

# **Violation of the Right of Indigenous Peoples in Bangladesh**

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## **DECLARATION**

I am Anwar Hossin bearing ID: 181-38-249 student of LL.M. (Final) hereby solemnly declares that, the present work has been submitted in the fulfillment of the degree of Master of Laws.

I declare that thesis has been prepared by me and has not been previously submitted to any other University/ Organization for any academic qualification/ certificate/ degree.

The work presented is my original work and it is not submitted before.

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## CERTIFICATION

This is to certify that the thesis on “Violation of the rights of indigenous people in Bangladesh: with case study” is done by Anwar Hossin bearing ID: 181-38-249 in the partial fulfillment of the requirements for the degree of LL.M. (Final) from Daffodil International University, Dhaka, Bangladesh. The thesis has been carried out under my guidance and is a record of this carried out successfully.

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I am also grateful to the authorities, journal, websites, newspaper mentioned in the references, but I along bear the responsibility of errors, omission and discrepancies, if there is any.

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## **Abbreviations**

<b>ASK</b>	<b>= Ain o Salish Kendea</b>
<b>ASA</b>	<b>= Association for Social Advancement</b>
<b>BBS</b>	<b>= Bangladesh Bureau of Statistics</b>
<b>BRAC</b>	<b>= Bangladesh Rural Advancement Commission</b>
<b>CHT</b>	<b>= Chittagong Hill Tracts</b>
<b>CHTDF</b>	<b>= Chittagong Hill Tract Development Facility</b>
<b>FYP</b>	<b>= Five years plan</b>
<b>GOVT</b>	<b>= Government</b>
<b>ILO</b>	<b>= International Labor Organization</b>
<b>NGO</b>	<b>= Non-Governmental Organization</b>
<b>UNESCO Organization</b>	<b>= United Nation Economic Social and Cultural</b>

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## **First Chapter**

### **Introductory remark**

#### **1.1 Title:**

Violation the rights of Indigenous peoples in Bangladesh: with case study.

#### **1.2 Introduction**

The International Day of World's Indigenous Peoples is observed on 9th August of each year to protect the rights of indigenous people worldwide, as on 23rd December 1994, the UNGA has decided that this day should be observed on 9th August each year during the International Decade of the World's Indigenous People. The rights of indigenous people have assumed a significant place in the international human rights law. In recent years the issues concerning indigenous peoples have not only been received the national and global attention, but have attained the status of customary international law and thus legally binding upon all States.

However, it is seems that more than 450 million indigenous people are living in the world in more than ninety countries. This being the reality, there has also been a system of slow disappearance of these local peoples over the last half century. But they still markedly constitute populations of many states. The indigenous peoples are usually found in disadvantageous positions compared to a national mainstream population. Probably a normal rule is that, they are deprived economically, financially and socially, denied their rights to education, equal treatment, land ownership and many other activities that the general people are engaged.

However, there are no different pictures in the canvas of Bangladesh. Indigenous peoples in Bangladesh continue to be disproportionately represented in the poorest and most permeable part of the community. Following the national technique for poverty accelerated reduction II (NSAPR-II), the present sixth five-year plan (FYP) among other government and non-government policies and publications has identified the development challenges of indigenous peoples and provisioned some object areas of intervention to address them. Some of the development challenges of indigenous peoples stated in the written above technique documents of the government include suffering from extortion by land grabbers, low level of social awareness, bad nutritional conditions, ethnic prejudice, living in remote areas, difficulties for schooling, social



discrimination, lack of relevant objectives in mainstream policies of the government, and partial operationalization of land disputes resolution commission in Chittagong Hill Tracts (CHT), lack of comprehensive understanding of their problems and ethnically disaggregated data. In this situation, their 'development with their ethnic and cultural identity' has often been tougher or even impossible. While the condition and position of their socioeconomic and political situation are still far from being good, indigenous peoples in Bangladesh are thriving to change the situation. Policy implication of government, strategic priority of development agencies and focused programs of NGOs can substantially contribute in bringing positive changes in their lives, livelihood, and culture.

Indigenous peoples are called in many different terms across the universe such as Janajati, Adivasi. In Bangladesh they are known as 'tribal', 'minority', and 'small ethnic minority' in the national constitution through the 15<sup>th</sup> amendment. However, giving the vast diversity of the people, International Labor Organization (ILO) uses an inclusive terminology 'Indigenous and Tribal people. (1)

### **1.3 Problem Statement**

In the modern era of globalization, when most of the civilized nation ratified the universal declaration of human rights and all civilized nations of the world talking about the fundamental human rights and trying to highly ensure it for each nation under their own constitution, in such condition the Indigenous communities were fighting to survive as a human being. They fight to acquire their human rights such as adequate food to live, a shelter to survive, an identity to demand themselves as human being and social being and proper education to know them etc. However, when it is question about Bangladesh perspective the condition of indigenous group is so much poor. They suffered from societal cruelty, including rape and killing. This cruelty was sometimes associated with land grabbing. Some indigenous rights best NGOs reported that, indigenous women and girls were increasingly targeted for rape and other assaults and the justice system often failed to protect victim's or punish offenders.

The indigenous community experienced widespread discrimination and abuse, despite government quotas for participation of indigenous CHT residents in the civil service and higher

education as called for in the 1997 Peace Accord<sup>4</sup>. Indigenous persons from the CHT were unable to participate effectively in decisions affecting<sup>4</sup> their lands due to disagreements regarding the structure and policies of the land commis<sup>4</sup>sion. Strict security measures prevented some indigenous individuals and activists from combating discrimination.

The constitution of Bangladesh allows for p<sup>4</sup>ositive action in favor of indigenous people, but indigenous groups reported effective positive action did not occur. Some NGOs reported discrimination against indigenous people in state hiring and promotions. According to the CHT Commission, fewer than half of indigenous children ages six through 10 were enrolled in school, in part due to a lack of indigenous-language instruction. Indigenous people at times lacked access to adequate housing and health care.

