



Research paper on

“Vulnerability of indigenous people rights in Bangladesh”

Course title: Legal Research Methodology and Effective Writing

Course Code: Law-412

Submitted to: Md. Safiullah

Senior Lecturer

Department of Law

Daffodil International University

Submitted by: Fariya Yasmin

Id: 151-26-735

Section: A

BATCH: 23RD

Date of Submission: 11.12.2018

ACKNOWLEDGEMENT

Alhamdulillah!! I am so grateful to my respected parents that I am in the world for them. With the blessings of Allah Almighty the dissertation on an Empirical Study on topic of Vulnerability of indigenous peoples rights in Bangladesh Perspective which is not easy for me. Alone it was difficult to me to done this research. First of all I am deeply indebted to our Honorable course Teacher Md. Safiullah, Senior Lecturer, Department of Law, who inspired me to write on this topic and also contributes his ideas and viewpoints

I am also thankful to the authors, journals and web mentioned in the references

LETTER OF TRANSMITTAL

To

MD. Safiullah

Senior Lecturer

Department of Law

Daffodil International University

Subject: Submission of the thesis paper.

Dear Sir,

It is a great pleasure to submit my thesis on “vulnerability of indigenous peoples rights in Bangladesh”. I have given my best effort to furnish the thesis with relevant information that I have collected from various way. I have concentrated on my best effort to achieve the objectives of the work and hope that my endeavor will serve the purpose.

I will be highly grateful and obliged if you kindly accept my thesis and evaluate it with your sagacious judgment.

Sincerely Yours,

Fariya Yasmin

ID: 151-26-735

Department of Law

Daffodil International University

Declaration

I hereby do solemnly declared that the work presented in this thesis has been carried out by me and has not been previously submitted to any other institution. The work I have been presented does not breach any copyright.

I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations.

Fariya Yasmin

Id: 151-26-735

CERTIFICATION

This is to certify that the thesis on “Vulnerability of indigenous peoples rights in Bangladesh” is done by Fariya Yasmin partial fulfillment of the requirements for the degree of LLB (Bachelor) from Daffodil International University. The thesis has been carried out under my guidance and is a record of the *bonafide* work carried out successfully.

.....

Md. Safiullah

Senior Lecturer

Department of Law

Daffodil International University

ABSTRACT

On the above analysis, it has been briefly discussed about the dimension of deception of the indigenous people of Bangladesh. These dimensions of deprivations were created not only for the scare resources and failure of the governance. Rather mostly it has been generated by bad political intention or personal interest related matters. Most of the governments have tried to serve their own purpose and use the indigenous people. But it has not revealed the government through sensitization towards them has taken mentionable step. The indigenous peoples have not adequate recognition in Bangladesh either in the constitution or any other official documents of the Government. That is creating frustration to them as well as they are not considered in the development planning by the government. For this reason administration also got a negative message about them and its bad impact suffered to the communities. In any development planning, decision-making stages or policy level there is no meaningful participation of the Indigenous peoples in Bangladesh. That is why mostly every planning have taken by excluded the their participation. In the last BNP regime there was a deputy' minister recruited from the indigenous community for the ministry of CHT. But as he was deputy minister so he has not entitle to seat in the cabinet meeting that is the highest policy level forum of the government. Apparently it is seen there is a minister from the indigenous community but he has no scope to influence or sensitize the policy at all. The indigenous leaders are frequently claim that, the peace treaty is not been implemented by any government. Awami league government was the initiator of the treaty, they had taken some major step to implement the treaty but not implement completely. The BNP government does not recognize the treaty, as Awami league was the initiator of the treaty. Some unsettle and uncompleted issues are there. In light of the constitution, Government has to allocate all resources without discrimination to each other but we have seen the discriminator)' allocation in the annual development programme. Education status also below of the indigenous communities than the

national average. And government has not been taken any mentionable step as affirmative action to minimize the gap. Only the tribal quota in higher education has some role to enroll of the indigenous student but the drop out rate is high in the primary and secondary level. Harassment by the government officials such as forest department, land department, law enforcing agencies and military also accused much by the news paper reports as well as claim by the indigenous leaders. The materialistic and vested interest of the said officials also causes of it but no clear policy, recognition and positive message from the government side also active reasons behind these.

Table Of Contents

Chapter: 1

Introduction of the Indigenous People in Bangladesh

1.1: Introduction.....	ix-x
1.2: Statement of the Problem	x-xi
1.3: Research Question.....	xi
1.4: Objectives	xi-xii
1.5: Methodology.....	xii-xiii
1.6. Conclusion.....	xiii

Chapter: 2

Conceptual Framework of Indigenous people in Bangladesh

2.1 Indigenous People.....	xiii-xiv
2.2 Elements of Indigenous Peoples Includes.....	xiv-xv
2.3 Indigenous Peoples of Bangladesh	xv-xvi
2.4 Discriminations against Indigenous Peoples of Bangladesh.....	xvi-xvii

Chapter: 3

International Human rights Instrument related to Indigenous peoples

3.1 UDHR.....	xviii-xix
---------------	-----------

3.2 ICESCR.....	xix-xx
3.2 ICCPR.....	xx-xxi
3.3 II-O 107.....	xxi
3.4 Setting Standard of the indigenous peoples.....	xxi-xxii
3.5 Obligations of the State.....	xxii
3.6 Normative Framework.....	xxii-xxiii
3.7 Progressive realization of human rights.....	xxiii-xxiv

