

The Imperative and Reality of Constitutional Recognition for Indigenous Land Rights in Bangladesh

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Abstract

Indigenous peoples of Bangladesh have been residing in the land of Bangladesh long before the demarcation of this land. They hold a deep belief that there exists a sacred connection between them and their ancestral lands, which usually passes through generations in the form of collective ownership. Due to the constitutional non-recognition of this form of ownership, they do not possess any legal right over these lands, and eventually, they have been facing forcible eviction from their ancestral lands. Though the Constitution has denied the indigenous identity and hasn't incorporated collective land ownership in Articles 6 and 13, respectively, it still affirms that ensuring the socio-economic rights of the people and upholding the inherent dignity of people from their respective footings is the signature tune of the Constitution. This paper will evaluate how this constitutional non-recognition led to the forcible eviction of the indigenous people from their ancestral land, despite international legal instruments stressing the imperativeness of recognizing collective ownership of indigenous peoples. This paper will also explore how Article 7B of the Constitution has interpolated the last nail in the coffin of the aspiration of future recognition of the collective ownership of indigenous people and how this provision has faded away the fundamental aim and progressive thirst of the Constitution.

Keywords: Indigenous People, Dichotomy, Forcible Eviction, Institutionalized Orthodox Nationalism, Progressive Thirst

Introduction:

Bangladesh is home to numerous cultural and linguistic groups, in addition to the Bengalis, more than 48 indigenous communities have existed in Bangladesh since the beginning of time. Indigenous peoples of Bangladesh have historically been at the forefront of numerous struggles against feudalism and colonialism, and many members of these communities also participated actively in the country's 1971 Liberation War.¹ Despite their contributions, indigenous peoples in Bangladesh are one of the most marginalized, neglected, and discriminated communities in all spheres of society.² And the scale of discrimination they

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¹ Binota Moy Dhamai, An Overview of Indigenous Peoples in Bangladesh. in Prof Mong Shanoo Chowdhury Human (ed), *Survival Under Threat Human Rights Situation of Indigenous Peoples in Bangladesh* (Asia Indigenous Peoples Pact and Kapaeeng Foundation 2014) 10.

² *ibid.*

have been facing compared to Bengali people is nothing but an absolute dichotomy.³ In accordance with the 2022 survey, nearly 1,650,159 people, or 1% of the entire population, identified as Indigenous.⁴ The Santals represent almost 30% of the plains' indigenous population, followed by the Hajong, Garo, Manipuri, Koch, Rakhain, and Khasia, and the Chittagong Hill Tracts have eleven Jumma communities. These communities include the Marma, Chakma, Tanchangya, Tripura, Lushai, Mro, Chak, Khumi, Bawm, Pangkhua and Khyang.⁵ Unfortunately, these communities have been facing forcible eviction and the extent of forcible eviction is more discernable among the plain indigenous compared to the highlanders.⁶ This form of forcible eviction of indigenous people has been prevalent for decades. In 1964 and 1965, for instance, Garos, Hajongs, Kochs, Dalus, and other Indigenous peoples in Greater Mymensingh were driven out of their territory by inciting communal rioting.⁷ In the year 1964, a significant influx of approximately 30,000 Hajong refugees occurred, resulting in their relocation to India. The Hajongs, who were resettled in Arunachal Pradesh, particularly in the Changlang district, are currently lacking in citizenship privileges.⁸ According to data that existed from 1964 to 1971, an annual average of 196,296 refugees, including the Hajong community, fled to India from East Pakistan.⁹ In 1947, Indigenous peoples made up 97.5% of the total population in the CHT region, but by 2014, this proportion had decreased to approximately 51%. Unexpectedly, the number of non-indigenous individuals increased as a result of a government population transfer ('rehabilitation') program designed to outnumber the local Indigenous population. In 1979–85, the military and civil administration organized huge Bengali settlers' transmigration as part of the state's counterinsurgency policy against the Parbatya Chattagram Jana Samhati Samiti-led Pahari ("Hill People") rebels.¹⁰ In this process, numerous indigenous communities were systematically and forcefully driven out of their lands, and the state redistributed a significant portion of their lands to newly migrated Bengali settlers.¹¹ All of these unresolved issues regarding contested land rights and fundamental rights are solely related to the constitutional recognition of indigenous peoples.¹² Constitutionally, if their exclusive mode of ownership of property was recognized, they wouldn't have to be subjected to unjustified eviction from their own lands without any reasonable

³ *ibid* (n 1) 12.

⁴ Bangladesh Bureau of Statistics, '*Population and Housing Census – Preliminary Report 2022*' (Government of Bangladesh 2022) 10.

⁵ Dhamai (n 1) 11.

⁶ *ibid*.