#### **1.4 Rationale of the study**

In the era of globalization, the customary concept of society, ethnicity, culture has been modified over time. At one time the issue of human rights got much attention in the present governance system of Bangladesh as well as around the earth. The rights issues got emphasis among the international document of human rights. In many cases among the member states of the United Nations is practicing those documents to ensure the rights of their citizens. Although there are numbers of human rights violation cases we see in the world. In these circumstances the issues of International Labor Organization (ILO) C 107 (1957) and C 169 (1989).

Indigenous people's rights revealed international attention from various aspects especially on the human rights and development paradigm. Diverse ethnic communities are losing their own identity, culture, language, livelihood, assets and over all they are becoming vulnerable and marginalized day by day. Some are becoming extinct. In Bangladesh, there were 45 identified ethnic communities<sup>1</sup> existing century after century. Their identity and rights are repeatedly violated in every tier of the society but generally the state stays silent. Rather we have seen in the past that, the state also became the actor of human rights violator. Indigenous people don't have access in the participation and inclusion in<sup>4</sup> the development planning, governance system or any other state mechanism without few exceptions. Sometimes, apparently, it was seen that some initiatives have been taken in favor of them. But many questions have been raised whether these really helped to add value to their life or not. On the other hand, despite ratifying several international instruments of human rights, Bangladesh government does not take any mentionable

affirmative action to ensure the rights of indigenous communities. So, it may also raise a question whether the different 'Solidarity' 2006, an annual publication of Bangladesh Adibashi Forum, governments are sensitized enough towards them or not. The leaders of the indigenous community are repeatedly claiming that no government is sensitizing to ensure their rights. Rather it is patronizing to make them extinct from Bangladesh. So, it is necessary to point out and measure the level of sensitization in the political process and bureaucracy towards indigenous communities.

### **1.5 Research Questions**

In this study I have the following questions which are scrutinized through the study period:

1. Who are the indigenous peoples under legal system of Bangladesh?
2. What are the legal statutes by which the government of Bangladesh deals with the rights of indigenous?
3. Why the Indigenous peoples are depriving from their land ownership?
4. Are there any violation against the rights of indigenous people in access to identification, education, consumption, earning, sanitation, water, food and various social programs?

### **1.6 Research Objectives**

No investigation can achieve his covetable success without definite objectives. Like that no research can draw a successful ending without specific objectives. For that, to achieve a complete research paper my specific objectives of the study was:

1. To find out the cardinal barriers to ensure the human rights of indigenous peoples in Bangladesh.
2. To find out the cardinal matters by which the indigenous peoples are victim of violation.
3. To find out the legal measures by which the government of Bangladesh deal with the indigenous to protect them from such discriminations.

### **1.7 Literature Review**

Discrimination against indigenous people is a matter of international. The indigenous are victim of discrimination throughout of the world over all Bangladesh. So internationally and nationally

many researchers were working with the issue of indigenous peoples. They were trying analyzed many crisis and discrimination of the indigenous peoples from different views. In this paper, some views of the scholars are trying to consider.

In 'Responsibility to respect the rights of minorities and indigenous peoples' Corinne Lewis observed that minorities and indigenous peoples throughout of the world continue to face eviction from their lands and other violation of their rights caused by private sector development and extractive projects like mining, gas, oil and logging activities. He also mention 'The threats to minorities and indigenous peoples as well as women within these communities, will includes as their lands are coveted for new projects.'<sup>1</sup>

Scholar Birgitte Feiring observed the issue as 'indigenous peoples have strong spiritual, cultural, social and economic relationships with their traditional lands, but their land rights are often the most precarious.'<sup>2</sup>

'Socio-Economic Baseline Survey of Chittagong Hill Tracts' Abul Barakat thinks about the issue that, Bangladesh is not a monolithic country. 1.2% small ethnic communities are living hear also, but unfortunately they are unrecognized by the constitution. It has not been accept the land rights of the indigenous communities rather violated that have. The poaching by the others is over throwing up much more. The 72% Santal peoples are land less among the community<sup>3</sup>

In the last three decade the Bengali mainstream people`s migration is increased in the Chittagong Hill track and compare to the ethnic group. As a result the hilly communities lost their land and some Bengali mainstream peoples poached by the cooperation of administration. Fifty years ago the ration of indigenous peoples at CHT was 75% and currently its only 47%. The peace agreement' has been signed but the process to established peace is weakening and the land commission is not operative.<sup>4</sup>

'Right of Indigenous people in Bangladesh: A case study in CHTs' by Abul Alamgir in this work the author has tried to analysis that, the CHT peace agreement signed between the OPCJSrecoS( parbatya chattyagram jana sanhati samitis of ) and the government of Bangladesh in 1997 which

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<sup>1</sup> Responsibility to respect the right of minorities and indigenous people (pdf) by Corinne Lewis

<sup>2</sup> Indigenous peoples rights to land, territories and resources – **Birgitte Feirng**

<sup>3</sup> Socio Economic base live survey Chittagong hill tracts – Dr. Barakath

<sup>4</sup> Rights to Ethnic peoples – Manusher Jonno Foundation (MJF)

recognized the reestablishment of the rights of indigenous communities with the composition of local and regional councils as controlling and supervisory organs over land and land management, law and order, civil administration, development projects: water, sanitation, education, food, health, forest and environment and many more. After few years of signing the peace treaty, it did not implement as historically the people are absorbed. Human rights have been severely violated in the territory for many years of the peace agreement though the area is economically sound.

