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## Indigenous or Tribal People? Intersecting the Legal Regime of Tribes' Recognition in Bangladesh under the Focus of Historical Approach

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*This article explores the prolonged struggle of racial minorities in Bangladesh to gain recognition as indigenous people, delving into historical contexts and legal frameworks. It scrutinises the intricate issue of officially acknowledging tribal communities as Indigenous despite global recognition of Indigenous rights. Bangladesh categorises these communities as tribal and minor ethnic groups, refraining from formal acknowledgement as Indigenous, unlike countries such as Brazil, Canada, Ecuador, Finland, New Zealand, Norway, and the Philippines. The article challenges claims of indigenous status, particularly in the Chittagong Hill Tracts, revealing Bangladesh's reluctance to recognise tribal communities officially. Factors include constitutional considerations, historical land disputes, non-allegiance of tribal communities, and challenges in relocating settled non-tribal populations. Legal perspectives analyse Bangladesh's adherence to the Indigenous and Tribal Peoples Convention, 1957, and the Chittagong Hill Tracts Peace Accord, 1997. Despite initiatives for tribal development, the partial implementation of the Peace Accord perpetuates conflicts, hindering formal recognition. The conclusion assesses the current status and prospects, noting persistent challenges and an elusive fulfillment of legal obligations, making the recognition of tribal communities as Indigenous in Bangladesh a complex and unresolved matter.*

**Keywords:** *tribal people, indigenous people, distinction between tribal and indigenous people.*

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## INTRODUCTION

Indigenous peoples, also referred to as aboriginal people, are a community whose establishment of settlement in a particular region is so ancient that it cannot be correctly dated. Throughout the world, a dispute regarding indigenous populations exists to recognise certain groups of people indigenous to the land. Many welfare states had recognised certain groups of populations as indigenous to their land. On the contrary, in many countries, Indigenous people are still fighting and struggling for the recognition and security of their rights, which they are supposed to avail for being original residents of the land, residing at the same place from time immemorial. Bangladesh is also home to many communities who claims themselves indigenous to the land. But as a state, Bangladesh does not recognise any community or group of people as indigenous to the land. Rather, Bangladesh has labelled those communities as tribal people and minor ethnic groups. Now, whether these people have any actual rooted history of being Indigenous is a question of examination from the historical aspect, as well as the distinction between the tribal and Indigenous people also needs to be intersected.

## UNDERSTANDING OF INDIGENOUS PEOPLE

By literal meaning, aboriginal means being the first or earliest known of its kind present in a region.<sup>1</sup> On the other hand, by the literal meaning, Indigenous means the earliest known inhabitants of a place, especially of a place that was colonised by a now-dominant group.<sup>2</sup> These two words, 'aboriginal' and 'Indigenous', are used synonymously and carry almost the same meaning practically. Even though the current era of welfare states ensures the fundamental rights of the people, all the issues that might violate or undermine any rights of any person or

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<sup>1</sup> 'aboriginal' (Merriam-Webster), <<https://www.merriam-webster.com/dictionary/aboriginal>> accessed 03 July 2024

<sup>2</sup> 'indigenous' (Merriam-Webster) <<https://www.merriam-webster.com/dictionary/indigenous>> accessed 03 July 2024

community are seriously dealt with at the state and international levels, but there is no widely accepted definition for aboriginal or Indigenous people.

Countries that have acknowledged the rights of aboriginal or Indigenous people in their constitutions or by any statutory laws did not provide any definition for aboriginal or Indigenous people based on the etymology of the words. Rather, countries included communities staying in their territories, such as aboriginal or indigenous people of that country. As of a report of October 2023, Brazil, Canada, Ecuador, Finland, New Zealand, Norway, Philippines and Sweden are the countries which acknowledged the rights of the Indigenous people living in their territory.<sup>3</sup>

The Constitution of Brazil has recognised the status and rights of the Indigenous people living within the territory of Brazil. Even though there are 305 tribes, which are living in present-day Brazil,<sup>4</sup> the Constitution of Brazil categorised all of the tribes as *Indians*. The Constitution of Brazil provides that *Indians* shall have their social organisation, customs, languages, creeds, and traditions recognised, as well as their original rights to the lands they traditionally occupy.<sup>5</sup>

In the *Constitution Act of 1982*, Canada recognised the rights of the aboriginal people of Canada and defined the aboriginal people of Canada. In section 35(2) of this Act, aboriginal people of Canada are defined as the people belonging to the ethnic community of *Indian*, *Inuit*, and *Métis* living within the Canadian territory.<sup>6</sup>

In the Constitution, Ecuador has recognised and protected many rights of the indigenous people of Ecuador.<sup>7</sup> However, the Constitution of Ecuador has not provided any specific definition of the names of tribes, which shall encompass the theme of the indigenous people of Ecuador.