⁷ *ibid* (n 1) 12.

⁸ Dr. Adibur Rahman, 'Partition of India and Migration from the Mymensingh District of Erstwhile East Pakistan: A Study of Hajong Tribe' [2020] 3(13) *Scholars Journal of Arts, Humanities and Social Sciences* <DOI: 10.36347/sjahss. 2020.v08i02.003> accessed 29 October 2023.

⁹ *ibid* 68.

¹⁰ Shapan Adnan and Ranajit Dastidar, *Alienation of the Lands of Indigenous Peoples in the Chittagong Hill Tracts of Bangladesh* (1st edn, Chittagong Hill Tracts Commission 2011) 42.

¹¹ *ibid*.

¹² Rahman (n 8) 41.

compensation. The preamble of the Constitution of Bangladesh has contemplated the fundamental aim of Bangladesh, which is to ensure the rule of law, and all kinds of “fundamental rights, freedom, equality, and justice”.¹³ This aim does not limit its scope to the era of available rights only; rather, it demonstrates an optimistic approach that the constitution will be opened to incorporate all sorts of internationally recognized human rights into its framework and would ensure them.¹⁴ But when the question of ensuring the fundamental rights of the indigenous people arises, they only get their questions echoed back instead of any constructive answers.¹⁵ Non-Bengali groups of Bangladesh have been classified as ethnic minorities in Article 23A and classifying non-Bengali groups as ethnic minorities as opposed to indigenous people is a destructive form of prejudice.¹⁶ Recognizing them as indigenous people would be equal to accepting them as native to their respective lands as well as acknowledging them as they have lived in these lands prior to the arrival of Bengali settlers and even before the demarcation of the border of these lands.¹⁷ “Because of this prejudice they haven’t been effectively included as contributors or as beneficiaries into the structure of development of this nation.”¹⁸ Thus, formal recognition of these individuals as indigenous individuals would result in the return of land and the protection of fundamental rights.¹⁹

Journey of Constitutional Recognition of Indigenous People of Bangladesh:

The indigenous community has been yearning to get their constitutional recognition long before the independence of today’s Bangladesh. The path of their journey was rugged due to the ambivalent treatment by the different regimes of this land in different periods.

Constitutional Recognition as Indigenous People from the Hill Tracts Prior to the Independence of Bangladesh

The Chittagong Hill Tracts, along with other frontiers states resided by indigenous peoples, were officially designated as a Totally Excluded Area under “the Government of India Act of 1935”. This designation underscored the imperative to recognize and safeguard the Chittagong Hill Tracts and their indigenous inhabitants. In 1947, the Indian subcontinent was divided into two parts: Pakistan, which had the majority of Muslims, and India, which

¹³ Justice Latifur Rahman, *The Constitution of People's Republic of Bangladesh with Comments and Case-Laws* (2nd edn, Mullick Brothers 2004) 26-30.

¹⁴ Tarik Morshed, ‘Preamble’ (Constitutional Law, 29 January 2020).

¹⁵ M Emran Ali and Toshiyuki Tsuchiya, ‘Land Rights of the Indigenous People of the Chittagong Hill Tracts in Bangladesh’ [2022] 5(1) Fourth World Journal <<https://shorturl.at/eyJUW>> accessed 24 January 2024.

¹⁶ Tanvir Chowdhury, ‘Bangladesh Government Orders Media Ban on Word ‘Indigenous’ (*YouTube*, 9 August 2022)< https://www.youtube.com/watch?v=_9n1eS_-Qq4&list=LL&index=2> accessed 12 August 2023.

¹⁷ *ibid.*

¹⁸ Saikat Biswas, ‘State of Indigenous People's Right in Bangladesh’ [2011] 4(1) Core <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjg066M5d6CAxXQDgGHYDzBdAQFnoECCIQAQ>> accessed 25 November 2023.

¹⁹ Chowdhury (n 16).

had the remainder. The three heads of the hill tracts of Chittagong, delegates of the Hill People's Federation and the Hillmen's Organization, as well as other indigenous representatives, met with the British Government and subcontinental political leaders to convey their demands. They demanded that the Chittagong Hill Tracts become an independent region.²⁰ Four days after the independence of India and Pakistan, the Radcliffe Commission arbitrarily located the Chittagong Hill Tracts within East Pakistan. The Chittagong Hill Tracts were deemed a Reserved Area by Pakistan's first constitution, which was enacted in 1956, i.e., a territory reserved exclusively for indigenous peoples, with limitations on non-indigenous colonization. This status was confirmed by the Constitution of 1962, which designated the CHT as a tribal area requiring presidential approval for any administrative alterations. In 1964, however, the CHT was removed from the list of tribal areas as a result of a constitutional amendment passed by the National Assembly.²¹ Consequently, the CHT no longer enjoyed formal recognition as a distinct area for indigenous people. Because of this constitutional stupefaction, non-indigenous people were allowed to acquire lands and establish habitation in the Hill Tracts. Nevertheless, the Hill Tracts Manual, 1900, was there to check whether any land had been arbitrarily transferred.