‘State of Indigenous peoples Rights in Bangladesh’ by Saikat Biswas in this work the author analyzed the issues that, the nature of the administration of Bangladesh is not vigilant or suppressive to the poor communities. The indigenous people are first within the poor class of people. They have no mentionable participation in the development program of the state. There is not enough to mention in the constitution in favor of the backwards communities of people. In the first instance it is needed the promise of the government. If there is unambiguous promises then the government could not silent rather can take the affirmative action. That means the government can take special legislation which will be recognized by the constitution, to assure their patrimonial and customary' rights the constitutional protection is needed. All citizens are equal in the view of constitutional provision although there is some exception.

Smritikana Das manifested such as, right to life, security, movement and property' are fundamental rights guaranteed by 3<sup>rd</sup> part of the Bangladesh constitution. Article 11 bluntly mentions that the Republic shall be a democracy in which fundamental human rights and freedom and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.<sup>5</sup> Article 15 entrusted that it shall be a fundamental responsibility of the state that the state shall provide the basic necessities of life including food, clothing, shelter, education and medical care of its citizens. The right to work and social security is also guaranteed by the same provision. Article 19(1) ensures equality of opportunity to all its citizens; article 20(1) establishes work as a right and duty. Article 27 provides for equality before law and article 28(1) prohibits and forms of discrimination on grounds only of religion, race, caste, sex or place of birth. Article 41 stipulates

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<sup>5</sup> Indigenous peoples access to land in Northern-n-belt of Bangladesh: A study of the Santal community – Smritikana Das.

freedom of religion and article 42 provides for the right to property. Apart from the constitution, the state is also responsible by various international instrument, such as the United Nations charter of 1945 article 1 & 55, the universal declaration of human rights(UDHR) of 1948 article 2, the international Covenant on Civil and Political rights and economic social and cultural rights 1966 article 2, International convention on the elimination of all form of racial discrimination of 1965 article 1, convention on the Elimination of all form of Discrimination against women etc. Although the human rights are continuously violate in general. These violations are more acute and widespread in the case off the most vulnerable actions, of the society, which includes women and the immoralities. The following discussion mainly put emphasis on violation of Adibashi women's various rights as citizen.

Saikat Biswas has analyzed in his paper about 'promoting the rights of Indigenous children and women'. His observation about indigenous children is that the indigenous children suffer from higher mortality rates than mainstream children in such country. They are also more exposed to low birth weight, malnutrition and disease. He has also pinpointed a major problem about the indigenous children which is that the indigenous children are not registered at birth by any authority of the state. 'UNICEF maintains that non registration at birth is a cause of child discrimination and a risk factor for child abuse, trafficking and exploitation and leads to further exclusion of indigenous children'.<sup>6</sup> The author also state that the maternal mortality is particularly higher in indigenous community. In the eye of the author the root reason of the poor health status of indigenous children and people is apathy of the administration, poverty, access to health services, malnutrition, lack of safe drinking water etc.

### **1.8 Research gape**

Every good work is restricted by certain restriction. Research on violation of the rights of indigenous people in Bangladesh also a good work because the indigenous communities of Bangladesh are depriving from their rights by the state and society.

However, the present paper title is 'violation of the rights of indigenous people in Bangladesh: with case study' doesn't any new phenomenon, huge research have been made about this matter.

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<sup>6</sup> Sate of Indigenous peoples rights in Bangladesh- Saikat Biswas

But, I have been faced with various limitations to complete the study. Proper and specific adequate data is the pre-condition to carrying a proper thesis paper I faced few limitation to gathered adequate data collection. A big gap of my study is that, I was unable find out the mystery of some specific provisions of the constitution of Bangladesh. As a result the study has been faced with various gaps. The grounds of the constitution of Bangladesh where I could not find out the proper mining are as follows:

Bangladesh is a new born country, whose born commitment was the equal human rights for all citizens, (In order to ensure for the people of Bangladesh equality, human dignity and social justice)<sup>7</sup> how she forgot her commitment, her born. How she made different rights for different communities. Why the indigenous people, tribe community are deprived from their land, education, identification, safe life etc. A gape has been remaining in this stage of the research.

“Further pledging that it shall be a fundamental aim of the state to realize 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”<sup>8</sup>. It is a great aim or goal for a healthy democratic state, where economically or politically all people are equal and rule of law and natural justice will be secured for all citizens. Plowshares, why the peoples of the Ramu are the victim of political aggression? Why the ramu community did not found the justice after six years of the aggression? Why the santal locality is the victim of armed conflict? Hear a gape has been remaining of the research.

How can a decelerated secular state take a state religion for her? How the state can say that “people of Bangladesh shall be known as Bengalese as a nation and the citizens of Bangladesh shall be known as Bangladeshies”<sup>9</sup>, when there have been living different kinds of communities. A gape has been remaining in the stage of the research relating to the rights of indigenous people.

## 1.9 Methodology

It has been reviewed the relevant Writing, composition on this subject such as administrative documents, laws and acts, published articles, formal study, different seminar etc. Then analyzed

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<sup>7</sup> Peoples Republic Constitution of Bangladesh, Preamble, para 3

<sup>8</sup> Ibid

<sup>9</sup> Ibid, art- 6 (2)

the relevant international human rights instruments (HRI) such as ILO-107, UDHR, ICCPR, ICESCR, Constitution of Bangladesh, UN declaration on indigenous people. It has also been analyzed the published reports about indigenous peoples rights violations and claiming their demands in the national newspapers. In this study has been considered the secondary data sources like sport, published articles, relevant laws, conventions, administrative documents etc. On the other hand, it also been used the primary data sources such as newspapers report. This study also emphasis on the qualitative analysis to prove the arguments although it has been analyzed and used some rationale quantitative information in different specific cases. In this study it has been analyzed the reasons of not ensuring the internally recognized rights of the indigenous peoples as well.



