

**HUMAN RIGHTS** analysis



**LAW** campaign



BETWEEN EMPIRE AND NATIONALISM

# The marginalisation of the indigenous people in Bangladesh

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International law as well as other disciplines, the thought that indigenous people are entitled to a special set of rights has become incontestable and universal. Admittedly, discourses purely relating to rights and duties of indigenous people originated in international legal plane may contain a kind of unanimity, though the case is not same when viewed from other disciplines' point of view in the national plane. For instance, any discourse focusing on legal sociology of the American Red Indian cannot be meant to qualify the situation regard to the indigenous people of Bangladesh. That's why it needs more circumspection in dealing with issues regarding indigenous people in the national context, because many important factors situated apparently outside legal arena may have close link with it, without which the outcome of the discourse may be misleading. Granted, the concern of the present article is to identify the reasons for marginalisation of the indigenous people of Bangladesh and its solution. But in doing this, we will go beyond the frontier of law for the sake of a better discussion and give special emphasis on two other things, namely Imperialism and Nationalism.

After a constellation of scholars' effort to put anti-imperialist thought in motion, it has become crystal-clear that any discourse about history of a colonised territory cannot become complete unless intrusion of imperialism in native culture is properly pointed out, which Edward Said has pictured almost exhaustively in his work "Culture And Imperialism". Similarly as inhabitants of a colonised territory, this statement goes true for the indigenous people of Bangladesh because their present condition reveals that marginalisation of the indigenous people has causal relationship with earlier empire and latter nationalism immediately and remotely in a linear flow. To elucidate the role of empire, the first thing we can mention is its hegemonic nature. That is to say, imperialism always imposed its culture on periphery in various direct and indirect ways to obtain consent of the ruled. In this endeavour, the various means applied by the empire such as reshaping physical environment, remoulding ideological fabric of the native people or legal and administrative endeavour helped to turn indigenous people a peripheral entity. Examples may be drawn from literatures of decolonisation and works of subaltern school of history.

Eventually, towards the end of imperial era nationalism became a predominating thought in the political trends since the progressive members of the majority people were acquainted with western political ideas through education. But once again, nationalism failed to patch up the rupture between the indigenous people and national politics. It happened not for the reason that the indigenous were lack of western education; in fact it entailed a problem the root of which lies in the philosophical idea of nation-state itself which was impossible for the numerically and geographically inferior indigenous people to resolve in their favour. Thomas D. Musgrave in "Self-Determination And National Minorities" has rightly put it-

"The concept of nation-state presupposed an exact correlation in the boundaries of the nation and the state; in reality this seldom occurred. Whenever it did not occur, so that some other ethnic group was also encom-

passed within the state, tension arose between the majority and indigenous groups, because the indigenous was ipso facto an alien element. The indigenous could not join in building the national character and culture of the dominant people, nor could its own national aspiration be satisfied."

Accordingly, the situation after dismantling of British Empire in Indian sub-continent in 1947 surprisingly conform to the foregoing statement because the partition of sub-continent into two separate states, namely

Indians and Pakistan, took place on the ground of ethno-religious identity with hundreds of indigenous and religious subgroups in each state's boundary. What is more, the state of Pakistan was founded on strong religious nationalism which after 1947 turned into something not less than what should be exactly called religious fanaticism. In the following decades, the absence of constitutional democracy in Pakistan led to gradual decay of rule of law and paved way for intrusion of despotism and power politics wherein religion appeared as a conclusive determinant in socio-political events. So it was certain that in religious sentiment swayed Pakistani politics, non-Muslim communities including the indigenous people would be edged out of the scene and succumbed to bondage of domination.



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On the other hand, as a reaction to this unjust domination and exploitation in the name of religion, resistance began to grow in East-Pakistan against the ruling class in the form of a rather secular political movement demanding autonomy finally resulting in a historic liberation war. After independence, the adoption of the constitution for the People's Republic of Bangladesh deserves mention for its bearing on the indigenous issue on two grounds. The first is undoubtedly Bangalee nationalism, which was then and there rejected outright by the indige-

ous people. The second is incorporation of article-38 to the effect that "no person shall have the right to form, or be a member or otherwise take part in the activities of, any communal or other association or union which in the name or on the basis of any religion has for its object, or pursues, a political purpose". The objective of this proviso was to cause Secularism, one of the fundamental principles of the state policy to take effect, and thereby to found a theoretical basis for a secular kind of nationalism which would entitle anyone from any caste, race or religion