Constitutional Recognition as Indigenous People from the Hill Tracts Posterior to the Independence of Bangladesh

After the independence, despite several efforts made by the indigenous representative from the Chittagong Hill Tracts (CHT), the 1972 Constitution of Bangladesh didn't recognize the unique identity of the indigenous peoples or their collective ownership. Manabendra Narayan Larma, the representative for Chittagong Hill Tracts North, declined to consent to the constitution out of protest. Because hill tract government officials would have more broad constitutional discretionary authority in this region than anywhere else in the country since there would be no safeguarding mandate.²² Due to the lack of legal recognition of the collective ownership of the indigenous community, the authority would be at their discretion to evict the indigenous people from their ancestral lands.²³ Throughout the course of time, the indigenous community from the plain land has encountered many forms of social exclusion in multiple domains, including social, religious, political, economic, and developmental spheres. Additionally, they have faced the denial of constitutional recognition, leading to feelings of dread and insecurity. Their experience with regard to the erosion of their cultural identity and customary land ownership is far worse than that of the people living in the Hill tract areas.²⁴ Since the time

²⁰ Anti-Slavery Society (Great Britain), *Anti-Slavery Report* (2, Anti-Slavery Society 1984) 45.

²¹ Rajkumari Chandra Kalindi Roy, *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh* (1st edn, International Work Group for Indigenous Affairs 2000) 46.

²² *ibid* 47.

²³ Roy (n 21) 47.

²⁴ Society (n 20) 47.

of the British Raj in this land, they have been subjected to severe oppression in terms of protecting their lands from the land grabbers.²⁵

Constitutional Recognition of the Plain Landers as Indigenous Community

Among the indigenous communities in the plain land, the Santal, Garo, and Khasia people are the notable ones who have been possessing a larger portion of land compared to others, and unfortunately, they have faced this forcible eviction from their ancestral lands at an alarming scale.²⁶ Before the British regime, the Santal people enjoyed their ancestral lands in a peaceful state, but right after the British Raj started, a serious type of collusion took place between the people of Santal and the British regime. Consequently, during the mid-19th century, the Santal community initiated a rebellion on June 30, 1855, across many regions of eastern India. The revolt was directed against both the colonial administration and the local Zamindari system, popularly referred to as the 'Santal Hool' or 'the Santal rebellion'.²⁷ Therefore, the British regime was the initiator of this forcible eviction. "The demise of the British Empire did not result in the demise of colonial rule."²⁸ "For instance, after the partition of 1947, the legacy continued with a more adverse impact on the Islamist nation-state of Pakistan. Unfortunately, this legacy continues to operate in present-day Bangladesh."²⁹ The Garo community in Bangladesh has been living in the Madhupur Sal forest for a long period, dating back to ancient times. During the Mughal era, they used the forest as both a dwelling place and for agricultural purposes.³⁰ During the British colonial period spanning from 1858 to 1947, the Garo community was subjected to taxation under the authority of local landlords, commonly referred to as Zamindars. In 1927, the British government implemented the first forest policy for the Indian subcontinent, which aimed to safeguard the rights of the indigenous population residing in the Sal Forest.³¹ During the Pakistani period (1947–1971), the government wanted to evict the Garo people from their land by declaring a huge portion of Madhupur Forest as a National Park.³² Following the independence of Bangladesh, the Garo people anticipated the eradication of their exclusion and neglectful treatment. However, regrettably, the reality proved to be divergent from

²⁵ Roy (n 21) 48.

²⁶ Philp Gain, 'The indigenous communities of the plains need urgent social protection' (*The Daily Star*, 10 August 2020) <<https://shorturl.at/jBIPQ>> accessed 24 January 2024.

²⁷ Munira Jahan Sumi and Ramy Bulan, 'Land Rights of Indigenous People: A Study on Santal Community in Bangladesh' [2018] 4(9) IGI Global <DOI: 10.4018/978-1-5225-7897-0.ch009> accessed 25 November 2023.

²⁸ Mrinal Kanti Debnath, 'Living on the Edge: The Predicament of a Rural Indigenous Santal Community in Bangladesh' [2020] 12(5) Indigenous Studies Portal <<https://portal.usask.ca/record/62734>> accessed 25 November 2023.