## Second Chapter

### Indigenous people in Bangladesh

#### 2.1 Background of indigenous people in territory 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 interrelation between their religious belief and their social structure. The communal spirit is strong and according to their law and custom all land is the property of community. Public ceremonies celebrations and writes for the occasions of birth, marriage, death etc. Reinforce their solidarity' Bangladesh is known as multi-lingual and multi-cultural country with a population of 140 million (Barkat and Halim, 2009). Among the whole population, 89.7 percent are Muslim, 9.2 percent are Hindus, the rest of being Buddhists and Christians and followers of other religions. Approximately 1.2 percent of the population is indigenous people, mainly living in Chittagong Hill Tracts and the plain land of the northwestern part of Bangladesh and central Bangladesh. It is believed that Bangladesh is a country of 57 ethnic communities who are commonly known as ADIVASIS (indigenous) (Singha, 2002). According to the Bangladesh Population Census of 1991, the total indigenous or Adivasis population of Bangladesh is 1.2 million and constitutes 1.13 percent of the country's total population (UNESCO, 2005). The Bangladesh Population Census in 2001 did not provide any statistical data on indigenous peoples or total indigenous population size and according to many the 1991 Census is controversial on many grounds. Although it is a debatable issue, if we assume that the data of 1991 census is correct and the growth rate of indigenous people is similar between 1991 and 2008 with the national population growth rate, then in 2008, 1.54% (1,544,126) would be indigenous people out of 150 million people in Bangladesh (Barkat and Halim, 2009).

The Chittagong Hill Tracts (CHT) is the only region in the country where Indigenous Peoples are largely concentrated. Indigenous Peoples in other parts of Bangladesh are located mainly in the north-west (Rajshahi-Dinajpur), central north (Mymensingh-Tangail), north-east (Greater Sylhet), south-west (Patuakhali-Barguna-Barishal) and south-east (Chittagong-Cox's Bazaar). Nevertheless, the Constitution of Bangladesh does not recognise the ethnic, linguistic and cultural minorities of Bangladesh as 'Indigenous People. Through the 15th Amendment to the Constitution in 2011, the government termed Indigenous Peoples as "tribes, minor races, and ethnic sects and communities" (Article 23A), while also calling all the people of Bangladesh, irrespective of their ethnic, linguistic and cultural backgrounds, as "Bangalee" (Article 6.2). Indigenous Peoples rejected this provision arguing that they are not "Bangalee" as a nation, but Bangaldeshis as citizens. They all are a separate nation possessing separate identity, culture, customs, language and society apart from Bengalis. Furthermore, a number of legal government documents, referred to "tribal", "indigenous" or "aboriginal" interchangeably. Indigenous Peoples rejected the Fifteenth Amendment of Constitution saying that it undermined the human rights and fundamental freedoms of Indigenous Peoples.

## **2.2 Identification of indigenous people in Bangladesh**

The term "indigenous peoples" is common denominator for more than 430 million indigenous peoples, originated from over 5500 ethnic groups, live in approximately 90 countries over the world. Of the same 7000 languages today, it is estimated that 4000 are spoken by indigenous peoples (DESA 2009). Given the diversity of indigenous peoples, there is a broad international consensus that a universal definition is neither necessary nor desirable. Instead, the recommended approach is to identify the peoples concerned in a given country context, putting particular emphasis on their self-identification as indigenous peoples. According to ILO Convention No: 169 (Article-1) "Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries

and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions” (ILO convention, 169, 1989).

Indigenous people in Bangladesh are from the minority community, popularly known as ‘Adibasi’, living in certain pockets of geographical location with their own distinct language, culture any way of life. However, there exists an informal common accord among the States that indigenous peoples are the descendents of those who inhabited a geographic region, when people of different ethnic origins arrived. In Asian context, the term 'indigenous peoples' is commonly understood as different cultural groups, e.g., 'Adivasis', 'tribal peoples', 'hill tribes' or 'scheduled tribes'. 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 Bangladesh there are about 50 different indigenous communities living in the plain lands and hill areas. Though they claim that their population is over 3 million, 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.

### **2.3 Legal right of indigenous people in Bangladesh**

Generally the constitution of Bangladesh has been adopted two kinds of rights for the citizens of Bangladesh. Firstly the fundamental rights which are adopted under the third part of the constitution and this category of rights are secured by the High Court division of the Supreme Court. And the second categorical rights are basic rights which are known as Basic needs under the Article 15 of the Bangladesh constitution. But those categories of rights are not protected under any Court. Besides of those two categories of rights the people of People’s Republic of Bangladesh are entitled to enjoy the universal rights as human being.

However, though it is well known acceptable right that, all people of Bangladesh are equal before law, but generally we saw the different seen that the indigenous communities are marginalized and discriminated by the state and society. “The mainstream or major population along with the state deprives or excludes indigenous population from a full participation in social, political and

economic life.”<sup>10</sup> As a result, they are unable to exercise powers and gain access to services and resources which are the cordial grounds for enjoying their fundamental and basic rights and lead a life of wellbeing and dignity.

### **2.3.1 Fundamental rights of indigenous people**

The Constitution of Bangladesh (Article 27) states that all citizens are equal before law and are entitled to equal protection of law. In addition, the Constitution (Article 28) outlaws discrimination on grounds of race, religion and place of birth and states 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. It is understood that the Indigenous Peoples form part of the disadvantaged part of the citizens, which the constitution terms ‘backward section of citizens’. Under these provisions of the constitution, the government undertakes some affirmative action’s in favor of Indigenous Peoples. Notable among these are:

- setting up of a Special Affairs Division (SAD) under the Prime Minister’s Office particularly for plain lands Indigenous Peoples;
- signing of the CHT Accord with the PCJSS as a solution of the CHT problem through political and peaceful means and accordingly establishment of CHT Regional Council and three
- Hill District Councils as special administrative arrangements for the CHT;
- Enactment of the CHT Land Dispute Resolution Commission Act of 2001;
- Amendment of CHT Regulation of 1900 in 2003 for establishment of a separate district judge court in CHT;
- Continuing of quota reservation in the government jobs and educational institutions for ‘tribal’ people etc.