Chapter: 4

Level of Sensitization Measure

4.1 Government does not recognised the existence of indigenous people either constitutionally or government documents	xxiv-xxv
4.2 Meaningful Participation of Indigenous people arc missing in the development planning	xxv-xxvi
4.3 Harassment and non cooperation by government departments.....	xxvi-xxvii
4.4 Customary law, inheritance law, ancestral land ownership not recognized	xxvii-xxix
4.5 Government taking adibashi unfriendly and so-called development project.....	xxix
4.6 State obligations versus adibashi people's rights.....	xxix-xxx

Chapter: 5

Observation and different views

5.1 Politicians view.....	xxx1-xxxii
5.2 The Policy makers how look the issue.....	xxxii-xxxiii

Chapter: 6

Conclusion

6.1 Recommendations.....	xxxiii-xxxiv
Bibliography.....	xxxv

Chapter 1

Introduction of indigenous people in Bangladesh

1.1 Introduction

The accuracy of data about the total ‘adibasi’ population and the number of ‘adibasi’ groups in Bangladesh is subject to doubt. Bangladesh is inhabited by approximately 2 million ethnic minorities.¹² The Census of 2000 reported that the CHT tribes consist of 501,144 persons which is only 0.5% of the total population of Bangladesh. According to Rahim, the ‘tribal’ population of Bangladesh is concentrated in the CHT and in the Mymensingh, Sylhet and Rajshahi regions.² The total ‘adibasi’ population in Bangladesh was 897,828 in 1981. Adnan using this data reported that during the time the total CHT ‘adibasi’, population was 455,000, or 61.07 % of the total population of the CHT.³ In 1991, the total ‘adibasi’ population of the CHT had increased in number, but decreased as a percentage to 51.43% of the total population of the area. The reduction in proportion is due to the influx of Bengali settlers. In Bangladesh there are about 45 recognized different indigenous communities living in the plain lands and Chittagong Hill Tracts (CHT). Indigenous people are commonly known as ‘Adibashi’. According to the last government census of 1991 indigenous people constitute roughly 1.2 percent of the total population of Bangladesh. Although adibashi leaders are demanding that the number of both plain land & hill tracts indigenous people could be more than 2 percent of the total population. The Bangladesh Adibashi Forum (BAF) demanded the present population of adibashi people is approximately 25 lakhs.¹ Adibashi leader

¹ Erni and Nilsson 2008, p.333, Country Profile: Bangladesh. The Concept of Indigenous Peoples in Asia, Document No.123. C. Erni. Copenhagen International Work Group for Indigenous Affairs (IWGIA)

² Rahim, 1989, p.59, The Society and Its Environment in Bangladesh: A Country Study. Washington DC, Library of Congress.

³ Adnan, 2004, Migration Land Alienation and Ethnic Conflict: Causes of Poverty in the Chittagong Hill Tracts of Bangladesh. Dhaka, Research & Advisory Services.

and writer Mr. Mangal Kumar Chakma said, “indigenous people think that their actual number of population is more than the government census. It is intentional that the government census shows less than their actual population’². They belong to six linguistic categories and were originally people of the hills, mountains and forests, mainly living in their ancestral lands in rural areas. The attitude of the Bengalis towards the indigenous people is not so positive. Forest lands that provide a means for earning their living are now being occupied by the influential Bengalis. In the name of rubber plantation, social afforestation, agroforestry, fruits & vegetable cultivation’s, building eco-parks, ecotourism, agroindustries etc., their land and properties are being grabbed by Bengali Muslim land grabbers and pirates, and thereby the indigenous people are made destitute. They are refused basic survival requirements in both rural and urban areas.³ In the modern society sometimes indigenous people are excluded from the mainstream community. Still they are not allowed to have food, take tea, breakfast or use the common cookeries in hotels and restaurants’⁴.

The Bengali by making false and fabricated documents in connection with the land related and law enforcing agencies easily evict indigenous people from their ancestral land.

1.2 Problem statement-

For lack of sensitivity in bureaucracy and politics it is not possible to ensuring Economic, social, cultural, civil and political rights of the indigenous people in Bangladesh. The ridiculous failure to protect indigenous peoples from violence is a prime example of state negligence toward them. "Indigenous people are routinely abused for their property and land because the state does not recognize them as equal citizens. They are evicted from their land, face violence including murder and rape, but our law and justice system can't protect them," said Drong, a Catholic. They face discriminations from all quarters because they are indigenous people and minorities in Bangladesh.

Courts, police, administration, local govt, representatives, land officials, service sectors all are biased against them. Usually the indigenous people do not dare to lodge complaints about atrocities, oppressions and abuses done to them by the Muslims because of fear and facing human rights violation further. If they protest against oppressions and lodge cases in the courts they have to pay for their lives and they are forced to leave Bangladesh.

1.3 Research Question-

1. How the indigenous are depriving of their constitutional rights?
2. Why the political are failing to ensure such rights?
3. why the major international human rights document ratified in Bangladesh are not ensuring for indigenous minorities?
4. How to solve this problem from Bangladesh?

