

BANGLADESH - INDIA LAND BORDER ISSUES AND MANAGEMENT

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Bangladesh and India share more than 4000km of land boundary. The border cuts across heavily populated villages, market places, roads and railways and common agricultural lands. The international border, drawn during the partition of India in 1947, divides a contiguous landscape and a population that was integrated and interdependent for centuries. The highly porous and often indistinguishable Indo-Bangladesh border gave rise to a number of issues that often vitiated friendly relations between the two neighbours. More importantly, millions of people living on either sides of the border continue to suffer economic hardships and physical restrictions due to frequent incidents along the border. While bureaucrats and policymakers in faraway capitals harangue on semantics, the people living in the border areas continue to be neglected. The writer, in his paper wants to bring these people in the focus. He argues that early settlement of the outstanding border issues and formulation of a people-friendly border management policy will promote inter-state relations, boost economic activities between the two countries and above all, bring succour to people living along the border belt. A peaceful and friendly border definitely serves the interest of both the countries.

INTRODUCTION

Historical Background

During British colonial rule, Bangladesh was a part of the province of Bengal, except for the district of Sylhet, which was then in the province of Assam. Because of the partition of India in August 1947, the eastern part of Bengal and the district of Sylhet together made up East Pakistan, later day Bangladesh. The Boundary Commission, led by Sir Cyril Radcliff, a British Judge, drew the 4,156 Km border between India and East Pakistan. The border cuts across rivers and canals, villages and markets, agricultural lands and tropical forests. There are hardly any distinguishing geographical features marking the border. Over the last 50 years, almost the whole length of the border has been demarcated; this was a Herculean task indeed. However, few kilometres of undemarcated stretches remain as sources of misunderstanding and tension between the two neighbours. In addition, there are a number of enclaves and adversely possessed land (APL), again relics of our colonial past, which remain unresolved. The two countries share one of the most porous borders in the world. Bangladesh Rifles (BDR) and the Border Security Force (BSF) of India guard the borders on either side. These forces are to ensure proper management of the international

boundary, check smuggling and illegal trafficking and ensure peace and tranquillity along the border belt.

Current Border Issues

From Bangladesh's point of view, human, arms and drug trafficking, increasing smuggling of goods into Bangladesh, and frequent and unprovoked firings by the BSF on Bangladeshi villagers living close to the border are major sources of concern. From India's point of view, alleged cross-border migration of Bangladeshis into India, and oft-repeated charges that the insurgents of India's North Eastern states are using Bangladesh territory as sanctuary are major impediments to better Indo-Bangladesh relations. Unresolved boundary issues are, no doubt, obstacles to orderly and peaceful management of the borders.

Proper management of the border will ensure friendlier relation between the two neighbours. It is in the long-term interest of both Bangladesh and India that the border remain peaceful, that the people living in the border areas carry on their normal life without hindrance and restrictions, illegal trafficking in all forms are curbed and that legal trade and commerce flourish. The Indo-Bangladesh border management issue has technical, organisational, financial and political dimensions involving both countries. The future of Indo-Bangladesh relations hinges largely on this issue.

Aim

The aim of this paper is to examine ways to resolve outstanding border issues between Bangladesh and India, and improve working procedures among government agencies deployed on the border so that bilateral relations between the two countries improve.

Scope

This paper will study the day-to-day management of Bangladesh-India borders and the progress made so far in resolving the existing land boundary disputes. It will examine existing legal and official procedures and study how best to improve those. The paper will concentrate on how to make BDR more effective by restructuring the forces, as well as providing them with effective legal tools. It will examine how to encourage people's participation in the management of the border. The paper will then recommend a set of measures aimed to improve the management of the Bangladesh-India border.

