

# Rights of the Ethnic Minorities under International Law: A Legal Monograph on Bangladesh and South Asia

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## Abstract

*The fact that the indigenous people have always been subject to oppression and discrimination is undeniable. It is very unlikely, especially in the South Asian region, to see proper implementation of the laws that uphold the rights of ethnic minorities. Starting from political freedom and cultural practices to education and economic rights, these people are subject to denial of access in different sectors. This paper aims at exploring those loopholes in the legal systems which are the compounding factors of such deprivation. Mostly focusing on the legal frameworks of the South Asian countries regarding rights of minorities, especially Bangladesh, this paper shall also include a comparison between the provisions of the national as well as international laws that enshrine the rights of different ethnic minorities. In addition to that, this paper shall also address the insufficiency of existing national and international obligations and try to look for answers on whether these are enough to protect minority rights or not. Moreover, the researchers equally emphasize on the necessity of international human rights law perspective in this particular field. Divided into several chapters, this paper stratifies the national laws, international instruments, eventually knitting into a comparison among South Asian countries like Bangladesh, India, Pakistan, and Nepal regarding the current context rights of indigenous people. The paper shall further argue the failure of government versus lack of susceptibility in this platform. Besides, through this research paper, how these rights can be administered and effectively enforced shall also be brought to light along with some recommendations. To recapitulate, by the end of this paper, this proposition should be well understood as to how the indigenous people have always suffered, what legal remedies they can seek if their rights are infringed, and what the government and international community can do in order to execute and validate these rights.*

## Introduction

Despite being a signatory to a number of human rights and other international documents, the record of Bangladesh in upholding the rights of the ethnic minorities

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does not mark a positive note. Known in different names in different parts around the world, such as *Janajati* in India or *Adivasi* in Nepal, the indigenous people are the minorities in Bangladesh popularly termed as ‘tribal’ or ‘ethnic minorities’ in the Constitution of Bangladesh through the 15<sup>th</sup> amendment, living in certain pockets of geographical locations having retained their own cultural, distinct language, and way of life.<sup>1</sup> These people are deprived of their social, economic, political and cultural rights, not only by the majority but also by the state itself, resulting in their inability to have access to the resources which are the key factors to enjoy basic and fundamental rights. Having said that, there were around 45 ethnic minority communities immediately after the independence of Bangladesh,<sup>2</sup> rights of whom are frequently denied by not ensuring their contribution and inclusion in the governance, development strategies, or state mechanisms.<sup>3</sup> According to the government census, these people constitute approximately 1.2% of the country’s entire population, whereas the ethnic people consider it to be a bigger number than the government claim.<sup>4</sup> Living in the rural and hilly areas mainly, the most mentionable among them are the *Garos*, *Marma*, *Manipuris*, *Khasias* and *Santal* communities. From education and cultural practices to political freedom, these people are exploited and subject to severe oppression and discrimination. Even though Bangladesh has obligations towards them under different international human rights instruments and the Constitution of Bangladesh itself, there is neither any affirmative action nor any positive patronization to preserve and protect their cultural identities or uphold their rights. This brings to light our current research paper- ‘Rights of the Ethnic Minorities under International Law: A Legal Monograph on Bangladesh and other South Asian Countries’. This paper is premised on the argument that the rights of these marginalized people are neglected and the current legal context of Bangladesh does not provide them with sufficient safeguards in contrast to the international standards. This narrative also brings forth a comparative analysis among the South Asian countries like India, Nepal, Sri Lanka, and Pakistan in contrast with Bangladesh in order to make the differences more evident. This proposition attempts to seek the legal loopholes which consequently end in the severe human rights violations and constitutional rights infringements of this aggrieved population and how this problem can be addressed under the existing platform.

## Background

The issue of ethnic minorities in Bangladesh is very debatable and highly politicized. Since independence in 1971, Bangladesh has experienced many-sided conflicts and insurgencies in the form of political turbulence, religion-based terrorism, and ethnic conflicts. The conflict in the Chittagong Hill Tracts started when the political

<sup>1</sup> Manusher Jonno Foundation, ‘Rights of the Ethnic People (Indigenous Peoples)’, Thematic Strategy Paper, *Manusher Jonno Foundation*, 2018.

<sup>2</sup> Saikat Biswas, ‘State of Indigenous People’s Rights in Bangladesh’, Masters of Development Studies Thesis, BRAC University, 2008.

<sup>3</sup> Ibid.