1.4 Research objective

1. To analyze the sensitivity in bureaucracy and politics to ensuring the rights of indigenous people in Bangladesh
2. to analyze the constitutional rights of the indigenous people in Bangladesh
3. to analyze the major international human rights documents ratified by Governments of Bangladesh.

4. To analyze how sensitize the political leaders and bureaucrats in Bangladesh towards ensuring the rights of the indigenous people
5. To give some recommendations to ensure indigenous peoples's right in Bangladesh
6. To examine the present situation in Bangladesh.

1.5 Methodology- Generally, the research would be conducted on exploratory method. It is a quantitative research. A logical frame work shall be developed on the basis of various way data analysis such as frequency distribution, causal relationship, factor analysis & others statistical tools of analysis. This study will examine and evaluate the present conditions of the laws and practices in this respect. In order to give complete shape to the study, a range of research methods would be used:

1. secondary data source like study report, published articles, relevant laws, conventions, covenants, government documents etc
2. Examination of the constitutional guarantees regarding right to Protection of Law and other relevant provisions in the Constitution of Bangladesh;

Analysis of statutory law and case law relating to indigenous peoples's Right in Bangladesh;

- I. Review of relevant public records, available statistical data and annual reports of various NGOs;
- II. Case studies of recent specific incidents relating to the Indigenous people's right
- III. Collection and analysis of relevant data.

Discussion on the conceptual issues will be based on the secondary literature including books, journals, electronic materials, constitutional law, statutory law and case law.

1.6 Conclusion-

The indigenous peoples have not adequate recognition in Bangladesh either in the constitution or any other official documents of the Government. That is creating frustration to them as well as they are not considered in the development planning by the government. For this reason administration also got a negative message about them and its bad impact suffered to the communities.

Chapter 2

Conceptual Framework of Indigenous people in Bangladesh

2.1 Indigenous People

There is no international agreement on the definition of ‘indigenous people’. In the anthropological perspective there are many definitions of the indigenous peoples around the world. However United Nations human rights bodies and international laws apply 4 criteria to distinguish indigenous people:

- a) Indigenous people usually live within (or maintain attachments to) geographically distinct ancestral territories
- b) They tend to maintain distinct social, economic and political institutions within their territories
- c) They typically aspire to remain distinct culturally, geographically and institutionally rather than assimilate fully into national society and
- d) They self-identify as indigenous or tribal. Despite common characteristics, there does not exist any single accepted definition of indigenous people that captures their diversity as peoples. Selfidentification as indigenous or tribal is usually regarded as fundamental criterion for determining whether the groups are indigenous or tribal, sometimes in combination with other variables such as “language spoken” and “geographical location or concentration”.

2.2 Indigenous peoples of Bangladesh In Bangla indigenous people are commonly known as Adibashi’ (original inhabitant). In People's Republic of Bangladesh there area unit concerning forty nine completely different endemiccommunities living within the plain lands and hill areas.

The Indigenous People’s Forum recognized 45 groups” among them till date. Since there have been no anthropology survey of the endemic individuals of People's Republic of Bangladesh, it is very difficult to present an accurate count of their number.

Indigenous people constitute roughly 2 percent of the total population of Bangladesh. They exist and live in almost 23 districts of Bangladesh. Historically and traditionally indigenous people have a love and respect for nature. They believe in the world of ‘spirits’ that exercise control over nature and their lives. Their original animism pervades their thoughts and feelings. Religion is not a

personal phenomenon for them. They generally express their religious feelings in a communal way rather than an individual way. These religious practices intensify social solidarity through the feeling of belonging to a specific cultural group. There is a deep relation between their religion and their structure. The communal spirit is robust and consistent with their law and custom all land is that the property of community. Public ceremonies celebrations and rites for the occasions of birth, marriage, death etc. Reinforce their solidarity.

2.3 Discrimination against indigenous people: Generally the mainstream Bengali society

thinks that the indigenous people's religion and culture are inferior. The indigenous population of Bangladesh forms a marginalized and exploited minority who principally live isolated in pockets in different parts of the country. In the social development inclusion framework the adibashi people of the country are not effectively included as development actors whether as contributors or as beneficiaries. Present practices and political environment among the politicians and parties has meant that there has been very little participation of the government

and other development partners in the development activities directed towards these communities. Lack of constitutional recognition, the pressure of Bengali population expansion and unfamiliarity in dealing with state mechanisms has, for many, led to a progressive erosion of their economic status and cultural identity. Some unfriendly projects also have been taken in different regime that made them more vulnerable too. Often they are refused basic survival requirements in rural and urban areas. Sometimes the poor indigenous people are not allowed to have food, take tea, breakfast etc. in the hotels and restaurants. On the other hand the Govt,

of Bangladesh does not recognize the existence of indigenous and minority people in Bangladesh. The Govt, often says, "In Bangladesh, nobody is minority and nobody is majority,

all are equal”. But unfortunately GOB adopted policies to discriminate, exclude, disintegrate and dispossess the minority and indigenous people. The change in the constitution of Bangladesh of 1972 through 5th & 8th amendments curtailed the rights of the indigenous and minority people. These changes made them second-class citizens, disregarded and violated all international documents, covenants, treatise and treaties of the UN and other international organisations where Bangladesh is a signatory.

