country, why did the Bengali Muslim identity not fit? Why were Bengali Muslims seen as inferior due to their language and culture? Does Islam not teach to embrace people from all backgrounds? Because religion was incorporated into the political construction of Pakistan as a nation-state, every attempt to criticise the ruling party and disintegrate Pakistan was interpreted as an attack on Islam. This helped the state maintain control over unhappy Bengali Muslims who had no experience with the promised Islamic society, and the state did not attempt to build one.¹³³

¹³¹ While it can be argued that they were not the only region to lose their cultural identity as various other regions bought into the idea of being ‘Pakistani’, there was, however, a significant difference in the treatment and attitude towards ‘Bengali-Pakistani’ Muslims.

¹³² Zillur R. Khan, *Islam and Bengali Nationalism*, Asian Survey, 1985, at 835.

¹³³ Talbot & Singh, *supra* note 30 at 349.

Thus this ‘Islamic’ movement loses its authenticity since it goes against the principles of the Prophetic practice. The Prophet Muhammad, despite bringing the message of Islam to Mecca and the Arab peninsula, which has a rich history of polytheists and idolators, still proudly identified himself as Meccan to put it into a more extensive geographical perspective.¹³⁴ In this light, there should not have been an issue with ‘Bengali’ Muslims, even if there were a solid affiliation to Hindus. The divide was against Hindus, not a different type of Muslims. So instead of focusing on the concept of equality and brotherhood – especially in the circumstances, they found themselves where already were divided and had to disassociate themselves from the livelihoods, lifestyle and family members that they left behind – they sought to reduce the significance of Pakistani conversion for minority groups.

With Bengali Muslims being subjected to such racism and socio-economic inequalities, they had spent the 1950s and 1960s advocating for more representation in the country’s decision making. Instead of being met with any form of engagement from West Pakistan political elites, General Yahya Khan led Bhutto’s mission to destroy the Bengali movement with their military might in 1971. The soldiers of West Pakistan were motivated by their officers and superiors to believe that Bengali Muslims were, in reality, Hindu in disguise. They even provided religious validation and justification to wage war on them, referring to them as ‘infidels’ and that any action taken against them would serve Islam’s interests.¹³⁵ Therefore, the creation of Pakistan was no longer about being Muslim; it was about being a specific type – a ‘Pakistani’ Muslim.¹³⁶ Thus, this decision and movement to remove the opposing party was almost a continuation of the colonial trauma that India had gone through when the British imposed themselves on them. Bengali Muslims were subjected to the struggles of an inner colony. As a result, the movement to create Bangladesh “gradually became more religious-ethnolinguistic nationalism in the nineteenth and twentieth centuries under economic pressure from non-Muslims and, later, non-Bengalis.”¹³⁷

¹³⁴ Abdullah ibn ‘Adi reported: I saw the Messenger of Allah, peace and blessings be upon him, while he was standing near Mecca and saying, “By God, you are the best and most beloved land to God. Had I not been driven away from you; I would not have left you.” – Sunan al-Tirmidhi

¹³⁵ Khan, *supra* note 105 at 836-837.

¹³⁶ This dangerous precedence is similar to how the Europeans used Christianity as religious justification for their colonial acts of aggression and oppression.

¹³⁷ *Id.* at 834.

2. THE FALL OF THE MUSLIM UNIVERSAL

The actual issue in Pakistan is that the mechanisms inherited from the colonial state have not been realigned with the prevalent ideals that fuelled the Muslim movement for equality, solidarity, and freedom. Amid the turmoil around concepts of national identity and state sovereignty, Muhammad Iqbal's high equation of Islam and civil society had been lost sight of.¹³⁸ Islam has always acknowledged that humans are social beings and, while also doing, recognises that humans are also different and how these differences can be the root cause for one group dominating others due to greed and desire. According to Hobbes, the Europeans also knew of this since, "From this equality of ability, ariseth equality of hope in attaining our Ends. And therefore, if any two men desire the same thing, they cannot both enjoy, they become enemies and facilitate this to serve their own agenda."¹³⁹ However, it is because of what the Europeans did and still do that the Islamic concept looks and encourages people to live by the higher universal of serving God. A relationship between Muslims transcends racial and tribal differences and unites people through the common belief in God, surpassing the importance of blood and tribal associations.¹⁴⁰

Thus, the concept of achieving this higher universal is further consolidated with the idea that there is no superiority of one tribe or race over the other in the eyes of God except with regards to piety – which cannot be determined through human observation – as declared by the Prophet Muhammad in his final sermon.¹⁴¹ Jaffary further explains the concept of universality by looking at the word 'ummah' and what that represents and promotes. "The ummah in Islam promotes the concept of brotherhood, which is fundamental teaching. Everybody will be treated equally before God, regardless of race, colour, or physical attributes. But the important character to be determined by God is *taqwa*, 'God-consciousness.'¹⁴² However, Islam does not abstractly promote

¹³⁸ Sato Tsugitaka, *MUSLIM SOCIETIES: HISTORICAL AND COMPARATIVE ASPECTS* (2004), 105.

