

**Indigenous Community in Bangladesh: A Legal Analysis of Rights,  
Challenges, and Prospects for Indigenous Empowerment**



**LL.M THESIS**

**A RESEARCH MONOGRAPH  
SUBMITTED IN PARTIAL FULFILLMENT OF THE CREDIT REQUIREMENTS FOR  
AWARDING THE DEGREE OF MASTER OF LAWS BY  
DAFFODIL INTERNATIONAL UNIVERSITY**

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## Letter of Transmittal

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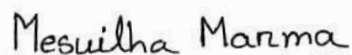
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**Subject: Prayer for Submission of Dissertation**

Dear Sir,

It is an excellent pressure on behalf of me that I even have been ready to make research on “**Marma Community in Bangladesh: A Legal Analysis of Rights Challenges and Prospects for Indigenous Empowerment**”. To conclude this research, I have even given my best ability to do useful research and collect all relevant information from various sources that will meet your expectations.

Therefore, if you have given this thesis paper for evaluation, I will be grateful to you and if any valuable recommendations are made by you in this regard, I will be available.



Sincerely yours,

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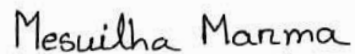
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## **Declaration**

I hereby solemnly declare that the thesis title “**Indigenous Community in Bangladesh: A Legal Analysis of Rights, Challenges, and Prospects for Indigenous Empowerment**” submitted by me in partial fulfillment of the requirement for the award of the degree of master of laws, Department of Law, daffodil International University.

I further declare that the research work presented in this thesis is original and it has not been submitted earlier either partly or wholly to any other university for any academic qualification or degree. This work I have presented does not breach any copyright.



**Mesuilha Marma**

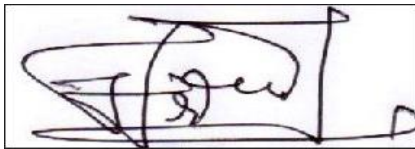
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## Certification

This is certified that thesis on title “**Indigenous Community in Bangladesh: A Legal Analysis of Rights Challenges and Prospects for Indigenous Empowerment**” has been prepared by Mesuilha Marma. It is prepared for the partial fulfillment of the requirements for the award of degree of master of laws, department of Law, Daffodil International University. This research has been carried out with my guidance and as research of the bonafide work carried out successfully.



**Dr. Kudrat-E-Khuda Babu**  
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## **Dedication**

Firstly, I am showing very much respect and gratitude to God. I would like to express my gratitude and to my parents for their encouragement and to provide me with opportunities for higher education. They will be guiding me to be a good human being and motivated me to dedicate myself to the benefit of the country.

## **Acknowledgement**

This paper is the result of constant sweat, pain and hard work. I believe that the confidence and courage to complete the task came through the divine help and generosity of some people. First and foremost, I have to express my humble gratitude to 'God' for empowering me to complete the work on time.

I would like to thank my thesis supervisor for his guidance and support at some crucial moments when I stumbled on the way to complete the research. He was the person who not only advised me to complete this difficult task but also encouraged me to go ahead and think critically about the paper from the beginning.

I cannot express my gratitude and appreciation to my beloved Law Department, Daffodil International University, for giving me this thesis opportunity.

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## Abstract

The Indigenous Communities in Bangladesh, especially Chittagong Hill Tracts region have faced historical marginalization, discrimination, and violations of their rights. This study explores the legal framework and policies related to the Indigenous Community, analyzing the extent to which they align with international human rights standards and domestic legislation. Additionally, it investigates the challenges faced by the Indigenous community in areas such as land rights, cultural preservation, access to justice, and socio-economic development. The research further explores potential avenues for indigenous empowerment, including the role of legal mechanisms, community participation, and the implementation of affirmative action measures. By critically analyzing the legal landscape and highlighting the rights and challenges of the Indigenous community, this study seeks to contribute to a better understanding of the issues faced by indigenous communities in Bangladesh and propose recommendations for policy reforms to promote their empowerment and safeguard their rights. It is focusing on their rights, challenges, and prospects for Indigenous empowerment.

**Keywords:** Indigenous Communities, Legal Analysis, Rights, Challenges, Prospects, Indigenous Empowerment.

## Abbreviations

ADB- Asian Development Bank

AL -Awami League

BIPF-The Bangladesh Indigenous Peoples Forum

BGB- Bangladesh Rifles, subsequently renamed as Border Guard Bangladesh

CHT- Chittagong Hill Tracts

CHTC- Chittagong Hill Tracts Commission

HDC- Hill District Council

HDLGC- Hill District Local Government Councils

ICCPR- The International Covenant on Civil and Political Rights

ICESCR- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

ILO-International Labour Organization

IDP- Internally Displaced Persons

IP- Indigenous Peoples

JI- Jamaat-e-Islami

MPFLR- Movement for Protection of Forest and Land Rights in the

OC- Officer in-Charge (of a police station)

PEDP- Primary' Education Development Plan

OHCHR- Office of the High Commissioner for Human Rights

RC- Regional Council

RF- Reserve Forests

SB- Shanti Bahini

IDP-Internally Displaced Person

UDHR-Universal Declaration of Human Rights

UN- United Nations

UNO- Upazilla Nirbahi Officer

UNDRIP- United Nations Declaration on the Rights of Indigenous Peoples

UPDF- United Peoples' Democratic Front

USF- Unclassed State Forests

VCF- Village Common Forests  
VGF- Vulnerable Group Feeding  
WB- World Bank

# **Chapter One**

## **Preliminary**

### **1.1 Introduction**

The term Indigenous people are known as very early or first peoples which is considered as aboriginal people. In our country like Bangladesh, we can find a number of Indigenous peoples such as Santals, Chakma, Marma, Rakhaine, Murong, Khasia, Garo, Oraon, Munda, Malpahari, etc. We know that in a country like Bangladesh, there is a lot of cultural diversity and also ethnic diversity. In our country, 54 Indigenous communities are available along with Bengali who is considered as the majority. The Indigenous population is almost 1,586,141 according to the census 2011. Almost 1.8 percent of the total number of populations. Though they claimed that the total number of populations of Indigenous people is over three million. Their culture and tradition are generally different from Bengali people. These different cultures, customs, traditions, language, and others contribute to the very rich and precious culture of our country.

