



HUMAN RIGHTS analysis

Indigenisation of development

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INDIGENOUS peoples are consistently the objects of development politics. Most of the development policies aimed at indigenous peoples frequently stress the importance of the giving up or leaving their culture in order to develop. Many new states after decolonisation process have worked diligently (through assimilation process) to wipe out indigenous history, culture and intellectual thought and replace these with the dominant culture and intellectual thought of the particular groups. In this way indigenous culture, belief, knowledge etc, i.e., their intellectual property rights is ignored and destroyed. Therefore, in this assimilation process under cover of 'nation-building' they are in most cases, undertaking 'state-building' by nation destroying more particularly destroying indigenous nature and their intellectual properties.

This kind of assimilation or state building process in the name of development should be called 'development bias' not 'development'. Indigenous peoples around the world are struggling for liberation from this kind of 'development bias' or 'so called development' and thereby for the protection of their history, culture, beliefs i.e., indigenous intellectual property rights.

Development projects without proper socio-economic survey and consultation with the local peoples bring misery in the life of project surrounded peoples. The Kaptai Dam in Bangladesh created in the 1959-1966 with the USAID funding is one of the most glaring examples of what multiplier and detrimental effect of development projects can be. After the building of the Dam, an area of 655 square kilometers, surrounded by indigenous peoples submerged by artificial lake. It has become a common practice that the national government or governmental agency which implement development project using funds received from international sources often use these projects to mask other agenda or include some additional agenda which are mostly detrimental to the indigenous peoples and environment. The development projects has become the potential principal instrument in the hands of state governments for disempowerment, devaluation and taking away the right to self-determination of indigenous peoples.

Displacement, disease, hunger, loss of livelihood, loss of self-reliance and other threats to physical well-being and detrimental effects to environment are regular results of most of the so called development projects. Therefore, the destruction or disruption of that intangible inalienable and basic interest is a violation of fundamental human rights both collective and individual.

Indigenisation of development

As development projects without prior consultation and proper socio-economic survey becomes unsuccessful and detrimental to environment and brings misery in the life of the indigenous peoples, they are increasingly raising their voice against such development projects. From the perspective of indigenous peoples, such development projects are an intrusive, unsustainable and unplanned influx of outsiders into their life and traditional territories. Indigenous peoples are thus often wary of programs offered in the name of development.

Therefore indigenous peoples are demanding 'indigenisation of development' i.e., development project in their area should reflect indigenous concern, address their needs and no negation and subjugation to their cultural values. There are also some independent initiatives by the development thinkers and human rights activists and jurists towards 'humanization' or 'democratization' of the development process.

The 'indigenisation of development' processes will give due attention to the need of the indigenous peoples to avoid paternalistic or externally conceived responses. They will recognize the need to ensure the full, free, active and meaningful participation of indigenous peoples in the planning, implementation and evaluation of development policies, projects and decisions, and will recognize the potential value of indigenous contributions to such processes. They will also respect indigenous peoples' rights over their land and resources, and will obtain the prior informed consent of indigenous peoples for projects on their lands. Finally, due regard will be given to the need to ensure that indigenous peoples enjoy equitable benefits from economic activities affecting them.

Right to development and the UN initiatives

The United Nations Declaration on Right to Development, 1986 recognized 'democratization approach' and in its preamble recognized 'development as a comprehensive economic, social, cultural and political process which aims at the constant improvement of the well being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom'. (Adopted by GA Resolution 41/128 of 4 December 1986).

The United Nations began its first formal work on indigenous people in

1982 with the establishment of the Working Group on Indigenous Populations. Since then, a wide range of activities has been undertaken as part of the Organization's human rights programs and by the United Nations system as a whole.

In April 2000, the UN commission on human rights recommended to ECOSOC the establishment of a Permanent Forum for indigenous issues as an advisory body to ECOSOC (Resolution 2000/87).

By Resolution 2001/57, the Commission on Human Rights decided to appoint, for a three-year period, a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, with, inter alia, the functions of gathering and exchanging information and communications from all relevant sources and formulating recommendations and proposals to prevent and remedy violations of such human rights and fundamental freedoms.

However, it is argued that the declaration on Right to Development, 1986 does not really define development and offers no further clarification on the indigenous concern or their notion of collective human right to development. Therefore the declaration does not explicitly address the needs and misery



of the indigenous peoples. Thus the General Assembly missed a great opportunity towards 'indigenisation of development'.