Chapter 3

International Human Rights Instruments related to the Indigenous People

Constitution of Bangladesh ensures the rights of the all citizens clearly. In spite of constitution, Bangladesh has ratified some strong international human rights instruments such as the Universal Declaration of Human Right (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic social and Cultural rights (ICESCR), International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), Convention Elimination of all forms of Discrimination Against Women (CEDAW), Child Rights Convention (CRC) and ILO 107 to declare and ensure more the rights of its citizens. Through these instruments the rights of the indigenous people focused along with the constitution in the existing pattern. As the party of these instruments the government of Bangladesh is obliged to ensure the rights of the indigenous people proactively.

3.1 **UDHR** As the party of Universal Declaration of Human Rights government have to address equal treatment and ensure human rights for all citizens. This declaration ensured the principle rights for any human being. In Bangladesh the indigenous people are not out of this. But despite of ratification of the UDHR the government frequently violated the human rights of the indigenous people. Sometimes government itself became actor of violator.

3.2 **ICESCR** As the party of International Covenant on Economic social and Cultural rights (hereafter ESCR) how any government can address the issue for the Indigenous people. To realise the mater we can analyse the report of United Nation Office of High Commission of Human Rights

(OHCHR)

“This instrument was adopted at the same time as the International Covenant on Civil and Political Rights (1966) to emphasize the equal status of the various categories of rights. In practice, many governments don’t regard economic, social and cultural rights as human rights. Some governments tend to consider these issues in terms of policy-making and programmes rather than rights. The result is that governments decide when they want to act and what level of resources they are prepared to allocate to these matters. But this approach perpetuates the practice of providing handouts to disadvantaged groups rather than ensuring entitlements based on recognized international human rights standards. Because governments have agreed to recognize the

economic, social and cultural rights contained in this Covenant as human rights, it is important for indigenous peoples, and others who are concerned about their rights in this area, to pressure governments to adhere to their obligations”.⁴ The ICESCR also includes a non-discrimination

⁴ Report of ESCR, www.unhchr.ch website

clause (in Article 2(2)) guaranteeing that rights will be exercised without discrimination of any kind. This nondiscrimination provision must be applied immediately, not over a period of time.

Articles of particular rights to indigenous peoples include:

Articles 6 and 7: the right to work, including the opportunity to gain a living through work freely chosen or accepted, as well as the right of everyone to the enjoyment of just and favorable conditions of work

Article 11: the right to adequate standards of living, including adequate food, clothing, housing and the continued improvement of living conditions

Article 12: the right to the highest attainable standard of physical and mental health and the obligation of governments to reduce infant mortality and promote the healthy development of the child

Article 13: the right of everyone to education

Article 14: the right to primary education, which is compulsory and free for all

Article 15: the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author.

3.3 ICCPR Complaints under the International Covenant on Civil and Political Rights and the first Optional Protocol The Human Rights Committee monitors the implementation of the ICCPR,

which provides for specific civil and political rights. The first Optional Protocol and the Human

Rights Committee's rules of procedure outline the steps involved in making a complaint about a violation under this Covenant. Article 1 of the first Optional Protocol limits the right to submit complaints to individuals. This prevents indigenous people from complaining about violations of their collective rights. Before preparing a complaint, you should examine the rights set out in the Covenant. The following Articles from the ICCPR are of particular relevance to indigenous peoples.

Article 1: the right of self-determination for all peoples, including the right to determine one's political status and economic, social and cultural development

Article 6: the right to life

Article 7: the right to be free from torture or cruel, inhuman or degrading treatment or punishment

Article 9: the right to liberty and security of person and freedom from arbitrary arrest or detention

Article 10: the right of all persons deprived of their liberty to be treated with humanity and respect

Article 14: the right to be equal before the courts, including the right to a fair and public hearing and the right to free legal aid and assistance of an interpreter

Article 18: the right to freedom of thought, conscience and religion Article 24: the right of every child to protective measures as required for minors Article 27: the right of ethnic, religious or linguistic minorities to enjoy their own culture, profess and practice their own religion and to use their own language (The Human Rights Committee has decided that indigenous peoples are covered by this article, even though they may not necessarily be a true "minority" of a population.)

3.4 ILO Convention -107 ILO was the first international body to address indigenous issues in a comprehensive manner. It has been working to protect and promote the rights of indigenous and tribal people since the early 1920s. ILO's activities in the area of indigenous and tribal people fall within two main areas of activity: the promotion and supervision of the two Conventions relating to indigenous and tribal people; and technical assistance programmes to improve indigenous and tribal people's social and economic conditions. Bangladesh government has been ratifying this convention since September 1972. But still it has not ratified convention 169 that is the modified form of convention ILO-107.