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<sup>3</sup> Lin Tylor, 'Which countries do well on recognising Indigenous rights?' *Context* (14 October 2023) <<https://www.context.news/socioeconomic-inclusion/which-countries-do-well-on-recognising-indigenous-rights>> accessed 03 July 2024

<sup>4</sup> 'The Brazilian Indigenous People' (*Survival International*) <<https://www.survivalinternational.org/tribes/brazilian>> accessed 03 July 2024

<sup>5</sup> The Constitution of Federal Republic of Brazil 1988, art 231

<sup>6</sup> Kent McNeil, 'The Constitutional Rights of the Aboriginal Peoples of Canada' (1982) 4 *The Supreme Court Law Review* 225

<sup>7</sup> Constitution of the Republic of Ecuador 2008, art 57

Finland has recognised the rights of indigenous people living within its territory. The Finnish Constitution recognises the *Sami* people living in Finland as its only indigenous people.<sup>8</sup>

New Zealand has incorporated the Treaty of Waitangi as Schedule 1 in its Legislature Act, 1908, which functions as the Constitution of New Zealand. In the treaty, it has been stated that the native or aboriginal people of New Zealand will be ensured of rights to their land and peaceful enjoyment of their property if they acknowledge the sovereignty of the British Monarch over the area of New Zealand.<sup>9</sup> Now, this Act does not provide the notion of which people will be considered as the native or indigenous people of New Zealand. But from the state practice and the context of the country, the *Māori* people of Aotearoa are the indigenous people.

In Norway, *Sami* people are considered as the indigenous group of people. Even though the Constitution of Norway does not state that *Sami* are the indigenous people of Norway, it provides that the authorities of the state shall create conditions enabling the Sami people to preserve and develop their language, culture, and way of life.<sup>10</sup>

The Constitution of the Philippines states that the State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.<sup>11</sup> However, the constitution does not provide any indication regarding the identity of the indigenous people of the Philippines. But it has been defined in another statute of the Philippines. According to the Indigenous Cultural Communities/Indigenous Peoples – refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organised community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilised such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and

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<sup>8</sup> Constitution of Finland 1999, s 17

<sup>9</sup> Legislature Act 1908, sch 1

<sup>10</sup> Constitution of the Kingdom of Norway 1814, art 108

<sup>11</sup> Constitution of the Republic of the Philippines 1987, art XII s 5

cultural inroads of colonisation, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos.<sup>12</sup>

Like the other two Nordic countries, Sweden also recognises the *Sami* people as their Indigenous people and some of their rights are protected in the Constitution of Sweden.

From the legal regime of the above-mentioned states, it appears that there is no specific definition of Indigenous people except from the Indigenous Peoples' Rights Act 1977 of the Philippines. However, a definition provided in the statutory law of a state cannot be considered as a universally accepted definition.

In a report published by the Department of Economical and Social Affairs of the United Nations, a definition of indigenous communities, peoples and nations has been provided. In the report, it is provided that indigenous communities, peoples, and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories or parts of them. They form, at present, non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories and their ethnic identity as the basis of their continued existence as peoples, by their cultural patterns, social institutions, and legal systems.<sup>13</sup> In the *Indigenous and Tribal Peoples Convention*, it has been incorporated that Indigenous people are those people who are distinguished from other mainstream people of any independent state<sup>14</sup> and who identify themselves as Indigenous people.<sup>15</sup>

It is quite clear that there is no definitive and encompassing definition of Indigenous people, but some characteristics of the Indigenous community can be identified from the above legal references.

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<sup>12</sup> The Indigenous Peoples' Rights Act 1997, s 3(h)

<sup>13</sup> José R. Martínez Cobo, *Study on the Problem of Discrimination against Indigenous Populations as Quoted in The State of the World's Indigenous Peoples* (vol 5, Department of Economical and Social Affairs 2009) 4

<sup>14</sup> Indigenous and Tribal Peoples Convention 1989, art 1

<sup>15</sup> Indigenous and Tribal Peoples Convention 1989, art 2

**From the above-referred discussion, Indigenous people can be identified with the following characteristics:**

1. People who have been living in the concerned territory for time immemorial and before the settlement of invasive people of different ethnicities.
2. In most parts and most states of the world, Indigenous people are minor communities as of number in comparison to the mainstream ethnicity.
3. Indigenous people carry on the culture and tradition of their forebears and they are determined to protect and preserve the culture and tradition of their own.
4. Even though Indigenous people have been living in the concerned territories from time immemorial, because of being the non-dominant class at the state ruling level, they are deprived of their rights to the land of their ancestors, which lands were acquired and occupied by invasive or colonial power.
5. Throughout the world, indigenous people are fighting to ensure their rights to ancestral land.