<sup>4</sup> Mangal Kumar Chakma, ‘The State of Adivasi in Bangladesh Nation State’, *Adivasi Janapoder Pothe Prantary*, p. 12.

representatives of the local people groups challenged the administration arrangement of perceiving just the Bengali culture and language and to designate all Bangladeshi natives as Bengalis. As a result of this, in the leadership of Manabendra Narayan Lama and others, a united political organization was formed in 1973 for all native people and tribes and it was called 'Parbatya Chhatagram Jana Shanghatti Samiti' (PCJSS). The situation became worse when an armed wing named 'Shanti Bahini' (Peace Group) of PCJSS was created to resist the existing government policies and operated their first attack on a convoy of the Bangladesh Army.<sup>5</sup> The group has also reportedly attacked any native who deemed to oppose them and support the government. During the uprising of Shanti Bahini, Bangladesh Army, police and Bangladeshi settlers were accused of perpetrating human rights abuses and also caused ethnic cleansing.<sup>6</sup> Later, Chittagong Hill Tracts Development Board was created under an Army General to address the rights and social, political, economic requirements of the area. In 1989, the 'District Council Act' was passed by the then President H. M. Ershad, which created three tiers of the local governments to transfer powers and responsibilities to the representatives of the native people, but the councils have been rejected and opposed by the PCJSS members.<sup>7</sup> In order to bring peace in that region, after many failed attempts, in the year 1997, the Peace Accord was finally formed, adopted, and signed by the officials. There are a common accusation and debate against developing countries that usually pay more attention to a better policy rather than their better implementation. Generally, the Governments of the developing countries have a tendency to formulate a broad and sweeping policy which becomes almost impossible to implement accordingly.<sup>8</sup> Though the government and Chittagong Hill Tract administration claim that there has been significant improvement in the area after the peace accord; however, according to many NGOs, researchers and research institutions, this area still lacks peace and security.<sup>9</sup>

### International instruments with regard to Minority Protection

Known as the custodian of natural heritage, 5% of the total world population belongs to indigenous communities and 2/3<sup>rd</sup> of (280 million) live in Asia, representing different civilizations; and that is why, Asia is known as the ethnic mosaic of the world. In the early years of the United Nations, there was no requirement of special provisions if individual human rights were protected accordingly, more specifically if the prohibition of discrimination on grounds such as ethnicity, religion, nationality, and race, were properly protected.<sup>10</sup> Accordingly, the concept of 'minority rights' was not

<sup>5</sup> Bushra Chowdhury, 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord', *Arms Control & Domestic and International Security (ACDIS)*, 2002, p. 33.

<sup>6</sup> Nigel Simon Rodley, 'Conceptual Problems in the Protection of Minorities: International Legal Developments', vol.17, *Human Rights Quarterly* p. 48, 1995, p. 71.

<sup>7</sup> Mohsin Amena, *Chittagong Hill Tracts Peace Accord, 1997*, 2<sup>nd</sup> edition, National Encyclopedia of Bangladesh, 2012, p. 31-39.

<sup>8</sup> Heather Smith & Thomas Pettigrew, 'Relative Deprivation Theory', *The Encyclopedia of Peace Psychology*, 2011, p. 79.

<sup>9</sup> Parbatya Chhatagram Jana Samhati Samiti, *Report on the Implementation of the CHT Accord*, 2013 available at <https://www.chtcommission.org/Report-on-Impln-of-CHT-Accord-January-2013-Final.pdf>, accessed on 23 February 2019.

<sup>10</sup> John Humphrey, *No Distant Millennium: The International Law of Human Rights*, 1989, p. 113.

developed much and so, the rights were protected under the general doctrine of human rights,<sup>11</sup> with the strong connotation, that minority members enjoy individual equality of treatment cannot reasonably insist facilities for the safeguarding of their ethnic particularism.<sup>12</sup> Thus, instead of safeguard for groups, individual, social, political, civil, economic, and cultural rights were considered as the lingua franca for the protection of human rights.<sup>13</sup> Moreover, the UN was not interested to create minority protection apparatus due to the pressure from the European and Latin American countries.<sup>14</sup>

The approach towards this changed dramatically in the 1960s and later part of it onwards. The first step was the adoption of the Convention on the Elimination of all Forms of Racial Discrimination (CERD), 1965.<sup>15</sup> Although the aim of the Convention was to prohibit any form of discrimination on the basis of religion, color, race, nationality, or ethnicity, it ensures some special procedures for the progression of racial or ethnic groups which is considered as an inherent recognition of minority rights.