on factors which should be left off to individual's own choice, it gradually becomes synonymous with extremism and fanaticism which results in purging of lesser community from national politics by manipulating state power and public sentiment. To do this an artificial ethnic barrier is also constantly maintained. In Bangladesh, the Chittagong Hill Tracts tragedy is a burning example of this. Similarly the marginalisation of the indigenous people in Bangladesh has chiefly stemmed from their constant absence from the mainstream national politics. Though apparently this is attributable to causes like numeric inferiority, weak economic condition or disempowerment, the fundamentalist elements in mainstream politics, as discussed earlier is equally liable. The reinstatement of religion based politics, inclusion of Bismillah-Ar-Rahman-Ar-Rahim and Islam as state religion in the Constitution has set out a trend of Islamic Nationalism, which was further reinforced by propaganda of some political parties as a means of achieving political aim. In fact this strategy cuts both way While labelling people of other creed as the unpatriotic and unreliable fringe in the eye of the majority Muslim, it also deploys social force by capitalising people's religious sentiment to create sharp ethnic schism so as to inflict on the ethnic minority groups (inclusive of the indigenous) a mixed feelings of social pressure and insecurity. The outcome of this situation is very serious in the first instance history is gradually failing to work as a connective among different sections of people, so politics is becoming more fragmented and saturated with ethno-religious flavour. The second one is even more alarming the gap between our constitutionalism and politics is increasing. And if it continues at this pace, the first one falling prey to this will be the indigenous people.

But by the last comment it is not intended to mean that law has no role to play in resolving the present crisis pertaining to the indigenous people. Rather it must be admitted that in some cases law is the only solution. Even then there are certain rights which of whose enjoyment depends on political attitude and atmosphere. In our Constitution some of these rights, purely of civil and political nature have the status of fundamental rights, without whose enjoyment it is impossible to secure the fundamental aim of the state that is to realise through a democratic process a socialist society, free from exploitation in which rule of law, fundamental human rights and freedom, equality and justice, political, economic and social shall prevail. With this end in view, a legal reform with some positive discrimination may be done, yet it remains doubtful how far this can serve to eradicate mutual distrust between the majority and the indigenous flowing from the long lasting dogmatic political trend. Because no initiative has properly been taken since the imperial period down to the present to bridge the gap between the nation and the indigenous people. Without the help of politics in prevailing circumstances, it would nearly be impossible for law to work as an adhesive to fix this crack. So alongside normative reform, the politics should be absolutely secularised which will better solve the riddle of nation and its boundary.

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## Control arms campaign



PHOTO CONTROL ARMS

"A gun is as easy to get as a packet of cigarettes." - Evan Jean Lolless, 34, serving life imprisonment for murder in the USA, 1997.

The issue is simple. The unregulated supply of weapons makes it easy for criminals to murder, for soldiers to kill indiscriminately, and for police to arbitrarily take lives. Today's weapons are quicker and more powerful than ever before. And in the wrong hands, faster and more powerful weapons mean more abuse and more wasted lives.

It's not just unlawful killings during wartime that is on the increase. Military and security equipment is being misused by soldiers, paramilitaries, and police to kill, wound, and commit terrible atrocities against civilians during peacetime too.

The global misuse of arms has reached crisis point. The flow of arms to those who openly flaunt international human rights and humanitarian laws is being ignored by many governments and companies. Guns especially have never been so easy to obtain. Their increased availability threatens life and liberty in communities and cities around the world. Including yours.

The lack of control of the arms trade is fuelling conflict, poverty, and human rights abuses worldwide. Every government is responsible. It doesn't have to be like this. Oxfam, Amnesty International, and a group of more than 500 NGOs in the International Action Network on Small Arms (IANSA) are calling for a global Arms Trade Treaty to bring the trade in weapons under control and for local action to protect civilians from armed violence.

Today, arms are so prevalent, for example it is estimated that there is one gun for every 10 people on the planet men, women, and children. "The excessive accumulation and illicit trade of small arms is threatening international peace and security, dashing hopes for social and economic development, and jeopardising prospects for democracy and human rights." And it's not just Oxfam, Amnesty International, and IANSA who believe that. These words were spoken in 2002 by UN Secretary-General, Kofi Annan.

Uncontrolled arms also fuel poverty and suffering. There are around 639 million small arms and light weapons in the world today. Eight million more are produced every year. Without strict control, such weapons will continue to fuel violent conflict, state repression, crime, and domestic abuse. Unless governments act to stop the spread of arms, more lives will be lost, more human rights violations will take place, and more people will be denied the chance to escape poverty. For many years, in our work around the world, Oxfam, Amnesty International, and IANSA have witnessed the human cost of arms abuses and campaigned for tougher arms controls. But now the situation is critical. Urgent measures are needed immediately. Governments need to take action at every level, from communities to the international arena, to stop this suffering.

