

## “ORIGIN AND DEVELOPMENT OF INTERNATIONAL BOUNDARY PROBLEMS BETWEEN BERUBARI AND BANGLADESH (1947-1974)”

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### **ABSTRACT**

*The Gram Panchayat of South Berubari was in the district of Jalpaiguri and under the jurisdiction of Kotwali Police Station, West Bengal, India. Since the independence of India in 1947, the name of South Berubari was published as news headlines time and again. Berubari issue was a most sensitive and patriotic issue during the second half of the twentieth century. The problems of people of berubari originated after the partition of India. The aim of this work is to highlight how the berubari-Bangladesh international boundary problems originated and developed.*

**KEYWORDS:** *Berubari, Radcliff Award, Chhitmahal, Identity*

### **INTRODUCTION**

The district of Jalpaiguri was divided immediately after the partition as well as Independence of India on 15 August 1947. As a result, Berubari became a border area. The border issue between India and East Pakistan, now Bangladesh, created severe problems in the Berubari area since India's independence. The 'Nehru-Noon Pact' was signed between the Prime Minister of India Jawaharlal Nehru and the Prime Minister of Pakistan Sir Feroze Khan Noon, in respect of some Indo-Pakistan disputes in September 1958. To implement the Nehru-Noon Agreement, the Constitution Ninth Amendment Act and Acquired Territories (Merger) Act were adopted in 1960. This legislation was challenged in the courts by a series of writ petitions. The Supreme Court decision on March 29, 1971, finally cleared the way, dismissing the objections to the two Acts but implementation was delayed by the Pakistani Army crackdown in East Pakistan and subsequent events which led to the emergence of Bangladesh as an independent country.

### **Origin of Dispute in Regard to Berubari Union No.12**

South Berubari was a small town. It was located near Indo-Bangladesh border, in Jalpaiguri District of West Bengal. It was around 13 km south of Jalpaiguri, the district headquarters.<sup>1</sup>Berubari Union No. 12, the focus of this study, had an area of 8.75 sq. miles and a population of ten to twelve thousand residents. After the division of India and Pakistan, the people of South Berubari became involved in a prolonged agitation.

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<sup>1</sup>Kar, Arabinda, *KiratBhumi*, JapaiguriZelaSankalan Second Edition, Sanskriti Para, Jalpaiguri: Year not mentioned, p. 747

The Indian Independence Act of 1947 was passed by the British Parliament on 18 July 1947. After this, a boundary commission was appointed under the Chairmanship of Sri Cyril Radcliffe. In accordance with section 3(3) of the Indian Independence Act, the boundary commission made an award. This award determined the boundaries of the province of East Bengal and the province of West Bengal constituted by section no. 3(i) of the Indian Independence Act. Unfortunately, at the same time, Commissioner Sri Cyril Radcliffe has penetrated five police station of the district of Jalpaiguri are in East Bengal. The police stations are respectively Boda, Panchagad, Tetulia, Debiganj, and Patgram. West Bengal has lost these five police stations due to this reason. As a result of therein lies the germination of problems of South Berubar.

According to Radcliff Award, India's borders ran a total length of 15,106.70 km (9,387 mi). Its borders with Pakistan and Bangladesh were delineated according to the Radcliff Line, which was created in 1947 during Partition of India. Its western border with Pakistan extended up to 3,323 km (2,065 mi), dividing the Punjab region and running along the boundaries of the Thar Desert and the Rann of Kutch. Both nations delineated a Line of Control (LoC) to serve as the informal boundary between the Indian and Pakistan-administered areas of Kashmir. According to India's claim, it shared a 106 km (66 mi) border with Afghanistan in northwestern Kashmir, which was under Pakistani control. India's border with Bangladesh ran 4,096.70 km (2,546 miles).

India's border with Bangladesh was 4096.70 kms long. Five Indian states lay on this border: West Bengal, Assam, Meghalaya, Tripura and Mizoram. They contributed to the border with Bangladesh as follows:

**Table 1: Border Sharing with Bangladesh**

West Bengal	Land Border: 1181.70 kms.	Riverine Border: 335 kms.	Total: 2216.70 kms.
Assam	Land border: 160 kms.	Riverine: 103 kms.	Total 263 kms.
Meghalaya			443 kms.
Tripura	Land Border: 773 kms.	Riverine: 83 kms.	Total: 856 kms.
Mizoram	Land Border: 58 kms.	Riverine: 260 kms.	Total: 318 kms.