All over the world, Indigenous communities have faced many challenges. These challenges related to many important things like their rights, land, identity, recognition, and more importantly their culture. Generally, lack of constitutional and legal framework is also liable for this reason. This has resulted in the exclusion of indigenous peoples from governance and development, except in a very marginal manner. They face various problems including insecurity, discrimination, and life safety. Their rights are not protected. The main thing is that they cannot access justice in most cases. This research proposal aims to undertake a legal analysis of Rights, Challenges, and Prospects for Indigenous Empowerment.

### **1.2 Scope of the Study**

This proposed research is to identify the challenges and rights of Indigenous communities. It will be covered the Legal, Constitutional, National, and International Institutional changing processes. It further tried to show the influence of civil society, government, and the development programs of the NGOs as well as exposure to other external agents. From an academic point of view, the study proves its importance by documenting the legal and institutional framework for Indigenous Communities.

### **1.3 Objective of the Study**

1. To identify and analyze the key legal challenges that indigenous communities encounter concerning their rights, land tenure, cultural preservation, and self-governance.
2. To assess the effectiveness of existing national and international legal frameworks in addressing these challenges and promoting indigenous empowerment.
3. To explore case studies from different countries to highlight successful legal strategies that have led to indigenous empowerment and positive outcomes.
4. To suggest potential legal reforms, policy recommendations, and best practices that could enhance indigenous empowerment and promote their rights and well-being

### **1.4 Research Questions**

1. What are the primary legal challenges faced by indigenous communities in asserting their rights, protecting their culture, and achieving self-determination?
2. How effective are existing legal frameworks, both at the national and international levels, in addressing these challenges and promoting indigenous empowerment?
3. What are the key factors contributing to successful legal strategies that have led to positive outcomes for indigenous communities?
4. How can legal reforms and policy recommendations be designed to enhance indigenous empowerment, rights protection, and overall well-being?

### **1.5 Research Methodology**

Research reports and publications of various organizations working in the area on indigenous communities, journals, booklets, newsletters, photographs and newspaper clippings are reviewed. Existing information from various sources was collected to enable the readers to understand the issues related to trafficking from different perspectives. A number of selected key informants from NGOs and research organizations were interviewed to add an additional perspective on trafficking and to expand the range of activities and interventions on trafficking covered in this report. This study analyzed textbooks, journals, reports, relevant national laws, case studies, daily newspapers, online documents and some publications as secondary data sources.

## **1.6 Types of Data**

Mainly qualitative data was collected for the present study. Primary emphasis will be on qualitative data in analyzing and writing the report as the present study will be qualitative and descriptive. A very small volume of quantitative data will, if necessary, be used in the present study.

## **1.7 Sources of Data**

Both primary and secondary data will be collected to conduct the present research. Various methods and techniques will be applied to collect primary data. Methods and techniques are observation, case study and use of original data. On the other hand, books, journals, periodicals, dissertations, daily reports and various recognized websites are used as secondary data.

## **1.8 Limitations of the Study**

The research is time bound. Funding is also a limitation of this study. Secondly sources of data are also limited.

## **1.9 Expected Outcome**

A comprehensive understanding of the legal challenges faced by indigenous communities worldwide. Critical insights into the strengths and weaknesses of existing legal frameworks in promoting indigenous empowerment. Identification of successful legal strategies and their potential for replication in different contexts. Policy recommendations and legal reform proposals aimed at enhancing indigenous rights and empowerment.

## **1.10 Significance**

This research holds significant academic, social, and policy implications. By providing a thorough analysis of indigenous rights challenges and prospects for empowerment, it can contribute to legal scholarship, inform policy decisions, and empower indigenous communities to advocate for their rights effectively.

## **1.11 Conclusion**

This research proposal outlines a comprehensive study aimed at understanding the legal challenges faced by indigenous communities and exploring opportunities for their empowerment. The insights gained from this research can contribute to legal reforms and policy changes that positively impact indigenous rights, culture, and self-determination.

## **Chapter Two**

### **Indigenous Rights and Discrimination**

#### **2.1 Introduction**

In Bangladesh there are number of Indigenous groups. This group of Indigenous population seemed to be culturally isolated by majority. Though the constitutions give the right for this people but there are also some discriminations to be followed. They are called minorities. Though many provisions of our constitution indicate about their rights but there is no especial provision for them to declare about their rights and opportunities. There are some provisions and constitutional rights that apply to indigenous communities. Below are some key aspects related to the legal rights of indigenous people in Bangladesh

#### **2.2 Economic Discrimination**

In the case of the economic aspect, Indigenous are generally in vulnerable conditions. As per many sources, we can see many problems regarding economic terms. They are also discriminated from many things. Especially in the labor market, it's not easy for them to access it. They do not have specialized skills. Generally, they do not have specialized skills other than their traditional work like agriculture, because they have been deprived of their traditional possession of land, they are forced to sell their labor in the production sector controlled by the Bengali majority – then, as the supply of labor in these sectors increases, wages fall. Eventually, the overcrowding of the indigenous laborers forces them to migrate for temporary seasonal employment over a region of 100 kilometers from their own villages.<sup>1</sup> Though the constitution of Bangladesh has some provisions like Article 29(2) which indicates about their opportunities. But in reality, no effective tools cannot be followed.<sup>2</sup>

#### **2.3 Educational Discrimination**

Discrimination against Ethnic Minorities affects their education and quality of schooling. That's the reason it in turn affects their labor market. Lack of schooling means a lower education rate, poverty, low income, and also engage different development activities. If we see an example in Godagari then we can realize that two Indigenous boys were admitted into a school but unfortunately, they were not allowed to sit with their Bengali classmates.