Sixteen year old Camila Magalhaes Lina from Brazil, lost the use of her legs in 1998, when she was hit by a stray bullet in a shoot out between thieves and private security forces while walking home from school. In the 60 seconds it takes you to read Camila's story, it's likely that another two people, just like her, have been seriously injured by the use of arms. Someone else won't have been so lucky. They're dead. By 2020, the number of deaths and injuries from war and violence will overtake the numbers of deaths caused by killer diseases such as malaria and measles.

Without strict control of arms exports and measures to protect people from their misuse, countless others will continue to suffer the catastrophic consequences of the arms trade. Readily available weapons will intensify and prolong wars. More people will be terrorised and forced from their homes. Families will be prevented from growing food to feed themselves or earning enough money to send their kids to school. Human rights abuses will continue. People will be trapped in poverty. This isn't fiction. Oxfam and Amnesty International and IANSA members work with people who experience these atrocities every day. The only way to end this cycle of poverty and suffering is to control the trade in arms. The time to act is now; face up to the arms crisis!

Source: IANSA (International action network on small arms).

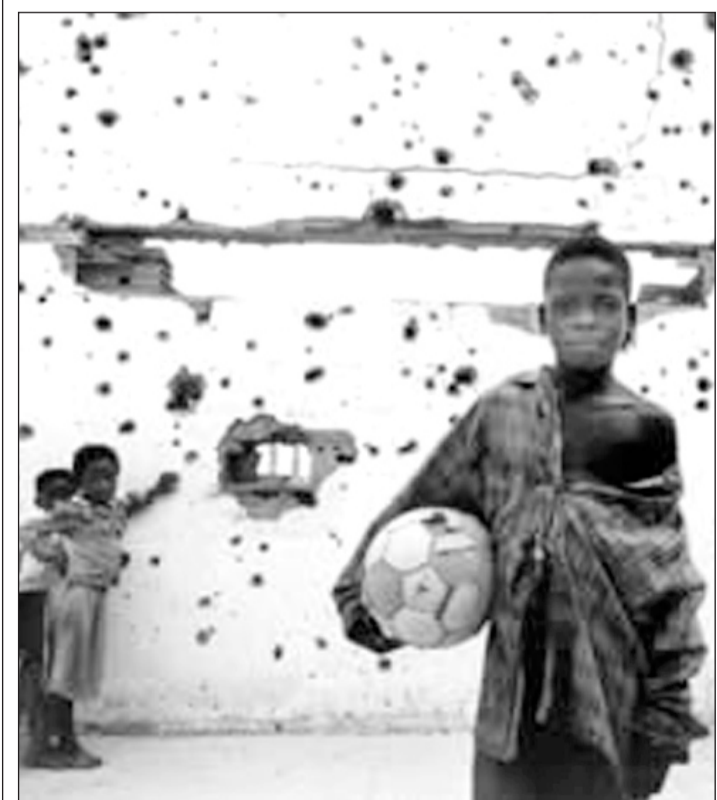


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**LAW** opinion

# Judicial lock-up in Shikarpur

ANEES JILLANI

It is against the law in Pakistan, and perhaps for that matter, in almost all the civilised countries of the world, to keep children with adult prisoners. I need not explain as to why this norm is practised. The colonial rulers introduced the formal system of prisons in the Indian Subcontinent, and soon thereafter also advanced the notion of keeping juvenile prisoners separate from the adults. Concepts such as Borstal Schools and Reformatory Prisons were initiated for the first time in this part of the world.

It was nothing but shocking then that children in certain prisons in the interior of Sindh were being kept with the adult prisoners till very recently. The military a couple of years ago tried to remove the children from the adult barracks in the Sukkur and Hyderabad jails and it led to serious riots. Fortunately however, the authorities eventually succeeded in segregating the children from adults.

I had thus had no option but to visit the Judicial Lock-up in Shikarpur (also known as Mukhtiarhari) during my recent visit there when I was told that children were being kept there with the adults. What I saw there is indescribable, and could lead to innumerable suspensions, eventual dismissals and resignations, and even toppling of governments in another country. Not here of course.