¹³⁹ Thomas Hobbes, *LEVIATHAN*.

¹⁴⁰ Asqiyin Ab Halim, *Ibn Khaldun's Theory Of 'Asabiyyah and the Concept of Muslim Ummah*, (J. Al-Tamaddun, 5-6 (2014).

¹⁴¹ "Indeed, there is no excellence for an Arab over a non-Arab, nor a non-Arab over an Arab, nor a white person over a black one, nor a black person over a white one, except through *taqwa* (piety) and obedience to Allah."

¹⁴² Ab Halim *supra* note 116, at 7.

this concept of universality under God; it also considers the realities of the world we are supposed to achieve this higher universal.

According to Ahsan, "...the Ummah did not abolish tribal identity; it only changed the hierarchy of an individual's identities in society. In essence, the tribal identity of the individual was of secondary importance to an Ummah identity." Watt concluded that the Islamic concept of brotherhood maintained and strengthened the solidarity of the tribes.¹⁴³ With the above in mind, it is evident how the concept of universality categorically differs from the European concept of universality in how everyone needs to assimilate into the European culture. If a group does not, they are excluded from that universal. This, in turn, creates the superiority complex upon which one particular group exerts their efforts to dominate the other through exploitation, racism and, in worst-case scenarios, violence.

"Colonialists were not made from the same mould. Furthermore, it was like colonialism as a historical venture to be deeply split between racism and universalism, greed and disinterestedness, exploitation and humanitarianism."¹⁴⁴ This sums up the West Pakistani attitude and actions towards their fellow 'Pakistani' brethren. They ended up enacting the colonial mindset by continuing the colonial practice of domination over those they considered inferior, which stems from the concept of the ruling nation being civilised and the other being uncivilised. This concept granted them the justification to conduct acts of colonialism. If one assesses Pakistan's actions and attitude towards Bengali Muslims, it goes against why Pakistan was created and is more in line with the European vision. This suggests that Pakistan, having already suffered from British colonialism, continued this internalised colonial trauma, reducing the concept of creating Pakistan to 'in' the name of religion but not necessarily 'for' the faith and those who follow it. This is evident in how West Pakistan portrayed Bengali Muslims. "Discussion about the identity of Bengali Muslims was fraught with controversy as 'Bengali' and Muslim were presented as incompatible in state parlance, following a tradition from colonial time."¹⁴⁵ Thus, the leaders took every opportunity to push their agenda of the Pakistani universal by depicting East Pakistan as disloyal to

¹⁴³ *Id.* at 7-8.

¹⁴⁴ Megret, *supra* note 56, at 7.

¹⁴⁵ Talbot & Singh, *supra* note 30 at 351.

the formation of Pakistan – this is despite there always being a difference of opinion to either stay united with India or become divided – and since Pakistan was created on religious grounds, the leaders used the same tactic to paint them as false Muslims. Being disloyal to Pakistan was considered disloyal to Islam. Thus, one of the ways they attempted to do this was via language.¹⁴⁶

According to the philosophy of West Pakistani leaders, being a Muslim meant that they needed a language that reflected their ‘Muslimness’. The Urdu language was proposed by its leaders as it had origins and similarities with Arabic and Persian.¹⁴⁷ Although, if there were any language that could have been considered Islamic, it would have been Arabic as it is the language of Muslim religious scriptures – primarily the Quran and Hadith – so the question was why Arabic was not adopted since only a handful of the Pakistani elite spoke Urdu. Muhammad Ali Jinnah was the leading advocate of powerfully imposing and forcing a language spoken by a mere 7 percent of the entire population of West Pakistan and East Pakistan combined. Bengal was not the only region with its own culture and language. The people of the Punjab and Sindh could have also felt aggrieved with their languages being overlooked. Yet, there was a vital difference in the treatment between the Bengali Muslims and others. Thus, language became merely a tool for the fundamental matter of identity and acceptance as they faced the challenges of acceptance and survival. Islam was reduced to a political tool to serve the West Pakistani agenda, and this essentially became naturalised – it became the central body through which politics was conducted. The choice to establish Urdu as the state language of Pakistan reflected an overarching idea of Muslim identity that found resonance in the people's geographically based cultural identities. Urdu, reduced to becoming a subaltern language in its own regional context, came to be considered a tool of neo-imperialist dominance.¹⁴⁸

¹⁴⁶ Muhammad Ali Jinnah famously declared at a public meeting at the Race Course Maidan, Dhaka, on 21 March 1948, “Let me make it very clear to you that the state language of Pakistan is going to be Urdu and no other language. Anyone who tries to mislead you is really the enemy of Pakistan. Without one state language, no nation can remain tied up solidly together and function. Look at the history of other countries. Therefore, so far as the state language is concerned, Pakistan’s shall be Urdu.”

