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Acknowledging the Property Rights of Bangladesh's Indigenous People: A Constitutional Fiat or Legal Paradox?

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In official documents in Bangladesh, the indigenous population is frequently referred to as 'Tribal'. Bangladesh's indigenous peoples have faced numerous challenges in obtaining their land rights. For countless centuries, these individuals have resided in the hills and forests of the nation. However, implementing government laws, business enterprises, and development initiatives has increasingly jeopardized their land. The entitlement of indigenous communities to possess, exploit, and oversee their traditional territories has often been disregarded despite constitutional protections and universally recognized human rights standards. The article recognizes the constitutional challenge of upholding the inherent rights of indigenous people to their land. Delving into the history, the paper presents a comprehensive overview of indigenous peoples' property rights violations. The article illustrates that although indigenous people are granted acknowledgment under the Bangladesh constitution, more is needed to ensure their property rights. The study also suggests potential revisions to the Bangladesh constitution as a means of resolving the current issue.

Keywords: Bangladesh, indigenous people, property rights, Bangladesh constitution.

INTRODUCTION

In Bangladesh, over 50 diverse indigenous communities live in the lowlands and highlands.¹ The indigenous people are commonly mentioned as 'tribal' in official papers in Bangladesh, even though Section 97² and Act 12 of 1995 and Rules 6³, 34⁴, 45⁵, and 50⁶ of the Chittagong Hill Tracts (CHT) Regulation 1900 designate them as 'indigenous peoples' or 'aboriginal'.⁷ Throughout history, Bangladesh's indigenous peoples have led numerous uprisings against feudalism and colonialism. Notwithstanding these accomplishments, indigenous populations in Bangladesh continue to be among the most impoverished, marginalized, and discriminated-against communities in all areas. Their defiance towards the monarchs, colonists, and nobles should have been memorialized in the nation's archives. Unfortunately, their bravery and contributions have never been appropriately recognized in national history.⁸ The history of contemporary human civilization is replete with acts of brutality against indigenous people. Due to their disparities with the majority ethnic, religious, or linguistic group, a large number of these tribal people have been slaughtered or expelled from their homes. Strong steps against the aforementioned issues are urgently needed, considering the history of the indigenous people in Bangladesh is one of persecution and denial of human rights. This essay aims to illustrate that, despite a long history of indigenous people in Bangladeshi territory and recognition as tribal people by the constitution, where they have been granted protection to preserve their unique local culture and traditions, their right to property has been overlooked. Little progress has been made in defending their land rights and resolving property

¹ Arif Ahmed, 'Rights of Indigenous Peoples in Bangladesh' *The Daily Star* (09 August 2016) <<https://www.thedailystar.net/law-our-rights/rights-indigenous-peoples-bangladesh-1266478>> accessed 10 August 2023

² State Acquisition and Tenancy Act 1950, s 97

³ Chittagong Hill Tracts (CHT) Regulation 1900, r 6

⁴ Chittagong Hill Tracts (CHT) Regulation 1900, r 34

⁵ Chittagong Hill Tracts (CHT) Regulation 1900, r 45

⁶ Chittagong Hill Tracts (CHT) Regulation 1900, r 50

⁷ *Ibid*

⁸ Prof. Mong Shano Chowdhury, *Survival under Threat: Human Rights Situation of Indigenous Peoples in Bangladesh* (AIPP Printing Press Co. Ltd. 2014)

disputes by enacting few laws; however, the Constitution should make an effort to grant exclusive safeguards to their land rights.

DEMOGRAPHICS OF INDIGENOUS PEOPLE IN BANGLADESH

Various definitions of indigenous people around the world exist from an anthropological standpoint. The US, Canada, and New Zealand all have implemented initiatives to recognize indigenous people within their constitutions.⁹ To distinguish indigenous people, nevertheless, international law and United Nations human rights authorities use the following four criteria:

- a. Indigenous people typically reside in physically separate ancestral lands.
- b. They typically uphold separate social, economic, and political systems within the areas they inhabit.
- c. They often strive to maintain their uniqueness in terms of culture, geography, and institutionally as opposed to fully assimilating into national society
- d. They self-describe themselves as native or tribal.