### **2.3.2 Basic rights of indigenous people**

The basic rights are known as basic needs under article 15 of the Bangladesh constitution, which are the fundamental aim or goal of the stat. the state shall arrange thus rights for its citizens voluntarily. “It is a fundamental responsibility to attain, through planned economic growth, a

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<sup>10</sup> National Seminar on Indigenous peoples in Bangladesh: Human Rights and Sustainable Development Goals, 10 December 2015.

constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people.<sup>11</sup> But the state still does not clear that, are the indigenous people the Bengalese and Bangladeshis or not. When the indigenous communities are refused to identified them self as a Bangladeshi.

However, though the state has been taking various measures under article 15 for its nation, but the indigenous people are deprived form the measures by the mainstream people of the country.

The quantitative data suggests that the '*adibasi*' are unable to fulfill basic human needs; they have to endure food shortages and poor housing. They lack access to adequate health services and medicine, get sick from poor water and sanitation, lack access to education etc. this clearly shows both their vulnerability and the lack of proper policies to make up for this. In the following discussion, the above-mentioned themes are explored in detail.

### 2.3.2.1 Food

“The census data reveals that 19.5% households’ have two meals a day. Though they have used to three meals a day, most can no longer afford this. The study showed that the rice was the staple food of the '*adibasi*'. The poor '*adibasi*' have one meal at around 9 or 10 am and have dinner 7 to 8 pm.”<sup>12</sup> '*Adibasi*' generally only eat meat such as pork, chicken, snake, frog etc. at festivals. Even those who can afford three meals a day consume insufficiently nutritious. And most of the families are take low-calorie items of food. A significant proportion of '*adibasi*' families eat only rice and salt. 51 households mainly survive on rice and vegetable. Some can occasionally afford pigeon peas with rice and vegetables. Only 11 households said that they often can afford some fish. Only 8 households said that they can afford some meat.

### 2.3.2.2 Health

The '*adibasi*' have a high incidence of malaria. Mosquitoes in the area are very dangerous and spread fever among the inhabitants. About 80% of the respondents said that at least one of their

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<sup>11</sup> Peoples Republic Constitution of Bangladesh, art 15

<sup>12</sup> Rights of indigenous peoples in Bangladesh: a case study CHTs Abul Alamgir

family members had suffered from malaria. People also often mentioned water borne diseases like diarrhea, dysentery, cold and skin diseases as they use dug-well, ponds and canals water for drinking and cooking. The canal water contains decaying plant materials during summer. This causes growth of micro-organisms and stomach problems and diarrhea for ‘*adibasi*’ people when they drink it. Drinking pit water also predisposes their children to other contagious diseases.

Many of the ‘*adibasi*’ first try to use their indigenous knowledge for recovery from illness and diseases. In severe cases, they go to the hospital or medical camps operated by the army, to *Rabeta* hospitals, the pharmacy, or the folk healer for treatment. Almost 43% of the respondents clearly stated that they cannot afford the medical expenses if someone in their family becomes sick. A respondent said that he needed to sell household items like hen and rice to buy medicine or meet the doctor for the sickness of his family member. Sometime, they are forced to sell or mortgage their land to recover from illness.

### 2.3.2.3 Education

The ‘*adibasi*’ have lack of opportunity to receive quality education in the region due to limited school in the areas and most importantly due to financial problem and insecurity. However, the *chakma* have been kin interest in being educated, in sending their children at school and thus to explore other formal and informal work for their survival.

In 2001, Bangladesh Bureau of Statistics (BBS 2001) estimated the literacy rate to be 89% in *chakma* community while the Primary and Public Education Department (2001) revealed the literacy rate to be 65% in Bangladesh.<sup>52</sup> A study shows that during 2001-2005, the youth literacy rate in Bangladesh has been 72.73% with 75.03% of them males and 70.36% females. For the same group the literacy rate was 25.8% in 1974 and it has risen to 47.5% by 2001. Alarmingly, the literacy rate is decreasing among the *chakma* community while the rate is improving in the rest of the country. A study conducted exhibits that the literacy rate is 76% among the *chakma* community and my own survey finds 72% literacy rate in Sonai and Mayni in 2013 whereas according to the BBS report the rate was 89% in 2001. Indeed, literacy rate among the *chakma* community was historically much better than the overall rate in Bangladesh.

## **2.4 violations against the rights of indigenous people**

Continuing human rights violations by state and non-state actors, marginalization of indigenous communities and other abuses on the Indigenous Peoples have been intensified in day after day. These include rape and sexual assault against women and children, killings, arson, grabbing of lands, unlawful arrest and torture, and structural forms of discrimination based upon ethnicity, religious affiliation and gender. The government has expressed its intent to protect the rights of Indigenous Peoples, but has taken inadequate steps to prevent the violation of human rights of the Indigenous People.

In 2012, the numbers of incidents of human rights abuse against indigenous peoples have increased drastically compared to the previous year of 2011 both in the CHT and in the plains. 8 people (2 from the CHT and 6 from the plains) were reported to be killed, 23 were either arrested or detained throughout 2012 while 133 were tortured or intimidated. Also, 276 indigenous houses were demolished. A total of 9 communal attacks were made on indigenous communities across the country; of them, 4 were in the CHT and 5 were in the plains of Bangladesh. Moreover, 165 people fled and took shelter in the neighboring state of India during brutal communal attacks on indigenous villages in Matiranga upazila under Khagrachari district. It is reported that Bengali settlers committed most communal attacks in CHT where security forces played a role either passively or collaboratively. Religious extremism has been one of the most anxious issues in 2012. Indigenous peoples largely follow Buddhism, Christianity, Sanatanism or their traditional religion. In September, 23 Buddhist temples including 2 Hindu temples were burnt to ashes by the Muslim extremists in Ramu, Ukhiya, Teknaf and Cox's Bazaar municipality in Cox's Bazaar district and in Patia under Chittagong district. Such type of religious violence is unprecedented in the history of Bangladesh. Unlike previous few years, intensity of violence against indigenous peoples has reached a critical stage in 2012 where more than hundred Bangladeshi indigenous citizens have fled to Indian state of Tripura in order to survive from brutal communal attacks. Cross border escape due to communal violence has rarely been seen since the CHT Accord was signed in 1997 in the past.