Any community in any part of the world, having these characteristics, but not limited to these characteristics, can be identified as indigenous people of their land.

## **UNDERSTANDING OF TRIBAL PEOPLE**

The tribal people share almost similar types of characteristics as indigenous people. The International Labour Organization identifies the terms 'indigenous people' and 'tribal people' as common denominators referring to the same community or class of human beings.<sup>16</sup> The main difference between tribal and indigenous people is about the claim to the land they are residing on. It is also to be understood that all the indigenous communities are identified as tribal people. However, tribal people are not necessarily to be identified as indigenous people. For instance, there are so many nomadic tribal communities that are always on the move, not settling in one place. These people have all the characteristics of the indigenous people, but they do not have

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<sup>16</sup> International Labour Organization, 'Who are the indigenous and tribal peoples?' (ILO) <[https://www.ilo.org/global/topics/indigenous-tribal/WCMS\\_503321/lang-en/index.htm](https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang-en/index.htm)> accessed 03 July 2024

any link or connection to any land. For this reason, these tribal people cannot be identified as indigenous people. Most of the states that do not recognise the Indigenous people of their territories or do not recognise any rights of the Indigenous people residing within their territorial limit *de jure* identify these communities as tribal people. For instance, Bangladesh has recognised the unique local culture and traditions of the tribes, minor races, ethnic sects, and communities.<sup>17</sup>

## HISTORY OF SETTLEMENT OF TRIBAL COMMUNITY IN BANGLADESH

The term ‘Indigenous’ translates in Bangla as ‘*Adivasi*’ or ‘*Adivasi*’, meaning the people living in the land from the very beginning or original residents of the land.

The dispute regarding the indigenous people of Bangladesh concerns the area of modern-day Chittagong Hill tracts, encompassing mainly three districts of Bangladesh, named *Bandarban*, *Khagrachari*, and *Rangamanti*. But in the flat land of Bangladesh, some kingdoms like *Pundravardhana*, *Vanga*, *Gangaridai*, *Samatata*, *Anga*, *Suhma*, and *Harikela* existed from the ancient *Vedic* period. *The Vedic* period is considered to be the time frame of 1500 BC to 500 BC, which is considered the bronze age of the Indian subcontinent.<sup>18</sup> During this period, the most prosperous and historically famous kingdoms, among others, were *Pundravardhana*, *Samatata*, and *Vanga*.

*Pundravardhana* was the kingdom encompassing the area of modern north and north-west Bangladesh.<sup>19</sup> *Samatata* was the kingdom that had a territory of modern-day east and south-east territory of Bangladesh, not having *Chattogram*, *Cox’s Bazar*, and *Chittagong Hill Tracts*.<sup>20</sup> *Vanga* was the kingdom encompassing the territory of southwest Bangladesh and the eastern territory of India at the western border of Bangladesh.<sup>21</sup>

<sup>17</sup> Constitution of People’s Republic of Bangladesh 1972, art 23A

<sup>18</sup> Patrick Olivelle and Mark McClish, *The Arthasāstra: Selections from the Classic Indian Work on Statecraft* (Hackett Publishing 2012) xxiv

<sup>19</sup> Suchandra Ghosh, ‘Pundravardhan’ (*Banglapedia - National Encyclopedia of Bangladesh*, 17 June 2021)

<<https://en.banglapedia.org/index.php?title=Pundravardhana>> accessed 03 July 2024

<sup>20</sup> AM Chowdhury, ‘Samatata’ (*Banglapedia - National Encyclopedia of Bangladesh*, 17 June 2021)

<<https://en.banglapedia.org/index.php?title=Samatata>> accessed 03 July 2024

<sup>21</sup> Amitava Bhattacharya and B N Mukherjee, *Historical Geography of Ancient and Early Medieval Bengal* (Sanskrit Pustok Bhandar 1977)

Historically, India was reconstructed as the product of two original races: a fair invading race speaking an *Aryan* tongue and a dark-skinned aboriginal one speaking *Dravidian*.<sup>22</sup> From this perspective, the *Dravidian* people are the indigenous people of the Bengal Delta and Ganges Delta flatlands.