The term 'Adibash or Upajati' is commonly used in Bangladesh to refer to persons who were the first or initial inhabitants in specific regions of Bangladesh.¹⁰ It is highly challenging to offer an accurate figure of Bangladesh's indigenous population because there has never been an anthropological study of them. Approximately 1% of Bangladesh's overall population is indigenous people. They are present and occupy about 23 districts in Bangladesh.¹¹

Bangladesh is a multilingual and multicultural nation where 89.7% of the population is Muslim, 9.2% is Hindu, and the remaining population comprises a mix-up of Buddhists, Christians, and

⁹ Jens Korff, 'Constitutional Recognition of Aboriginal People' (*Creative Spirits*, 15 August 2021) <<https://www.creativespirits.info/aboriginalculture/politics/constitutional-recognition-of-aboriginal-people>> accessed 10 August 2023

¹⁰ Saikat Biswas, 'State of Indigenous People's Rights in Bangladesh an Analysis of Bureaucratic and Political Sensitivity' (Masters of Development Studies Theses, BRAC University 2008)

¹¹ *Ibid*

adherents to other religions.¹² Along with the predominant Bengali population, Bangladesh is a nation of great racial variety, home to around 54 Indigenous Peoples who speak at least 35 different languages. Indigenous people make up 1% of the nation's population, or 1,650,159 people, according to the 2022 census. However, the nation's indigenous groups assert that there are about five million people in their group. The country's plains districts are home to a large proportion of the indigenous population, while the Chittagong Hill Tracts (CHT) are home to the remainder.¹³

INDIGENOUS PEOPLES' PROPERTY RIGHTS DURING THE BRITISH MONARCHY

The British declared the Chittagong Hill Tract in 1860, and in 1868 they declared the entire region to be terra nullius, or land belonging to none.¹⁴ A terra nullius region does not necessarily mean it is uninhabited; individuals may live there, but the territory may not be the property of any officially recognized community. However, the chiefs of this region rejected the state's acquisition of land and claimed to be the proprietors of the land. The then government subsequently enacted the Charter of Indian Forests in 1855, the Forest Department in 1864, and approved the Indian Forest Act in 1865, with the major goal of declaring the forests to be public property. In order to regulate the century-old right of customary use, they drew forth an amendment known as the Forest Act of 1878.¹⁵ The colonial authority developed the notion that indigenous people had no claim to the forest areas. Moreover, with the intention of restricting the indigenous people's access to their land and forests, two types of forests were established in the Hill Tracts under British administration after 1860. The British government succeeded in transforming around one-fourth of the Chittagong Hill Tract area into a reserved forest.

¹² Smritikana Das, 'Indigenous People's Access to Land in Northern-Belt of Bangladesh: A Study of the Santal Community' (*Munin*, 15 June 2011) <<https://munin.uit.no/handle/10037/3471>> accessed 10 August 2023

¹³ 'Indigenous peoples in Bangladesh' (*IWGIA*)

<<https://www.iwgia.org/en/bangladesh.html#:~:text=Bangladesh%20is%20a%20country%20of,1%25%20of%20the%20total%20population.>> accessed 10 August 2023

¹⁴ Md. Ashrafuzzaman, 'The Tragedy of the Chittagong Hill Tracts in Bangladesh: Land Rights of Indigenous People' (Master of Science in Development Studies Theses, Lund University 2014)