The clean shaven Mukhtiarhar at the Lock-up, Mr Imtiaz Ahmed Mangi, appeared an educated, decent and friendly person. But he looked so out of place in a building which was perhaps more than 150 years old, and one-third of which had almost collapsed. What looked hilarious was hundreds of sacks lying in a room with a collapsed roof totally covered with dust and some spilling paper all over. I told him that I wanted to visit the Lock-up and he looked bewildered. He was perhaps expecting me to express an interest in some major real estate deal. So without wasting anytime, we moved to the so-called jail. I told him that I am primarily interested in meeting any under-18 prisoner: there was one.



The child had an infected gun shot wound, and was lodged with about sixty other prisoners in one room. I had never seen such a thing in my life despite the fact that I must have visited several dozen prisons in my life. The people behind the bars across myself hardly had room to stand what to talk of sleeping in that place. While talking to the prisoners I noticed that there was a hole leading to an adjoining room. I was relieved but not for long for when I walked a few steps, I noticed that it was equally full. Where is the toilet I enquired the prisoners. Right behind them in a corner. I told the Mukhtiarhar that I had to see it. He said that he would not advise me as he could not guarantee my security once I enter the barrack. I told him that I was willing to take the risk; and all this conversation was going on in front of the prisoners. So the guard reluctantly and cautiously but of course

dramatically opened the barrack iron gate. I entered and the prisoners suddenly lined up on both sides and started shaking my hands and a plethora of complaints started. I reached the toilet; it was clean and I was happy. It goes without saying that the prisoners themselves had to clean it as the prisoners in Pakistan are invariably their own bonded labour.

I asked Mr Mangi as to what kind of hell is this? And can it get worse than this? I told him that at least release the child, particularly so because he had committed no crime and was only picked up by the police following his gun shot wound after an inter-village feud. He said that it was not possible. I am always reluctant to act as sureties or guarantors for anybody but ended up even offering myself as the child's guarantor. Mr Mangi said that he was helpless as he did not have the authority to release the child.

We kept walking towards the other remaining barracks (there were a total of six) and I could not help noticing that the number of inmates kept thinning out until we reached the last barrack where there were only a few prisoners in the whole room. Now do I need to explain the reasons behind this luxury? And the last two barracks were the only ones that were getting any sun light. The others did not get any. One prisoner was even openly using a mobile phone and I could not help recalling the recent action taken by the Supreme Court of India against the Bihar Government for letting a sitting MLA from the ruling party use his mobile phone from the prison.

On the one hand was the under-18 prisoner and then I came across an around 75 year old man. He was shaking extremely violently and my first reaction was that he was perhaps simply acting in front of me. I told him to stand still but the other prisoners told me that he was not acting and this is how is shaking all the time. His crime: shooting. The guy could not shoot an elephant, unless he was really a good actor.

There are a couple of things now that should be kept in mind about the Shikarpur Mukhtiarhari. It was a Judicial Lock-up and there were thus no convicted prisoners. Almost 90% percent of captives eventually

are absolved of all charges and unconditionally released by courts. What would be the compensation to the 270 under-trial prisoners locked in this Lock-up? Had it been the United States, they probably would have ended up recovering millions as damages. Here all they could earn from the courts of laws are lots of tareekhs (adjournments).

The second point about this Lock-up was its overcrowdedness. It was simply unbelievable to see so many people lodged in one room. And the crux of this whole phenomenon is the fact that there is a newly built District Prison in existence in Shikarpur that is lying unutilised for the past three years due to bickering amongst the various departments in the Government of Sindh. I leave it to the Government officials to explain the reasons for the delay in making the prison operational. But regardless of the basis, and how good it may be, how would anybody in the Government of Sindh explain the misery of these prisoners living in the enlightened moderate Republic.

Mr Mangi nice as he was insisted on my taking cold drinks and biscuits in his office. It was hard to do this after seeing all of the agony. I called the DCO - District Co-ordination Officer from his office enquiring as to why is the Government not transferring the prisoners to the newly built prison. He said that he was helpless and instead asked me to help him. Strange? This Lock-up is not a normal one and so the prisoners are not even allowed to go out at any time of the day. You can imagine the plight of the ones who are living in the barracks that are not getting any sun light in this cold. All kinds of ailments in such an environment are simply expected to be part of life. Mr Mangi mentioned in passing that scabies is one of the most common ailments in this place: the biscuit almost fell out of my hands. I found an excuse to rush to his toilet to wash my hands but there was no water. I found some drinking water to clean my hands. Hands hopefully were free of scabies but the mind has developed bad patches about this strange system obtaining in our Land of the Pure.

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