It is worth noting and interesting that the 1989 ILO Convention No. 169 on indigenous and tribal peoples which has been strongly criticized by indigenous peoples for not referring to the 'right to self determination' clearly declared that indigenous and tribal peoples 'shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well being and the lands they occupy or otherwise use' (Article -7 of the convention no. 169). It is the first international document attempting to indigenisation of development process. (But this convention is not widely ratified yet and there are some in-built limitations. For example, ILO complaint procedure is not directly open to indigenous peoples).

Emerging international and state standards and practices are increasingly recognizing that indigenous peoples should have rights over their lands and development projects that affect them.

Chapter 26 of Agenda 21 of the United Nations Conference on Environment and Development calls upon intergovernmental organizations to establish a process that empowers indigenous people and their communities through, inter alia, recognition of their lands, support for alternative environmentally sound means of production and arrangements to strengthen indigenous participation in the national formulation of policies, laws and programs relating to resource management and development that may affect them.

Article 30 of the draft United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right 'to determine and develop priorities and strategies for the development or use of their lands, territories or other resources'.

The draft Declaration aims to balance collective and individual rights, recognizing that as individuals we are entitled to certain inalienable rights based on the idea of equality, but at the same time promoting collective rights based on the acceptance and tolerance of difference. At present the draft can only influence governments through its moral force; it isn't legally

binding until it's formally adopted by the United Nations. The Human Rights Commission has set 2004 as the year for its adoption. Until then indigenous and non-government organizations face the enormous challenge of preserving the integrity of the original document against objections from governments for whom economic imperatives are more important than indigenous rights and cultural diversity.

Ethnicity and development

Now a days ethnicity is no longer viewed as obstacle to development. Even institutions like the World Bank have indigenous development plans that not only acknowledge the right of indigenous communities to their own culture, but also stress the importance of their participation in the development efforts [for details see World Bank Operational Directive (OD) 4.20 adopted in 1991]. But for the full realization of indigenous concerns and for the indigenisation of development processes following legal and political measures are to be considered at first:

i) The right to an identity as an indigenous people, which involves the right to be different, and to be free from discrimination in relations with state and society. It is expected such recognition will be accorded through national constitutions of the country concerned.

ii) The right to sufficient territory to reproduce culturally as a people.

iii) The right to autonomy in the various spheres of life as people, i.e. government, justice, education, health, social and economic way of life, etc in order to regulate ethnic reproduction and cultural changes.

iv) The right to participate in the various spheres of national life and the right to prior consultation on the measures, plans, programs, and projects that may affect their ethnic identity, their territories, or the natural resources situated therein.

v) The right to development, in the sense of future development of their social groups, their culture, and improvement of their own quality of life, in accordance with their cultural and social systems and the life plans they devise or carry out as peoples.

Experience has shown that it is beneficial to involve indigenous people in a development project, which is ultimately a step towards 'democratization' and 'humanization' of development process. However following factors are to be considered while engaging indigenous peoples in the development project concerned-

! The active commitment and collaboration of stakeholders are essential for the fulfillment of a project (e.g., when the project area is inhabited or privately owned by indigenous peoples).

! Access to the natural resources within the project area is essential for local livelihood, security and cultural heritage; and

! Indigenous peoples express a strong interest in being involved in the development project.

The involvement of indigenous peoples in development process is a significant step for the indigenous peoples to retain their culture, history, knowledge, beliefs etc and even revive what has been lost in the past. However, the future that they are designing should be in accordance with their own way of development thought, only then they would be able to recuperate what has been lost in the past and sustain their intellectual property rights and thereby maintain cultural survival. Above all, the indigenisation of development thought contributes to the protection of indigenous intellectual property rights and puts indigenous peoples at the center of the development process.

The indigenisation of development process is an initiative towards ensuring indigenous peoples' survival in today's globalized world. The practical steps that they are taking about and making are designed at salvaging the integrity of their culture and recuperating what they have lost due to century long oppression and repression inflicted upon them.

However it should be born in mind that the indigenous peoples do not want development in isolation rather want to contribute and believe in mutual cooperation. Simply put, they want to manage, decide and freely determine their internal community life including social, economic, cultural, political and ecological means and of the sovereign participation of their people in the development process. The days of considering the indigenous peoples as an obstacle to development has gone, it is time to accord due recognition of indigenous peoples participation at the development process as the knowledgeable managers of their environmental and development problems i.e. 'indigenisation of development'.