¹⁵ *Ibid*

Afterward, by adopting the Bengal Act of 1900's Chittagong Hill Tract Regulation, it was stated that non-indigenous people were not allowed to reside in the Chittagong Hill Tract area and that non-tribal people were not permitted to purchase land. Only the deputy commissioner could approve the request of Bengalis if they were required to settle in the area, and the indigenous people were only allowed to collect forest natural resources to fulfill their everyday requirements. CHT was designated as a region that was exempt and independent from the main administration by the Chittagong Hill Tract Regulation of 1920. In 1935, the area was declared a completely distinct region.¹⁶

The treatment of indigenous people by the British government has a murky and unsettling past. The manner in which the government stripped these communities of their property rights is among the most heinous examples of this maltreatment. Indigenous people have been routinely denied the ability to own land or other types of property for generations, leaving them open to exploitation and abuse. Even now, this legacy of injustice affects indigenous people.

INDIGENOUS PEOPLES' PROPERTY RIGHTS IN THE PAKISTAN PERIOD

After the British monarchy and the split between India and Pakistan, the then Bangladesh was included in Pakistan as East Pakistan. However, the separation of India and Pakistan on the basis of religion led to a dispute between the native population and the Pakistani government. With 97.2% of the non-Muslim population living in tribal areas, they were not quite happy to become the inhabitants of Pakistani territory, as it identified itself as a Muslim-majority state.¹⁷

In accordance with the CHT Regulation 1900, the Pakistani government has permitted CHT to operate autonomously since 1963. However, in 1963, a military administration took control and made significant changes to the constitution that became effective in 1964. Following this revision, CHT was no longer known as an 'Excluded Area' but rather as a 'Tribal area'.¹⁸ In the

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

CHT, the non-indigenous Bengali people were permitted to settle in the Chittagong Hill Tract area, and the locals were acknowledged as tribal people.

CONDITION OF INDIGENOUS PEOPLE AFTER INDEPENDENCE OF BANGLADESH

Indigenous peoples of Bangladesh have fought for their land rights for a very long time. These people have long resided in the country's hills and forests, but in recent years, government initiatives, business ventures, and development projects have all put their territory in greater danger. Indigenous peoples are frequently denied the right to own, utilize, and manage their historic lands, despite constitutional protections and global human rights norms. In Bangladesh, the long tradition concerning indigenous land rights is complicated and characterized by discrimination, dispossession and displacement. Indigenous populations have experienced forceful displacement, confiscation of land, and cultural assimilation since the colonial era. Although there has been some progress in the post-independence era in recognizing their rights, there have also been new developments in exploitation and marginalization.

Large-scale infrastructure projects, like dams, motorways, and power plants, uprooted a multitude of indigenous people away from their traditional lands during the 1980s and 1990s. The rise of commercial farming, mining industries, and tourism, as well as other issues unique to the new millennium, pose threats to the indigenous territory's sustainability and cultural authenticity. Moreover, the government implemented measures to discriminate against, exclude, fragment, and displace indigenous and minority populations. The fifth and eighth amendments to Bangladesh's constitution from 1972 limited the privileges of the people of color and indigenous groups. These modifications downgraded them to second-class status, defying all international treaties, covenants, and documents that Bangladesh has ratified.¹⁹ However, with the 2011 Constitution's amendment, individuals having ethnic identities other than that of the Bengali community are mentioned where only cultural considerations are made, and

¹⁹ *Ibid*

concerns about Indigenous Peoples' economic and political rights, particularly their rights to land, are still not addressed.²⁰

SIGNIFICANT PERILS OF BANGLADESHI INDIGENOUS PEOPLE

One of the troubling issues and an essential factor contributing to major infringements of human rights in Bangladesh continues to be the entitlement to land of Indigenous Peoples. Indigenous Peoples' organizations have raised their opposition to the rising spate of human rights abuses and demand that their rights be protected, promoted and upheld. Whilst the 1997 agreement known as the 'Chittagong Hill Tracts Agreement', represented a positive compromise between the Indigenous Peoples of Bangladesh and the Bangladeshi government, its principal issues are still unsolved 19 years later.²¹ Indigenous Peoples continue to encounter difficulties in areas like the restoration of authority and duties to Chittagong Hill Tracts authorities and the upkeep of the tribal characteristics of the area.