For meeting the international standards on minority protection, a wide range of legally binding international treaties, conventions, covenants, and other legally non-binding declarations are included in it. Among those instruments, the most significant ones are described below:

### **United Nations Declaration on the Rights of the Indigenous People (UNDRIP)**

This is considered as one of the most important legal instruments regarding the rights of the ethnic minorities. Both Article 3 and Article 4 of the UNDRIP talk about the right to self-determination of the ethnic minorities and indigenous people. However, it does not state anything about the cessation of land, though it gives them the right to claim autonomy, determine political status, and pursue their economic, social, and cultural rights. Moreover, Article 25 and 26 say that states shall give legal recognition and protection to their land, territory, and resources with due respect to the customs and traditions of the indigenous people to their land tenure system. Even, different courts from Canada and the USA have also given judgment in favor of the first right of ethnic minorities in the forest. With regard to that, Article 10 of the same legal instrument says that they cannot be forcibly removed from their lands and territories. No relocation shall take place without the free, prior and informed consent of theirs. Furthermore, Articles 3, 20, 21, 23, 29, and 32 states that the right to maintain and develop their political, economic and social system, and institutions and to secure their own means of development including freedoms of engaging in traditional and other economic

<sup>11</sup> Janice Kunz, 'The Present Status of the International Law for the Protection of Minorities', vol. 48, *American Journal of International Law*, 1954, p. 282.

<sup>12</sup> Inis Claude, *National Minorities: An International Problem*, Harvard University Press, Cambridge, 1955, p. 211.

<sup>13</sup> David Wippman, 'The Evolution and Implementation of Minority Rights', vol. 66, *Fordham Law Review* p. 602, 1997, p. 605.

<sup>14</sup> John Peters Humphrey, 'The United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities', vol. 62, *American Journal of International Law*, 1968, p. 870.

<sup>15</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195, adopted on 21 December 1965.

activities. The most recent development in this sector has been established through the ruling given by the Pastaza Provincial Court in favor of the Waoroni people of Pastaza for the protection of half a million acres of the South-Central Ecuadorian Amazon Rainforest from oil drilling.<sup>16</sup> This sets a great precedent for indigenous land rights.

### **International Covenant on Civil and Political Rights (ICCPR), 1966**

The concept of minority rights was regarded as the international norm by Article 27 of the ICCPR which is a legally binding instrument and has universal recognition.<sup>17</sup> Here, it has been clearly stated that any minority shall not be denied the right to enjoy their own culture, to profess and perform their own religion, or to exercise their own dialect. Moreover, by the term specifically mentioned in the Article, “shall not be denied”, the UN Human Rights Committee points to the positive obligations and duties placed on states parties to actively safeguard minority’s right from any sort of violation, both by the state itself as well as in the private sectors.<sup>18</sup>

The right of “persons belonging to minorities” is limited under the Article 27 of ICCPR.<sup>19</sup> Despite its reference to “in community with the other members of their group”, the rights of the minorities assured under this provision must be asserted individually. Notwithstanding the fact that certain scholars dynamically consider Article 27 of the ICCPR to be “declaratory in nature” and to reflect “a minimum of rights recognized by customary international law”,<sup>20</sup> it obviously served as a beginning for all subsequent changes in the international regime of minority rights.<sup>21</sup>

Starting from Article 27, there are quite a few other provisions in the ICCPR that have a substantial relevance in shielding the rights of minority groups. These include, inter alia, right to self-determination, the principle of non-discrimination; freedom of thought, conscience and expression; freedom of expression; prohibition against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence; freedom of association; right to equal suffrage and equal access to public service; and equality before the law which is described accordingly in the respective article 1, 2, 18, 19, 20, 22, 26 of the aforementioned covenant.

### **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, (UNDM) 1992**

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious

<sup>16</sup> Julia Banim, ‘Amazon Tribe Wins Lawsuit Against Oil Company, Saving Huge Amount of Rainforest’, *UNILAD*, May 2019.

<sup>17</sup> Patrick Thornberry, ‘Is there a Phoenix in the Ashes? – International Law and Minority Rights’, vol.15, *Texas International Law Journal*, 1980, p. 443.

<sup>18</sup> Human Rights Committee, *General Comment 23*, U.N. Doc./GEN/1/Rev.1, 1994, p. 52.

<sup>19</sup> Hurst Hannum, ‘Contemporary Developments in the International Protection of the Rights of Minorities’, vol. 66, *Notre Dame Law Review*, 1991.

<sup>20</sup> Yoram Dinstein, ‘Collective Human Rights of Peoples and Minorities’, vol.25, *International & Comparative Law Quarterly*, 1976, p. 118.