MANAGEMENT OF BANGLADESH-INDIA BORDER

The Joint Guidelines and the Management Issues

The BDR and BSF operate under joint-guidelines for management of the Bangladesh-India borders. These guidelines set the ground-rules for day-to-day management so that both the forces can operate in close proximity of each other with friendly and good neighbourly spirit. "Joint India-Bangladesh Guidelines (JIBG) for Border Authorities" came into effect in 1975. The joint guidelines identified problems and causes of incidents of firing by the security forces that have become regular features in the Bangladesh-India border. JIBG has identified the following as being the main causes for friction among the two frontier forces:

- a. Unauthorised movements of persons across the border.
- b. Inadvertent crossing of land and river boundaries.
- c. Smuggling.
- d. Private claims over land, cattle, fisheries etc.
- e. The possibility of a clash between the border forces of Bangladesh and India, when forces reach the borderline in hot pursuit of criminals.
- f. Traffic in illicit arms and ammunition.
- g. Border crimes, particularly armed robbery, cattle lifting, kidnapping etc.

The main causes identified that could lead to clashes were as follows:

- a. Lack of knowledge among the forces as well as nationals of both countries in identifying international boundaries.
- b. Cultivation of land where the boundary crosses the course of a river and when part of an individual's land is on the side of the river owned by the other country.
- c. Formation of char land in the bed of the river or as an accretion to the main land.
- d. Fishing and navigational disputes.
- e. Cattle lifting and trespassing.
- f. Attempts by local people to take over the APL during joint boundary demarcation along the borders.

In addition, the JIBG emphasises strict check, regular and frequent contacts and the exchange of information and intelligence at appropriate levels between border authorities in order to contain smuggling and cross-border criminal activities or untoward incidents at the borders. On border problems, the JIBG suggests settlement of disputes through mutual consultation by border district authorities. Where local authorities are not able to resolve the issue, they should refer the matter to the respective Governments. The Sector/Battalion/Company / Post Commanders or equivalent ranks in the Police are to receive all complaints regarding title to any land or immovable property on the other side of the border. This will also be applicable in the case of char lands, navigation facilities and difficulties in harvesting. They will hold a joint enquiry within 24 hours of the complaint received.

JIBG has also incorporated a few simple rules to avoid untoward incidents. They are:

- a. In case of missing international boundary pillars, both sides should decide an easily identifiable working boundary without prejudice to the de jure boundary.
- b. Neither side will have permanent or temporary border security forces or any other armed personnel within 150 yards on either side of the real or working boundary line. No one will construct permanent posts until the completion of the final demarcation.
- c. Border forces will prevent entry of armed civilians within 300 yards of either side of the borders.
- d. Forces will establish joint checks on the bank, if possible, or in the main channel, wherever the boundary, working or real, runs through the mid-stream of a river.

The JIBG emphasises close communications between the border forces of the two countries. It stipulates two meetings in a year between the Director Generals (DG) of BDR and BSF, alternating between Dhaka and Delhi. It also stipulates four meetings a year at Deputy Director General (DDG) level, alternating between sites in Bangladesh and India, and regular meetings at Sector and Battalion Commanders level. JIBG also stresses that whenever either side calls for a contact on the border, the other side must reciprocate immediately. So far the proceedings of the meetings reveal that there has been no substantial change in the agenda through the years.¹ Also, many mutually agreed decisions had not been implemented.

1. Author's discussion with a senior official of BDR

Border Incidents

Despite comprehensive joint guidelines, the Bangladesh-India border has continued to remain a source of tension and irritants since 1971. Problems persist, and the causes leading to incidents of firing and border skirmishes identified in the JIBG have not changed or disappeared. Often Bangladeshi villagers living in border areas try to cross the border illegally to meet relatives across the border in India, become victims of shooting by the BSF. Moreover, due to ignorance about "No Man's Land", many villagers stray into these areas to collect firewood, for example, leading to firing incidents. Complex visa granting procedures between India and Bangladesh encourage people to cross the border illegally. This often results in firing incidents. Annex A shows the details of firing incidents from 1976 to 2001.