Numerous Khasi villages located within the Moulvibazar district of north-eastern Bangladesh are in grave danger of disappearing altogether as a result of persistent oppression and harassment by members of the forest department and a group of powerful local Bengalis from a variety of backgrounds, including workers and owners of nearby tea estates, small-time business owners, politicians, and farmers. Their daily existence, in addition to their economically viable methods, is in jeopardy due to the persistent pressure from these powerful entities, which target the ancestral territories of these Indigenous communities through both legal and violent tactics. Over the past few years, trashing the betel leaf farms of the tribal people has continued to be a prevalent and frequent occurrence in an effort to force Indigenous Peoples off their territories.²² Villagers in Khasi have long engaged in the agricultural practice of growing betel leaves. The betel farms are a primary target of attacks since farming betel leaves continues to be the primary source of income for the majority of Khasi people. Protesting against the damage of betel leaf vines can even result in violent encounters, as a young ethnic Khasi man

²⁰ *Ibid*

²¹ *Ibid*

²² Morgana Jaouen, 'The Indigenous World 2023: Bangladesh' (*IWGIA*, 29 March 2023)

<<https://www.iwgia.org/en/bangladesh/5110-iw-2023-bangladesh.html>> accessed 10 August 2023

experienced on December 23, 2022, when an entourage of influential Bengalis attacked him.²³ According to Khasi leaders, the territory where Khasi villagers' betel leaf farms are located could represent the actual explanation for the vines' attacks.²⁴

Over the last few decades, Khasi and other tribal peasants have been struggling to reclaim their legal entitlements to their lands. For instance, a court case about this has been pending since 1999 for the Doluchhara villager's residents. However, officials from the forest department have been forcing local Bengali recipients to seize their land in an effort to carry out social forestry initiatives continually.²⁵ The (2010-11) Social Forestry Project's beneficiaries weren't the Khasi locals who reside on and use the property, but a group of powerful Bengalis. Later, starting in or around (2017-18), these powerful and wealthy Bengali benefactors took control of 12 betel leaf plantations by force. Since then, residents of the area's several Khasi villages have lived in constant fear of expulsion.²⁶

INFLUENCE OF INTERNATIONAL HUMAN RIGHT FRAMEWORK ON THE PROPERTY RIGHTS OF INDIGENOUS PEOPLE

The most recent human rights document addressing the fundamental rights of indigenous people worldwide is the UN Declaration on the Rights of Indigenous Peoples, published in 2007. In addition, the ILO drafted two global treaties concerning indigenous people: the Indigenous and Tribal Populations Convention, 1957 which has been ratified by Bangladesh since 1972, and the Indigenous and Tribal Peoples Convention, 1989. These agreements state that one of the primary prerequisites for identifying the populations to which the rules stipulated by the Convention apply is self-identification as 'indigenous'.²⁷

The adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007 has accelerated the development of laws for land rights, making them a crucial human rights concern for indigenous peoples. Indigenous peoples possess the right to preserve and reinforce their unique

²³ *Ibid*

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ *Ibid*

spiritual connections to the lands, territories, waters, coastal seas, and other resources that they have historically owned or formerly occupied and used, as well as the obligation to uphold these connections for present and future generations. It is important to acknowledge and comprehend that indigenous people's close ties to the land form the cornerstone of their cultures, spirituality, integrity, and economic survival. Indigenous tribes view their relationships with the land as more than just a matter of production and possession; they also view it as a tangible and spiritual element that they must fully enjoy in order to pass on their cultural heritage to future generations.²⁸ The United Nations Declaration on the Rights of Indigenous People 2007 has set a milestone in addressing Indigenous peoples' rights. Unfortunately, Bangladesh has not yet ratified the convention.²⁹

LEGISLATION AT THE NATIONAL LEVEL PROTECTING THE DIVERSE RIGHTS OF INDIGENOUS POPULATIONS

Bangladesh's legal framework for indigenous land rights is a patchwork of national and international laws, policies, and court decisions. The Constitution of Bangladesh recognizes the rights of indigenous peoples to their traditional lands, but also allows the government to acquire land for public purposes.