²⁹ Kazi Kamrul Islam and Kimihiko Hyakumura, 'Forestland Concession, Land Rights, and Livelihood Changes of Ethnic Minorities: The Case of the Madhupur Sal Forest, Bangladesh' [2019] 10(3) Forests <doi.org/10.3390/f10030288> accessed 25 November 2023.

³⁰ *ibid.*

³¹ Islam (n 29) 7.

³² Alavi Kibria, 'Understanding the Social Exclusion Process of the Garo Indigenous Community of Bangladesh Master's Thesis Author' [2018] 9(1) *Linnaeus* 8.

their expectations. In 1972, the forest department executed a ban on taking advantage of resources from the Sal Forest. As a result, the Garo people, who relied heavily on the forest for their livelihood, experienced significant exclusion. Santal and Garo people were not the only community to experience this neglectful treatment and exclusion but there are more than 30 plain lander indigenous communities that have experienced it in the same way.³³ The most unfortunate thing was that they didn't have any spokespersons to speak on their behalf in regard to their cultural identity and land rights, as the people of the hill tract area had for speaking on their behalf.

The Undesired Reality Confronted by the Indigenous People in Return to Their Long-Cherished Constitutional Recognition

Prior to the 15th Amendment of the Constitution and the incorporation of Article 23A, an informal confidence had grown between the state machinery and this section of people that they had been acknowledged as indigenous people.³⁴ The indigenous population is considered a "backward section" of the population (Articles 14, 28, and 29).³⁵ In accordance with the third paragraph of the Constitution's Preamble, Article 11 also envisioned a democracy in which fundamental human rights and freedoms and respect for the dignity and value of the human person are guaranteed.³⁶ Article 6(2) contains the first problematic formulation regarding the recognition of indigenous people: "The people of Bangladesh shall be known as Bengalee as a nation, and the citizens of Bangladesh shall be known as Bangladeshis." This formulation is nothing but an outright denial of their existence in light of the country's history, ethnic diversity, and geography.³⁷ The incorporation of Article 23A, which recognizes them as tribes, minor races, ethnic sects, and communities, however, stabbed the final dagger into their cherished aspirations. Article 23A of the constitution is limited in that it only addresses the preservation and propagation of 'local culture and tradition' without addressing the linguistic or land rights of the indigenous peoples. This endeavor is the result of institutionalized nationalism, wherein they have been designated as "Upajati," or Sub-Nation.³⁸ Despite having their own languages, cultures, and religions as well as their own land, they are considered "Sub" by the Bengali people.³⁹ The rationale behind such a statement is that the legal system of this country is always

³³ Ashrafuzzaman Khan and Mrinmoy Samadder, 'Weeping of the Forest: Unheard Voices of Garo Adivasi in Bangladesh ' [2012] 19(3) International Journal on Minority and Group Rights <<https://shorturl.at/erAX4>> accessed 24 January 2024.

³⁴ Eva Gehraz, 'What is in a Name? Indigenous Identity and the Politics of Denial in Bangladesh' [2014] 4(12) Südasien-Chronik - South Asia Chronicle <<https://shorturl.at/aERY1>> accessed 13 February 2024.

³⁵ Roy (n 21) 47.

³⁶ Dr Shahjahan Mondol, 'Recognition of indigenous people' (*The Daily Star*, 27 August 2014) <<https://www.thedailystar.net/recognition-of-indigenous-people-38812>> accessed 12 August 2023.

³⁷ Prashanta Tripura, Indigenous Peoples Under the Legal and Policy Frameworks of Bangladesh. in Prof Mong Shanoo Chowdhury Human (ed), *An Overview of Indigenous Peoples in Bangladesh* (Asia Indigenous Peoples Pact and Kapaeng Foundation 2014) 45.

³⁸ Raja Tridiv Roy, *The Departed Melody: Memoirs* (1st edn, PPA Publication 2003) 179.

³⁹ *ibid*.

ready to uphold the superiority of the Hindu and Muslim (Bengali-based) personal laws in regard to the law of inheritance, distribution of the portion of property, procedure regarding Pre-emption, joint family property, but when the question of upholding the personal customs relating to the land ownership and administration of the indigenous community of Bangladesh strikes, the legal system of Bangladesh seems almost voiceless. These categorizations have not only led to an extraordinary and obstinate persistence of racial thinking in this country but also to the manifestation of disparities between majority and minority populations.⁴⁰

Scrutinizing the Absence of Recognition of Collective Ownership in the Constitution of Bangladesh through the Periscope of International Legal Instruments:

Collective ownership refers to the state in which property is owned by all individuals within a given group.⁴¹ Recent developments demonstrate that indigenous peoples are standing up for their collective land rights around the world. Many have negotiated efficiently for recognition as different people. This has encompassed the right to take part in any process of decision-making that affects them as well as the protection of their natural assets, which are the foundation of their culture and traditions.⁴² “According to Article 17(1) of the Universal Declaration of Human Rights (UDHR), Everyone has the right to own property alone as well as in association with others.” In regard to the Constitution of Bangladesh, Article 42 confers the right to property which is subjected to imposed restrictions. “Article 8 (j) of Convention on Biological Diversity, 1992 emphasizes the importance of traditional land use practices and collective ownership systems of indigenous in order to conservation and sustainable use of biodiversity.” Article 13 of the Constitution of Bangladesh does not recognize this widely accepted form of collective ownership. Though, Article 152 of the constitution recognizes customs and usage as law, Article 13 is silent when it comes to recognizing the indigenous customs of collective ownership. “Article 27 of ICCPR does not allude to land rights per se, but puts an emphasis on the connection between cultural rights and land rights. The HRC has thus developed a specific protection for indigenous peoples’ land rights by acknowledging the evidence that, for indigenous communities, a particular way of life is associated with the use of their lands”.⁴³ Article 32 of the constitution of Bangladesh also emphasizes the right to life which also signifies a corresponded tune with regard to Article 27 of ICCPR. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of 1965 requires state parties to eliminate discrimination based on race and

⁴⁰ Gerharz (n 34) 5.

⁴¹ Barry A Stein, 'Collective Ownership, Property Rights, and Control of the Corporation' [1976] 10(2) Journal of Economic Issues <<https://www.jstor.org/stable/4224489>> accessed 25 November 2023.

⁴² Roy (n 21) 136.

⁴³ Jeremie Gilbert, 'Land Rights as Human Rights: The Case for a Specific Right to Land' [2013] 10(18) SUR International Journal on Human Rights 119.

guarantee "the freedom to acquire and hold property alone and in association with others."⁴⁴ Similarly, Article 28 of the Constitution of Bangladesh prohibits any sort of discrimination based on religion, race, caste, sex, or place of birth. The International Labour Organization (ILO) is recognized for its unique role in ratifying international instruments specifically addressing indigenous rights. ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107), which was ratified by Bangladesh and the Preamble of which states the indigenous people of the CHT experienced being continuously driven away from their ancestral homelands without their approval and without getting reimbursement for the resulting damages.⁴⁵ Article 11 of this convention recognizes collective ownership and states: "The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized."⁴⁶ Nonetheless, the implementation of adequate strategies to ensure the unhindered enjoyment of rights by indigenous Jummas and plains people is deficient. This includes their individual rights to their homes, agricultural lands, jums, and privately owned forests, as well as their collective rights to communal lands, which include forests.⁴⁷ The ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169) is widely regarded as the most comprehensive international instrument regarding the land rights of indigenous and tribal peoples. Although Bangladesh has not yet officially adopted Convention No. 169, this provision holds persuasive weight because it is the most recent and complete international instrument pertaining to indigenous peoples and it has recognized the occupancy of traditional land by indigenous people, and it has stated to take steps to restore the possession of the land that used to be under their traditional possession.⁴⁸ Despite the fact that the concept of collective ownership has been extensively promoted and acknowledged in numerous legal instruments, the needs and aspirations of recognizing collective ownership of indigenous peoples have received little attention in the Bangladeshi Constitution. Although the Preamble and Article 11 of the Constitution advocated for the protection of all human rights and Article 25 emphasized respect for International Laws, still there is no light for implementing this legal and moral obligation instead the government chooses to remain silent on this issue. This silence and lack of incorporation eliminate not only the land rights recognized by international law but also the inherent dignity of indigenous people.

⁴⁴ *ibid* 118.

⁴⁵ *ibid* (n 43) 139.

⁴⁶ *ibid*.

⁴⁷ *ibid* (n 43) 138.

⁴⁸ *ibid* (n 43) 141.

Riddle of Ensuring Right to Life and Equality for the Indigenous People in the Context of Constitutional Mandate:

Encountering the Question of Equality

Article 27 provides equitable rights and equal protection under the law for everyone, which is the foundation of all fundamental rights and accommodates the equality and nondiscrimination principle.⁴⁹ The phrase "equal protection of the law" is used to indicate that persons or objects are not always equal and that those in similar situations should be treated similarly. Equal protection is the guarantee that similar people will be treated identically and that people with different situations will not be treated as if they were the same;⁵⁰ therefore, a single law cannot be applied uniformly to all people regardless of their fundamental differences.⁵¹ Therefore, assessing the cultures, beliefs, lifestyles, and customs of the indigenous people with the same yardstick that has been used to assess the same in Bengali, wouldn't be treated equally. Therefore, overlooking their ancient laws and structure of land ownership and dispossessing them from their own lands is nothing but an ill approach to ensuring inequality. Article 23A of the Constitution addresses issues pertaining to the safeguarding and advancement of the cultural and traditional heritage of indigenous communities, commonly referred to as minor sects. However, extending protection to these communities solely on the basis of their classification as minor sects can potentially undermine their intrinsic identity.⁵²