¹⁴⁷ Robina Kausar, Muhammad Sarwar & Muhammad Shabbir, *The History of the Urdu Language Together with Its Origin and Geographic Distribution*, Int’l J. Innovation & Res. in Educational Sci., 5-6 (2015).

¹⁴⁸ Jalal, *supra* note 28 at, 570.

This discrimination and domination alluded to above can be understood from the Pakistani elite's attempt to reform and 'Islamicise' the Bengali language due to its Hindu origin. While Urdu originated from Arabic and Persian, Bengali originated from Sanskrit. This is despite 83 per cent of the East Pakistani population being Muslim and making up 52 percent of the entire Pakistani population combined.¹⁴⁹ Interestingly, however, long before Jinnah and the partition of India and Pakistan in 1947, even some of the Muslim elites of Bengal regarded Urdu to be the language of Bengali Muslims, such as the Suhrawardy family, the Nawab families of Murshidabad and Tallyganj in West Bengal, and the Nawab families of Bogra and Dhaka in East Bengal. And since there was an intense hostility towards Hindus, Bengali was viewed as the language of the Hindu elite. However, the Bengali elite failed to see the consequences of such elitist thinking as it neglected Bengali Muslim folk literature written by the rural masses.

While the gap between the elite and the working class widened, so did their cultural affiliations. The rural groups contributed to upholding their Bengaliness more than the elite. Their commitment produced early Muslim authors and contributors such as Kazi Imdadul Huq and Kazi Nazrul Islam. It was only until the 1930s that the Bengali Muslim elite had significant successes in contributing to the language, rivalling the contribution of their Hindu counterparts. By the partition in 1947 and the decades to follow shortly after, the Bengali elite was also on board in maintaining their Muslimness through their own Bengali language instead of Urdu. It was pivotal in their support to ultimately lead the political movement of creating Bangladesh.¹⁵⁰ "All of these figures-whether religious or political-were instrumental in raising Bengali Muslim consciousness against exploitation by Hindus, the British, and the West Pakistani industrial-entrepreneurial elites."¹⁵¹ Bengali nationalism again became more robust due to language conflict and began to supersede any possible religious similarities between the East and West. Since they were not accepted as Muslims due to their Bengaliness, they chose to revisit that element of their identity to establish a secular nation-state.

¹⁴⁹ Vernon O. Egger, *A HISTORY OF THE MUSLIM WORLD SINCE 1260: THE MAKING OF A GLOBAL COMMUNITY* (2018)

¹⁵⁰ Khan, *supra* note 105 at 839.

¹⁵¹ *Id.* at 841.

IV – CONSTRUCTING IDENTITY THROUGH THE OTHER?

The transition of the empirical nature of white supremacy to supposed independence and freedom for colonial subjects through the formulation of nation-states is a means – more hidden and subtle – for the inherent racism and colonial control to continue over new ‘independent’ countries. “The redrawing of international borders, the manipulation of political systems, and/or the denial or deprivation of nationality to exclude and marginalise racial, religious or ethnic minorities have resulted in statelessness in every region of the world.”¹⁵² In the period of ‘decolonisation’ and ‘modernisation’ of how the world is governed, the people who have allegedly been liberated from the clutches of white European colonialism over the last century still appear to be either influenced or run by their former colonial masters. The nature of how the war of independence is viewed plays a significant role since it is an integral part of the formation of Bangladesh and the identity to which the people attach themselves. In light of the categorisations of identity discussed in the first chapter, the Bangladeshis self-associate their identity with freedom and liberation; the idea that they fought for their lives and their future against the West Pakistani oppression still lingers in their minds as they commemorate the fallen every year that passes.

This chapter will briefly explore the different legal interpretations of the war in 1971 and explain how the events of Operation Searchlight and the framework enabling that were also genocide – a view not highlighted as frequently as others. While this chapter aims not to prove that 1971 was a genocide legally, it is essential to highlight the collective memory of people that do understand it as genocide; it is an important dimension especially in light of what the convention says. “The destruction of culture is often the result of physical and structural violence, and its negative consequences are severe regardless of the degree of direct intention.”¹⁵³ The narrative manifests differently due to the subjective nature of the social identity framework and the categorisations people are identified. When certain events are attached to one’s

¹⁵² Mohammad Shahabuddin, *BANGLADESH AND INTERNATIONAL LAW* (2021), 98.

¹⁵³ Lindsey N. Kingston, *The Destruction of Identity: Cultural Genocide and Indigenous Peoples*, *J. Hum. Rts.* 14, 11 (2015).

identity, they also become categorised accordingly. However, when integral parts of the narrative are missed, understanding one's identity is incomplete.