Only native castes residing in Bangladesh are permitted to purchase land belonging to indigenous castes and tribes under the State Acquisition and Tenancy Act (1950). The CHT Regulation (1900), CHT Development Board Ordinance (1976), Hill District Council Acts (1989), CHT Regional Council Act (1998), and CHT Land Disputes Resolution Commission Act (2001) are the five mainstream Acts that address the fundamental aspects of indigenous peoples' rights in the CHT. The Parliamentary Caucus on Indigenous Peoples and the National Human Rights Commission are working together to draft the Bangladesh Indigenous Peoples Rights Act (2015), which will protect the cultural, social, and economic freedoms of indigenous people. The

²⁸ Jeremie Gilbert, 'Land Rights as Human Rights' (*Sur*, 17 November 2017) <<https://sur.conectas.org/en/land-rights-human-rights/>> accessed 10 August 2023

²⁹ Chowdhury (n 8)

Bangladesh Indigenous Peoples Forum (BIPF) pleaded with the government to pass this legislation.³⁰

The Hill District Councils Act of 1989 provides for the establishment of autonomous councils in the Chittagong Hill Tracts but has been criticized for its limited powers and lack of implementation. The Indigenous Peoples Rights Act of 2007 is a landmark law that recognizes the collective rights of indigenous peoples, including their right to land but has faced challenges in its implementation and enforcement. In August 2016, a revision to the Chittagong Hill Tracts Land Dispute Resolution Commission Act, 2001 was made. The change is anticipated to clear up the process for the just settlement of land conflicts and the repatriation of native population-owned land that has been expropriated.

Even with these legal safeguards, indigenous people in Bangladesh still have a difficult time claiming their ancestral lands. Their customary land ownership systems are frequently not legally recognized, leaving them open to eviction and land grabs. Additionally, non-indigenous settlers who infringe on their ancestral homelands and resources subject them to harassment and prejudice. Furthermore, while planning and carrying out development projects that have an impact on indigenous groups' lands, the government has frequently ignored their prior, untainted, and informed permission.

EMERGENCE OF INDIGENOUS PEOPLE'S RIGHTS IN BANGLADESH CONSTITUTION

After a long-awaited and tiring journey of being unrecognized residents of Bangladesh, it has been finally concluded in accordance with the 15th amendment of the Bangladesh Constitution passed in 2011, that the State shall take measures to safeguard and foster the distinctive regional traditions and culture of the tribes, minor ethnic groups, and communities. However, the amendment excludes indigenous people from being considered as first-category citizens. Article 23A³¹ stated that 'The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities which explicitly mentioned

³⁰ Ahmed (n 1)

³¹ The Constitution of the People's Republic of Bangladesh 1972, art 23A

indigenous people as ‘tribal’ people while it had been mentioned in its Article 6(2),³² ‘The people of Bangladesh shall be known as Bengalese as a nation and the citizens of Bangladesh shall be known as Bangladeshis’.³³ These specific wordings indirectly raise questions on the citizenship rights of indigenous people, as it is important to note that indigenous people are not titled as ‘Bangladeshi tribal people’ or ‘Bangladeshi Indigenous people, but rather tribal people.