Encountering the Question on Right to Life

Article 31 of the Constitution states many safe parts, i.e., life, liberty, reputation, property, etc. It also obligates, dismantling these safe parts, no action shall be taken, except abiding by the law. Article 32 of the Constitution outlines the right to life, the basis of all human rights.⁵³ Justice Bhagwati while defining the ambit of the Right to Life stated right to life includes everything one would reasonably think necessary to have in order to lead a life of dignity.⁵⁴ Based on this proposition of Justice Bhagwati, the right to property as enshrined in Article 42 propounds nothing less than a means of right to life. Because, without property, these people will lose their means of livelihood as well as shelter, and without having these two components of life, how can a person continue to live? Moreover, Article 42 states the right to hold property and adds that no property shall be compulsorily "acquired, nationalized, or requisitioned" except by authority of law. However, the evidence of ousting the indigenous peoples demonstrates a great violation of this

⁴⁹ M Jashim Ali Chowdhury, *An Introduction to the Constitutional Law of Bangladesh* (3rd edn, Book Zone Publication 2014) 177.

⁵⁰ *Sheikh Abdus Sabur v Returning Officer, District Education office-in-Charge, Gopalganj and others* [1988] 41 DLR 30, (AD).

⁵¹ *ibid.*

⁵² Gilbert (n 43).

⁵³ Chowdhury (n 49) 192.

⁵⁴ *Francis Coralie v Union of Delhi* [1981] AIR 746 (SC).

constitutional mandate, as most of their lands were forcibly taken from them. Thus, if we scrutinize the constitutional mandates, emphasized in Articles 31, 32, and 42, then it would be clear that the lands that have been used and cultivated by the forefathers of the indigenous people, regardless of the form of ownership, are integrally connected with the lives of these people.⁵⁵ They believe these lands, including their water, air, trees, rocks, and plants, are very sacred, and any hit upon these substances is hitting upon themselves. Protecting these lands and adjacent things is similar to protecting their own lives.⁵⁶ Unfortunately, from the Chakma people from the Chittagong Hill Tracts to the Garo people from the Madhupur Garh (Tract), all indigenous communities have been facing mass eviction and restrictions on free movement from the lands they had been owning for generations. Chief Justice Chandrachud emphasized in the case of “*Olga Tellis v. Bombay Municipal Corporation*”⁵⁷ that access to necessary resources for one's livelihood is of utmost importance for individuals to live. It could potentially unveil challenges in upholding an individual's right to life if their means of livelihood were significantly compromised or not acknowledged as a constitutional right.⁵⁸ Thus, in this regard, it would be logical to argue that for indigenous communities, their ancestral land is the most indispensable resource for their lives, and snatching these lands away from them would certainly mean depriving them of their means of livelihood. Eventually, this will be portrayed as a deprivation of the right to life.

Systematic Denial of Inherent Identity

Most of the indigenous people are solely dependent on their collectively owned land to earn their livelihood. Jumma people usually choose land and cultivate that land for 5 years without any interruption from others. They cultivate through the Jum method and collect other resources from the adjacent source of that land. Evicting them from that land would only mean seizing their means of livelihood and denying their inherent identity. In the case of the indigenous people from the plain land, section 97 of the State Acquisition and Tenancy Act, 1950, has restricted the alienation of property without the authorization of the revenue officer, though this provision puts a clog on the alienation of property to anyone other than an aboriginal, still a lot of property has been fraudulently alienated using a fake title deed or changing the name of the aboriginals.⁵⁹ “The Chittagong Hill Tracts Regulation (Regulation I of 1900)”, “which was implemented with the aim of preserving the rich cultural heritage and safeguarding the indigenous population of Chittagong from

⁵⁵ Roy (n 21) 47.

⁵⁶ *ibid.*

⁵⁷ *Olga Tellis v. Bombay Municipal Corporation* [1981] AIR 180 (SC).

⁵⁸ *ibid* 63.