<sup>21</sup> Miodrag Jovanovic, ‘Recognizing Minority Identities Through Collective Rights’, vol.27, *Human Rights Quarterly*, 2005, p. 634.

and Linguistic Minorities<sup>22</sup> (UNDM) was adopted by the United Nation General Assembly in 1952 and considered as one of the first international mechanisms of universal application which is devoted particularly to minority concerns.<sup>23</sup> Having a non-binding instrument, UNDM carries substantial moral authority.<sup>24</sup> A significant development in the embellishment of norms on minority rights has been noticed and its impact has been substantive in guiding the progress of newer and upcoming minority rights theories.<sup>25</sup>

The UNDM is one of the most wide-ranging international documents suggesting both the rights of minorities and the duties of states towards them. It fixes the rights of the minorities mainly in Article 2 and spells out the responsibilities of the States in the Articles 1, 4, and 5. While the rights are always set out as rights of individuals, the duties of States are in part created as duties towards minorities as groups.<sup>26</sup>

### **Convention on the Elimination of all Forms of Racial Discrimination, (CERD) 1965**

The Convention on the Elimination of all Forms of Racial Discrimination (CERD) came into force in 1965.<sup>27</sup> Even though this Convention is recognized for prohibiting discrimination on the basis of ‘religion, color, race or ethnicity’, it assures special procedures for the advancement of racial or ethnic groups which is an implicit acknowledgment of minority rights. Article 5 of this instrument has been used by the CERD Committee as an important tool to safeguard the rights of minorities for protection against unfairness.<sup>28</sup> Hence, this document is an important one for the protection of minority rights.

### **Convention on the Prevention and Punishment of the Crime of Genocide, 1948**

The first international attempt to affirm the right of minorities was the Convention on the Prevention and the Punishment of the Crime of Genocide which was adopted in 1948.<sup>29</sup> By outlawing the physical or biological destruction of a national, ethnic,

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<sup>22</sup> *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted on 18 December 1992.

<sup>23</sup> Jennifer Jackson Preece, ‘National Minority Rights vs. State Sovereignty in Europe: Changing Norms in International Relations?’, *Nation and Nationalism*, 2004, p. 348.

<sup>24</sup> Natan Lerner, ‘The 1992 UN Declaration on Minorities’, vol. 23, *Israel Yearbook on Human Rights* p. 111, 1993, p. 128.

<sup>25</sup> *Ibid.*

<sup>26</sup> Asbjorn Eide, ‘Final text of the Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities’, 2001.

<sup>27</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195, adopted on 21 December 1965.

<sup>28</sup> Rudiger Wolfrum, ‘The Committee on the Elimination of Racial Discrimination’, vol.3, *Max Planck Yearbook of United Nations Law* p. 489, 1999, p. 519.

<sup>29</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 UNTS 277, adopted on 9 December

religious, or racial groups, officially acknowledged the right of minority groups to exist as a group, which must be well-thought-out as the most essential of all cultural rights.<sup>30</sup>

### **Convention on the Rights of the Child, (CRC) 1989**

The General Assembly unanimously adopted the Convention on the Rights of the Child (CRC) in 1989.<sup>31</sup> Among the core human rights treaties having a universal scope, only the CRC contains a provision, apart from Article 27 of the ICCPR, specifically addressing the rights of minorities. Article 30 of this Convention ensures the right of the children of the ethnic minorities and also encourages giving freedom of practicing their own culture, to perform and practice his or her own religion, or to use his or her own language. This ensures a significant right to the children not only as a minority but also as a human being, which would help in the overall development of the child. The protection of this right would eventually help in the protection of the communities in the future from extinction.

### **National Level Protection in South Asia: A comparison between the existing legal frameworks in the South Asian Countries**

South Asian countries like India, Pakistan, Bangladesh, Nepal, Sri Lanka, Bhutan, Maldives, and Afghanistan, represent a region of great diversity. The ethnic, cultural, or religious conflicts in the South Asian countries are historically driven by regional dimensions. The partition of India in 1947, in this regard, was a direct impact of the incompetence, to some extent, failure to entertain minority interests inside the newly independent India. It is debatable whether the partition was justified or not. But this, from the very inception of these countries, became a source of a continuing violation of minority rights in India, Pakistan, and Bangladesh due to different reasons like political unrest or animosity between Muslims and Hindus.

Moreover, an unfortunate aspect of present-day South Asia is that minority problem quickly cross-national frontiers.<sup>32</sup> Persecution of minorities within the boundaries of country results in severe repercussions in another where they might or might not be a minority. From a different perspective, continuous communal conflicts or tensions in this region inevitably lead the neighboring states to involve in an endless blame game due to the absence of an effective regional forum, which is also a result of the lack of trust amongst the South Asian nations. Keeping that under consideration, an attempt has been taken in this chapter to reflect an overview of minorities of different states and draw an outline of the national policies and laws adopted by states to protect these minorities from discrimination and exploitation.

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1948, entered into force on 12 January 1951.