3.5 Setting standards for the rights of indigenous and tribal people ILO is responsible for the only two international instruments relating exclusively to indigenous and tribal people: a. Indigenous and Tribal Populations Convention, 1957 (No. 107) b. Indigenous and Tribal Peoples Convention, 1989 (No. 169). 14 Member States have ratified Convention No. 169, and it is under active consideration in a number of other countries. These two Conventions establish minimum standards with respect to the civil, political, social and economic rights of indigenous and tribal people. They create binding obligations on the Member States that have ratified them. ILO Convention No. 107, adopted in 1957, was the first comprehensive international instrument setting

forth the rights of indigenous and tribal populations and the obligations of ratifying States toward them. While Convention No. 107 broke new ground, it used patronizing language, referring in its

Article 1 (1)(a) to these populations as “less advanced” and promoting assimilations approach. By the 1980s, the United Nations had completed the study by Martinez Cobo (see Leaflet No. 2 on

“Indigenous People, the UN and Human Rights”) and the Working Group on Indigenous Populations had been established to provide a forum for indigenous people to express their views. In the years following its adoption, the limitations of Convention No. 107 became evident and indigenous groups themselves began to call for new international standards.

3.6 Obligation of the State Since the state is the primary duty bearer for protecting and realizing human rights, it has certain obligations that it must fulfil. These obligations of the state have come to be identified as the obligations to respect, protect and fulfil.⁵

Obligation to respect: State must abstain from carrying out or tolerating any violation of the right in question by agents of the state

Obligation to protect: State must prevent the violation of the right by other individuals and nonstate actors

Obligation to fulfill: State must provide the resources and services necessary for individuals to enjoy their rights. This incorporates the obligation to facilitate 9 state must be proactive in

⁵ Right to Development A Primer, Centre for Development and Human Rights, page 92,93

strengthening people's access to the rights and obligation to provide (state must fulfill the rights directly whenever an individual or group is unable for reasons beyond their control, to enjoy the rights). CPR are seen as negative rights (freedom from), concentrated with preventing state interference in a citizen's life, ESCR are viewed as positive freedom (right to), involving affirmative action on the part of the state. The right to food, education and health each require the state to meet what the ESCR calls in GC3 'Core obligation'. These require state parties to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the ICESCR. Violation occurs through the direct action of the State is act of commission and also the failure to take step that are required by the ESCR (act of omission).

Chapter 4

Analysis of sensitivity towards indigenous peoples

Generally sensitivity depends on the person's satisfaction, feelings, and perception. But when some incidents happen frequently and repeatedly that are violating the rights and when the duty bearer become actor of rights violators institutionally then it gives us some sort of indications of sensitization. Any scattered, sudden, incidental issue cannot be proving the level of sensitization, but the repeatedly consisting incidents and subsequent steps against to ensure the rights that has serious and long run negative impacts will clearly point out the level of sensitizations. In view of nationalism and identity of the indigenous people, it has long historical background in Bangladesh. Although this study is mainly focused on the recent context but some relevant historical aspects have been mentioned as references. By analyzing relevant literature, study, documents, published reports in the newspapers and interviews, some specific points have found in favour of my argument such as

4.1 Government does not recognize the existence of indigenous people. In the constitution of Bangladesh, there is not clearly mentioned anything about the indigenous people so far. Although they have their own distinct culture, heritage, social custom, social organization, own language, rituals, norms and beliefs. And they are living in Bangladesh from couple of century ago. Simultaneously they are comparatively less privileged than the mainstream community in the social, economic and political aspects. As the distinct ethnic identity they have, so their identity of nationalism is in question. In the first constitution on 1972, article 6(2) all citizens of Bangladesh are treated as Bangali and that is amended in Bangladeshi on the subsequent regime. After our independence, Mr. M N Larma raised the question in the parliament, if everybody is treated, as Bangali then what should be about indigenous people. The president at that time Sheikh Mujibur Rahman replied without thinking deeply “Tora Bangali Hoye Ja”(you should become Bangali). On the subsequent government of General Ziaur Rahman amended the constitution and wrote all citizen of Bangladesh will treat as Bangladeshi. As the citizen of Bangladesh it is also true but this identity also does not recognize the distinctiveness of them. Tone Bleie explained the issue as, the homogenous cultural nationalist outlook of Sheikh Mujibur’s first government made such demands unacceptable. The first Constitution of Bangladesh enshrined in its Article 9 one language, Bangali, and one Bengali nation as the very basis of the state. The Constitution also enshrined the principle of secularism (Article 12) while accommodating free practice of religions and the scriptbased religions of the minorities were mentioned. Paradoxically, the very inclusion of Bangali nationalism as the core of the Constitution secured cultural and political hegemony, which was unacceptable to the CHT leadership. Also Article 28(1) of the Constitution, with its provisions of the so-called negative state obligation not to discriminate against any citizen of groups on the basis

of religion, race, caste, sex or place of birth, contradicts Article 9, with its exclusively Bengali nationalist principle.⁶ Ms. Bleie also explained that the transformation of nationalism by General

Zia from 'Bengali' to 'Bangladeshi' with emphasis on 'islamization' specifically ignored the political sensitivity on indigenous people's issue. She more added that, As we join in marking this year's (2008) UN-day for indigenous People, we note with great concern the recent deterioration of the human rights situation under the current military-led caretaker government. 'The recent turn in Bangladeshi national politics, is expression of a systemic malaise in the key state bearing institutions, which makes for bleak prospect for any gradual and sustained improvement of the human rights of the adibashis in the country. She explained how 'Cultural