It is evident from Annex A that border incidents are on the increase. The number was much less during the Pakistan period, providing a sad spectacle of Indo-Bangladesh relations. The Indian press has commented that the situation at the border around Bangladesh has worsened due to deployment of BSF personnel of non-Bengali origin who cannot communicate with the locals and have no idea about the social set up of Bengali societies in the border areas. BSF units returning from Indo-Pak border and Kashmir etc view the Bangladesh border with the same trigger-happy suspicion. BSF contingents composed of Bengali speaking soldiers would make a difference.² Citizens across the border, who are badly affected by frequent firing incidents, especially those from West Bengal have demanded that BSF forces along Indo-Bangladesh borders should be mainly Bengali speaking as was the case prior to 1971.³

Smuggling and Human Trafficking Across the Border

Along with firing and other untoward incidents, smuggling is on the rise as well. Food grain, sugar, textile, machinery and many other commodities worth millions of Takas are smuggled into Bangladesh. A survey conducted by the Bangladesh Unnayan Parishad (BUP), an NGO, revealed that, on average, commodities worth Taka 832.2 million are smuggled every month into Bangladesh from India. The annual seizure statements from BDR also help in assessing smuggling trends. The seizure statement for the period from 1976 to 2001 is shown in Annex B.

While there is no reliable data on women and child trafficking from Bangladesh, it has been estimated in surveys done by the NGOs that 200-400

2. *The Times of India News Service*, 25 April 2001

3. Alok Kumar Gupta and Saswati Chanda, "India and Bangladesh: Enclaves Dispute" in <http://www.ipcs.org>

young women and children are trafficked every month to India and beyond. Research has shown that traffickers use border enclaves as collection points.⁴ Although Bangladesh and India, along with other SAARC countries, have signed an agreement on child and women trafficking in 1997, BDR and BSF do not have any joint action programme to prevent trafficking.

Along with human trafficking, arms and drug smuggling are also on the rise. Due to insurgencies in North East India, Bangladesh has become a market for trafficking in arms and ammunition. Bangladesh has also become a thriving market for illicit Indian drugs and our young people are the victims of this trade. The frequent seizure of contraband Indian 'Phensidyl' by law enforcing agencies in Bangladesh reveals the extent of cross-border drug trade. Though these issues were raised during the BDR-BSF DG level border conference held in October 2000, mechanisms to combat drug trafficking were not put in place.⁵

Indian Government's Response

The Indian Government's reaction to cross-border movement of people has been to erect a barbed-wire fence along the Bangladesh-India border. The barbed wired border is a sign of distrust and low confidence between two friendly neighbours. The issue of fencing again came to the forefront recently, when the Tripura State Government urged Delhi to sanction funds for the fencing of some 200 km of the border. The intention according to the Tripura Government was to help check cross-border movements of militants, who seek sanctuary in Bangladesh.⁶ Such fencing separates a society that has been together for centuries. This measure is equally unpopular among people living on both sides of the border.

BORDER DISPUTE SETTLEMENT PROCESS

Types of Border Disputes

There are three kinds of land border disputes with India:

- a. Undemarcated border
- b. Enclaves
- c. Adversely Possessed Land (APL)

Undemarcated Border

Of more than 4000 km Bangladesh-India borders, 6.5 km are yet to be demarcated. Of these, 1.5 km lies in Daikhata under Panchagarh District; 2 km lies in the areas adjacent to Muhuri River under Feni District and 3 km in