The liberation of Bangladesh was not simply from the occupation of West Pakistan; it was from an entire system designed to exploit and enable colonial power to remain through formerly colonised nations. Therefore, when the international community fails to act because 'legally' they felt no obligation, they also become complicit in the genocide in 1971 and the generational trauma inflicted through colonialism and post-nationalism. Whether the Bangladeshis acknowledge the genocide themselves is another question since the idea of liberation and freedom means escaping victimisation. Perhaps being victims of genocide is not how they wish to remember themselves? Even if genocide is acknowledged as part of who they are, do they recognise the magnitude of what they went through? Thus, this chapter will explain how genocide played a significant role in shaping the Bengali community's identity and how it shaped the identity of contemporary Bangladesh.

A. INTERPRETATIONS OF THE BANGLADESHI FIGHT

Revisiting Hobbes' quote of equality and desire, he said, 'From this equality of ability, ariseth equality of hope in attaining our Ends. And therefore, if any two men desire the same thing, which they cannot both enjoy, they become enemies'; in the case of West Pakistan and East Pakistan, both desired a particular way of life, language, and culture to maintain their respective identities. Thus, although they may have begun under the flag of a unified Pakistan, they became enemies, and as a result, they became locked into a 'state of war'.¹⁵⁴ Thus, the idea that these two entities were at war is never in question. However, the war for independence can and is always read in several ways to determine what happened, especially with the different parties involved. Some will see it as a road to freedom and liberation. Others will view it as an internal conflict, calling it a civil war. It has even been termed as an India-Pakistan war instead of it being referred to as a national liberation war, which essentially takes away the story of

¹⁵⁴ Jean Jacques Rosseau describes the 'state of war' as "this manifest will to destroy one another, and all the actions that result from it produce between the two enemies a relation that is called war." - THE SOCIAL CONTRACT AND OTHER LATER POLITICAL WRITINGS.

the Bengali struggle for independence. Trying to twist the narrative to say that Bengalis were violent when the only reason for their approach was retaliation to the massacre and genocide that Pakistan was conducting is like focusing on the Palestinians trying to survive against Israeli terrorism through retaliation with whatever little they have.

In this light, we have this argument of what people deem a 'preventive war' to justify the actions of West Pakistan. However, such a term is used to cover the real atrocities caused.¹⁵⁵ 'Operation Searchlight' on the midnight of 25 March 1971 was not due to 'self or other defence against aggression' as contemporary 'just war' theory and international law have recognised only one just cause for war: self or other defence against aggression.¹⁵⁶ Moreover, in 1970 'preventive war' was "immoral and illegal as a matter of principle, as it is not a response to an actual or imminent attack."¹⁵⁷

According to Ehsan Abdullah:

It was owing to Pakistan's imposition of the unjust war and committing acts of genocide and other forms of repression, Bangladesh declared independence, and the representatives of the people of Bangladesh issued the Proclamation of Independence. They laid down the lawful basis of a just war through this proclamation. In looking back, it can be said that in response to the war, genocide, and repression waged by Pakistani authorities, the people of Bangladesh began the war of liberation to establish their effective control over the territories of Bangladesh. In this war, the critical asset of the people was their 'heroism, bravery and revolutionary fervour'.¹⁵⁸

B. SELF-DETERMINATION & NATIONAL LIBERATION

In sociology, Max Weber describes political action as 'when an individual is involved in an action that has subjective meanings of any form of power-sharing or brings any

¹⁵⁵ Operation Searchlight was quite simply immoral and vicious. It cannot come under 'preventive war' since this military action was in response to the non-violent movement of East Pakistan seeking independence by winning a majority during the 1970 elections and the postponement of the National Assembly. Additionally, Pakistan cannot defend its attacks on its citizens as a 'preventive war' because, generally, a preventive war takes place between two political entities.

¹⁵⁶ Mokerrom Hossain, *Bangladesh War of Independence: A Moral Issue*, Econ. & Pol. Weekly, 2009 at 27.

¹⁵⁷ *Id.*

¹⁵⁸ Ehsan Abdullah, *Spirit of Liberation War*, available from <https://mygoldenbengal.wordpress.com/2014/03/28/spirit-of-liberation-war/>

change to the existing meaning of power or control'.¹⁵⁹The belief and agenda behind the Awami League under the leadership of Sheikh Mujibur Rahman were, no doubt, politically motivated to help attain freedom and independence from Pakistan and determine their entity. While identifying as Bengali meant everything for East Pakistanis, the West Pakistanis wanted to maintain control over them. Thus, the independence movement was fully flowing to bring change to the existing power. The power to do anything of such gravity means that one must have the backing of the law.