Nationalism' formed the political culture in a key formative period for these state-bearing institutions.⁷ Often some people were trying to argue that, it has been mentioned about the indigenous people in the Constitution on article 28(4), 29(3, ka) as 'backward section of people'. Many persons were trying to interpret the constitution in such way. If we accept this logic, then it will raise the question about the term of 'backwardness'. In the human rights perspective, the terms of 'backwardness' gives us a discriminatory perception and also raise the question what the basis of backwardness', what is the criteria of backwardness, why would treat as backward, who will be the judge to measure of backwardness. The term of "backwardness" Itself is a discriminator)' word. On the other hand there is not recognizing about the existence of the indigenous people in the constitution of Bangladesh at all. The lead author of the Constitution of Bangladesh Kamal Hossain

⁶ "Emerging issues of Indigenous Peoples Rights in Bangladesh: why application of international law remains an uphill struggle"- Professor Tone Bleie, University of Tromso, Norway

⁷ "Emerging issues of Indigenous Peoples Rights in Bangladesh: why application of international law remains an uphill struggle"- Tone Bleie, University of Tromso, Norway

personally agreed many times that the issue of indigenous people did not get specific importance at that period. He also suggested incorporating their recognition as the Indigenous people in the constitution in clause number 29.⁸ Indigenous people are demanding constitutional recognition since long. They believe that, without constitutional recognition government will not take any affirmative action as progressive realization to solve their problems. On the other hand may inspire to violate their rights frequently. But no government has shown minimum interest to take any step to include them in the constitution in any way. Even any government never formulated any policy paper or any official declaration to recognize them. Rather in many cases the government representatives or spokesmen are decelerating that there are no indigenous people in Bangladesh.

Generally in some administrative documents they have been mentioned as ‘Upojati or Tribal’. Mentionable that, an online survey shows that 70.09% people supports giving the recognition of the Indigenous people in the Constitution or any other way conducted by daily Sangbad.⁹

4.2 Meaningful Participation of Indigenous people are missing in development planning

Indigenous people of Bangladesh have no meaningful participation in development planning, decision-making bodies and overall development agenda as well. In the last parliament there were four members elected who belonged to different indigenous communities. Amongst them 3 were from the CHI’ and one from the Mymensingh-1 constituency. All of them were elected on behalf of two major parties Awami League and BNP. But they have no way to contribute individually in

⁸ “Biponno Adibashi jibon O Somaj”, Mithushilak Murmu, Kashbon Prokashani, Dhaka ⁹
The Daily Sangbad, July 13, 2007

the parliament at all as well as no power of voting against the party decision. So it was not possible to influence the policy matters by them.

4.3 Harassment and non co-operation by government departments

Indigenous people are frequently harassed by different government officials. Especially for land related issues and access to state services. Generally they are neglected as whole. In some cases the government officials are not cooperating with them. Most of the allegation goes against land department, forest department and law enforcing agencies. The local level land department's officials know that the adibashi people are minority so they are weak and simultaneously they are not so educated and aware about the legal procedure of land issue. So it is easier to deprive them. Most of the land loss is by the cooperation of the land department officials. In Many cases the government officials do not take land tax from the adibashi people. Sulekha Mrong, one adibashi women leader of Modhupur, Tangail told me in a interview, when they went to the AC land office to pay their land tax, the Tahashilder (government official of land department) does not took it. He does not provide the government form and also not tell them the copy of land record and numbers of the documents. They had tried many times but the government officials returned themselves by scold. She also told, it is intentionally doing that one-day they will grab the land. Many adibashi families lost their land through way.⁹ On the other hand forest department is always disturbing the adibashi people. Most of the adibashi are dependent on the natural forest. But forest officials illegally sold trees and filed cases against adibashi people. They grabbed their land and planted trees. In Modhupur, more than 5000 forest cases have been filed against adibashi people. Still at least 1000 cases are running. The forest department filed several cases to one person. Ms

⁹ The information taken from the interview with indigenous women leader Ms Sulwkha Mrong of Modhupr, Tangail on the part of this study

Malati Nokrek is a teacher of Beribaid village of Modhupur. The forest department filed 3 cases against her for wood theft. The forest guard killed Piren Snal in broad daylight to protest against the brick wall around the Modhupur national forest. A student of class ten, Utpal Nokrek became disabled forever by the shooting of forest guards.

4.4 Customary law, inheritance law, ancestral land ownership not recognised.

The customary laws, inheritance laws and ancestral land ownership are the distinctive characteristics of the adibashi communities that have been expressed the identity and existence of them. Although there is many differences of the customary laws among the different indigenous communities. But in general, it demanded in the issue of land rights. There is no government document that has recognised these distinctive characteristics. The adibashi believed that they are son of soil and nature. From the century after century back they clean the jangle and made the residence and started cultivation. By the inheritance chronology they were living on that land.

They didn't need to make legal documents in many cases. But different government department evicted from that land. Mainstream people also grabbed frequently. Although it is clearly mentioned in the ILO convention 107 that it cannot be evicted any indigenous people from their ancestral land. In the British period, there was declared five thanas of the greater Mymensing will be treat as 'Partially Excluded Area'¹⁰ That mean these area will be excluded of general

¹⁰ R.W. Bastine-Final Report of the Settlement Operation in Five Thanas of the Partially Excluded Area of Mymensingh 1038-42, Government of East Bengal, Directorate of Land Records and Surveys, East Bengal, East Bengal Government Press 1954, Dacca

governance. This area will govern through the customary laws, customs and institutions of the indigenous people.