**Source:** Banerjee, R., 'An Account of Exclaves – Origin and Development', *Census 1961, West Bengal, District Census Handbook, Cooch Behar* (West Bengal Government, India), 1966

There were ninety two enclaves of Bangladesh on Indian soil and 106 enclaves of India on Bangladeshi soil. The Teen Bigha Corridor was a strip of land formerly belonging to India on the West Bengal–Bangladesh border that had been leased indefinitely to Bangladesh so that it could access its Dehgram–Angalpota enclaves. Enclaves constituted small and scattered pieces of landmass belonging to one country located in or surrounded by another. The problem of enclaves belonging to India and Bangladesh was the result of both history and geography.

Boundary Commissions were formed to deal with the partition of Bengal, the separation of Sylhet from Assam and the partition of Punjab. In addition to that it was decided that each Boundary Commission would consist of a chairman and four members, two nominated by the Congress and two by the Muslim League. Sir Cyril Radcliff was appointed the Chairman of both Commissions with the consent of both Congress and Muslim League.

Lord Mountbatten decided to hand over the award to the leaders of Congress and Muslim. The Congress claimed for West Bengal about fifty-nine percent of the area and forty-six percent of the population of the province. However, the Radcliff award announced only thirty-six percent of the area and thirty-five percent of the total Muslim population of Bengal under West Bengal, while as many as forty-two percent of non-Muslims remained in East Bengal.

The non-Muslims of Bengal protested against the transfer of Khulna and Chittagong to East Bengal. On the other hand, the Muslims criticized the loss of Calcutta, Murshidabad, and also certain parts of Nadia district. Jalpaiguri, Malda, Dinajpur, and Jessore were partitioned among both Bengal.<sup>2</sup>

It was four years later that the question of Berubari Union of Jalpaiguri district was raised by the Government of Pakistan for the first time in 1952. During the whole of this period, the Berubari Union continued to be in the possession of the Indian Union and was governed as a part of West Bengal. In 1952, Pakistan alleged that under the award Berubari Union should really have formed part of East Bengal and it had been wrongly treated as a part of West Bengal. Apparently, there were communications between the Prime Ministers of India and Pakistan on this subject from time to time but the dispute remained alive until 1958. It was under these circumstances that the Agreement was reached between the two Prime Ministers on September 10, 1958. That was the background of the consequent dispute in regard to Berubari Union No. 12.

### **Development of Problems**

Since the origin of Pakistan, the problems of AngorpotaDahagram were linked with Berubari. The latter was a big *mouza* of India's Jalpaiguri district. Its southern portion consisted of an entire union namely South Berubari Union No.12. This union formed a pocket surrounded on three sides by Panchagarh. According to Radcliff award-map, the Union was included in the then East Pakistan. But according to the boundary description in the award, it was not to be so included. This was precisely the cause of dispute between Pakistan and India which the Noon-Nehru Agreement of 1958 sought to resolve. According to that Agreement, South Berubari Union was to be divided into halves: India would get the Northern half and Pakistan would get the Southern half: and Angorpota-Dahagram enclaves were to go to India. This was followed in 1960 by the 9th Amendment of the Indian Constitution. The amendment was necessary to transfer South Berubari to Pakistan because the Supreme Court of India held that the transfer involved cessation of Indian Territory. But despite the 1958 agreement and the ninth (9) Amendments, South Berubari was not transferred. In 1960, a team of eight judges passed a verdict that "Preamble is not a part of Constitution".

There was a lack of information about the enclaves of Bangladesh in India and those of India in Bangladesh. Available sources indicated that along the northwestern boundary, there were at least 192 enclaves, the political status and exchange protocol of which were yet to be settled. Of the total, 119 enclaves inside India were claimed by Bangladesh while 73 enclaves inside Bangladesh by India. An account of 75 enclaves in northwestern Bangladesh which were inside India and identified as parts of Bangladesh suggested that 41 of them were in Lalmonirhat (2 in HatibandhaUpazila, 1 in LalmonirhatSadar, 4 in Kaliganj, 3 in Aditmari, 28 in Patgram, and 3 in Fulbari), 16 in Kurigram district (all in BhurungamariUpazila) and 18 in Panchagarh district (2 in PanchagarhSadarUpazila, 12 in Boda and 4 in Debiganj).

Bangladesh had virtually no administrative control over many of its small enclaves, which measured less than an acre. Consequently, Bangladesh was not in a position to conduct development activities there or to ensure normal civic life for those people who lived there, although, under the Constitution, they were entitled to enjoy the rights and privileges of citizenship. Within a year of Partition of Bengal, the issue began to surface and posed potential causes of political and

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<sup>2</sup>*ibid.*

communal tensions between India and Pakistan. To tackle the situation, Prime Minister Jawaharlal Nehru of India, and Prime Minister Feroze Khan Noon of Pakistan entered into an agreement in 1952 aiming to 'exchange the enclaves between the two countries'. But when a part of southern Berubari (7.39 sq km), an East Bengal enclave adjacent to the *Bodathana* of Panchagarh district was about to be handed over to East Bengal, opposition in India against the decision was strong. It was then decided to retain the piece of land by India in exchange for a stretch of an acre of land called *Tin Bigha* to link Angarpota-Dahagram enclave under *Patgramthana* of the Nilphamari district in mainland East Bengal. This decision was not implemented for more than two decades because of legal wrangles on the Indian side.