These historical kingdoms of *Pundravardhana*, *Samatata*, and *Vanga*, which encompass almost the entirety of the Bangladeshi territory, were predominantly the residence of indigenous *Dravid* people.

Tribal communities of *Dravid* indigenous roots currently reside in the greater *Rangpur*, *Dinajpur*, *Bogura*, *Pabna*, and *Rajshahi* areas of Bangladesh. According to Dr Niharranjan Ray, *Dravid* people not only resided not only in Bangladesh but in the whole of the Indian subcontinent. The lineage of most of the people of the Indian subcontinent is linked to the indigenous *Dravid* people.<sup>23</sup> The German Encyclopedia of Anthropology *Meyers Konversations-Lexikon* had categorised modern humans into three categories, which it had named the “Great Three Races”. According to this Encyclopedia, the three races of humans are *Caucasoid*, *Mongoloid*, and *Negroid*, and *Dravidian* are different races of people who don’t fit into any of these three categories.<sup>24</sup>

The Hill Tracts area is predominantly the residence of the *Chakma* majority people. During the partition of the Indian subcontinent, the *Chakma* people did not want to be part of Pakistan and they prioritised being under the rule of India. *Mohit Chakma*, a *Chakma* leader during the partition time, stated in one of his writings that nobody was available to hear our plea or support us. To advocate for our cause, we dispatched a delegation of our leaders to New Delhi. Sardar Patel welcomed them, listened to them sympathetically, and gave them advice to resist as hard as they could. Without holding back, he informed the delegation, “Right now, I have too much work on my hands between Hyderabad, Junagadh, and Kashmir. I promise you that I will help you out as soon as these issues are resolved.” The fact that he did not live long enough was

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<sup>22</sup> Edwin Bryant, *The Quest for the Origins of Vedic Culture: The Indo-Aryan Migration Debate* (Oxford University Press 2003) 25

<sup>23</sup> Asaduzzaman Assad, *Bangladesher Khudro Nregoster Etihaz* (Dhaka Prakashani 2021) 69

<sup>24</sup> *Meyers Konversations-Lexikon* (4th edn, 1885-90)



particularly terrible for the Chakmas. All of our dreams came crashing down on December 15, 1950, when the unwavering Sardar passed away.<sup>25</sup>

According to Bangladesh Indigenous Peoples Forum, 45 tribal communities are indigenous to the land of Bangladesh and according to the Society for Environment and Human Development, 27 tribal communities are indigenous to the land of Bangladesh. The tribes of both of these reports are *Assamese, Bagdi, Banai, Basak, Bawm, Bedia, Bhuimali, Bhumij, Bokti, Buna, Chak, Chakma, Dalu, Garo, Gond, Gurkha, Hajong, Hori, Karmakar, Ker, Kharia, Khasi, Khoyra, Khumi, Khyang, Kole, Kshatriya Barman, Lohar, Lura, Lushai, Mahli, Mahto, Malo, Manipuri, Marma, Mikir, Munda, Muria, Musahar, Mru, Oraon, Pahan, Paharia, Pal, Pankho, Patro, Rai, Rajbanshi, Rajuar, Rakhine, Ramdas, Ruiya, Santal, Saora, Shi Chong, Sing, Tanchangya, Teli, Tripuri, Turi, Uchoi*.<sup>26</sup> Most of these tribes belong to the *Mongoloid* lineage. It is not right to identify all the tribes of Bangladesh as indigenous. Because Chakma, *Mog, Garo, Khasi, Santal*, and other tribes of *Mongoloid* lineage are immigrant settlers to the Bangladeshi region, not indigenous.<sup>27</sup> These tribes had settled in the Bangladeshi region by migration from Myanmar, China, Mongolia, and the central and western parts of the Indian subcontinent.<sup>28</sup> There are tribes like *Assamese, Rajbanshi, Teli, Tripuri*, etc., which originally belonged to the territory of modern-day India. The very first recorded historical evidence relating to the settlement of tribal people in the hill tracts can be found in a map of that region, drawn by a Portuguese historian named *Me. Baros*. He had drawn that map in 1950, where he had pointed out that there were settlements of tribal people on the east bank of the *Karnaphuli River*.<sup>29</sup> Before this period, no other history can be found regarding the settlement of tribal people in the hill tracts of Bangladesh.

Analysing the above historical and anthropological references, it can be concluded that tribes of the hill tracts of Bangladesh who belong to the *Mongoloid* lineage actually are not indigenous to the territory of Bangladesh. They are also invasive to the territory of Bangladesh, like the *Ariayan* people arriving from *Persian* lands.