If provided with adequate resources, administrative support and constitutional recognition, indigenous peoples will be able to devise independent appropriate solutions to their development problems. Thereby the historical process of their political and economic marginalisation may at least be partially corrected, so that the indigenous peoples are in a position to take meaningful steps towards building and controlling their own destiny.

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RIGHTS column



Homage to a gallant green worrier

SHAFIQUK ISLAM CHOWDHURY



Five years ago Dr. Mohiuddin Farooque left this world, but green trees of this country, flowers, birds will never forget him. Because, he was their person. This gallant worrier fought for survival and flourishing of these speechless components of environment. His battlefield was from the courtroom to the courtyard of polluters. He showed us the way how one can use the concept of Public Interest Litigation for the interests of public.

A bright student of law, Dr. Farooque, after completion of Ph.D. from Manchester returned country and founded the Bangladesh Environmental Lawyers Association popularly known as BELA. He accumulated some energetic talented young professionals to shape up his dream. He trained them and made each of them dedicated to the cause.

When he started his activism the environmental matter was not so much exposed. People often opined that we are worried about our food and shelter and environmental activism may be nothing but a luxury. Keeping this reflection of people in mind Dr. Farooque started filing suits in the High Court because litigation makes substantial impact on polluters and encourage the victim of the polluter to raise their voice.

He brought a number of sensational issues to the court and got appreciation from the bench in the form of rule nisi or orders. His first writ was against the environmental pollution caused by the election campaign in 1994. In this case he protested the illegal encroachment of footpath by the election stall and graffiti in the walls. The High Court came up positively and later on the Election Commission ordered to clean the graffiti of wall and demolish the stall.

Backed by the BELA team he filed series of cases including industrial pollution, vehicular pollution, illegal encroachment in Uttara and Gulshan lake, pollution caused by brick field, hill razing, Gas explosion in Magurchara, kids using as camel jockey, importation of radiated milk. In all cases he argued for the environmental conservation and convinced the learned Judges for their positive pronouncement. However, his greatest achievement was the famous FAP-20 case where the court questioned Dr. Farooque's standing for filing the case before the court as he is not personally aggrieved by the environmental pollution caused by the FAP project in Tangail. As per Section 102(1) if any person personally aggrieved can come to the court, on behalf of him any other person cannot file the case.

This situation became a hindrance to the Public Interest Litigation (PIL) in the country because most of the victims of pollution have not easy access to the court because of financial constraint. On the other hand, any public-spirited lawyer cannot come to the court on behalf of the said victim. For this impasse, this case became very crucial, especially for the social activists and social thinkers.

At long last the Appellate Division of the Supreme Court extended the interpretation of the aggrieved person on 25 July 1996 in Dr. Mohiuddin Farooque Vs. Bangladesh case and declared that from now on any person who has sufficient interest can come to the Court on behalf of any distressed person. This was a landmark judgement and by this judgement the legal arena got its horizon to stand beside the underprivileged people extended.

It is very painful that after this judgement Dr. Farooque got very little time to contribute to the nation more and left this world on 2 December 1997. However, his BELA team forwarded his spirit and came up with some big success in the cases on encroachment in the river Buriganga and vehicular pollution in the city.

To commemorate the memory of Dr. Farooque, general people like us will wish to see more public interest cases in the High Court. Dr. Farooque had sown the seed, now we need to grow the plant as a big tree. That would be the proper way to respect him.

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RIGHTS investigation

Bhutan: The Chickens are coming home to roost

HUMAN RIGHTS FEATURE

It is an old truism that human right violations in a country act as an early warning system when assessing the political health of a society. As in medical diagnosis, cures are easily available in the early stages. The international community largely ignored the human right violations in Southern Bhutan in the early nineties. India chose to look the other way when ethnic Nepalese of Bhutanese citizenship were forcibly evicted and connived with the Bhutanese by shepherding the refugees into Eastern Nepal. Nepal and Bhutan do not have a contiguous border. This failure to read the tea leaves is now proving costly to both Bhutan and India. Human Rights perspectives are not only ethically correct but in the long run also create the conditions where long term solutions are possible.

Nestling between India and China, the tiny Kingdom of Bhutan has defacto lost much of its sovereignty in the last decade. It only remains to be seen as to how long the transmutation from defacto to dejure loss of sovereignty will take.

Much of the blame squarely rests on the shoulders of the present King Jigme Singhye Wangchuk. Not having either the political sagacity or diplomatic skills of his father, he has led Bhutan to a situation where its very existence is now in question.