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<sup>1</sup>Dr. Firoz Hasan, "Indigenous Rights and Deficiency: An Analysis on Indigenous community in Bangladesh". 2015

<sup>2</sup> Constitution of Peoples Republic of Bangladesh. Article 29(2)



The Education rate is not satisfactory for the Adivasi communities from all over the country. Barrier of language is one of the main reasons. Not only that but also poverty, a friendly environment is also liable for a low education rate. One of the main demands of the tribal community is for them to receive education in other languages. It is a pity that no significant progress has been made yet.<sup>3</sup>

## **2.4 Peace Treaty not Completely Implemented**

Some essential steps had taken by government regarding this matter. But the leaders claim that government walked slowly regarding it to implement this peace treaty. Not only that after the Awami League regime when BNP was in power, they had not also taken any positive steps though they created some instruments to implement it. Mr. Santu Larma said in this regard, “The tribals of Chittagong Hill Tracts are now under the threat of massive displacement due to land grabbing, establishment of parks and social forestry. Lack of constitutional recognition of indigenous identity and rights, lack of effective policies, non-implementation of the Chittagong Hill Tracts and non-functioning of the Chittagong Hill Tracts Land Commission may worsen the situation. He also claimed that, “The fundamental aspects of the treaty are yet to be implemented due to lack of government initiative. Now the process of its implementation remains stuck.”<sup>4</sup>

## **2.5 There is no meaningful initiative to solve the land problem**

In any country or area land is one of the key elements. In the case of Indigenous Communities land is also a mother for them. We know that without land we have no existence so Indigenous Communities have felt that they have no existence without it. But it is sad that the government could not solve the land issue. Though there is a land commission in CHT it has not been functioning to reach a conclusion on the land issue. Another problem is that there is no land commission for plain land in Adibashi. Governments do not agree on their customary law, ancestral land rights, inheritance laws or dokhli satto. In many cases, government departments list their lands as Khas lands or respective department lands. Hence tribal lands are being encroached upon by mainstream people, evictions continue by some departments of the government, East Bengal Tenancy Act is not applicable, customary law, ancestral ownership is not recognized and land ownership is continuing and increasing.

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<sup>3</sup>Saikat Biswas, ‘State of Indigenous People’s Rights in Bangladesh an Analysis of Bureaucratic and Political Sensitivity’ < <https://core.ac.uk/download/pdf/61800743.pdf> > accessed 20 July 2023

<sup>4</sup> Staff Correspondent, ‘Indigenous people in CHT become victim of land grabbing, displacement’ *The Daily Star* (Dhaka, 7 August 2008)

Tribals are also harassed in various ways by law enforcement agencies and other departments over land related issues. International development agency Oxfam's "Ongrasar Gananyan Project" baseline survey shows trends in land loss for indigenous peoples in Bangladesh.

## **2.6 Gender Rights of Indigenous Women in Bangladesh**

Like women in other parts, the socio-economic status of indigenous women in Bangladesh is lower than that of their male counterparts. The lives of indigenous women in Bangladesh are shaped by the patriarchal and largely patriarchal nature of the social system. Although tribal women have more social mobility than non-tribal women in comparable rural society of Bangladesh, in terms of inheritance rights, legal and political rights, decision-making power, etc., their status is slightly better than non-tribal women.

## **2.7 Harassment and Noncooperation by Government Departments**

Indigenous Communities are frequently harassed by government officials. Most of the allegation goes against the land department, forest department, and law enforcement agencies. The local level land department's officials know that the adibashi people are a minority so they are weak and simultaneously they are not so educated and aware of the legal procedure of land issues.

On the other hand, the forest department is always bothering the tribals. Most of the tribals are dependent on natural forests. But the forest officials filed a case against the tribals for illegally selling the trees. They occupied their land and planted trees. More than 5000 forest cases have been filed against tribals in Madhupur. At least 1,000 cases are still pending.

## Chapter Three

### Indigenous People and Bangladesh

#### 3.1 Introduction

Bangladesh is home to more than 54 Indigenous Peoples who speak at least 35 languages, along with the majority of the Bengali population.<sup>5</sup> Though they claim that their population is over 3 million,<sup>6</sup> according to the survey of 2011, the country's indigenous population is around 1,586,141, which signifies 1.8% of total population of the country. In Bangladesh, they are treated as 'tribals' in official documents, though in the Act 12 of 1995 and Rules 6, 34, 45, 50 of Chittagong Hill Tracts (CHT) Regulation (1900), they are documented as 'indigenous peoples' or 'aboriginal' as per section 97 of the SAT Act (1950).