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<sup>25</sup> Assad (n 23) 38

<sup>26</sup> Assad (n 23) 71

<sup>27</sup> Assad (n 23) 70

<sup>28</sup> Assad (n 23) 71

<sup>29</sup> Assad (n 23) 26

## WHY TRIBAL PEOPLE ARE NOT RECOGNIZED AS INDIGENOUS?

Bangladesh as a state does not recognise any certain community as Indigenous to the land and there is not any proper and official explanation from the state level, for which reason Bangladesh does not recognise any certain community as indigenous to the land. But there are multiple reasons which might result in such a standing of Bangladesh.

**Constitutional Bindings:** Bangladesh is a country that, by the principle of the Constitution, believes in the equality of all citizens. Equality before the law is also a fundamental principle incorporated and ensured in the Constitution of Bangladesh.<sup>30</sup> If Bangladesh as a state grants any certain class of citizens with any special status, that will be a violation of the constitutional rights of other citizens to whom such status is not granted by the state. It might be a reason that to avoid such legal complexity, Bangladesh doesn't recognise indigenous people's rights. The main dispute involved in the matter of the rights of indigenous people is the right to land. When any special right is granted to the tribal people regarding the land property of any specific territory, other citizens who are not part of tribal communities will be deprived of the opportunity to live and reside in such specific territory. The Constitution of Bangladesh ensures the rights of all citizens to settle and reside in any part of the country.<sup>31</sup> Such incidents will also lead to violations of constitutional provisions and legal complexities, which are to be adjudicated by the apex court of Bangladesh.

### **Historical Dispute Related to Land and Non-Allegiance of Tribal Communities to the State:**

The major dispute regarding the rights of the indigenous people is about the right to their property. The property dispute of the tribal community against the state exists in the hill tracts districts in Bangladesh. The root of this problem exists in the land surveys done by the British Empire. Before the arrival of British rulers in the Indian subcontinent, there was no documentation regarding ownership and demarcation of land properties, and neither land was utilised by the local ruler as property of the state or the royals. The borders of the territory possessed by the local ruler were marked by landmarks like rivers, canals, trees, public roads, etc. The taxes paid by the local ruler were considered as 'remuneration of the sovereign', paid

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<sup>30</sup> Constitution of People's Republic of Bangladesh 1972, art 27

<sup>31</sup> Constitution of People's Republic of Bangladesh 1972, art 36

for protection and justice offered by the King or *Sultan* or Emperor.<sup>32</sup> After taking over the ruling power from the East India Company, the British monarchy ordered the recording and documentation of land properties throughout the Indian subcontinent by doing a cadastral survey of lands. As hill tracts were extremely uneven terrain, it was impossible to do land surveys in these mountainous regions. For which ownership of property in the hill tracts remained out of legal documentation. However, the local *Chakma* Kingdom claimed the ownership of almost all the territory of the hill tracts region. Later on, when Pakistan gained its independence in 1947, the tribal communities, which were of *Chakma* majority, wanted to join with India, even though the territory was given to Pakistan as part of East Pakistan by the decision of the Radcliffe Committee. When Bangladesh got its independence in 1971, the majority of the tribal communities took part in the liberation war of Bangladesh, but the *Chakma* King Tridev Roy allied with Pakistan and wanted to join Pakistan with his people and land, and during that time, he left Bangladesh and went to Pakistan where he died in 2012.<sup>33</sup> These events of non-allegiance of the tribal communities to the state also contributed to the conflict disbelief between the tribal communities and Bangladesh as a state.

### **Difficulties of Removing Non-Tribal Population Already Settled in the Disputed Area:**

Another reason why tribes are not recognised as indigenous people of Bangladesh is the *Bengali* population living in the disputed area. Since 1979, the government of Bangladesh has been relocating people of *Bengali* ethnicity to the Hill Tracts district by giving them land property through the process of settlement. As per the census of 2022, the ratio of the *Bengali* population in the hill tracts is 50.06 *per cent* and the ratio of the minor ethnicity population is 49.94 *percent* and this ratio of the *Bengali* population covers almost a million people.<sup>34</sup> Removing or relocating such a huge population to other places will cause internal disturbance in Bangladesh, as well as create a huge influx in the institution of legal proceedings at all the courts concerned to those

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<sup>32</sup> Irfan Habib, *The Agrarian System of Mughal India 1556-1707* (3<sup>rd</sup> edn, OUP 2013) 111-112

<sup>33</sup> Purna Lal Chakma, 'Raja Tridev Roy: From Chakma King to Pakistan's Begar' (*Medium*, 16 December 2023) <<https://medium.com/@purnalal/raja-tridev-roy-from-chakma-king-to-pakistans-begar-e4f1c42eda3a>> accessed 13 January 2024

<sup>34</sup> Population and Housing Census 2022, *Preliminary Report*, Bangladesh Bureau of Statistics (August 2022) 27, 31

territories as well as in the apex court of Bangladesh. To avoid such complexities, Bangladesh as a state might not recognise any rights of any tribal communities.