The latest situation is of the King's own making. Starting with an ill-conceived policy of discrimination, harassment and finally forcible eviction of over a hundred thousand of his subjects of Nepalese extraction, he depopulated large parts of Southern Bhutan. Not satisfied, he then went on to take on the Sarchops, who are his ethnic cousins in Eastern Bhutan. Selling Shangri La to a gullible western audience was not too difficult but the hard-nosed reality of his geopolitical situation has yet to dawn on him.

The whole Eastern watershed area of the Himalayas has been in a state of demographic flux for centuries. In the last hundred years, the population explosion has led to land hunger of a kind experienced in few parts of the world. The depopulated areas of Southern Bhutan were only too inviting to many ethnic insurgent groups living in the contiguous areas on the Indian side of the border.

The first to move in were the United Liberation Front of Assam (ULFA). The ULFA is fighting for an independent Assam. Initially buying off local Bhutanese officials, they were able to consolidate their presence before Thimpu, on the prodding of New Delhi woke from its lotus eating slumber. The indigenous Bodo people who live on both sides of the Indo Bhutan border soon had their armed factions setting up on the Bhutanese side of the border. Of late, the Koch Rajbansis, another indigenous peoples group, have also dug in with their Kamtapur Liberation Organisation (KLO). Eyeing all this territory for the asking, where the Bhutanese King presides over a state apparatus which is more make believe than real, both armed factions of the National Socialist Council of Nagaland (NSCN) led by Muivah and Khaplang have also been partaking of the sanctuary offer.

The ULFA and the National Democratic Front of Bodoland (NDFB)

shifted their primary bases to Bhutan from Bangladesh in 1997-98. An increasing approximation in the relationship between New Delhi and Dhaka after Sheikh Hasina's Awami League came to power in Dhaka in June 1996, led to the signing of the Chittagong Hill Tracts Peace Accord on 2 December 1997 between the insurgent Jana Samhati Samiti (PCJSS) of the Hill peoples of the Chittagong Hill Tract (CHT) and the Government of Bangladesh. New Delhi exerted pressure on the PCJSS to sign the CHT Accord.

The Government of Bangladesh subsequently reciprocated the Indian gesture by arresting Mr. Anup Chetia, Secretary General of the ULFA on 21 December 1997 in Dhaka. As Dhaka mounted pressure on the Indian insurgents, ULFA and NDFB shifted their bases to Bhutan.



Bhutan gradually found itself entangled in what was primarily India's internal conflict as ULFA used Southern Bhutan as sanctuary to conduct raids across the border in India. However, the involvement went further. Many Bhutanese officials connived in and promoted the ULFA presence in Southern Bhutan for pecuniary benefits. In a rare press statement on 6 July 2000, the Royal Government of Bhutan (RGOB) confirmed that the ULFA was transferring funds using Bhutan's diplomatic bag facilities. Two junior employees of the Protocol Division of the Bhutanese Foreign Ministry, Wanchuk Dorji, a grade 15 employee, and Lhaba Tshering, a grade 17 employee were sacked and legal proceedings initiated. Police investigations revealed that they had sent about US \$38,000 and Indian Rs 300,000 using the diplomatic bag facility between January and July 1996. Two other government employees and two private individuals have been sentenced by the district court in Samdrup Jongkhar to life imprisonment and five years imprisonment respectively for dealings with the ULFA.

India has continued to exert diplomatic pressure on Bhutan to expel the Indian insurgent groups. In addition, India has been training the Royal Bhutan Army in counter insurgency warfare and has provided sophisticated arms to deal with the insurgents. India also has regularly suggested holding of joint military operations in Southern Bhutan to flush out the ULFA and NDFB. The only operation so far done jointly have been in a three-kilometer radius of the India Bhutan border, but this has yielded little result.

In its July 2001 session, the Bhutan National Assembly, chaired by King Jigme Singhye Wangchuk, expressed serious concern about the presence of the ULFA and NDFB. "The ULFA headquarters, used by their leaders and military commanders, must be moved out of Bhutan," the King was quoted in Kuensel, the mouthpiece for the Palace in Thimpu.

The Bhutanese National Assembly resolution adopted warned that the Bhutanese Government would not agree to any more meetings with the ULFA insurgent leadership on vacating their camps in the kingdom.