Social exclusion is a process through which individuals or people are systematically deprived of enjoying various rights, opportunities and resources that are normally available to the members of the different groups, and which are fundamental to social integration and observance of human rights within that particular groups. Different studies found that low economic opportunities, specific geographic location, exclusion, deprivation and dispossession of land are the main drivers of poverty among the indigenous peoples in Bangladesh.

### **2.5 Violation against indigenous women and girl**

Over the past few years, the most appalling issue facing indigenous women and girls in Bangladesh is the alarming rate of violence against them, especially due to weak enforcement of existing legal and institutional measures by the State. According to Kapaeeng Foundation's statistics, from January 2007 to September 2016, there have been at least 466 reported incidents of violence against indigenous women and girls in Bangladesh. In comparison to 50 indigenous women and girls who were victims of rape, attempted rape and gang rape as reported by Kapaeeng Foundation, there were 615 victims of mainstream Bengali women and girls reported by Ain O Salish Kendra (ASK) in 2014. It is worth mentioning that 7.52% of the victims/survivors in 2014 were from indigenous communities, who are merely 1.8% of country's total population, while the remaining 92.48% victims were from the Bengali community, who are the majority in the country with 98.2% of the total population. From the statistical data given, it is clear that the propensity of committing sexual and physical violence against indigenous women is higher than the violence faced by Bengali women. In regards to the alarming trend of violence experienced by indigenous women and girls, impunity enjoyed by the perpetrators plays a crucial role. A study report commissioned by the CHT Commission reveals that not a single conviction had taken place out of 215 cases occurred in the CHT documented by them.

### **2.5 State obligation on violation human rights**

.The right to a remedy for victims of human rights violations as an individual or group is a tenet of every functioning judicial system. The effectiveness of all other rights rests on access to an effective legal remedy. This section discusses and analyzes three different avenues allowing



indigenous people to enforce state obligations concerning indigenous land rights. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law identify the state's obligation in relation to the due diligence standard. The Basic Principles suggest that states are required to "take appropriate legislative and administrative and other appropriate measures to prevent violations"; "investigate violations effectively, promptly, thoroughly, and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law"; "provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice . . . irrespective of who may ultimately be the bearer of responsibility for the violation"; and "provide effective remedies to victims, including reparation." Another important avenue is to enable indigenous peoples' participation in vital stakeholder's forums. Taken together, states have an international legal obligation to comply with the due diligence standard relating to indigenous land rights.

This section discusses the enforcement of state obligations to observe indigenous land rights. It does so in three steps: discussing and analyzing compliance with the views of the UN Human Rights Committee, examining the enforcement mechanism under the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169, and examining the monitoring system of the Inter-American Convention on Human Rights.

## CHAPTER THREE

### Laws relating to the rights of indigenous people

CHT Accord refers to several measures on substantive legislation in the region, including the enactment of new laws and the amendment of existing laws, regulations and practices to comply with the Accord on the basis of advice and recommendations of the CHT Regional Council. In line with this provision of the Accord, the Government passed the CHT Regional Council Act of 1998, the Hill District Council (amendment) Act of 1998, the CHT Land Disputes Resolution Commission Act of 2001 and the CHT Regulation (amendment) Act of 2003.

However, the process of bringing necessary amendments to the concerned Acts in accordance with the Accord has remained unattended. The recommendations on the necessary amendment to the Electoral Roll Ordinance 1982, the Electoral Roll Rules 1982, the CHT Regulation 1900, and the Draft Rules on Social Forestry 2001 and the Code of Conduct for the NGOs have already been placed before the government by the CHT Regional Council. But the government has not responded so far in this regard, except effecting some changes (some provisions are not indigenous friendly) on the Draft Rules on Social Forestry 2001

On the other side, the CHT Development Board Ordinance, Forest Act, Union Council Act, Upazila Council Act, Poursava Act, CHT Transit Rules of 1973, Police Regulations of Bengal of 1943, the CHT (Land Acquisition) Regulation of 1958, Rules of the CHT Bazar Fund of 1937 etc. have not yet been amended as per the terms of CHT Accord. In essence, there has been no substantial progress in the process of bringing alteration, amendment and addition to the relevant laws, regulations and practices in accordance with the CHT Accord.

Further, the various sectoral national policies, e.g. on Health, Women, Forest, Land, Environment etc. are yet to be correspondingly amended in consonance with the spirit of the CHT Accord to account for the special needs and situations of region's Indigenous Peoples. Most of these policies contain contradictory and impractical, if not outright insensitive, provisions to the CHT. One of the examples is the Primary Education Policy that stipulates specific number of students' enrollment in a school for registration with the government. The provision is not appropriate for much of CHT, especially in remote and hilly areas, which are inaccessible and sparsely populated.