<sup>30</sup> Thomas Buergenthal, *International Human Rights in a Nutsbell*, 1988, p. 49.

<sup>31</sup> *Convention on the Rights of the Child*, 1577 UNTS 3, adopted on 20 November 1989, entered into force 2 September 1990.

<sup>32</sup> Joshua Castellino & Elvira Dominguez Redondo, *Minority Rights in Asia: A Comparative Legal Analysis*, New York, Oxford University Press, 2006, pp. 58-103.

## Ethnic Minority Rights in India

The Constitution of India is a comprehensive example which addresses several aspects of the right of minority groups.<sup>33</sup> Part III of the Indian Constitution assures certain fundamental rights for each and every citizen of India. The protection of minorities is heavily predisposed by these general rights and responsibilities. These rights expressly include: equality before the law, safeguard against discrimination on grounds of religion, race, caste, sex or place of birth, equality of opportunity in matters of public employment; abolition of untouchability; freedom of expression; freedom of association; right to free education up to the age of fourteen; right to freely profess, practice and propagate religion; right of religious denominations to manage religious affairs; safeguard against taxation for promotion of any particular religion, and safeguard against religious instruction in state-funded educational institutions.<sup>34</sup>

Even though non-discrimination has been guaranteed as a fundamental right in Indian Constitution, the state can still make special provisions for the betterment and development of any socially or educationally backward groups of citizens or any caste or tribes.<sup>35</sup> Amongst all the tribes or tribal groups, almost 50% of India's tribal population is comprised of the 6 major tribal communities.<sup>36</sup>

The most important thing claimed by the tribal people is their autonomy.<sup>37</sup> To address this, governments have relied on two political-administrative solutions: the creation of the autonomous district and regional councils provided for by the sixth schedule of the Constitution, and the formation of separate states.<sup>38</sup> However, these solutions were not in compliance with what the tribes had actually hoped, many of the indigenous groups, in the North-Eastern region in particular, have been demanding the self-rule for a very long time.<sup>39</sup> It is to be noted that the average socio-economic status of these tribes is also under the national margin.

## Ethnic Minority Rights in Pakistan

Among the 9 basic principles enshrined in the 'Objection Resolution' annexed to the Constitution of Pakistan, one says that there should be sufficient provisions for the minorities so that they can fearlessly perform their religion to sustain their culture.<sup>40</sup> The

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<sup>33</sup> Ibid.

<sup>34</sup> *The Constitution of India*, 1950, arts. 16, 17, 19, 21, 25, 26, 27 & 28.

<sup>35</sup> Paras Diwan & Peeyushi Diwan, *Human Rights and the Law: Universal and Indian*, Deep & Deep Publications, 1998, pp. 351-405.

<sup>36</sup> Govind Sadashiv Ghurye, 'The Scheduled Tribes of India, New Brunswick', in Mary John, Praveen Kumar Jha & Surinder Jodhka (eds), *Changing Economics and Identities in Contemporary India*, Transaction Publishers, 2006, pp. 277-289.

<sup>37</sup> Rabinda Nath Pati & Jagannatha Dash (eds), *Tribal and Indigenous People of India: Problems and Prospects*, APH Publishing, 2002.

<sup>38</sup> Christian Erni, 'Indigenous Peoples' Self-Determination in Northeast India', vol.3, 2001, p. 61.

<sup>39</sup> Sanjib Baruah, 'Territoriality, Indignity and Rights in the Northeast India', *Economic and Political Weekly* p. 15, 2008, p. 19.

<sup>40</sup> The 'Objective Resolution', one of the most important documents in the constitutional history of Pakistan, was a resolution adopted on 1949 by the Constituent Assembly. In 1985, this document was annexed to



Constitution further provides that the State shall not only safeguard the legitimate rights and interests of minorities but also their due representation in the federal and provincial services shall be ensured accordingly.<sup>41</sup> Unfortunately, no definition of ‘minority’ has been proposed by the Constitution in spite of referring to this term several times, which itself creates a lacuna in the meaning of minority and poses the question of what constitutes a minority in Pakistan?<sup>42</sup> For example, Punjabis are the major ethnolinguistic groups in Pakistan among all the existing. The Baluchis, the Sindhis, and the Pakhtuns are some other groups, who not only suffer from the characteristic minority syndrome of unfairness and persecution but also are denied the official status of minorities.<sup>43</sup> Eventually, this gives the Baluchis, Sindhis, and Pakhtuns and strong feeling of unfairness, discrimination, and injustice.<sup>44</sup> It is their claim that their provinces do not receive the rightful share of the national resources offered by the State.<sup>45</sup>