Keith E. Whittington, William Nelson Cromwell Professor of Politics of Princeton University, explains the relationship between politics and law as follows:

Law and politics are deeply intertwined. Law is an essential tool of government action, an instrument the government tries to influence society. Law is also how the government itself is structured, regulated and controlled. It is no surprise that law is an important prize in the political struggle and that law shapes how politics is conducted.¹⁶⁰

The above provides a platform and a foundation to understand how Bangladesh was able to fight for independence under the volatile circumstances they were in. A group must desire to be identified as a people and the institutions and tools to express that desire. While a people could be identified as Bangladeshi in March 1971 based on historical, ethnic, racial, religious, and linguistic characteristics, in international law, people identification is concerned with territory defined by an international boundary. However, as Jennings points out, this constituted a paradox: "On the surface, it seemed reasonable: let the people decide." It is absurd because people cannot decide before someone decides who the people are.¹⁶¹ The irony and indeterminacy of international law were laid out bare when the same system also serves Pakistan's agenda in their behaviour and treatment of East Pakistan, highlighted later in this chapter. As pointed out by Kennedy, Clausewitz proposes that "war is still the continuation of politics by other means."¹⁶² The self-determination principle 'legally imposes an obligation on the

¹⁵⁹ Hossain, *supra* note 127, at 26.

¹⁶⁰ Keith E. Whittington, *LAW AND POLITICS: CRITICAL CONCEPTS IN POLITICAL SCIENCE*, (2012).

¹⁶¹ Shahabuddin, *supra* note 123, at 93.

¹⁶² Kennedy, *Of War and Law*, 1

colonial Powers and establishes a right for all peoples to exercise self-determination and 'recognised as a human right'.¹⁶³

While West Pakistan may not have been a colonial power, with the trauma and internalisation of colonisation, the subjects of coloniality tend to relive that experience by doing unto others what was done to them. Thus, East Pakistan became an internal colony of West Pakistan. However, legally they were not compelled by this law since they did not qualify as a colonial power. The law ensured that West Pakistan could continue denying the people of Bengal the right to self-determine as, consequently, a human right. Nonetheless, by 1970, this became a universal declaration: "Every state must refrain from any forcible action which deprives people... of their right to self-determination and freedom and independence."¹⁶⁴ Thus, it is no surprise or coincidence that this universal declaration came into existence in the same year. So, did East Pakistan's election victory not give them the right to self-determine and claim independence? This event did not prevent the Bangladeshi genocide, which began just a few months after the election in 1971. Instead, the 'war' was allowed to endure a further nine months against those who did possess anything close to the resources and firepower that Pakistan had. Ironically, Bangladesh, the victim of international humanitarian law, followed the rule of liberation and self-determination by 'seeking and receiving support by the purposes and principles of the Charter' from India as they were entitled. In abiding by the law, Bangladesh was able to attain freedom from a lengthy period of traumatic genocide, but only after the intervention of India – the only country to respond to Bangladesh's aid.

C. BANGLADESH INDEPENDENCE WAR: A GENOCIDE

From the history of the war described throughout, it is pretty evident that West Pakistan had the clear intent to destroy the national movement for Bangladesh by killing innocent protestors and civilians through 'Operation Searchlight', which then involved nine months of massacre and rape. Interestingly, the last point for Article II states that

¹⁶³ Georges Abi-Saab, WARS OF NATIONAL LIBERATION IN THE GENEVA CONVENTIONS AND PROTOCOLS (1979), 369.

¹⁶⁴ *Id.* at 370-371.

Complicity in genocide is also a punishable act. As far as the international community is concerned, the US, China and the Soviet Union all had an interest in what was happening in South Asia and had actively sent support for Pakistan.¹⁶⁵ Since Pakistan was already guilty of genocide, sending support to a party of that nature makes one complicit in that genocide. Thus, these countries fall under committing a crime against humanity and should have been punishable under international law. According to Dr Siegfried O Wolf:

The Bangladesh Liberation War demonstrated that the US and other members of the United Nations (UN) were willing to fade out any esteem for democratic principles and human rights to achieve their goal in 1971. The prevalence of inaction regarding the genocide of the Bengali people committed by the Pakistan Armed Forces must be interpreted as a clear ignorance of the 1948 UN Convention on the Punishment and Prevention of the Crime of Genocide (Genocide Convention) by the respective national governments.¹⁶⁶

It was never ignorant of the UN Convention; it was a complete disregard for it while knowing it swung the probability of successful political and economic gain in South Asia. Thus, genocide is necessary for the current political and economic structure.¹⁶⁷ Bangladesh's struggle for independence speaks volumes of the dedication to their fight against injustice towards their people, language, culture and identity through the act of liberation and freedom. While the idea of a unified Pakistan as the Islamic Republic was initially accepted when breaking away from India after many years under British colonial rule, the treatment of East Pakistan was far from the accurate depiction of the Islamic faith and instead of accepting Bengalis as equal Muslims with a different language and culture, they were forced into speaking a language that only 7 percent of the population said. The 1952 language war saw the beginning of a long wait to attain independence in 1971. While speaking to the Awami League leaders a few hours before his arrest on the night of 25th March 1971, he said, "I have given you independence, now go and preserve it."¹⁶⁸ The nine-month endurance of the genocide shows how the

¹⁶⁵ Sacha Ismail, *1971: Bangladesh's "Liberation War"*, available from <https://www.workersliberty.org/story/2022-01-18/1971-bangladeshs-liberation-war>

¹⁶⁶ Wolf, *supra* note 2.