### **BASIS OF THE CLAIM OF TRIBAL COMMUNITY AS INDIGENOUS TO THE LAND**

There are two categories of ethnic tribal groups in Bangladesh. The first category is tribal groups of flat land, which are mainly residents of the flat area of north and north-west Bangladesh, distributed in Rajshahi, Rangpur, and Mymensingh divisions. Another category is tribal communities of hilly areas, which are mainly residents of the eastern hilly area of Sylhet and Chattogram division. The main reason for the dispute regarding land between the state and the tribal people is the non-existence of any actual documentary record of ownership of land in the Chittagong Hill Tracts area. In the other area of modern-day Bangladesh, surveys were conducted by the British government in the late 19th century and early 20th century and consequently, the Record of Rights was prepared as a document of ownership and right of possession based on those surveys. As no survey was conducted in the hill tracts area because of geographical obstacles and lack of technology during that era, no document of ownership was also created. As a result, there was no legal recognition as to the ownership of land properties of the hill tracts area. The tribal people were claiming that certain lands were traditionally being used by the tribal communities of the hill tracts area. When the Government of Bangladesh started relocating climate refugees from the northern part of the country to the hill tracts by offering a land settlement to those people, that ignited a conflict between the government and an organisation founded by the tribal communities known as *Jana Sanghati Samiti* (JSS). This conflict existed for almost two decades, which eventually ended with the signing of the Chittagong Hill Tracts Peace Accord in December 1997.

In that accord, the Government of Bangladesh agreed that Hill District Local Government *Parishad* would be transformed into Hill District *Parishad*.<sup>35</sup> All land of the hill tract area shall be vested in the administration of the concerned Hill District *Parishad*.<sup>36</sup> Properties of the hill tract area cannot be given in lease or settlement without prior permission of the concerned Hill

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<sup>35</sup> Chittagong Hill Tracts Peace Accord 1997, cl B(2)

<sup>36</sup> Chittagong Hill Tracts Peace Accord 1997, cls B(34)(a), D(17)(b)

District *Parishad*.<sup>37</sup> All the properties given in a lease or settlement must be reviewed by the Land Dispute Settlement Commission.<sup>38</sup> The Land Dispute Settlement Commission shall resolve all disputes by the traditional rules, regulations, and customary law of the Chittagong Hill Tracts.<sup>39</sup>

Due to all these conditions of this accord, the Government of Bangladesh is legally under obligation to recognise some rights of the tribal people regarding the land property of the hill tracts area. Currently, this peace accord is the base of all the claims of all the rights of the tribal communities of Chittagong Hill Tracts.

### REGIME OF LEGAL RECOGNITION OF TRIBAL COMMUNITY IN BANGLADESH

In Bangladesh, tribal people are recognised as minority communities and there is a special constitutional provision in the Constitution of Bangladesh for the protection of the culture and tradition of the tribes. But as most of the tribal community identifies themselves as indigenous to the land, Bangladesh as a state doesn't recognise any of the tribes as indigenous communities, neither *de facto* nor *de jure*.

**Indigenous and Tribal Peoples Convention 1957:** The State of Pakistan ratified the ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107) on 15 February 1960. So, being part of Pakistan as East Pakistan, the Convention was already applicable on the territory of independent Bangladesh. After gaining independence from Pakistan, Bangladesh ratified the Convention on 22 June 1972.<sup>40</sup> Later on, when ILO introduced a newer convention in 1989, named the Indigenous and Tribal Peoples Convention,<sup>41</sup> Bangladesh had not ratified that convention. However, the ratification of Bangladesh of the Convention No. 107 of 1957 is still in force.<sup>42</sup> As this convention ratified by Bangladesh is still in force, Bangladesh is still under a legal

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<sup>37</sup> Chittagong Hill Tracts Peace Accord 1997, cl B(26)

<sup>38</sup> Chittagong Hill Tracts Peace Accord 1997, cl D(4)

<sup>39</sup> Chittagong Hill Tracts Peace Accord 1997, cl D(6)(b)

<sup>40</sup> Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107) and the Laws of Bangladesh: A Comparative Review* (first published 2009, International Labour Standards Department, ILO Geneva and ILO Office in Dhaka) 2

<sup>41</sup> ILO Convention No 169

<sup>42</sup> Ratifications of C107 - Indigenous and Tribal Populations Convention, 1957 (No 107)

obligation to acknowledge the rights of Indigenous and tribal people, as mentioned in Convention No. 107.