### Ethnic Minority Rights in Sri Lanka

There is much less diversity in Sri-Lanka in terms of ethnicity, religion, and language in comparison with other countries in South Asia. Surprisingly, despite having much less cultural differences, Sri Lanka is a vivid example of how state policies can create chaos and disrupt national peace with regard to minority rights. There are both direct as well as indirect legal provisions in The Constitution of Sri Lanka that uphold minority rights. Chapter III of the Constitution titled ‘Fundamental Rights’ guarantees freedom of thought, conscience, and religion to each and every citizen of the country regardless of his religion, race, language, etc.<sup>46</sup>

The Tamils, who are predominantly Hindus by religion, are the largest minority group in the entire country. There has been a long history of conflict between Sinhalese and Tamils in Sri Lanka that resulted in civil war for approximately two decades that was the consequence of the denial of minority rights.<sup>47</sup> The conflict basically originated from the decision taken by the then government, mostly dominated by the Sinhalese, not to give proper recognition to the Tamil language. The ‘Official Language Act, 1960’ made Sinhala the one and only national language of Sri Lanka. The 1972 Constitution of Sri Lanka affirmed this decision and upheld the policy.

In the early 1970s state-sponsored settlement schemes put many Sinhalese settlers into Tamil areas, which eventually led both the ethnic groups towards extremism.<sup>48</sup> As a result, hundreds of Tamil civilians were killed by the Sinhalese in 1983 which was due to an ethnic riot between the two communities. This became the turning point in the

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and made a substantive part of the 1973 Constitution of Pakistan.

<sup>41</sup> *The Constitution of the Islamic Republic of Pakistan*, 1973, art. 36.

<sup>42</sup> Javaid Rehman, *The Weaknesses in the International Protection of Minority Rights*, 2000, p. 136.

<sup>43</sup> *Ibid*, p. 7.

<sup>44</sup> Feroz Ahmed, *Ethnicity and Politics in Pakistan*, Oxford University Press, 1999.

<sup>45</sup> Akbar Zaidi (ed), *Regional Imbalances and the Regional Question in Pakistan*, Vanguard Books, 1992.

<sup>46</sup> *The Constitution of the Democratic Socialist Republic of Sri Lanka*, art. 10.

<sup>47</sup> Satchi Ponnambalam, *Sri Lanka: National Conflict and the Tamil Liberation Struggle*, Zed Books, 1983.

<sup>48</sup> Javaid Rehman & Jeffrey Roy, *World Directory of Minorities*, 1997, pp. 580-585.

history of conflict between Tamils and Sinhalese.<sup>49</sup> The series of events gradually led the country towards a large-scale civil war between LTTE, which represented Tamil interests and the government forces that upheld the Sinhalese interests. However, this armed conflict targeted civilians of all ethnicities irrespective of their involvement in the riot. However, it seemingly concluded in 2009 with the massive military operation conducted by the Sri Lankan army overpowering the LTTE.

## Ethnic Minority Rights in Nepal

Nepal is a rich country in terms of language, culture, religion, biodiversity, and socio-cultural diversity. As many as 59 (previously 61) indigenous communities have been officially and legally recognized by the Nepal government under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act-2002.<sup>50</sup>

Indigenous Peoples make up 38% (approximately 8.5 million) of Nepal's population.<sup>51</sup> But, Indigenous People's Organizations of Nepal claim that their population could be as high as 50% of the country's total population. Despite constituting such a significant portion of the population, indigenous people have been marginalized in terms of language, culture, and politics as well as economic opportunities throughout history.<sup>52</sup> The indigenous peoples of Nepal have been politically oppressed, economically exploited, culturally and socially discriminated against; and, since the second half of the 18th century, the formation of modern Nepal by Prithvi Narayan Shah, the king of Gorkha, the indigenous people became the victims of discriminatory policies and practices adopted by the state.<sup>53</sup> In the quest of uniting small states and principalities, Indigenous People did not only lose their land and territories but also the system of autonomous governance system (which was said to have participatory, consensual, just and inclusive).<sup>54</sup> Indigenous People were treated inhumanely. The indigenous political and social institutions were systematically destroyed and replaced by the highly centralized system of governance, controlled by the hill high caste rulers at the center. Indigenous people were systematically disempowered. They were forced to follow the Hindu code of conduct and culture of the ruling caste, which was alien to them.<sup>55</sup> In Nepal, it has led to economic, social, and, political instability, migration and insurgency over the years, even though it is now claimed that the situation is under control at present.<sup>56</sup>

<sup>49</sup> Tennekoon Serena, 'Newspaper Nationalism: Sinhala Identity as Historical Discourse', in Jonthan Spencer(ed), *In Sri Lanka: History and Roots of Conflict*, Routledge, 1997, p. 205.