¹⁶⁷ Andrews, *supra* note 49, at 54.

¹⁶⁸ S.A. Karim, *SHEIKH MUJIB: TRIUMPH AND TRAGEDY* (2005).

Bengalis hold onto those powerful words to survive against a threat to their existence; endurance and genocide effectively became a part of their identity.

D. CULTURAL GENOCIDE & IDENTITY SHIFT

Reducing the Bangladeshi genocide and its perpetrators to only the events and Pakistani elite in 1971 trivialises the more profound implications of the genocide; that it is a colonial trauma suffered by an Indigenous community alluded to in the first chapter and that they are up against a more extensive force of oppression in light of what has been discussed in this chapter so far. While genocide has been addressed in general per the UN Convention to highlight a different angle on the events leading to Bangladesh's independence, perhaps the exploitation of the Bengali indigenous community did not warrant since international law does not address the idea of 'cultural genocide' which George Tinker defines as the effective destruction of a people by systematically or systemically (intentionally or unintentionally to achieve other goals) destroying, eroding, or undermining the integrity of the culture and system of values that defines a people and gives them life."¹⁶⁹ Culture is an integral part of what consists of a person's identity.

Thus, the indigeneity of the Bengali Muslims was under threat as they were forced to assimilate. They were undermined and exploited when they refused to surrender their culture and language. Despite being the greatest advocates for the Pakistani Muslim state and adapting their identity to become part of the new homogenous nation, they still wanted to retain characteristics unique to them as 'Indigenous peoples may adapt their culture to changing times and still retain their unique cultural and group identities'¹⁷⁰ yet they were forced to find another route to claim back their 'nation-ness'. According to Raphael Lemkin, 'genocide' consists of the deliberate destruction of a nation through massacres or coordinated actions designed to destroy essential foundations of group life. Therefore, genocide physically and culturally violates a social group's right to its collective existence, yet he never received political backing for cultural genocide to be acknowledged in the 1948 UN

¹⁶⁹ Kingston, *supra* note 125, at 5.

¹⁷⁰ *Id.*

convention; it was merely seen as physical violence.¹⁷¹ Bangladesh had been subjected to racism and efforts to eliminate elements of their 'Bengaliness' since the 1947 India and Pakistan partition in what Lemkin describes as cultural genocide.

According to the UN Convention, Operation Searchlight also met the criteria of physical genocide. Yet, in both cases, East Pakistan was denied their collective identity as being Bengali and social belonging as being Muslim. "The cultural genocide of Indigenous peoples often reflects the intentional destruction of a nation's values and practices."¹⁷² They were denied the freedom to practise their culture, which escalated to their existence being denied. International law and its community did nothing to prevent, acknowledge and reprimand these actions since they are complicit in this atrocity. Were they involved, perhaps it would have exposed the system and the political actors that stand to benefit from the downfall and destruction of others? However, the failure to recognise or pay attention to cultural genocide is predictable considering that, historically, erasing the 'Aboriginal' was a crucial basis for establishing the West's development.¹⁷³

The continual genocidal experience causes the identity to shift. Either it is completely destroyed, or the survivors find ways to fight against the dominant social group and ensure that their language and culture do not cease to exist. As part of this polarised identity for the out-group, the in-group is creating an identity as the only possible counterforce to combat the threat. The in-group's claim that they alone possess the bravery and strength to identify and confront the threat is the basis for their reborn identity. The more they hold accountable out-group members for committing gross atrocities and making unholy alliances with other political actors, the more conspicuously the in-group demonstrate their identity to save themselves and others from extinction. Thus, the objective of going to war with the out-group is not simply to eradicate the threat but to strengthen the in-capacity groups to give justice and build a better society.¹⁷⁴ While Bengaliness remains a core historical aspect of who they are in the Bangladeshi context, they had to shift their identity by reinventing themselves as

¹⁷¹ *Id.* at 7.

¹⁷² *Id.* at 9.

¹⁷³ Andrews, *supra* note 49, at 32.