Bangladesh is obliged to take initiatives to make progress for the tribal or Indigenous people if they are lacking socio-economically from the mainstream population, and the state is obliged to integrate the tribal or Indigenous population with the mainstream population.<sup>43</sup> It has been observed that the government of Bangladesh has taken initiatives to connect the hill tracts area.<sup>44</sup> The government had already proposed a plan to connect the hill tracts via railway networks.<sup>45</sup> For the integration of the tribal population with the mainstream population and to create chances for their advancement, the government has ensured that a certain amount of quota will be preserved for the tribal population in government services.

According to the convention, signatory states are obliged to introduce such an educational policy where tribal and indigenous populations will be merged into the formal education system with similar opportunities and facilities to the mainstream population.<sup>46</sup> The mother tongue of the tribal and indigenous people shall be included in their formal education.<sup>47</sup> To preserve the traditions and linguistic rights of the tribal people, the government has incorporated significant tribal languages in the formal education curriculum in the pre-primary and primary education stages.<sup>48</sup>

As per the Convention, the state is obliged to create a different administrative body for the observance and development of multiple types of programs for the tribal and indigenous

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<sup>43</sup> Indigenous and Tribal Populations Convention 1957, arts 2, 4, 5 & 6

<sup>44</sup> Fazle Alahi, 'Khagrachhari awaits greater connectivity, trade as 42 new bridges set to open' *The Business Standard* (Dhaka, 24 October 2024) <<https://www.tbsnews.net/bangladesh/khagrachhari-awaits-greater-connectivity-trade-42-new-bridges-set-open-519118>> accessed 31 January 2024

<sup>45</sup> 'Chattogram Hill Tracts to come under railway network' *The Daily Star* (Dhaka, 24 May 2022) <<https://www.thedailystar.net/news/bangladesh/development/news/chattogram-hill-tracts-come-under-railway-network-3030746>> accessed 31 January 2024

<sup>46</sup> Indigenous and Tribal Populations Convention 1957, arts 21 & 22

<sup>47</sup> Indigenous and Tribal Populations Convention 1957, art 23

<sup>48</sup> 'Textbooks of Pre-Primary and Primary Stage for 2023' (NCTB, 1 February 2024)

<<https://nctb.portal.gov.bd/site/page/c6816afa-4e9f-4bde-8dd0-6d44074baf7f>> accessed 31 January 2024

population.<sup>49</sup> The government of Bangladesh introduced a different ministry for the same purpose, titled the Ministry of Chittagong Hill Tracts Affairs.<sup>50</sup>

From the actions taken by the government of Bangladesh, it can be observed that the government of Bangladesh had complied with almost all the obligations of the Convention except recognising the tribal populations of Bangladesh as indigenous.

**The Chittagong Hill Tracts Peace Accord 1997:** At the end of the 1970s decade, the Government of Bangladesh started relocating climate refugees from the northern part of the country to the hill tracts by offering land settlements to those people, ignited a conflict between the government and an organisation founded by the tribal communities known as *Jana Sanghati Samiti* (JSS). This conflict existed for almost two decades, which caused many casualties to non-tribal, tribal, and law enforcement forces. Many tribal people were forced to move to neighbouring countries. There was a resistant movement among the tribal people against the government. This conflict eventually ended with the signing of the Chittagong Hill Tracts Peace Accord in December 1997.