<sup>50</sup> Ibid.

<sup>51</sup> Krishna Bhattachan, 'Do Nepalese Indigenous Peoples fall under minority group?', 1 February 2015, *Indigenous Voice* available at <https://www.indigenousvoice.com/en/do-nepalese-indigenous-peoples-fall-under-minority-group.html>, accessed on 1 March 2019.

<sup>52</sup> "Indigenous Peoples - National", *Indigenous Voice* available at <https://www.indigenousvoice.com/en/indigenous-peoples/national.html>, accessed on 20 February 2019.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

For centuries, only a small ruling clique enjoyed all rights and privileges whilst the rest of Nepalis, including women, Dalits, *Janajatis*, *Madhesis*, people from the Far West, and sexual and gender minorities, lived less privileged lives. Nepal, however, now appears on track to recognize all Nepalis equally, with opportunities opening up for the marginalized minorities too, after the adoption of the new constitution especially.<sup>57</sup> Indigenous people are fairly proportionally represented. The Constituent Assembly consists of 219 indigenous members, which is 36% of the total seats.<sup>58</sup>

However, Nepal is a land of minorities, be it in terms of religion, ethnicity, caste, gender, sexual orientation, political opinion, or geography. It alone accounts for hundreds of ethnic, linguistic, and religious groups within its borders.<sup>59</sup> Since there are more than 100 ethnic groups in Nepal, some say the new constitution still limits their representation. Though members of parliament are to be chosen through a proportional representation vote to ensure that minority groups are represented, the groups say the number needs to be increased.<sup>60</sup>

The ICCPR, adopted by the UN General Assembly in December 1966, which Nepal is a party to, supersedes national law.<sup>61</sup> Nepal voted 'Yes' to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) at the UN General Assembly on September 13, 2007. Also, Nepal ratified the primary international legal instrument the Convention on Indigenous and Tribal Peoples of the International Labor Organization (ILO, Convention no. 169) on August 22, 2006, and deposited it at the ILO, Geneva on September 14, 2007 and it came into effect since September 14, 2008. Nepal is one of the 20 countries (and the only one in Asia) to have ratified the Convention.<sup>62</sup>

### **The failure of the government and the lack of susceptibility**

Bangladesh, not being an economically strong country, there is a scarcity of resources which creates a problem in order to distribute it among the large population (currently more than 17 Crore, according to the latest census). The minorities, or in other words, *Adibashies*, are also an integral part of the society and are entitled to equal rights with the mainstream community. Unfortunately, this simple reality is not accepted by the policymakers and field level implementers, and thus, these minorities end up being socially outcast. The socio-economic conditions of these marginalized people are way under the economic indicators. Without a few exceptions, the '*Adibash*' or indigenous people belong to the poorest and most discriminated people of Bangladesh.

<sup>57</sup> S. Pant, 'New Nepal: Minority rights and opportunity', *The Himalaya Times* (25 June 2008) available at <https://thehimalayantimes.com/opinion/new-nepal-minority-rights-and-opportunity>, accessed on 25 February 2019.

<sup>58</sup> 'Minorities and the constitution building process in Nepal', *Minority Rights Group* available at <https://reliefweb.int/report/nepal/minorities-and-constitution-building-process-nepal>, accessed on 1 March 2019.

<sup>59</sup> Indigenous voice (n 52).

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

Now, the important thing that matters is how the policymakers and implementers perceive this issue and addressing the problem to combat the challenges imposed upon them. Do they really want to solve these problems or want to overburden them with even more complications? During the Hydraulic Power Station establishment in CHT, the government did not discuss it with the indigenous people. When the Kaptai Dam was set up, shelters of hundreds of *Adibashies* and their cultivable lands went underwater including the Rajbari of the Chakma Raja. The struggle for independence and survival emerged basically after these incidents. In fact, even after independence, they did not have any specific rights ensured under the Constitution. The 15th amendment of the constitution of Bangladesh identifies this group of people as Khudra Nri-Ghoshti (small minority ethnic group).