¹⁷⁴ William A Donohue, *The Identity Trap: The Language of Genocide*, *J. Lang. & Social Psych.*, 15 (2012).

a postcolonial state to escape genocide. The 1971 catastrophe was a struggle for survival rather than a self-conscious attempt to construct a secular state, even though inspiration was sought in slogans such as 'Joi Bangla' triumph to Bengal, which had no religious implications.¹⁷⁵ Eliminating the threat meant to become an out-group themselves, so they were no longer Bengali per se; they became Bangladesh, a nation-state of their own where they could give their people the justice they deserve after decades of colonial trauma and genocide.

E. MUSLIM BANGLA NATIONALISM

The fall of the Muslim universality which Pakistan had promised to establish along with adopting the postcolonial framework of nation-states meant that the Awami League, led by Sheikh Mujibur Rahman returned to the 'Bengaliness' identity before the Pakistan movement since the very movement they became part of led to further exploitation. Thus, it is no surprise why he championed 'Bengali nationalism'. "The movement of 1952 was not only a movement for language but also for the establishment of social, economic, cultural and political rights of the people of Bangladesh. . . Bengalee nationalism is a great force today. The Bengalees have awakened and no power on earth can any longer suppress or exploit them."¹⁷⁶ To escape the claws of Pakistani rule, the Bengali nationalism movement was grounded in democracy, secularism and socialism which were largely alien concepts to the population yet saw the benefits of attaining their freedom. However, once free, those same concepts were no longer deemed acceptable.¹⁷⁷

The movement for an independent Bangladesh was also rooted in the protection of the Bengali language which is demonstrated in this new Bengali homeland; Bangladesh alone remains the true Bengal because the people maintain their connection with the land through their use of the Bengali language.¹⁷⁸ This idea that Bangladesh remain close to their pre-colonial roots is substantiated by the fact that there is also a perception in Bangladeshi public discourse that cultural practises have shifted in the 60

¹⁷⁵ Talbot & Singh, *supra* note 30 at 349.

¹⁷⁶ Jones, *supra* note 80 at 383.

¹⁷⁷ Hossain, *supra* note 34, at 167.

¹⁷⁸ Jones, *supra* note 80 at 388.

years since division, but only in West Bengal, not Bangladesh. West Bengalis are said to be losing touch with their motherland as they abandon their mother tongue in favour of Hindi and English.¹⁷⁹ Ironically, homeland narratives in contemporary West Bengal emphasise how the Bangladeshi community wandered away from a connection to the Bengali motherland as Islamic practises overtook other traditions.¹⁸⁰ This is perhaps a shared understanding among both West Bengalis and Bangladeshis as one can see in the following interview:

Q: What distinguishes Bengali culture?

A: Actually, we are slowly reaching the end of being Bengali; now we are Bangladeshi. Our heritage was Bengali but it is at the end of the road.

Q: [My research assistant asks] Ok, then how do we know we are Bangladeshi?

A: Our religious fervour is slowly increasing. People are thinking more, and differently, about religion. This [Islam] is our best asset and last hope¹⁸¹

The distinction of Bangladeshi and Bengali, which were previously synonyms, reaffirms the Bengali identity category's initial conception during the Bengali Renaissance as solely embracing Hindus. Muslims were regarded to be distinct at the time, and were referred to as simply Muslims or Bengal Muslims. This difference is mirrored in the reincarnation of Bangladeshi as a 'Muslim from Bengal'.¹⁸² "After experience had indicated a distinct set of interests for Bengali Muslims, their basic strategy in countering threat perceptions from one community was to seek an alliance with the other. The perceived threats were seen to be [to] one or the other of their attributes – to their Bengaliness or to their Muslimness. These two streams of their nationhood found political expression in the two political parties that currently dominate the national scene."¹⁸³ What this indicates is that contemporary Bangladeshi identity has been switching between Bengali nationalism-secularism and Bangladeshi-

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 386.

¹⁸¹ *Id.* at 386-387.

¹⁸² *Id.* at 387.

¹⁸³ Chowdhury, 'Roots of Bangladeshi National Identity', 17.

Muslim nationalism with the latter as a response to the former.¹⁸⁴ While the Bengaliness narrative, as embodied by Sheikh Mujib and the Awami League, framed itself against the mistake of the Pakistan period, the Bangladeshi-ness narrative, as embodied by Ziaur Rahman and the Bangladesh National Party, embraced Pakistan as a logical step toward Muslim Bengal's separate homeland.

The overthrow of the Awami League in 1975 was the first power move to restore Islamic consciousness in Bangladeshi culture and politics that had been lost during the secularisation period, allowing Bangladesh to break away from West Pakistan while also allowing Islamic political and militant groups to flourish. It's almost a role reversal, because secularism was created as a concept in the 1972 constitution in response to Islamic party resistance to Bangladeshi independence. General Zia's initial Islamization campaign prior to his assassination bore fruit in 1990, when the Islamic identity of Bangladesh was officially restored by being declared as the state religion with significant changes to the constitution; the *basmala* was now inserted at the beginning of the constitution, while terms such as socialism and secularism were replaced with phrases such as 'social justice' and 'absolute trust and faith in Almighty Allah'. Since then, both parties, especially the Awami League, have symbolically declared the return of Islamic identity.¹⁸⁵“While Bengali ethnicity remains a marker of identity for them, Islamic resurgence has restored a hitherto repressed sense of Muslim identity to the extent that Bangladesh is now recognized by most Western countries as a moderate Muslim nation.”¹⁸⁶ The return to Islam as a significant part of their identity is in line with how Islam was practised before in the Bengal for many centuries before it was suppressed during the events and period leading up to the creation of Bangladesh.