In recent times also from the past Constitutional Recognition of the Indigenous Communities in Bangladesh is one of the most debated issues in the history of Bangladesh. There are lots of controversy regarding this matter in the field of law as well as the politics of Bangladesh. To the extension of this issue, Bangladesh has witnessed two-decade-long armed conflicts in the hill tracts area. Though the armed conflict has ended, Bangladesh can't find out an amicable solution to this issue still now. Existing constitutional provisions are not suitable for them as constitutional recognition. In our civil society constitutional recognition of indigenous communities are now most important issue in recent times.<sup>7</sup>

#### 3.2 Indigenous Peoples and Constitution of Bangladesh

The Constitution of Peoples Republic of Bangladesh states about indigenous people in some provisions. It also ensures affirmative action for indigenous peoples and prohibits discrimination inter alia on grounds of race, religion or place of birth, Article 23A of which provides, “the State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities”.<sup>8</sup> It also mentioned in Article 28 (4) that, “nothing in this Article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward section of citizens”.<sup>9</sup>

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<sup>5</sup> IWGIA, “Indigenous peoples in Bangladesh” < <https://www.iwgia.org/en/bangladesh.html> > accessed 27 July 2023

<sup>6</sup> Arif Ahmed, ‘Rights of indigenous peoples in Bangladesh’ *The Daily Star* (Dhaka 9 August 2016)

<sup>7</sup> Dr. Abdullah Al Faruque, ‘Constitutional recognition of indigenous people’ *The Daily Star* (Dhaka 17 March 2011)

<sup>8</sup> The Constitution of the People’s Republic of Bangladesh. s,23

<sup>9</sup> The Constitution of the People’s Republic of Bangladesh. s,28(4)

### **3.3 Background of Ethnic Minorities problem**

We know that Bangladesh has been independent after nine-month in 1971. The basic spirits behind this war were freedom from oppression, equality and social justice which is also mentioned preamble of our constitution. In para third of preamble of our constitution stated about fundamental aim of the State where it run to through the democratic process a socialist society, free from exploitation a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens. Among the ethnic minorities those who joined or supported liberation war were not properly recognized. Due to partisian policy of Government many of them weren't join liberation war. That was the core issue that all community can't be victimized because of some people's faults.

### **3.4 Identity of Indigenous Peoples**

Government perspectives on the identity of indigenous peoples, however, are varied. It prefers the terms "tribe" and "tribal" ("upajati" in Bangla), and is opposed to the use of the words "indigenous" and "Adivasi". The government's reluctance to recognize indigenous peoples is largely politically motivated and has its roots in Bengali nationalism. The legal situation, on the other hand, is quite pluralistic, and reflects, in its totality, the currency of all the terms preferred by government officials and indigenous peoples combined.

Following the 29 August 2005 High Court verdict that declared the Constitution (Fifth Amendment) Act, 1979 (Act 1 of 1979) ultra vires and illegal, the government of Bangladesh took initiative to amend the constitution. To pursue the government of Bangladesh for constitutional recognition of indigenous peoples, the leaders of indigenous peoples raised their voices for recognition of their rights to existence, identities, culture, participation and consent, self-government, land and territories in the constitution.

### **3.5 Politics of Nationalism**

In our constitution, there are a few number provisions where constitutional recognition of indigenous communities or ethnic minorities was not properly maintained. We know that our nationalism is followed by the spirit of liberation and Article 6(2) provides people of our country shall be known as Bengalees as a nation and citizen of our country is known as Bangladeshi. There are several articles of our constitution are indirectly state unity and solidarity. Article 9 of our constitution is also one of the articles which is also mentioned about it. As an independent nation, we will go through that way, unfortunately, several ethnic minorities were denied by our constitution. We know that in the 15th amendment, these two articles came to life again. Along with these two, a new Article has been introduced which is also inserted by the 15th amendment. So, Article 23A provides about protecting and developing the unique local culture. It indicates about traditions of the tribes, minor races, ethnic sects, and communities.

Bengalee nationalism” is an ethnicity-based nationalism. It is an exclusive nationalism. This nationalism is based on Bengali culture and language whose cultural dimension was set by the language movement in 1952. Earlier by the 5th amendment of Bangladesh's constitution, “Bengali nationalism” was replaced by “Bangladeshi nationalism”. The state principle of “secularism” was replaced by the term” absolute trust and faith in Almighty Allah” on the 5th amendment. But no minor ethnic community was a follower of Islam. Thus the “Bangladeshi nationalism” introduced by the 5th Amendment created a hegemony of religious nationalism. It didn’t change the lot of ethnic minorities. In no way, it is logical to impose the nationality of the majority people to a minor community by constitutional provisions. Such provisions have made the ethnic minor communities nothing but second-class citizen of the state.<sup>10</sup>

### **3.6 Deprivation of rights of Ethnic Minorities**

Ethnic minorities as a community identify themselves as indigenous people(adibashi). Though they identify themselves as pahadi (people of hill) or tribal earlier, the wave of international indigenous movement touched the indigenous community in 2000’s. specially since 1993 the indigenous movement has got momentum after celebration of “international year of indigenous people”.

There are some international sets of criteria regarding the definition of indigenous people:

Firstly, in an independent country where culture and others types of things like economic and social condition is generally distinction from local or national community. Their tradition and culture are not only distinguished from national community but also their status is regulated by special laws like their own custom or their law. Secondly in case of indigenous communities on account of their descent from the populations which inhabited the country belongs at the time of conquest, colonializations or establishment of present state boundaries. Moreover, identification of an individual of indigenous community is determine their communities. In Bangladesh these all things are fulfilled by ethnic minorities. But they are yet to be recognized as indigenous people in the constitution.

Though they have fulfilled their identity as Bangali according to our constitution in Article 6 but lack of constitutional recognition has violated constitutional rights of ethnic minorities. We know that our constitution states about not to discriminate against any citizen on the ground of sex, religion, race and color. It is a matter of sorrow that indigenous communities are discriminated on the ground of their race.

Their right is often violated by government and influential people. Recent survey reveals that the rate of poverty is high to indigenous people. 86% of indigenous people live below poverty line.