In many cases, the government failed to serve justice to these marginalized people, and even in some cases, remained silent and did not take any step at all to protect their rights. According to Amnesty International, the brutality that has been witnessed by the Chittagong region can be easily called ‘genocide’ or ‘ethnic cleansing’.<sup>63</sup> Decades of violence between indigenous-led insurgencies and government security forces in the Chittagong Hill track gave rise to socio-political tension in that region which persist despite the signing of a peace record years ago. Allegation of serious human rights abuse against members of indigenous communities’ surface now and then. The case of Kalpana Chakma was another remarkable incident when the activist was abducted in 1996 and never seen again.<sup>64</sup>

Even after so many years of peace accord in the year 2014, more than 117 women were sexually harassed by the local people reportedly.<sup>65</sup> The number of unreported cases is even more. Frequent rapes of indigenous children and women is also not an uncommon scenario and the numbers are increasing alarmingly. Surprisingly, apart from the tourists and local people, even the people from the army posted in that region are also involved, who are closely affiliated with the local muscle men and political leaders of those communities. Amnesty has made a call on the Bangladesh Government to implement the promises made during 1997 Peace Accord and give recognition and protection of the rights of the indigenous people of the Chittagong Hill Tracts.<sup>66</sup>

## Conclusion & Recommendations

Minorities exist in all countries of the world. Stark denial of this fact, throughout history, has been one of the root causes of a wide range of tensions ranging from civil unrest to ethnic strife and insurgency. Giddens says, “Minority communities or groups are those who have faced discrimination and exclusion for centuries, how big or small their number is.” Therefore, definition of minority group is related with a bloodbath

<sup>63</sup> Robert Meganson, ‘Hidden Bangladesh: Violence and Brutality In The Chittagong Hill Tracts.’, *Amnesty* (2017) available at <https://www.amnesty.org.uk/groups/wirksworth-and-district/hidden-bangladesh-violence-and-brutality-chittagong-hill-tracts>, accessed on 28 February 2019.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

of exclusion and discrimination.<sup>67</sup>

The current condition of the minorities in Bangladesh is a serious issue of concern for the human rights defenders. The Status of minorities in the current world has recognized a pattern of unfairness and uncertainty. Bangladesh and the other South Asian countries are no exception to that. However, an emblematic trend has been revealed in the example of minorities in Bangladesh.<sup>68</sup> The seeds of violence against the minority groups are not unfamiliar within the very nucleus of the current existing democracy, which have resulted to the dehumanization of politics and also treat human beings as vote banks and vote constituencies. Lack of answerability and transparency of the state mechanism leads the condition towards worse. Bangladesh should give recognition to the ethnic minority people and their culture. Minority rights thus not only require (a) recognition but also (b) positive action. Positive actions can include a range of special measures ranging from affirmative action to ensuring their rights to the recording of a fully accurate population census and producing desegregated data.<sup>69</sup>

Moreover, dialogues should be initiated at the local, state, and regional levels with indigenous people and their representatives to address their legal recognition as distinct people with collective rights under international human rights standards.

Alongside, an effective mechanism should be established at all levels for the full and effective participation of indigenous people in matters that concern them as well as their overall welfare. Besides, immediate actions should be taken for the realization of their IP rights with regards to their traditional knowledge and mitigate the impacts of the commoditization of their culture, in the name of globalization.

Undoubtedly, the civil society has a significant role to play in this particular platform. As long as the citizens are politically motivated, it can provide the best safeguard for its own security by making the government democratize itself and make it more people-oriented. There should be more policies and state projects to ensure minority rights. Being a Muslim majority country, Bangladesh offers a very restricted window for the indigenous people to freely practice their cultural, religious rights, and customary beliefs. Furthermore, the existing laws and legal order of the country put the minorities in a vulnerable position by giving privileges to the majority, especially in the context of the deteriorating current situation giving rise to communalism. Minority rights can only be ensured through the annulment of discriminatory provisions from the national Constitution as well as other relevant laws. Genuine participation of the minority communities should be ensured in all state affairs. Representative democracy should be introduced and practiced in a true sense in and outside the government bodies because true democracy remains, to date, an illusion for the minorities as they are marginalized not only culturally, but also politically.

It is high time we built a culture of tolerance and inclusion. During the Liberation

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<sup>67</sup> Serena (n 49).

<sup>68</sup> Hurst Hannum, *Documents on Autonomy and Minority Rights*, 3<sup>rd</sup> edition, Martinus Nijhoff Publishers, Dordrecht, 1993.

<sup>69</sup> Indigenous voice (n 52).

War of 1971, the minorities also participated side by side others and shed their blood without giving any single thought to their future.<sup>70</sup> Their migration to the neighboring country causes the minorities of Bangladesh to diminish in size, wealth, and talent which is a great loss for the country. Their cultural heritage, languages, and distinct practices are being lost every day. Obviously, the State has the responsibility to stop this cultural genocide and promote them in a better position, as they deserve, in line with different international instruments. This can only be ensured by establishing good governance in all levels of state affairs, tolerance for others, and due respect for the human rights of the minorities.

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<sup>70</sup> Saleem Samad, *State of Minorities in Bangladesh*, South Asia Forum for Human Rights, 1999, pp. 75-96.