4. *The Daily Star*, Dhaka, 20 January 2002

5. *The Daily Star*, Dhaka, 26 October 2002

6. *The Daily Star*, Dhaka, 15 February 2001

Lathitila-Dumabari under Moulavibazar District.⁷ All these stretches remain undemarcated because of differing technical positions taken by India and Bangladesh. Among those, Muhurir Char is the most talked about issue in Bangladesh-India border dispute. In the Muhuri River area, India relies on Article 1(5)⁸ of India-Bangladesh Land Border Agreement (LBA) signed in 1974. While India's position is that Muhuri River should be kept separate from the remaining portion of the Tripura-Noakhali/Comilla sector, where demarcation was to be done on the basis of Chakla-Roshnabad Estate Maps of 1915-1918, Bangladesh considers Chakla-Roshnabad Estate CS Map⁹ to be the most relevant document in determining the two points of the Muhuri River between which the mid-stream would form the boundary between Bangladesh and India. Bangladesh also argues that since the Noakhali/Comilla-Tripura sectors were demarcated according to the Chakla-Roshnabad Estate CS Map in 1892-99, the demarcation of the Muhuri River, which is geographically located in the Noakhali sector, should be based on the Chakla-Roshnabad Estate CS Map. Similar differences in technical approaches are visible in the demarcation of Lathitilla-Dumabari boundary. Thus the first meeting of JBWG held in Dhaka in July 2001 ended in a stalemate. The second meeting, which was due on 26-27 March 2002 in New Delhi, has not taken place till the writing of this paper in mid 2002.

Enclaves

The problem of enclaves is a legacy from the days of princely states in British India. In 1947, the Maharaja of Cooch Bihar opted for the Indian Union and the neighbouring districts of Rangpur and Dinajpur came to East Pakistan. This resulted in the appearance of a number of Indian enclaves inside Pakistan and a number of Pakistani enclaves inside India. In the early days after partition, residents of these enclaves moved freely to their respective mainland, but tension between India and Pakistan led to increasing restriction on such movement. Bangladesh inherited the problem in 1971. As per an agreed list of enclaves signed in April 1997 at the level of Director General Land Record & Survey (DGLR & S), Bangladesh and DLRS, India, Bangladesh has 51 enclaves inside India with an area of 7,110 acres and India has 111 enclaves inside Bangladesh with an area of 17,158 acres.

7. *The Daily Prothom Alo*, Dhaka, 26 April 2001

8. "The boundary in this area (Muhuri River) should be demarcated along the mid-stream of the course of Muhuri River at the time of demarcation. The boundary will be fixed boundary. The two governments should raise embankments on their respective sides with a view to stabilising the river in its present course."

9. "Technical Working Paper" for the Bangladesh Delegation to the Second Meeting of the Bangladesh-India Joint Boundary Working Group, p.4

Article 1(12) and Article 3 of the Land Boundary Agreement (LBA) of 1974 envisage that Bangladeshi enclaves in India and Indian enclaves in Bangladesh should be exchanged expeditiously and people in the enclaves offered a choice of citizenship. In accordance with the agreement, Bangladesh has handed over the Berubari enclave to India. India had pledged to return in exchange a land corridor measuring 178×85 meters to reach the Dahagram-Angorpata enclave of Bangladesh. However, India has never opened the corridor to Bangladesh giving the pretext of legal complications. After protracted negotiations, on 26 June 1996 India agreed to keep the corridor open every alternate hour during daytime. Finally, on 12 Aug 2001 India declared that the corridor would remain open for 12 hours from dawn to dusk. Bangladesh is still pursuing to keep the corridor open for 24 hours. Although the Indian Government regularly declares its intention to exchange the enclaves in accordance LBA-1974, their policymakers say that the exchange of enclaves require amending their Constitution for ratification of the treaty. After a passage of a quarter century, the agreement is still awaiting ratification by the Indian Parliament. Bangladesh argues that since India was a signatory to the Nehru-Noon Agreement of 1958 and the 9th amendment of the Indian Constitution ratified the agreement, the Constitution does not need further amendment to ratify LBA - 1974. This legal dillydallying by India is a barrier towards building trust and confidence between the two neighbours. Meanwhile, residents of the enclaves of both countries face enormous hardships because of frequent shooting incidents, poor law and order situation and a general state of uncertainty and deprivation.

Adversely Possessed Land.