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<sup>10</sup> Zia Uddin Ahmed,” *Constitutional recognition of ethnic minorities Bangladesh and national integrity*” (academia) < [https://www.academia.edu/16171318/Constitutional\\_recognition\\_of\\_ethnic\\_minorites\\_in\\_Bangladesh](https://www.academia.edu/16171318/Constitutional_recognition_of_ethnic_minorites_in_Bangladesh)> accessed 25<sup>th</sup> July 2023

Land ownership has been transferred from indigenous people to non-indigenous overwhelmingly within 30 years. 67% of indigenous people are landless now. 20 % of households of Chittagong hill tracts are electrified where the percentage is 40% in other rural area. These statistics shows that the indigenous people are deprived of their needs.

### **3.7 Threat to National Integrity**

The people of ethnic minorities were not consulted or recognized by state. This problem still prevails in Bangladesh. Before 15th amendment, constitutional protection of ethnic minorities as indigenous people was demanded. The recognition of their nationhood was demanded. But 15th amendment frustrated them. We can say that it is also threat to national integrity and in case of any unpleasant situation regarding oppressive steps towards the indigenous people government should responsible. Bangladesh has witnessed forty yearlong armed conflict in Chittagong hill tracts. To avoid further conflict and to ensure the stability of Bangladesh, the demand of ethnic minorities must be addressed. It is the duty of state to protect and facilitate human rights of every citizen. If constitution itself denies the recognition of a community, it is very difficult to realize their human rights from state.

### **3.8 Constitutional Debate**

The ideological choice of our fundamental principles of state policy does not create a critical debate. Manendra Narayan Lama only opposed the ideals of 'Bengalee' nationalism which forms the core content of Articles 6, 8 and, 9. He raised the question that, 'If everybody is treated, as Bangalee then what should be about indigenous people?'

In response to this opposition, the majority argument holds that the sense of 'Bengalee' nationalism was the central motivation of becoming an independent nation. To establish this argument, Nurul Islam passionately said that the independence of Bangladesh was coextensive with 'Bangabandhu' and 'Bangabandhu' was the devoted dreamer of our 'Bengalee nationalism'. So, the deviation from this principle will go against the spirit of liberation.<sup>11</sup> It's a matter of sorrow that none of M. N. Lama's logic or historical basis could shake the minds of the then-ruling class. His claim was rejected.

The Constitution makes mention of "minority communities," "ethnic communities," and according to the government of Bangladesh, all people born in Bangladesh are Bengali. In 2010 the Small Ethnic Groups Cultural Institute Act recognized, by name, only about 27 of the more than 50

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<sup>11</sup> Asif Nazrul, *Songbidhan Bitorko 1972: Gonoporishoder Rastrobhabna* (first published 2023, Prothoma Prokashan) 136

Indigenous groups. Indigenous Peoples have called on the government of Bangladesh to recognize them by either the term “Indigenous” or Adivasi, which means aboriginal or tribal.<sup>12</sup>

### **3.9 Indigenous Peoples and Their Right**

The rights of indigenous people are not only national or internal matter of a country but also have assumed a significant place in the international human rights law. In this manner these laws are legally binding upon all state. The UN declaration and also ILO has introduced some instruments regarding indigenous people. Bangladesh is also a party of Tribal Populations Convention, 1957 from 1972. The Indigenous and Tribal Peoples Convention, 1989 is also one of the conventions where Bangladesh is also a party.

The right of Indigenous peoples includes many several problems related to acknowledgement and their protection also advancement. We know that they are categorized by many different things like cultural, economic, social, resources etc. Under the UN Declaration on the rights of Indigenous people also defines their rights internationally. It also specifies their right as land, resources, culture etc.

### **3.10 Conclusion**

We can say that indigenous community is part of our country. So, refusal of recognition is against the spirit of our constitution and also liberation war of Bangladesh. We know that international covenant on civil and political rights and International Covenant on Economic, Social and cultural rights are also ensure the right of Indigenous communities as like local people of a country. We know that constitution is the supreme law of a country. So constitutional provision is very important for Indigenous community for promoting their right and recognition. In our democratic country Constitution recognition of Indigenous people is essential. So, Bangladesh should take proper step to ensure their rights and constitutional recognition along with international instruments.

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<sup>12</sup> Bangladesh. Human Rights Committee. State Report. United Nations Committee on Civil and Political Rights, 19 June 2015. Web.  
<<http://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/198/21/PDF/G1519821.pdf?OpenElement>>

## **Chapter Four**

### **Legal Standards for Indigenous Peoples' Rights**

#### **4.1 Introduction**

In all over the world indigenous people have faced different challenges for their protection and establish their rights as per legal standards. There are many reasons behind it. Recognition of their cultures, distinct identities and different types of rules for their land management system is liable for that reason. Though different international legal standard and norms are to be followed for their protection and execute their laws. These norms and legal rules guarantee their rights and protection.

#### **4.2 Rights of Indigenous Peoples**

The right of Indigenous peoples includes many several problems related to acknowledgement and their protection also advancement. We know that they are categorized by many different things like cultural, economic, social, resources etc. Under the UN Declaration on the rights of Indigenous people also defines their rights internationally. It also specifies their right as land, resources, culture etc.