¹⁸⁴ Hossain, *supra* note 34, at 167.

¹⁸⁵ *Id.* at 174-6.

¹⁸⁶ Hossain, *supra* note 34 at 170-71.

V – CONCLUSION

The ‘self and other’ framework allows us to understand the historical events that led to the creation of Bangladesh irrespective of what social, political and legal lens a person may adopt in explaining the different narratives surrounding their liberation. However, it is necessary to lay down the foundations of social philosophies, which later take the form of political and legal relevance. These ideas allowed the colonisers to create the social categorisations of difference and later institutionalise them through the postcolonial framework of nation-states. While giving the illusion that freedom is possible, the implications of adopting nationalism were profound in how former colonies ruled as dominant culture and impacted their attitudes and treatments towards minorities due to the colonial ideologies that formed the framework, to begin with. Europe’s agenda has always been domination, and that trait has continued through the acts of their former colonies. However, because identity is subjected to the self and the others, it is essential to look beyond the parameters within which the Bengalis and the International community ‘universally’ understood the particularity of that identity. Thus, discussing identity from the perspective of indigeneity and Muslim ummah grants us the tools to imagine the Bengali Muslims before, during and after colonial intervention.

The history of the Bangladeshi struggle has proven to be even more profound and complex than initially portrayed. The Muslims of Bengal became subject to the colonial trauma that the British had first inflicted on India, which subsequently was passed on in the struggles for socio-economic and political equality among all regions in Pakistan. The colonial trauma referred to in the paper is not simply the grievances of another nation-state taking advantage of the minority groups living in the vicinity. Instead, the coloniality of power was also transferred, which eventually saw Pakistan adopt a European concept of universality despite Islam and the idea of the Muslim ummah being at the forefront of their creation. The Bengali struggle becomes even more significant when one considers the efforts they put in and the impact they had on the masses to follow and believe in the concept of Pakistan. Pakistan should have felt indebted to the Bengali Muslims for ensuring the Muslim dream of their land became a reality. But the idea of Muslim universality was soon replaced by the nationalistic

notion of being a Pakistani. The term Pakistani, therefore, lost its Muslim essence. The Muslims in Bengali were unable to adhere to their cultural and religious identity as West Pakistan marginalised them for being a ‘Bengali Muslim’.

The Pakistan Universal took form in the form of the military, the governance and the state language, yet it excluded those who played a significant role in establishing their identity. This is akin to how Europe established their identity and dominance over others through others. As a result, Bangladesh became subjugated to racism and violence, which eventually led to the formation of Bangladesh. The colonial nature of international law played a vital role in how Bangladesh was treated under the circumstances of being a territory under the governance of West Pakistan with no real power over what language they could speak or what they could identify themselves as. The different approaches to war also significantly influenced how Pakistan conducted this genocide under the pretence of it being an internal conflict or a preventive war. East Pakistan sought the liberation of their victim identity through the principle of self-determination through non-violent movements before having to fight for survival, let alone freedom.

Genocide is an important dimension of the Bangla Universal because it is essentially a paradox where by committing a crime of killing their people, Bangladeshis are created. By being victims of genocide, it is a confirmation in itself of their status as a people. The lack of acknowledgement of cultural genocide though played a significant role in the identity shift and how they became politically relevant. “For many Indigenous peoples, the need to recognise and prevent cultural genocide is paired with the desire to heal – and thrive despite – past trauma.”¹⁸⁷ However, this desire to heal cannot be achieved by accepting that Bangladeshi identity was liberation from Pakistani genocidal atrocities; that only diagnoses the symptoms of the problem. It is akin to assuming that one has a headache when really, they are experiencing the effects of a brain tumour. Similarly, the separation results deepen when considering how colonial history and framework combined led to their identity shift.

The essence of Muslim universality lies in the ‘ummah’ transcending the racial boundaries created by man yet despite there being multiple identity shifts for the

¹⁸⁷ Kingston, *supra* note 125, at 31.

Bengalis in relation to their Bengaliness or Muslimness, their Muslimness has remained throughout all periods be it before the British, Indians or the Pakistanis. Part of their original identity has remained and survived despite colonial encounters while simultaneously been altered by history, resulting in a mixture of the original and the colonial when conceptualising the identity of the Bangla Universal today.