The right to property has been held exclusively as one of the fundamental rights of the citizens of Bangladesh under Article 42³⁴ of the constitution. As the indigenous people are not recognized as citizens of the country, it is clear that their property rights are not recognized as fundamental rights. As states are permitted to implement special provisions for special protection of the ‘Backward section of citizens’ of the country, one could argue that the Constitution does provide some protections under Article 28(4). As under this article, the constitutional framework of Bangladesh guarantees equitable treatment for its citizens alongside prohibits discrimination, among other things, based on race, religion, or place of birth. Article 28(4)³⁵ further enumerates that absolutely nothing in the foregoing article shall preclude the government from making special provisions for women, children, or the advancement of any backward section of citizens.³⁶ Here, the backward section of the citizens itself is a lucid concept as no fixed criteria have been set up to identify who shall be considered as backward citizens. Moreover, identifying indigenous people as backward section indicates the fact that despite being self-sufficient, they are not provided with adequate protection and recognition.

THE IMPORTANCE OF CONSTITUTIONAL RECOGNITION

Parliaments, administrations, and courts all operate under the guidance of the Constitution. The national political discourse and laws are significantly impacted over the long term by it. The constitution is more explicitly the ‘code of conduct book’ for the nation. In addition to

³² The Constitution of the People’s Republic of Bangladesh 1972, art 6(2)

³³ Arif Ahmed, ‘Indigenous Peoples’ Land Rights in Bangladesh’ *Daily Observer* (10 August 2017) <<https://www.observerb.com/details.php?id=88933>> accessed 10 August 2023

³⁴ The Constitution of the People’s Republic of Bangladesh 1972, art 42

³⁵ The Constitution of the People’s Republic of Bangladesh 1972, art 28(4)

³⁶ Ahmed (n 1)

establishing ties between individuals and organizations and recognizing national ideals and aims, the Constitution also specifies who is entitled to what and to whom. The constitution has an impact on indigenous individuals and their position in society in all of these ways. People's standard of living might suffer significantly from unacknowledged behavior.³⁷

ANTICIPATED CONSTITUTIONAL RECOGNITION AS A PROSPECTIVE WAY OUT

According to Article 23A of the constitution, tribally occupied traditional lands may be considered a component of cultural heritage and thus be protected. However, it should be noted that owning property, including land, is not only a cultural right but also a necessity for leading an ordinary existence with dignity. The current scenario has demonstrated that such cultural and traditional acknowledgment is insufficient to halt the violation of Bangladesh's indigenous peoples' property rights. The indigenous people of Bangladesh may be acknowledged as 'Bangladeshi indigenous people'. If it is not feasible, the Legislature may attempt to pass an amendment to acknowledge their political, socioeconomic, and property rights while placing some restrictions on the basis of specifically addressed public purposes. It is necessary to introduce a future amendment to the constitution in order to add an additional provision similar to Article 14(1) of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries³⁸ which states that, 'The right of ownership and possession of the concerned peoples over the lands which they traditionally occupy shall be recognized.'³⁹

CONCLUSION

For many reasons, Bangladesh's indigenous peoples have had difficulty securing their land rights. These people have lived in the nation's hills and forests for millennia, but government policies, business ventures, and development projects have put their territory in more and more danger. The right of indigenous peoples to own, utilize, and manage their customary lands has frequently been denied, despite constitutional safeguards and universal human rights norms. Bangladesh's past with regard to indigenous land rights is complicated, and characterized by

³⁷ Korff (n 9)

³⁸ Convention concerning Indigenous and Tribal Peoples in Independent Countries 1989, art 14(1)

³⁹ *Ibid*

discrimination, dispossession, and forced relocation. Since the time of colonization, indigenous tribes have experienced forceful expulsions, confiscation of land, and cultural assimilation. While there has been some progress in the post-independence era in having their rights recognized, there have also been new kinds of marginalization and exploitation. Proper constitutional recognition of indigenous peoples' property rights is a fair cry for the tribal people of Bangladesh. Despite the contentious discussion surrounding the matter, it is clear that constitutional recognition will be the best approach to stop the infringement of indigenous peoples' property rights. The Government needs to take immediate steps regarding the ongoing issue.