As a result of the Radcliff Award dated 12 August 1947, Berubari Union No. 12 fell within West Bengal and was treated as such by the Constitution which came into force on 26 January 1950 and had since been governed on that basis. Berubari Union No. 12 would be so divided as to give half the area to Pakistan, the other half adjacent to India being retained by India. The Division of Berubari Union No. 12 would be horizontal, starting from the north-east corner of *Debiganjthana*. The division should be made in such a manner that the Cooch-Bihar Enclaves between Pachagar Thana of East Pakistan and Berubari Union No. 12 of *Jalpaigurithana* (Kotwali) of West Bengal would remain connected with Indian territory and remain with India. The Cooch-Bihar Enclaves lower down between *Bodathana* of East Pakistan and Berubari Union No. 12 would be exchanged along with the general exchange of enclaves and would go to Pakistan. Similarly, the exchange of Old Cooch-Bihar Enclaves in Pakistan and Pakistan Enclaves in India without claim to compensation for the extra area would go to Pakistan was principally agreed upon.

At the invitation of the Prime Minister of India, Jawaharlal Nehru, the Prime Minister of Pakistan, Feroze Khan Noon, visited New Delhi from the 9 to 11 September 1958.<sup>3</sup> During this visit, they discussed various Indo-Pakistan border problems with a view to removing causes of tension and establishing peaceful conditions along the Indo-Pakistan border areas. The respective Prime Ministers had frank and friendly discussions on the border problems. This was followed by an official agreement to exchange all the enclaves in the Nehru-Noon Accords, though deteriorating relations between East Pakistan and India and a series of court cases in India prevented this from being implemented. It was indicated in this agreement that Berubari Union No. 12 would be so divided as to give half the area to Pakistan.<sup>4</sup> 'Berubari Defense Association' was formed after Nehru-Noon Accords to protest against the agreement and to cancel the agreement.<sup>5</sup> The peoples of Berubari tried to solve the problems under the leadership of 'Berubari Defense Association'. Under pressure, the Indira-Mujib Accords was signed in 1974 to solve the enclave issue. The accords created specific provisions to exchange all the enclaves with the exception of AGDH (Asymmetric Group Diffie Hellman) and Berubari Union, a disputed area along the border with Jalpaiguri. As the Accords had it, India would retain the southern half of South Berubari Union No. 12 and in exchange, Bangladesh would retain the Dahagram and Angarpota enclaves. India was to lease in perpetuity to Bangladesh an area to connect Dahagram with Bangladesh.<sup>6</sup> This agreement too remained only partially fulfilled.

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<sup>3</sup> *Bharatiya Jana Sangh, Party Documents, 1951-1972*, Volume 3, New Delhi: Bharatiya Jana Sangh, 1973

<sup>4</sup> Nehru-Noon Agreement, 1958, Vide Article No. 2(3)

<sup>5</sup> Kar, Arabinda, *op. cit.*, p. 749

<sup>6</sup> Indira-Mujib Agreement, 1974, Article No. 1, Vide Paragraph 14

While Bangladesh ceded South Berubari shortly after the agreement was signed, the corridor only opened eighteen years later. Despite regular discussions, there was no move to exchange the enclaves themselves.

In simple terms, adverse possessions were territorial part of a country occupied by another country. Since partition, a part of Indian territories was being occupied by Bangladesh. On the other hand, a part of Bangladesh was also being occupied by India. There were forty-three such small territorial parts involving 2749.16 acres belonging to India along the Indo-Bangladesh border which were being controlled by Bangladesh. India had control over forty-seven territorial stretches which, measured 2922.25 acres belonging to Bangladesh.<sup>7</sup> Since the partition of India, the inhabitants of these difficult possessions were enjoying citizen's right and amenities provided to them by the country that controlled the land in which they lived. Consequently, these people also considered themselves the citizens of the nation and obeyed the latter's constitution.

Over the years, the magnitude of illegal migration reached such an astounding proportion that it began to alter the demographic profile and threaten the socio-political fabric of the Border States. Living in relative isolation from the mainstream, the people in the remote border areas started feeling neglected due to lack of developmental and income generating activities. As a result, the people in the border areas started looking towards the areas adjoining West Bengal, the district headquarters and the state capital for income-generating avenues. This resulted in large-scale migration of human population from the already sparsely populated border areas and put tremendous pressure on the basic amenities of the small urban habitations of the state. Lack of employment opportunities had also given lured the youth to various kinds of crimes and insurgency. Lack of basic facilities also adversely affected implementation of Government's plans and programmes.