⁵⁹ Harun Ur Rashid Shapan, 'আদিবাসীদের সামাজিক ভূমি অধিকার এবং বর্তমান চিত্র' (DW, 26 June 2016) < <https://rb.gy/fl59ld> > accessed 15 August 2023.

potential impacts of external migration and preservation of their true identity".⁶⁰ "But while discussing the applicability of this law in the Hill Tracts in the case "*Rangamati Food Products v Commissioner of Customs and Others*"⁶¹, The high court division has expressed its view that the Chittagong Hill Tracts Regulation, 1900 is a dead law". Due to several numbers of amendments to this regulation, it has lost its effectiveness in safeguarding the interest of the CHT people.⁶² Moreover, The Chittagong Hills Tracts Peace Accord, 1997 was propagated for safeguarding the interests of indigenous people from the Chittagong Hill Tracts. Among the provisions of this accord, provisions regarding demobilization, reintegration, and mainstreaming of the ethnic community have been implemented with a satisfactory scale but the key issues that still need to be addressed are specifically giving back acquisitions and forcibly taking lands and collective ownership, decentralization, and ensuring basic fundamental rights.⁶³ Interestingly, Bengali intruders and the Bengali regime appear to justify the removal of indigenous people from their land through the "Doctrine of Terra Nullius," which refers to "newcomers tend to assume that the land did not belong to anyone before their arrival".⁶⁴ Another point of justification preached by the government of Bangladesh in terms of forcibly acquiring lands from the indigenous by applying the "Concept of Nomadism" which refers to "a way of life of peoples who do not live continually in the same place but move cyclically or periodically".⁶⁵ Authorities in Bangladesh have referred to the indigenous Jumma as "nomadic tribes people" prescribing as a group of people who are always changing their location.⁶⁶ Consequently, they have been evicted from their lands in the name of establishing reserve forests, protecting khas lands, establishing national parks, tourist centers, eco-parks, land surveys, enemy properties, and fraud title deeds that are solely connected to their right to life.⁶⁷ Therefore, it can be argued from the viewpoint of constitutional mandates that denial to recognize the collective mode of ownership is a grave violation of their right to life, and refusal to acknowledge their distinctive footing in regard to owning property is an infringement of their right to be treated equally and the continuing eviction from their lands and forcibly seizure of their lands without fulfilling the requirement of Article 42 represents a colorable exercise of whims and caprice.

⁶⁰ Praban Chakma, 'The Chittagong Hill Tracts Regulation and its constitutional status' (*The Daily Star*, 1 December 2020) <<https://www.thedailystar.net/law-our-rights/news/the-chittagong-hill-tracts-regulation-and-its-constitutional-status-2003809>> accessed 14 August 2023.

⁶¹ *Rangamati Food Products v Commissioner of Customs and Others* [2005] BLC 525 (HCD).

⁶² Chakma (n 60).

⁶³ Masfi-Ul-Ashfaq Nibir, 'The CHT Peace Accord: Progress made, but needs full implementation ' (*The Business Standard*, 22 May 2023) <<https://www.tbsnews.net/thoughts/cht-peace-accord-progress-made-needs-full-implementation-635906>> accessed 6 November 2023.

⁶⁴ Roy (n 21) 50.

⁶⁵ Bangladesh Government, *Statement in United Nations Working Group on Indigenous Populations* [1991].

⁶⁶ *ibid.*

⁶⁷ Islam (n 29) 9.

Article 7B and No Room for Being Optimistic for the Future Recognition of the Indigenous Peoples' Identity and Collective Ownership:

Recognition of identity and the concept of collective ownership have been endowed within the ambit of Articles 6, 13, and 23A of the Constitution. It is needless to say the indigenous people of this country haven't gotten their desired recognition yet. There are several reasons for such rejection, which include institutionalized orthodox nationalism, continuing the Bengali migration process, and refusing the human dignity of these people. Institutionalized orthodox nationalism in this regard, denotes a political and social framework wherein a nation's government and institutions actively advocate and maintain traditional and conservative nationalist ideologies and values.⁶⁸ Apart from these obstacles, there is an obdurate obstacle that interpolates the last nail in the coffin. All these above-mentioned articles have been incorporated within the framework of Part I and Part II of the Constitution, and Article 7B contemplates that all articles of Parts I, II, and III shall not be amendable by way of insertion, modification, substitution, repeal, or by any other means. Article 7B, which could now be termed "The clogger clause"⁶⁹ has made this part I, II, and III and provisions of it entirely boxed. Interestingly, Article 7B, as a constitutional amendment, appears to aim at limiting the possibility of future amendments, even though it does not explicitly assert any superiority over other amendments in any way.⁷⁰ The reason is this basic structure doctrine demonstrated in Article 7B has made these provisions "virtually fixed forever".⁷¹ It wouldn't be possible to bring forth any modification to the current framework of these provisions. Incorporation of this wholesale basic structure clause in Article 7B has lost the relevance of basic structure doctrine which used to be "the most important normative tool for determining constitutional validity".⁷² 15th Amendment of the Constitution has turned the jurisprudence of constitutional amendment into an obsolescent nature. Therefore, if in the future any contemplation of the government arises for recognizing the identity of the indigenous people in Articles 6 and 23A and their culture and inherent mode of land ownership in Article 13, it wouldn't be possible to make it happen. This particular provision is nothing but an "eternity clause"⁷³ in the constitution,

⁶⁸ Siniša Malešević, 'Nationalisms and the Orthodox worlds' [2020] 26(3) Journal of Association for Study of Ethnicity and Nationalism <doi.org/10.1111/nana.12539> accessed 6 November 2023.