#### **4.3 International Legal Standards for Indigenous Peoples' Rights**

In international legal framework and international community's legal framework indigenous people are addressed. Not only that but also under UNDRIP and other important international legal and standard instruments like International Labour Organization Convention also focus on their rights and their protection. Especially in case of their human rights these instruments are more effective tools to be followed. the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) are also focused on that matter.<sup>13</sup>These laws play very significant role for their rights, protection, land, cultural heritage, language, traditional knowledge and their self-governance. These instruments are very important to implement their right and protection. In case of equality, non-discrimination these documents are required.<sup>14</sup>

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<sup>13</sup> S. Mokodenseho and T. L. Puspitaningrum, "Relasi Sosial-Ekonomi dan Kekuasaan antara Rentenir dan Pedagang Pasar Tradisional di Jawa Tengah," *Polit. J. Ilmu Polit.* Vol 13, No 1 (2022) DO -10.14710/politika.13.1.2022.41-58, Apr. 2022, [Online]. Available: <https://ejournal.undip.ac.id/index.php/politika/article/view/37977>

<sup>14</sup> E. W. Muh. Idris Ismail Suardi Wekke, Sabil Mokodenseho, "Peace Resolution in Education and Application on Information and Communication Technology," *Int. J. Adv. Sci. Technol.*, vol. 29, no. 06 SE-Articles, pp. 3349–3358, May 2020, [Online]. Available: <http://sersc.org/journals/index.php/IJAST/article/view/14076>



#### **4.4 National Implementation of International Legal Standards**

Along with international legal standard national laws are also provide an important framework for protection the right of indigenous people at national level. There are many countries from all over the world are maintain their national standard along with international. Some countries like Indonesia are developed their legislation as per international norms and their regulations to protect indigenous peoples right. Their constitutional law along with their national law on human rights protection are create protective measures for their right of indigenous people. The decision of court also empowers their right. Interesting fact is that the ministry of Environment and Forestry also provide some rules and regulation for Indigenous people.<sup>15</sup>

#### **4.5 Challenges in the Implementation of Indigenous Peoples' Rights**

In common word we can say that the implementation of indigenous peoples right faces many challenges. Not only international level but also national level as well. Inadequate legal recognition and their protection and complex system of their land management and short of justice more importantly lack of constitutional recognition are liable for this reason. In our country like Bangladesh challenges many problems due to complex cooperation among indigenous people, government and stakeholder. In case of geographical and environmental condition are also liable for this matter. Understanding these challenges is critical to developing effective strategies and policies to address them.<sup>16</sup> In addition, there is a need to involve indigenous peoples in decision-making processes and ensure that their voices are heard. Finally, it is important to promote local wisdom and cultural values to strengthen the character of the younger generation and prevent the negative impacts of globalization.<sup>17</sup>

#### **4.6 Conclusion**

In few countries like Indonesian context protection and safeguarding of indigenous people is very important thing with international legal standard because of huge number of indigenous people are live in Indonesia. Safeguarding the rights of indigenous peoples with international legal standards

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<sup>15</sup> J. Jasin and G. Mokodompit, "Preserving Customary Title Granting Ritual in Bolaang Mongondow Raya in Perspective of 1945 Indonesian Constitution," *J. Arts Humanity.*, vol. 8, no. 10, pp. 28–36, 2019, [Online]. Available: <https://theartsjournal.org/index.php/site/article/view/1734>

<sup>16</sup> A. P. Asmaroini, "Implementasi Nilai-Nilai Pancasila Bagi Siswa Di Era Globalisasi," *Citizsh. J. Pancasila dan Kewarganegaraan*, vol. 4, no. 2, p. 440, 2016, doi: 10.25273/citizenship. v4i2.1076.

<sup>17</sup> A. Veronika, "Implementasi Ajaran Tri Kaya Parisudha Dalam Membangun Karakter Generasi Muda Hindu Di Era Digital," *J. PASUPATI*, vol. 6, no. 1, p. 1, 2019, doi: 10.37428/pspt. v6i1.135.

should be a priority for the Indonesian government. <sup>18</sup>Under different declaration like Rio Declaration is also create protective measures for indigenous people. Many communities confronting REDD demonstration projects are seeking rights and have an informal understanding that REDD should be rights-based. Brazil and Indonesia are emerging nations with tremendous biodiversity that care about worldwide TK conservation<sup>19</sup>.

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<sup>18</sup> E. D. Harumanti, “Pengelolaan Air Balas: Kerangka Hukum Internasional Dan Perbandingan Hukum Di Indonesia,” *J. Huk. Lingkung. Indones.*, vol. 2, no. 1, pp. 69–92, 2020, doi: 10.38011/jhli.v2i1.173.

<sup>19</sup> B. Panjaitan and K. Roisah, “*A Comparative Study on the Legal Protection of Indigenous Peoples Rights towards Traditional Knowledge in Brazil and Indonesia*,” 2021, doi: 10.4108/cai.29-6-2021.2312597.

## **Chapter Five**

### **Recognized Legal and Human Rights of Indigenous People**

#### **5.1 Introduction**

There are some international legal frameworks regarding Indigenous communities. In case of their legal right and ensure human rights from different angles those instrument plays very significant role. Like Universal Declaration of Human Rights, International Labour Organization and many others institution are working together to protect Indigenous rights and recognition. We know that human rights are the important aspect from all around the world. So, to protect human rights of Indigenous are also key issue from all angles.

#### **5.2 Universal Declaration for Human Rights (UDHR)**

The Universal Declaration for Human Rights, (1948) was approved for ensuring human rights from all over the world for everyone. There are some articles from UDHR which are significant to follow:

Firstly, under article 1 of UDHR states about Right to Equality. The term equality referred to all kinds of people including Indigenous. From every aspect all are equal before law.

Secondly article 2 of this declaration states about Freedom from discrimination. In all kinds of situation Indigenous People cannot be discriminated. They have same opportunities like local people under this article. In case of government and non-government opportunities all are equal from the law and shall not be discriminated.

Thirdly article 3 of this declaration states about Right to life, liberty and personal security. So, everyone including Indigenous communities have the right to life, liberty, and personal security from all aspect. We know that everyone has some privacy and some personal security. So, in case of Indigenous communities they also have same right same as ours.