To implement this Agreement, the Ninth Amendment Act of the Constitution and Acquired Territories (Merger) Act was adopted in 1960. This legislation was challenged in the courts by a series of writ petitions which prevented the implementation of the Agreement. The Supreme Court's decision on March 29, 1971, finally cleared the way for the implementation of the Agreement. This, however, could not be done because of the Pakistani Army crackdown in East Pakistan and the subsequent events which, led to the emergence of Bangladesh as an independent country. The total area of South Berubari Union No. 12 was 22.58 sq. kms. of which 11.29 kms. was to go to Bangladesh. The area of the four Cooch Behar enclaves which would also have to go to Bangladesh was 6.84 sq. kms. making the total area to be transferred 18.13 sq. kms. The population of the area including the four enclaves to be transferred, as per 1967 data, was 90% Hindu. The Bangladesh enclaves, Dahagram and Angorpota, were to be transferred to India. Their total area was 18.68 sq. kms. and as per 1967 data, more than 80% of their population was Muslims. Had this exchange gone through, it would have meant a change of nationality for the population or migration of the population from Dahagram and Angorpota and South Berubari Union No. 12 and consequent serious rehabilitation problems. After 1971, India proposed to Bangladesh that India would continue to retain the southern half of South Berubari Union No. 12 and the adjacent enclaves and in exchange, Dahagram and Angorpota would be retained by Bangladesh. As part of the package, a strip of land would be leased in perpetuity by India to Bangladesh, giving her access to Dahagram&Angorpota in order to enable her to exercise sovereignty on these two enclaves.

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<sup>7</sup>*ibid.*, p. 29

According to the official description, the Chilahati, Barashashi, Kajaldighi-paranigram, NowtariDebattar, and NowtariNawabganj attached to South BerubariGram Panchayet and Kshudipara, Singpara attached to Nagar BerubariGram Panchayet were such difficult possessions belonging to Bangladesh which were being administered by India. On the other hand, some parts of Berubari sheet no. 25, 28 and 30 were disputed possessions belonging to India but administered by Bangladesh.

The Indira-Mujib Agreement was signed between Indian Prime Minister Indira Gandhi and Bangladesh Prime Minister Sheikh MujibarRahaman on 16 May 1974 to solve the problems of Berubari. But it could not solve the border problems. Some part of *Mouza* of Berubari area was under the control of India. On the other hand, some parts of Berubari*Mouza* were still under the control of Bangladesh (Erstwhile East Pakistan), known as *Chhitmahals*. The people of these areas had no citizenship rights due to this border problem. Presently, neither Bangladesh nor India could establish their own control over their *Chhitmahals* located in one another country. As a result, the *Chhitmahal*dwellers were subject to anarchy, disorder, and neglect. As a consequence of these hazards, the people of the *Chhitmahals* started mass-movements to solve the border as well as *Chhitmahal*problems under the leadership of leftists like Nirmal Bose, Kamal Guha, N.C. Chatterjee, TridipChoudhury, ArabindoGhosal, Amar Roy Prodhan, Sudhansu Mazumdar, Satish Roy Prodhan, and others. The Supreme Court intervened on the issue and repealed the proposed agreement to separate Berubari from India without the constitutional amendment.

## CONCLUSIONS

The problem of the indo-Bangladesh border would continue to be a major headache for India if the problems afflicting the border were not addressed urgently. The issues of illegal migration, smuggling, the spread of Islamic fundamentalism since 1947 from across the border etc. needed to be effectively tackled.

People living in the South Berubari, as well as Indian border areas, had diverse problems, which called for multiple strategic solutions. People of the border area could not move at pleasure. BSF always kept strict vigilance. Indian Government at the center could only address the same, by recognizing and taking into consideration the concerns of the people.

The residents of South Berubari were the citizens of India by heredity and they lived with great anxiety, agony, and suspicion. But they were determined to live as Indian citizens in their own homes and land. In this regard, the state government, as well as the Government of India, needed to take necessary steps to solve the problem of Berubari and make the permanent declaration of the working boundary of Berubari Gram Panchayat as legal boundary i.e. *de facto* boundary to be a *de jure* boundary.

Under pressure of berubari movement, India Government has taken a major step to resolve the land boundary dispute between India and Bangladesh pertaining to Enclaves and Adverse Possession lands On 01 Dec 2014. On 06 May 2015, the Constitution Amendment Bill (One Hundred and Nineteenth Amendment) on Land Boundary Agreement (LBA) with Bangladesh was unanimously passed (180 votes to zero) in the RajyaSabha and then later it was also passed in LokSabha. The same paved the way for the permanent settlement of decades-old boundary disputes between the two neighboring countries.

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