⁶⁹ Kawser Ahmed, 'Article 7b, or the Death of the Basic Feature Doctrine?' (*The Daily Star*, 12 June 2018) <<https://www.thedailystar.net/law-our-rights/article-7bor-the-death-the-basic-feature-doctrine-1589884>> accessed 14 August 2023.

⁷⁰ *ibid.*

⁷¹ Chowdhury (n 49) 626.

⁷² Kawser Ahmed, 'Revisiting Judicial Review of Constitutional Amendments in Bangladesh: Article 7B, the Asaduzzaman Case, and the Fall of the Basic Structure Doctrine' [2023] 56(2) Israel Law Review <<http://dx.doi.org/10.1017/S0021223721000297>> accessed 16 August 2023.

⁷³ Lima Aktar, 'Article 7B and the Paradox of Eternalising the Constitution of Bangladesh' (*IACL- AIDC Blog*, 11 May 2021) <<https://blog-iacl-aidc.org/2021-posts/article-7b-and-the-paradox-of-eternalising-the-constitution-of-bangladesh>> accessed 13 August 2023.

which would fade away the fundamental aim and progressive thirst of the constitution, which has been enshrined in the third paragraph of the preamble of the constitution.⁷⁴

Conclusion

“The emergence of an indigenous people's right to cultural integrity marks the establishment of a connection between access to ancestral territories and freedom of religion, cultural rights, and right to access natural resources.”⁷⁵ For countless generations, the indigenous people of this land have relied on natural resources for the majority of their needs. They hold a deep belief that they bear a unique responsibility to safeguard these lands, as they hold sacred significance to them. In the case of “*Mayagna (Sumo) Awas Tingni Community v. Nicaragua case*,”⁷⁶ the Inter-American Court of Human Rights stated that “Indigenous groups, by the fact of their very existence, have the right to live freely in their territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations”. However, there have been instances where they have been displaced from these lands without sufficient justification. The displacement of indigenous communities from their ancestral properties can be seen as a potential manifestation of racial discrimination.⁷⁷ As someone who has been a part of this country since before its inception, it can be disheartening that, state institutions do not fully recognize the importance of their languages, land ownership, and true identity. Instead, they have faced challenges, difficulties, and mistreatment due to the actions of certain individuals in positions of power, both within civil society and the government. It should be considered whether this could potentially be classified as a form of life. If we read the Constitution in its entirety with reference to the four cardinal principles, i.e.,” nationalism, socialism, democracy, and secularism” it becomes evident that these refusal mechanisms do not uphold the spirit of the Constitution. Because there is an integral correlation between the right to own property and these four fundamental principles of the Constitution. Socialism is characterized by the collective ownership of the means of production,⁷⁸ on the other hand, the relationship between democracy and property ownership encompasses various dimensions. The fundamental aim of democratic legislation is to safeguard the rights of citizens to property,

⁷⁴ Tarik Morshed, ‘Fundamental Rights’ (Constitutional Law, 24 February 2020).

⁷⁵ Gilbert (n 43) 120.

⁷⁶ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001) Inter-Am. Ct. H.R. 79 (ser. C).

⁷⁷ Now This News, ‘An Initiative to Expand Indigenous Land Ownership Rights’ (*Now This News*, 8 November 2022) < https://www.youtube.com/watch?v=bAM_Chba9ms&list=LL&index=5 > accessed 15 August 2023.

⁷⁸ J Barkley Rosser Jr and Marina V Rosser, *Comparative Economics in a Transforming World Economy* (3rd edn, The MIT Press 2018) 53.

as it bestows essential freedoms on owners.⁷⁹ Therefore, it is imperative for a democratic government to consistently prioritize the promotion and protection of property rights for its citizens.⁸⁰ Moreover, recognition and acknowledgment of distinct but authentic subject matter including the special mode of owning property is the signature tune of nationalism and secularism. Therefore, declining such an inherent right would vitiate the basic fabric of these principles.

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⁷⁹ Tilo Wesche, 'The Concept of Property in Rawls's Property-Owning Democracy' [2013] 1(11) *Analyse und Kritik* < DOI: 10.1515/auk-2013-0109> accessed 6 November 2023.

⁸⁰ *ibid.*

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