Adversely possessed land (APL) is another legacy of partition. Since 1947 about 3,500 acres of Bangladesh land is in India's possession and about 3000 acres of Indian land is in Bangladesh's possession in different sectors of the border.¹⁰ The issue of APL has remained unresolved for the last 25 years because of the differing interpretations by India and Bangladesh of the formula of the transfer. Unresolved APL issues contribute to frequent border incidents. The Baraibari border clash on 18 April 2000 left 3 BDR and 16 BSF men dead in the worst border fracas in the 30 years of Bangladesh's independence. One positive outcome of this unfortunate incident was that it was a chilling reminder to the Indian policy makers of the urgency of settling the border issues with Bangladesh.¹¹ In nearly one hundred border incidents in 2000, 47 Bangladeshis

10. *The Daily Star*, Dhaka, 23 October 1999

11. Prakash Singh, Former DG, BSF, in an interview with *The Sunday Times of India*, 22 April 2001

were killed and 88 were abducted either by BSF or by armed gangs from India, while 11 Indians were killed along different border points.¹² Until 1999, the two countries held 146 bilateral meetings at different official levels to diffuse border related tensions. Indian officials admit that non-ratification of the Mujib-Indira Agreement i.e. LBA-1974 is the prime cause of border tension.¹³ (LBA-1974 is in Annex C).

At the Foreign Secretary level meeting held in 2000, two Joint Working Groups were formed to deal with unresolved border issues. The progress that has been made so far is the drafting of the Terms of Reference by India in February 2001. The compulsions of realpolitik and diplomacy demand that India opt for a speedy solution of the border issue.¹⁴ Thus, activities in this regard were geared up and both the working groups have submitted proceedings to their respective governments recently, though results are yet to be made public.¹⁵ Many opportunities of putting Bangladesh-India relations on the right track have been lost. After the restoration of democracy in Bangladesh, the signing of the Ganges Water Treaty and the Chittagong Hill Tracts Accord, there is nothing of substance that obstructs making bilateral relations between Bangladesh and India among the best in the world. The Indian Government often views Bangladesh in a negative manner. The media generally ignores Bangladesh. However, Bangladesh, when it does appear in the media, it is mainly in reference to the insurgency in the northeast, religious fundamentalism or so-called ISI activities. Seldom, if ever, does the Indian media write about the achievements and aspirations of Bangladeshi people. They conveniently ignore the fact that Bangladesh is a \$3-billion market for Indian goods and services, the single biggest trading partner in the developing world.

ANTI-SMUGGLING OPERATIONS: ROLE OF BDR

Anti-smuggling Operations

BDR forces total about 40,000, organised in 11 operational sectors, 41 battalions that staff 520 Border Outposts (BOPs). In addition to maintaining the security of the border, BDR is responsible for checking smuggling across the border. Customs Act 1969 has empowered the BDR to seize/search and arrest

12. Report compiled by *Research and Documentation Units* of Ain-o-Salish Kendra, a Human Rights Organisation

13. *The Daily Star*, Dhaka, 29 October 1999

14. Siddharth Varadarjan, Deputy Bureau Chief of the Times of India, in an interview with *The Sunday Times of India*, 22 April 2001

15. Col Khan Ahmed Ullah Imam, Director Operation & Training, BDR during a telephonic interview with BBC Radio on 05 August 2002

smugglers within 5 miles of the border.¹⁶ The Government of Bangladesh in 1973 has empowered all members of BDR deployed in the border areas to be officers of customs. However, BDR cannot operate unilaterally beyond 5 miles from the border. Operations beyond 5 miles of the border require presence of a Police officer or a Magistrate. This curbs the initiative of BDR; smugglers, in turn, exploit this situation. The smugglers only require to cross 5 miles from the border to be outside the jurisdiction of the BDR.