4.5 Indigenous Language becoming extinct:

Most of the indigenous communities have their own language. Some were has their alphabet too. But day-by-day these languages were becoming extinct. One study conducted by BRAC that, in Bangladesh 68 language was practicing among the 73 ethnic groups, among these 4 languages has been extinct. Most of the numbers are gradually extinct. More than 31.9% does not think to study in their mother language among the ethnic groups. Dr. Muhammad Rafi was the lead researcher tide as “Small Ethnic Groups of Bangladesh; A mapping Exercise” shows that, nobody talk in the language of Vojpuri, Bang/i, Kurmi and Rajbangsbi even in their daily household work. O the other hand the population of Bagdi, Sadri, Pahari, Bedey and like other 51 ethnic groups are so less, if there is not taken any effective initiative these language will be extinct within short time.

Dr. Rafi thinks, ignorance of the government and pressure of another culture this has happened. This pressure is too high among the Indigenous people of the plain land than the hilly area. Many of them are does not talking to fear to identify as minority. In some where the mothers does not taught their children their mother tongue, rather they think that it is better for our security to mix up with the mainstream nation.¹¹

¹¹ Small ethnic groups of Bangladesh; A mapping exercise, Dr. Muhammad Rafi, BRAC RKD

4.6 State obligation versus indigenous people's rights

Although there is not mentioned specifically about the indigenous people in the constitution of Bangladesh, but the article 28, 29 ensure the equal rights of all citizens. These articles also expressed not to take any discriminatory measures at all. It means state is must oblige to ensure equal treatment for all citizens. But it is not happening. Rather often those who are in the power they made as an actor of violating rights of the indigenous people. The government ratified the UDHR, CPR, ESCR and ILO convention 107. But still not taken any monitoring measure how it is apply these international instruments to ensure the rights of the indigenous people. As the party state must be obliged to respect, protect and fulfil to the rights of the people. But it has frequently seen that, government doesn't respect economic social and cultural rights of the indigenous people. Not also protect them from the discriminatory attitude and policy framing. Mostly government does not fulfil their rights without few exceptions. When government does not recognise the existence of the indigenous people then they had to exclude from the entire development planning and state policy framework. It is also delivered the negative message to the entire government mechanism especially in lower level bureaucracy. Finally it creates negative impact to the life of indigenous people. The indigenous leaders also claim that, as the member state of United Nations Bangladesh doesn't observe the international indigenous day that declared by the United Nations despite of 2.5 million indigenous people exist here.

Chapter: 5

Observation and different views

5.1 Politicians view: The president of Awami League and former Prime Minister Sheikh Hasina wrote in the message of indigenous day when she was the oppositions leader, The Adibashi were repressed in various way. In the name Echo Park it has been killed the indigenous people, evicted from their homestead land, destroyed their livelihood and lives, culture is becoming extinct. Civilization cannot progress this way.¹² Sheikh Hasina also took a big step to settle the arms revelation at CHT and finally has signed the treaty. But the indigenous leaders alleged to her regime, the government go slow to implementing the treaty. It is indicating to go the government reluctant mood. The presidium member of Jada Party and former member of the parliament Mr. GM Kader mentioned, The indigenous people of Bangladesh were facing displacing and driven away from their ancestral homelands and are fighting for their land and way of life. The indigenous leaders are expressing their concern that those are fading away due to lack of government patronisation and aggressive activities by section of local people. They complain that their right are often violated both by the government and by bengali. These can be protected only if the government shows more awareness and sensitivity to indigenous causes and comes forward and take step.¹⁴ He added that, to facing discrimination due to their ethnicity, members of indigenous communities face hardship in education, employment and everyday life. Lands of the indigenous people have been encroachment upon and settled by new comers. With little legal protection, indigenous peoples can rarely recover the lands they traditionally occupied. Sometimes government agencies in the name of development work take over lands belonging to the indigenous people. All over the north of Bangladesh indigenous peoples say they are concerned about what they call encroachment onto their traditional homeland by the bengali settler. As they are mostly marginalized, indigenous and tribal peoples lack clout in a national and even in most local

¹² “Biponno Adibashi Jibon o Somaj, Mithushilak Murmu, Kashbon Prokashani, Dhaka ¹⁴
The Daily Star July 17, 2008

government, with the limited exception of local government of Chittagong hill district. Their interest and empowerment opportunities to improve their situation. Most significant issue raised Mr. Kader, The newly elected Australian prime minister recently apologized to the indigenous people of Australia. Prime minister Kevin Rudd told parliament: “We apologies for the laws and policies of successive parliament and government that have inflicted profound grief, suffering and loops on these our fellow Australians. Should we continue to neglect our fellow Bangladeshis, the indigenous people, and continue not doing what should be done for them, and be compelled by our conscience to offer similar apologies in future? Would asking for apology in future absolve our irresponsible acts today?”¹³ President member of Awami League Mr. Amir Hossain Amu said, Rights of the indigenous people can be established if a secular, democratic and progressive government is formed. He added that, people of all faith, Hindu, Muslim, Buddhist, Christian including indigenous people all have sacrificed their lives in the War of liberation, so all should enjoy equal rights.¹⁴ Secretary general of Gono Forum, Mr. Pankaj Bhattacharia said, The next elected government should make apology to the indigenous people for the repression on them.¹⁵ That means there is a lot of offence committed by the different governments in the past.