## CHAPTER FOUR

### CASE STUDIES

#### **Massive communal attack on Buddhist community in Cox's Bazaar and Chittagong**

On 29-30 September 2012 Islamic radicals led a huge common assault on Buddhist people group in Ramu, Ukhiya, Teknaf and Cox's Bazaar region zone under Cox's Bazaar area and Patia in Chittagong region, following a photo stigmatizing the blessed Quran was purportedly labeled by somebody on the mass of a Facebook client, Uttam Barua. In this assault, no less than 21 sanctuaries including 2 Hindu sanctuaries and around 50 houses having a place with Barua people group were totally scorched to fiery debris and progressively 200-250 houses were stripped and plundered. Several individuals ended up destitute and many families left their homes for more secure spots. It is discovered that on 29 September around 9.00 pm an aggressor parade was brought out Chowmuhini region of Ramu upazila sadar. Led by pioneer of Chatra League (understudy wing of Awami League) Md. Saddam, the parade was tended to, among others, by leader of Ramu squeeze club Nurul Islam Selim, pioneer of Sechhasehabak League (volunteer wing of Awami League) Apel Bhutta et al. Plus, Abul Kasem of Chatra Dal (understudy wing of Bangladesh Nationalist Party), Md. Didar of BNP, and Md. Jahangir of Jamat-e-Islam et al were available in this gathering. Around 8 thousand aggressor Muslims went to the parade. At a resulting rally, they guaranteed a young by the name of Uttam Barua (24) had posted the purportedly hostile photograph in the long range informal communication site and requested his capture.

It is in like manner found that at around 11.30 pm another assailant march was drawn out that strolled down towards the Barua Para in Ramu upazila and a couple of youngsters from the procession set a couple of homes of the Barua Buddhists on fire. Around at that point, BNP authority of Cox's Bazar-3 casting a ballot statistic Lutfar Rahman Kajal and negative behavior pattern director of Ramu upazila Soheli Sarwar Kajal were in like manner present there and they didn't shield the group from striking the Buddhist society.

From that point on, no less than 30 houses, three sanctuaries including 'Saada Ching' and 'Laal Ching' were singed to the ground. A 100-foot high underconstruction Buddha mold was

additionally assaulted in Bimukti Bidarshan Bhabana Center in Ramu. The priest of this sanctuary was additionally injured. Likewise, Ramu Maitree Bihara, Saada Chinglaal, Ramy Sina Bihara and Jadiparha Bouddha Bihara were burnt, stripped and plundered. Somewhere around 10 Buddhist towns were assaulted and Purbo Merongloa region that had around 40 houses was scorched. One of Buddhist sanctuaries was Ramu Bara Bouddha Bihara in which thousand-year old Buddha statues were obliterated. Crowds plundered and harmed in excess of 200 houses until the point when 3.00 am in this assault. It is accounted for that few individuals were harmed in the midnight assault and the Buddhist villagers got terrified and left their homes for more secure spots. Nearby individuals claimed that Md. Didar of BNP drove the horde amid the incendiarism assault.

The fire administrations figured out how to splash the burst around 3.00 am nevertheless the sanctuaries and the houses were at that point gutted by at that point. Around 3.30 am, units of Border Guard Bangladesh (BGB), Rapid Action Battalion (RAB), and police figured out how to suppress the assault. Nearby organization forced segment 144 to control the circumstance. The home clergyman Mahiuddin Khan Alamgir and industry service Dilip Barua visited the spot on 30 September.

### **An indigenous adolescent killed allegedly by forest guards in Kaptai**

On 7 April 2012 an indigenous juvenile named Ula Mong Marma (14) s/o Thui Mra Chai Marma of town Aga Para of Chitmorom association under Kaptai upazila of Rangamati Hill District was supposedly executed by backwoods watchmen of Karnophuli woodland scope of timberland division.

Neighborhood sources said that on that day at twelve Ula Mong Marma with his three companions went to the close-by held backwoods under Karnophuli saved woods to gather kindling for local use. Around 3.00 pm a gathering of backwoods watchmen of timberland division pursued Ula Mong and his companions. Despite the fact that the companions of the perished could barely escape, the backwoods monitors got Ula Mong. As Ula Mong did not return home till night, his companions educated to director of Chitmorom association Mr. Thowai Ching Marma about the issue. The neighborhood individuals sought him in the timberland during the evening, yet they

neglected to follow the person in question. The following day on 8 April 2012 around 9:00 am the neighborhood individuals recuperated Ulah Mong's dead body secured with shrub and leaves at the reserved backwoods.

Dr. Mong Kyaw Ching Marma, acting Residential Medical Officer (RMO) of Rangamati General Hospital said that Ula Mong Marma had kicked the bucket because of head damage. Karnophuli go officer Mamunur Rashid declined the association of any backwoods staff with this occurrence. Notwithstanding, neighborhood villagers affirmed that a gathering of woods monitors driven by beat officer Md. Abdul Rahman was watching at that region of the saved timberland on that day. It was discovered that on 10 April 2012 a case was recorded with the Chandraghona police headquarters in this association. However, none was captured.

#### **Four indigenous laborers killed at Manda in Noagaon**

On 4 May 2012 at around 11.00 am four indigenous workers were slaughtered and 10 more, including lady, were truly harmed at Chakgopal field in Kashpur association of Manda upazila in Noagaon locale in a conflict over land debate. It is discovered that Mr. Maharama Mardi (48), Mr. Madan Mardi (45) and Mr. Iliyas Mardi (40) were slaughtered in the spot and genuinely harmed Mr. Krishna Mardi passed on in the next morning in Rajshahi Medical College Hospital. All the perished were occupants of Pungi (Nibuda) town of Niyamatpur police headquarters under Naogaon area. The Office-in-Charge (OC) of Manda police headquarters Abdullahel Baki said that Mr. Anowar and Mr. Dalim, rancher of Chakgopal town, had a long disagreement about 10 Bigha arrive. In such manner a preliminary had additionally been running in the Court. Sources stated, Mr. Anowar had embedded Boro paddy in the ebb and flow season. In that morning Mr. Dalim contracted some indigenous workers for harvesting the Boro paddy. While they were procuring the reap, Mr. Anowar carried some Bengali individuals with poles and sharp weapons to assault them. Accordingly, a conflict happened between them. In that in advance of expressed conflict, three indigenous workers were executed on the spot. Subsequent to hearing the news, police went to the spot promptly and recuperated the dead bodies. Mr. Salam, sibling of Mr. Dalim documented an argument against Anowar and his group. Following the episode, police captured

Dalim, who employed the indigenous Laborers and 6 people of the Bengali aggressors. On 1 June 2012 police additionally captured two affirmed culprits to be specific Anwar and Delwar.