In that accord, the Government of Bangladesh agreed that Hill District Local Government *Parishad* would be transformed into Hill District *Parishad*.<sup>51</sup> All land of the hill tract area shall be vested in the administration of the concerned Hill District *Parishad*.<sup>52</sup> Properties of the hill tract area cannot be given in lease or settlement without prior permission of the concerned Hill District *Parishad*.<sup>53</sup> All the properties given in a lease or settlement must be reviewed by the Land Dispute Settlement Commission.<sup>54</sup> The Land Dispute Settlement Commission shall resolve all disputes by the traditional rules, regulations, and customary law of the Chittagong Hill Tracts.<sup>55</sup>

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<sup>49</sup> Indigenous and Tribal Populations Convention 1957, art 27

<sup>50</sup> Ministry of Chittagong Hill Tracts Affairs (MOCHTA), *Charter of Duties* (2024)

<sup>51</sup> The National Committee on Chittagong Hill Tracts Affairs, cl B(2)

<sup>52</sup> The National Committee on Chittagong Hill Tracts Affairs, cls B(34)(a) & D(17)(b)

<sup>53</sup> The National Committee on Chittagong Hill Tracts Affairs, cl B(26)

<sup>54</sup> The National Committee on Chittagong Hill Tracts Affairs, cl D(4)

<sup>55</sup> The National Committee on Chittagong Hill Tracts Affairs, cl D(6)(b)

## THE CURRENT STANDING AND FUTURE PROSPECTS OF RECOGNITION OF TRIBAL COMMUNITY AS INDIGENOUS

The current standing of the recognition of the rights of tribal people is not promising. Even though some improvement was made in the Hill Tracts region regarding fulfilling conditions of the Peace Accord, most of the conditions have not been implemented till now. It was the responsibility of the *Jana Sanghati Samiti* to surrender all the weapons held by all its members, along with a list of all the active members, and the government of Bangladesh agreed that upon such surrender, the government would grant general indemnity to the members of *Jana Sanghati Samiti*. Most of the other conditions of the Accord have not been fulfilled yet. The government of Bangladesh was supposed to conduct land surveys in the hill tracts area. But no improvement can be seen in this matter. Even though the government had formed the Land Dispute Settlement Commission, the Commission was not able to show any functional efficiency throughout the whole tenure till its establishment.<sup>56</sup> As per the Peace Accord, the government was supposed to withdraw all the military establishment and para-military camps from the hill tracts area. Due to the degradation of law and public order, the government had not considered withdrawing the military establishment and para-military camps from the hill tracts area. This action also led to a newer series of conflicts between law enforcement forces and the local armed gang, which belongs to the tribal communities. So, having peace in the hill-toothed area and establishing land rights for the tribal communities is still a long-awaited dream.

### Major Findings

1. There is not any worldwide accepted definition of Indigenous people.
2. Tribal people and indigenous people share the same characteristics, which is having a different type of culture and lifestyle from the mainstream population.
3. The ingenuity of any class or society of people depends on them having a different culture and lifestyle from the mainstream population, like the tribal people, and having been

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<sup>56</sup> Fazle Elahi, 'Parbotto Vumi-Birodh Nishpotti Commission Niye 'Hotash' Manush: Commission Chairman' *BDNews* (Rangamati, 25 July 2022) <<https://bangla.bdnews24.com/samagrabangladesh/vieyq7h0re>> accessed 1 February 2024



residents of a certain area from time immemorial or before the arrival of any invasive race or community.

4. The mainstream population of Bangladesh are descendants of Indo-Aryans, and Aryans were invasive migrants from the Iranian plateau.
5. Almost all the tribes of Bangladesh belong to the Mongoloid race, meaning they are also migrants, arriving from the East Asian region of modern-day China, Mongolia, and the Korean Peninsula.
6. The indigenous people of the Indian subcontinent are the *Dravid* people, the *Shantal*, *Tamil*, and *Teli* tribes of Bangladesh belong to the *Dravid* ethnicity.
7. The *Tamil* and *Teli* tribes migrated to the territory of Bangladesh from the region of the southern part of current-day India. From this point, only the *Shantal* tribes of Bangladesh can be considered as indigenous communities of Bangladesh.

## CONCLUSION

Bangladesh, as a state, wishes to settle the disputes of the tribal conflict. Due to the non-allegiance mindset of some separatist tribal groups, the situation of peace and public order in the Chittagong Hill Tracts area is gradually degrading, despite so many attempts from the government of Bangladesh to integrate the tribal communities with the mainstream populations. The government of Bangladesh had also failed to settle some major disputes like disputes related to land rights and the Commission formed for settlement of such disputes failed to gain any success or to show any efficacy. Even though the claim of the tribal communities of being indigenous to the land is not concrete, they have rights to some extent to be identified differently from the mainstream population of Bangladesh. But long-lasting mistrust and conflict of the armed tribal groups with the law enforcement agencies is somehow blocking the way of the efficacious recognition process of the tribal people of Bangladesh and also the process of integration of them with the mainstream population. If armed conflicts in the Hill Tracts region cannot be eliminated, tribal populations will have to struggle for their already recognised rights, and their recognition of being indigenous to the land will not be achieved any time soon.