5.2 The Policy makers how look the issue: Former Foreign secretary of Bangladesh government Mr. Faruk Chowdhury thought, It has been raised the question, do we do appropriate behavior to the religious minority? Doesn't they affected in economic, social, political and administrative harassment? Doesn't we confined within the mental limitation, backward mentality in the era of globalization? Isn't it this against our state solidarity? Isn't a major obstacle to build a modern and

¹³ The Daily Star, July 17, 2008

¹⁴ The Daily Star, June 30, 2008

¹⁵ The Daily Star, June 30, 2008

progressive state? It cannot be disagreed in the last three decades our achievement in this sector is for shame. The advisor of present caretaker government Rasheda K Chowdhury remarks that, It is necessary to adequate publicity about the rights of the marginalized and indigenous peoples. On the other hand it also important the legal side. Another vital issue is to application of the laws. Finally the most important thing is that political commitment. Former secretary and present advisor of caretaker government AMM Shawkat Ali wrote, Our State Acquisition and Tenancy Act of 1950 does provide the identification in terms of protection of their land rights. Garos are among the total 22 communities classed as aboriginals. The law imposes restriction of alienation of lands by aboriginals. Alienation or transfer of rights of lands can only be made from one member of these communities to another aboriginal who is domiciled or permanently residing in Bangladesh.

During the pre-1971 period, in most of the districts there used to be a Special Officer in the office of the Deputy Commissioner to deal with issues of legal rights of the ethnic minorities. They appear to have gone out of existence. Some of the recent project related studies involving Participatory Need Assessment (PNA) Surveys have indicated the lack of security of the ethnic communities like Garos in terms of land rights. It has been reported that the Garos 'are being evicted from their ancestral homes'. This, on the face of it, appears to be unlawful action of lawful authority. If we had a well-functioning system of enforcing land rights, the tragic event of Eco Park could be avoided. One of the major elements of the policies is to ensure security and well being of the marginal ethnic groups such as Garos. We often hear such words as marginal ethnic groups but fall short of identifying them. The reference made in PRSP is to communities outside the Chittagong Hill Tract region. That does not carry us far enough.¹⁶

¹⁶ echo-Park and Ethics in Development, The Daily Star, January 9, 2004

Chapter 6

Conclusion

6.1 Recommendation:

- It is need to formulate an in-details policy for the indigenous communities of Bangladesh
- Should ensure effective reflection of all the human rights instruments in the government policy documents that's are relevant to the indigenous people
- Protect human rights violation of the indigenous peoples as well as ensuring justice
- Affirmative action need to enrolled in the mainstream education including bilingual primary education
- Effective initiative need to settle the land related problems • Specific and justified allocation in the national budget for the adibashi
- Prior and effective discussion with the indigenous people to taken any development project on their areas
- Recognize the distinct existence of the indigenous peoples in the government documents

Bibliography

1. Erni and Nilsson 2008, p.333, Country Profile: Bangladesh. The Concept of Indigenous Peoples in Asia, Document No.123. C. Erni. Copenhagen International Work Group for Indigenous Affairs (IWGIA)
2. Rahim, 1989, p.59, The Society and Its Environment in Bangladesh: A Country Study. Washington DC, Library of Congress.
3. Adnan, 2004, Migration Land Alienation and Ethnic Conflict: Causes of Poverty in the

Chittagong Hill Tracts of Bangladesh. Dhaka, Research & Advisory Services.

4. Report of ESCR, www.unhchr.ch website
5. Right to Development A Primer, Centre for Development and Human Rights, page 92,93
6. “Emerging issues of Indigenous Peoples Rights in Bangladesh: why application of international law remains an uphill struggle”- Professor Tone Bleie, University of Tromso, Norway
7. “Emerging issues of Indigenous Peoples Rights in Bangladesh: why application of international law remains an uphill struggle”- Tone Bleie, University of Tromso, Norway
8. “Biponno Adibashi jibon O Somaj”, Mithushilak Murmu, Kashbon Prokashani, Dhaka
9. The Daily Sangbad, July 13, 2007
10. The information taken from the interview with indigenous women leader Ms Sulwkha Mrong of Modhupur, Tangail on the part¹ R.W. Bastine-Final Report of the Settlement Operation in Five Thanas of the Partially Excluded Area of Mymensingh 1038-42, Government of East Bengal, Directorate of Land Records and Surveys, East Bengal, East Bengal Government Press 1954, Dacca
11. Small ethnic groups of Bangladesh; A mapping exercise, Dr. Muhammad Rafi, BRAC RKD of this study
12. “Biponno Adibashi Jibon o Somaj, Mithushilak Murmu, Kashbon Prokashani, Dhaka
13. The Daily Star July 17, 2008
14. The Daily Star, July 17, 2008
15. The Daily Star, June 30, 2008

16. The Daily Star, June 30, 2008

17. echo-Park and Ethics in Development, The Daily Star, January 9, 2004