Fourthly article 6 states about Right to Recognition as a Person before the Law. This right is one of the most important rights to maintained. We know that recognition of Indigenous communities is now a days very important matter. In many countries like Bangladesh cannot give proper recognition to Indigenous communities which is mention in this article. So, they have the same identity same as ours.

Sixthly article 9 of UDHR states about Freedom from Arbitrary Arrest and Exile. In case of protection and arbitrary arrest this article shall be applicable. Indigenous people have also the same right same as local community.

Moreover, under article 19 of UDHR states about Freedom of Opinion and Information. This one is also important right to follow. In every aspect of our country either development or policies Indigenous communities has the right which have mentioned in article 19 of this declaration.

Finally, article 26 states about Right to Education. We know that education is the key elements to change a nation. But in recent studies we can see that Indigenous people are discriminated by government in some cases regarding education.

Last of all we can say that These articles were made to ensure and protect human rights all over the world. indigenous people are not excluded, this is also applicable for them. Bangladesh also ratified this convention. Considering the reality for the Indigenous people of Bangladesh, is not relatively just.

### **5.3 International Labor Organization (ILO)**

In case of international body ILO was the first institution to address indigenous issues in a comprehensive manner. Its main target is to protect the rights of Indigenous. Regarding two areas of ILO One is the supervision and promotion the promotion the two conventions relating to indigenous and tribal people Bangladesh ratified this convention in 1972.

Under this said convention Article 2 states that Governments shall have the primary responsibility for developing coordinated and systematic action for the protection of the populations concerned and their progressive integration into the life. So, from this article we can say that government has some liabilities to protect Indigenous people.

Article 11 of this convention states about the right of ownership, collective or individual, of the members of the population concerned over the lands which these populations traditionally occupy shall be recognized. Another thing it clearly states that 'As with ILO 169, indigenous and tribal peoples living in countries that have ratified ILO 107 may seek enforcement of their rights by approaching the ILO's Governing Body. The same procedures that apply to ILO 169, discussed in Section VI below, also apply to petitions submitted in relation to ILO 107.' Since Bangladesh has ratified the convention, if indigenous people feel that their rights are being violated then they can ask for help. But as mentioned earlier, conditions are not very easy. They cannot even reach the litigation process. It is the duty and responsibility of the government to ensure their rights. But

from the discussion of the historic background, we can see that sometimes, the governing body itself becomes the violator of their rights.

#### **5.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

This convention refers to that economic, social and cultural rights must be guaranteed by the state to the individual. To be specific, the report of United Nation Office of High Commission of Human Rights (OHCHR, 2007) stated that:

There are some articles that clarifies the rights further. These are: (International Covenant on Economic, Social and Cultural Rights, 1996:

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 15: The right of everyone to take part in cultural life

Since Bangladesh ratified this convention, it is obvious for the representing state that they are ensuring the rights that indigenous people rightfully deserve. The contemporary situation of their economic and culture is not what this convention expects from its representing state.

#### **5.5 International Covenant on Civil and Political Rights (ICCPR)**

International covenant on civil and political rights (ICCPR) specifies the civil and political rights. It guarantees the freedom, security, and physical and spiritual integrity of people and can be immediately protected by states.

##### **International Covenant on Civil and Political Rights, 1966:**

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 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: Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

These civil and political rights are applicable for every individual of the ratified states and so is applicable for the indigenous people. Bangladesh ratified this convention in 2000. So, by signing this convention this responsibility falls under the governing body to ensure indigenous people's rights.

## **5.6 National Constitutional Basis**

The constitution of Bangladesh is not so helpful to the indigenous people. There are not so much laws and legal obligators for them. Despite this, the amendments of the constitution poorly focus on the particular indigenous population. There are very few acts that merely relate to them. Articles 14, 27, 29, of the Constitution of Bangladesh Evaluative analysis: A quota system facilitates employment of tribal people in government jobs, but in an inadequate manner. There are no easy remedial measures available. Laws: Article 28 (1) Evaluative analysis: this clarifies that the state shall not discriminate any people on the ground of any religion, race, sex, caste. Sub-section 4 of article 28 addresses that nonadvanced group as in women and children will receive facilities. But did not mention anything about the indigenous people or indigenous women or children. Retention of Own Customs & Institutions (Continuing Role of Chiefs, Headmen and Village Elders) Laws: Rules 39, 40, 47, 48, CHT Regulation, 1900, Sec 4(5), 4(6), 26, 66, HDC Acts, 1989 Evaluative analysis.

From the above discussion, it seems that the government is moderately related to the indigenous people. The peace accord signed in 1997 did not provide much of the opportunity for the indigenous people. The main provisions reflect the idea is that:

The government will start compensating the displaced persons in India and also compensation will be provided for the internally displaced people. The shanti Bahini or the JSS people would need to disarm themselves along with giving the govt. the list of all of their members within 45 days after signing the agreement, and they should provide all terms of co-operation to the government.

The govt. shall ensure providing two acres of lands to each landless family and the family who possesses less than 2 acres of lands, provided lands were available in the local areas. If requisite lands are not available then grove land shall be provided. As per the agreement, after signing the agreement between the government and the Jana Samhati Samiti and immediately after the return of the JSS members to normal life all the temporary camps of military, Ansar and Village Defense Party shall be taken back to permanent installations except the Border Security Force (BDR) and permanent cantonments. (Chittagong Hill Tracts Peace Accord, 1997).