### **Massive communal attack in Rangamati, injured more than 100 Jummas**

On 22 September 2012 the Bengali pilgrims directed viciousness assault upon the Indigenous Jumma people groups in various regions of Rangamati area town in nearness of the security powers. In this assault in excess of 100 harmed Jummas were distinguished including an administration doctor, 14 Union Council Chairmen. Three school educators and nine Bengali pilgrims and understudies were likewise defrauded in this assault. In addition, the Chittagong Hill Tracts Regional Council (CHTRC) office and rest house went under assault and numerous Jumma houses including their business foundations were vandalized. After much postponement of the start of the assault, Army, Border Guard of Bangladesh (BGB) and police were conveyed in the spots of event. Indeed, even after their arrangement, the law implementing experts hopelessly neglected to attempt appropriate measures to control the circumstance and spare Jumma individuals and their profitable properties from the assault of Bengali pilgrims. At long last area organization forced segment 144 around at 1.00 pm on 22. Be that as it may, even after proclamation of Section 144, the Bengali pioneers kept on arranging sorted out assaults in various regions of Rangamati town. Amid this time, the military and police did not remove any activity to scatter or to capture the Bengali pilgrims on the ground of breaking the Section 144. Indeed, even on 23 September, while Section 144 was still in power, with exemption to making scattered, no Bengali pioneer was captured amid the assault on Jummas at Rangamati Hospital territory, fairly endeavored to sort out assault on Jummas at East Tribal Adaam, Rajmoni Para and Garjantali.

It is discovered that out and out 4 cases were documented with the Kotwali police headquarters in Rangamati. Dr. Binode Shekhar Chakma, individual from Bangladesh Medical Association and Medical Officer of Rangamati Civil Surgeon office; Himel Chakma, the Rangamati locale reporter of private Television Channel Independent and The Daily Manob Kantho; Shimul Chakma and Dinesh Tanchangya, the casualties of the assault from Kalindipur and Hospital zone submitted Ajahars with the police headquarters. It was discovered that the two Ajahars of the assault on Dr. Sushobhan Dewan and on the assault upon Himel Chakma were acknowledged as cases. The

staying two Ajahars have not yet been acknowledged as suits. In any case, the police have not yet put any push to capture the people referenced in the cases recorded with.

Around 30 harmed individuals were admitted to Rangamati General Hospital. Afterward, Dr. Sushobhan Dewan, Mangal Kanti Chakma, Subhash Mitra Chakma, Shimul Kanti Tanchangya, Monghlau Marma and 5 quantities of Bengalis were sent to Chittagong Medical College Hospital. Thinking about the basic condition, Dr. Sushobhan Dewan was again exchanged to Dhaka.

A three-part Probe Committee headed by Mr. Mostafizur Rahaman, Additional Deputy Commissioner (Revenue) with two individuals Mr. Brishaketu Chakma, individual from the Rangamati Hill District Council and Mr. Habibur Rahaman, Additional Superintendent of Police was framed to explore into the common assault in Rangamati. The examination report was made open in October. In spite of the fact that different proposals were referenced in the examination report, it did not have the impression of Complete and bona fide image of the genuine occurrence. Accordingly, the report neglected to encapsulate the main drivers of the assault and neglected to distinguish the brains and instigators behind the assault.<sup>13</sup>

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<sup>13</sup> Human Rights Repots on Bangladesh 2012.

## CHAPTER FIVE

### Discussion and Findings

#### Discussion

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 tot the communities.

In any development planning, decision-making stages or policy level there is no meaningful participation of the Indigenous peoples in Bangladesh. Harassment by the government officials such as forest department, land department, law enforcing agencies and military also accused much by the newspaper 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.

Customary laws and land rights are not recognized by the government. The main problems of the indigenous community are land. Mostly they were living in the ancestral land. But frequently they are evicted from the homestead land by the land grabbers and government departments. No government has taken any effective step to make the solution.

The study found that most of the Government policies are bias to the mainstream. There is not seen any inclusion manner among the government projects, policies, committees, llieses are not targeting or addressing to the minority or indigenous communities. In fact the minority and the



indigenous communities are the part of the society, they has right to include any sort of government initiatives, this attitude are missing in the government documents.

### **Findings of the study**

- ❖ Indigenous people are organized and formed people's organizations.
- ❖ Indigenous people claimed their rights and entitlements.
- ❖ Public service institutions are sensitized to providing services to the indigenous people.
- ❖ Indigenous children received equality primary education.
- ❖ Women and girl group members are aware on women human rights, leadership and rights of indigenous people.
- ❖ Indigenous extreme poor people support increased for sustainable livelihood option
- ❖ Traditional handicrafts, culture, medicinal and herbal plants are promoted.
- ❖ Education institutions ensured inclusion of multi lingual education.

## CHAPTER SIX CONCLUDING REMARKS

The present research has described and analyzed the main challenges regarding violation of the rights of indigenous people in Bangladesh. The research has been divided into four fundamental questions and has sought to answer these questions with answers according to a significant study of indigenous community members and accompanied by the available secondary sources. The four questions are:

‘Who are the indigenous peoples under legal system of Bangladesh? What are the legal statutes by which the government of Bangladesh deals with the rights of indigenous? Why the Indigenous peoples are depriving from their land ownership? Are there any violation against the rights of indigenous people in access to identification, education, consumption, earning, sanitation, water, food and various social programs?’

In this research qualitative methods were used as an explorative means to facilitate the understanding of the particular challenges regarding the rights of indigenous people. I feel this design has generally been successful in helping me to understand certain situations regarding the violation of the rights of indigenous people in Bangladesh.

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