Although the BDR is legally empowered, it lacks human and material resources to keep a sharp watch over the 4000 km long frontiers. The force is at least 30% deficient in strength to the task. As such, vast stretches of the border remain thinly guarded. In the rugged mountainous jungles of the Chittagong Hill Tracts, the thinly guarded frontier is a threat to the security and sovereignty of the country. An estimate shows that the BDR needs at least 20 additional battalions with four sector headquarters. The Government has agreed to a proposal to raise the required forces in phases. The Home Ministry has sanctioned two more battalions and 60 more BOPs to raise the capability of the BDR. Although the BDR is fully committed to the protection of border and prevention of smuggling, they are often called out to restore law and order, ensure peaceful elections, and provide post-disaster relief and perform many other tasks. It is worth mentioning that approximately 1/5th of the total force remain on patrol in the border areas at any time of the day or night.¹⁷

Communication and distance between BOPs are important factors that affect operational capability. On the average, the distance between one BOP and another varies from 10 to 20 km. Road conditions are deplorable and in some cases road does not exist. From a BOP, one may have to travel a long distance going back to the main road, which runs parallel to the border, and travel same distance to reach another BOP. This is because there is hardly any lateral road to connect one BOP to another. We need to construct lateral roads as a part of long-term plan that will not only reduce distance between the BOPs, but also increase the operational capability of the BDR and all other agencies involved in border duties.

GROUND REALITIES IN THE BORDER AREAS AND OPTIONS FOR CHANGE

Border regions are often far-flung areas, deprived of the mainstream development activities of the Government. The standard of living near the international border is generally lower than in the rest of the country. The border drawn in 1947 cut an integrated economy into two. Rail and road

16. Author's discussion with a senior official of BDR

17. *ibid*

communications were snapped in many places. In fact, the boundary sliced through the lifeline of Bengal. The villagers found themselves cut-off from their land and placed on the opposite side of an international boundary.¹⁸ Cyril Radcliffe, the Chairman of the Boundary Commissions for Bengal and Punjab, held no public hearing and took little consideration of the economic, cultural, social and historic linkages that Bengal had developed over the centuries.¹⁹ None of the three Muslim members representing Pakistan in the Commission were from Eastern Bengal.²⁰

The legacy of disputes along India-Bangladesh borders was once borne by Pakistan and now by Bangladesh. On Bangladesh-India borders, Mr. R.N. Bhattacharya, ex IG, BSF has made the following comment: "It's the most artificial border in the world." To substantiate his comment, he read a report on a group wedding, celebrated in a West Bengal village, where three brides and two grooms were from India and three grooms and two brides from Bangladesh.²¹ These are the social realities that policy makers have to keep in mind if they are to make positive and effective steps to improve Bangladesh-India relations.

In recent years, there has been a fundamental shift in the life of many border regions. In Europe, for example, national borders in the traditional sense have all but disappeared. The borders of USA-Mexico, Canada-USA, China-Nepal, China-Myanmar, Malaysia-Indonesia, India-Myanmar etc have evolved from the traditional barrier role to that of a zone of cooperation. Border regions have achieved increased political autonomy and greater participation in the formulation of national policies that influence border zones. Despite economic, administrative, cultural and other asymmetries, there are ample opportunities for trans-border cooperation between Bangladesh and India at the local level. In some cases, border regions have become the catalyst of interaction and cooperation between neighbouring nations. For example, the state of Tripura, which shares 889 km-long borders with Bangladesh, is most porous; people from both sides cross almost daily. In this era of globalization, relaxing tariff barriers and facilitating informal trade between two countries may be relevant. It will not only improve conditions of life of the citizens of the border areas, but also reduce trans-border crimes.

Easier movement of people between the two countries will help ordinary people. For example, health-care facilities in Agartala are good. Hospitals in

18. Chaudhury Muhammad Ali, *The Emergence of Pakistan*, Lahore, Pakistan, 1988, pp. 203-204

19. Chaudhury, op.cit, p. 209

20. Abu Saleh Mohammad Akram and S. A. Rahman (both from West Pakistan) on behalf of Pakistan and Mehr Chand Mahajan on behalf of India were the members of the Bengal Boundary Commission.

21. Maseeh Rahman, "Wagah - Separated at Birth" Weekly Time Magazine, Vol. 150, No. 6, August 11 1997, p. 43