Like these there were almost 19 articles made in respect to the agreements with subsections but in reality, only disarming the members were done in a fast motion but others are still taking time to be implemented. For example, the excessive military base in the CHT area is not as per the agreement. The agreement was that all types of forces (e.g., military, Ansar, police, BDR) will return to their permanent base but in the recent times, still there is a disproportionate number of military bases. This is not something that the indigenous people expected from the government. For this reason, they are being violated from different perspectives of their rights, which also violates their rights that are internationally and nationally nominated to them.

## Chapter Six

### Conclusion

#### 6.1 Overview

In recent times also from the past Constitutional Recognition of the Indigenous Communities in Bangladesh is one of the most debated issues in the history of Bangladesh. There is a lot of controversy regarding this matter in the field of law as well as the politics of Bangladesh. To the extension of this issue, Bangladesh has witnessed two-decade-long armed conflicts in the hill tracts area. Though the armed conflict has ended, Bangladesh can't find out an amicable solution to this issue still now. Existing constitutional provisions are not suitable for them as constitutional recognition. In our civil society, constitutional recognition of indigenous communities is now the most important issue in recent times.<sup>20</sup>

Following the 29 August 2005 High Court verdict that declared the Constitution (Fifth Amendment) Act, 1979 (Act 1 of 1979) ultra vires and illegal, the government of Bangladesh took the initiative to amend the constitution. To pursue the government of Bangladesh for constitutional recognition of indigenous peoples, the leaders of indigenous peoples raised their voices for recognition of their rights to existence, identities, culture, participation and consent, self-government, land, and territories in the constitution.

Honorable High Court in various cases related to Chittagong Hill Tracts such as *Chakma vs Custom Commissioners and Others* (5 BLC, AD, 2000,29) and in 2005 the National Poverty Reduction Strategy Papers, etc. Act, adopted by the Government of Bangladesh and some government documents mention the term Adivasi.<sup>21</sup>

#### 6.2 Findings

- Lack of national effort to recognize them.
- Lack of involvement in different development programs.
- Unique law didn't Introduce to ensure their rights
- Lack of law to protect their culture.

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<sup>20</sup> Dr. Abdullah Al Faruque, 'Constitutional recognition of indigenous people' *The Daily Star* (Dhaka 17 March 2011)

<sup>21</sup> *Sampriti Chakma v. Commissioner of Customs* (2000) 5 BLC, AD,29



- In the case of the national budget, there is no sufficient budget for them.
- In the case of establishing their right there is no linkage between policies and practices.
- Lack of equality before the law
- In the case of language, they also discriminated
- In the case of human rights, it is violated.
- Lack of security regarding law and their legal system
- In the case of judicial proceedings, it is maintained a very complex method.
- There is no special force to them for protection
- No special treatment for them in case of special matter.
- No expertise has not introduced yet
- Inadequate provision of their law and their regulations.
- Right to life is also a major concern for them regarding the law.
- Lack of implementation of treatment from International Agencies

### **6.3 Recommendations**

The Indigenous community didn't get adequate recognition either in the constitution of Bangladesh or other official documents. International instruments also the Constitution mention state obligations. Though the government ratified ILO in 1972, there is no reflection of this convention in policy matters It's an urgent need to protect the rights and constitutional recognition of the Indigenous community. The government along with other stakeholders or civil society should take initiatives to maintain their rights. We can say that it's their right, not their privilege. So, they can demand their right as a citizen of our country.

#### **Some recommendations to follow:**

- National efforts to protect internationally recognized rights of Indigenous peoples.
- In all kinds of sectors increased integration is also a key concern for Indigenous people.
- In case of exercise for their rights it's necessary to empower Indigenous people.
- Engage Indigenous People in all kinds of sectors and build awareness.
- Ensure their rights to apply the law in a strict way.
- Establish the bridge between law, policy, and practice.

- Protect Indigenous Cultures.
- In the case of the national budget, a specific and sufficient budget along with sufficient wealth should be granted to the Indigenous people.
- Protect human rights violations of the indigenous peoples as well as ensure justice.
- Protect them from human rights violations and ensure justice.
- Special security force shall be introduced
- Special treatment for them in any kind of judicial proceedings
- Adequate law and provisions will be governed for any matter.
- Judicial proceedings will be easier
- Establish a task force for them in case of a disaster moment
- Immediate action should be taken in case of violation of their right.
- Organized lots of awareness seminars regarding their rights
- The government should work for them in collaboration with different NGOs
- Special court shall be introduced at their locality.
- Lawmaker should be more concerned about their culture and tradition.
- More respectful of their culture and their heritage
- Constitutional amendment should be necessarily implemented.
- International Agencies Should work properly for them regarding their prescribed matter.

It's necessary for the government to make mechanisms for comprehensive consultations with them to ensure their recognition and rights. Therefore, respecting their identity and ensuring their right as they are able to exercise it.

## **6.4 Conclusion**

We can say that the indigenous community is part of our country. So, refusal of recognition is against the spirit of our constitution and also the liberation war of Bangladesh. The indigenous of the plains and hill tracts of our country have been raising their voice for a long time in their demand to establish their identity as Adivasi. But it's a matter of sorrow that the government has mentioned them as a small ethnic group in the Constitution without fulfilling this demand.

We know that International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights also ensure the right of Indigenous communities like the

local people of a country. We also know that the Constitution is the supreme law of a country. So constitutional provision is very important for the Indigenous community for promoting their right and recognition. In our democratic country Constitution recognition of Indigenous people is essential. So, Bangladesh should take proper steps to ensure their rights and constitutional recognition along with international instruments. To ensure the constitutional rights of all ethnic groups and to establish the rule of law for the development of democracy in our country the constitutional recognition of Indigenous ethnic groups including the regional autonomy of the Chittagong Hill Tracts has become important.

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