Bhutan's Home Minister Lyonpo Thinley Gyamtsho informed the Assembly that he had held six rounds of direct talks with the top ULFA leadership since 1998 on the issue of dismantling their camps. The Home minister said the ULFA had opened a new camp on a mountain ridge above the Samdrup Jongkhar-Tashigang Highway in southern Bhutan, raising the number of camps of the ULFA to six, including its main general headquarters and training base.

The NDFB, a tribal rebel group in Assam, has seven camps inside Bhutan. It is reported that the Kamtapur Liberation Organization (KLO), had set up two bases inside the tiny Buddhist kingdom.

The ULFA signed an agreement with the Bhutanese Government in June 2001 to close down four of its nine camps in the Himalayan kingdom, besides reducing the number of cadres by December 2001. In November 2001, Mr. Aurobindo Rajkhowa, the Chairman of ULFA also met the King in the Bhutanese capital Thimpu to discuss this issue. However, there has been little or no evidence that ULFA has honored its commitments on one side or on the other side, any efforts by the Royal Bhutanese Army to enforce compliance.

After the refusal to move out, the Bhutanese King, Jigme Singye Wangchuk reportedly met the Chairman of the United Liberation Front of Asom (ULFA) Mr Aurobindo Rajkhowa, and political advisor, B Borghoin, for about an hour on 15 and 16 February 2002 at the Phakupang camp of the ULFA in South Bhutan and requested the ULFA to leave Bhutan. The ULFA leaders reportedly promised the King that they would discuss the issue amongst themselves.

The Indian Attitude

New Delhi has shown remarkable restraint but indications are that the patience of the Pundits of South Block or more importantly their counterparts in the Indian security establishment is wearing thin.

The Indian Government continues to mount diplomatic pressure on Bhutan. On 4 August 2002, India's External Affairs Minister Mr. Yashwant

Sinha visited Thimpu. The visit of the Foreign Minister was followed by that of the Chief of Staff of the Indian army, General S Padmanabhan from 25-27 September 2002.

Bhutan has so far rejected all offers of conducting joint military operations. Any joint initiative involving operations from the Southern districts to the inner districts of central Bhutan involving Sarbhag, Chirang, Dagana, Wangdiphodrang, Tongsa, Bumthang, Shemgang, towards further east in the districts of Samdrup Jongkhar, Pemagatshel, Tashigang, Mongar, Tashiyangtshi, Lhuntsi would have serious domestic implications for a King and monarchy, which is less than popular in these areas. It is reported that 14 out of the 18 districts will be affected by any joint military operations by Indian and Bhutanese forces. Bhutanese Government sources accept that at least 80,000 people would need to be evacuated, relocated and funds mobilized for their well being in preparation for an armed conflict.

While Indian Defence and Home Ministry officials continue to suggest holding joint military operations, Bhutan is wary of the idea. Bhutan is only too aware that India has failed to find military solutions to its insurgency problems. There is no guarantee that the insurgents will be flushed out through a single operation. This may prolong Indian military presence in Bhutan raising questions about its sovereignty, in addition to possible human rights abuses during military operations and its concomitant fallout on polity in Bhutan.

New Delhi has been circumspect in all enquiries concerning joint Indo Bhutan military operations, as it is aware of the wider concerns of the international community on this count. However, New Delhi's dilemma relates to the realization that Thimpu is not in effective control over Southern Bhutan and that this area is being used as a springboard for insurgency activities in an area where the geographical link between the Indian heartland and North Eastern India is at best tenuous.

Bhutan has dealt with the Indian insistence on the issue of joint military operations by hoping that the nightmare that it finds itself in will go away if it procrastinates long enough. The nightmare, however, is only too real.

Bhutan's attempted flirtation with Beijing and earlier discussions to explore the possibility of allowing Beijing to open a diplomatic representation in Thimpu has also not won it friends in New Delhi. Beijing however, has been conscious of New Delhi's concerns and has been doing any legwork, gingerly. New Delhi is also concerned that the Maoists in Nepal may soon cast their eyes and influence on Southern Bhutan. The fear that the infectious Maoist virus may infect the Bhutanese refugees in Eastern Nepal is a recurring worry shared by Kathmandu, New Delhi and Thimpu.

Bhutan not having any historical memory of its own has however been reminded that the last time it allowed cross border raids into British India in the 1770s, it lost the strategic area of the Duars. This time it may not just be Southern Bhutan that it loses but its existence and the make believe world of Shangri La and Xanadu that the King and his courtiers live in.

Human Rights Feature is the voice of the Asia-Pacific Human Rights Network, a joint initiative of SAHRDC and HRDC