

LAW

vision

Adivasi rights in Bangladesh: Where have they came in the last two decades?

DEVASISH ROY

JANUARY 1, 2005 heralded the beginning of the Second International Decade for Indigenous Peoples. This was deemed necessary because the first decade was clearly inadequate to deal with the legacies of colonialism, racism and other ills perpetrated upon indigenous peoples over the centuries. The main theme of the First Decade from 1995 to 2004 was "Partnership in Action".

special UN Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People. Professor Dr. Rodolfo Stavenhagen of Mexico has been appointed to this office. The other fulfilled target of the Decade was the establishment of the UN Permanent Forum on Indigenous Issues, which reports annually to the Economic and Social Council (ECOSOC) and provides expert advice to ECOSOC and to the UN specialized agencies. The third major aim of the Decade was

Rajbangshi, among others. Then there are the other so-called "tribal" peoples in north-central, north-eastern and southern Bangladesh, including the Garo (Mandi), Hajong, Khasi and Rakhaing. None of these peoples accepts the term "tribal", or its Bengali equivalent, "upajati", on account of its pejorative connotations. The East Bengal State Acquisition and Tenancy Act of 1950 ("EBSAT ACT, 1950") uses the terms "aboriginal tribes and castes" to refer to the Adivasis of the plains.

the constitutionally-protected EBSAT ACT, 1950, regarding transfer of aboriginal lands to non-aboriginals. Theoretically, an aggrieved aboriginal could go to court, but the impecuniosity of the dispossessed prevents any action to obtain legal redress. There are no viable alternatives to suo moto state action to implement this law.

National park, Eco Park and the human 'Denizens'

The Garo in Madhupur are far from happy. A "National Park" has been created on their traditional land, with a concrete wall that attempts to keep them away. A local leader, Piren Snal, who led a peaceful protest against the wall, had to give his life for his people. Go westwards towards Sylhet, the Khasi will tell you about the "Eco Park" created on their land, from which they are threatened with eviction. Just about a week ago, many Khasis were threatened with eviction by Forest Department personnel and Bengali villagers. The Khasis are not willing to be relegated to a status of human 'denizens' for the benefit of city-based visitors to the so-called Eco Park. Until the 1980s, many Khasi hamlets or purjis held formal leases from the Forest Department. Not any more, I am told.

Land alienation & denial of Self-Determination

Compared to the plains, the self-government rights of the indigenous peoples of the CHT are more secure, at least by law. However, you will find many Marma, Tripura or Chakma complain about not having their alienated lands restored. They may also complain about militarisation and human rights violations. Ask a Tanchangya, and he will tell you about the non-acknowledgment of their people's self-determination right. Other members of the smaller indigenous groups may complain of inadequate representation in the district and regional councils. Yet others may say that the 1997 Accord cannot adequately safeguard the CHT peoples' rights. And I have not said how the situation varies between men and women. In general, the situation of Adivasi women is worse than their men because they suffer as members of a disadvantaged minority and indigenous group, and also as women, even among their own people. I shall

hopefully write more about these issues in future.

Indigenous peoples in Bangladesh and the UN year and decade

On 9 August, 1993, the Bangladesh indigenous peoples celebrated the International Year of the World's Indigenous People, even though the government had ignored the event. They demanded constitutional recognition of their cultural integrity and political status. Leading members of Bangladeshi civil society, including the greatest living Bengali poet, Shamsur Rahman, extended their solidarity to the indigenous cause. The impact of the international events was thus felt within the country in various ways. Firstly, the UN events led to the forging of greater unity among the country's indigenous peoples. Secondly, it instilled a greater sense of pride in the indigenous identity. Thirdly, it led to the growing currency of the terms "indigenous" and "Adivasi", which has also facilitated intra-indigenous unity.

Indigenous identity and Bangladeshi political leaders

At United Nations fora, representatives of the Bangladesh Government have occasionally declared that there are no 'indigenous' people in Bangladesh, merely "tribals", or that all Bangladeshis, including Bengalis, are indigenous. The position is somewhat similar to that of the Government of India's, which too prefers "tribals" to 'indigenous'. However, barring some exceptions, the growing trend over the years has been to provide greater respect towards this identity. Both the Prime Minister and the Leader of the Opposition have sent messages of goodwill to the Adivasis on Indigenous People's Day in previous years, addressing them as "Adivasi". More recently, the draft national Poverty Reduction Strategy Paper ("PRSP") has used the terms "indigenous/Adivasi" in the Bangladeshi context. History cannot be denied. The Bangladeshi indigenous peoples were living in and sustainably managing large parts of the country long before other ethnic groups settled in these areas. In any case, it is not the primordial basis of their identity that is important, but the fact that indige-



nous peoples have historically been denied a role in state-formation and state-building. International Treaty law and Customary International law on human rights and indigenous peoples' rights seek to reduce the unbalance, and do away with some of the legacies of these historical wrongs and inequities, including through affirmative action or protective discrimination.

Towards dialogue, peace and development

The overall situation of the indigenous peoples of the country is a case for serious concern and calls for concerted action through dialogue, mutual respect, and trust. The recent Government-indigenous dialogue on the PRSP was a positive example to be emulated. There may be differences between the two, but the gaps can definitely be narrowed down. Greater devolution of authority to the hill councils, and direct representation of the plains Adivasis in the Special Affairs Division that deals with Adivasi issues for the plains - would accelerate development in the long-neglected Adivasi areas. That would instil a stronger sense of "Bangladeshihood" than to continue to keep them excluded from governance and development. Certain

sections of the government occasionally react in a frenzied manner to Adivasi protests against the violation of their rights. It is a norm of healthy and democratic societies for such complaints to be made. This happens also in the case of other countries, and the Government of Bangladesh should not feel that people who so complain are acting against the interest of the state.

The Adivasis of the country seek peace and stability in their areas and in the whole country. In the CHT, the indigenous people have suffered much during the 20-year conflict and will not easily support any further violence in the region. Whatever violence there is, can hopefully be ended, through the joint efforts of all concerned. The indigenous peoples of the region are more than ready to co-operate with all sections of Bangladeshi civil society to bring forth a truly just peace in the region.

Democracy and Self-Determination

The long-term interest of any state is to foster contentment, peace and development. And that is possible only by respecting true self-determination. The right of self-determination should not only be equated with the creation of a new

state. Bangladesh has ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Article 1 of both covenants reads: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." This right cannot be denied to indigenous peoples, including those in Bangladesh. Speaking about self-determination, the UN Special Rapporteur on Indigenous Peoples' Rights, Dr. Rodolfo Stavenhagen, had this to say, among others: "The link between self-determination and democracy must be strengthened in theory and in practice. The violence we see around us is not generated by the drive for self-determination, but by its denial. The denial of self-determination, not its pursuit, is what leads to upheavals and conflicts. And the denial of self-determination is essentially incompatible with true democracy".

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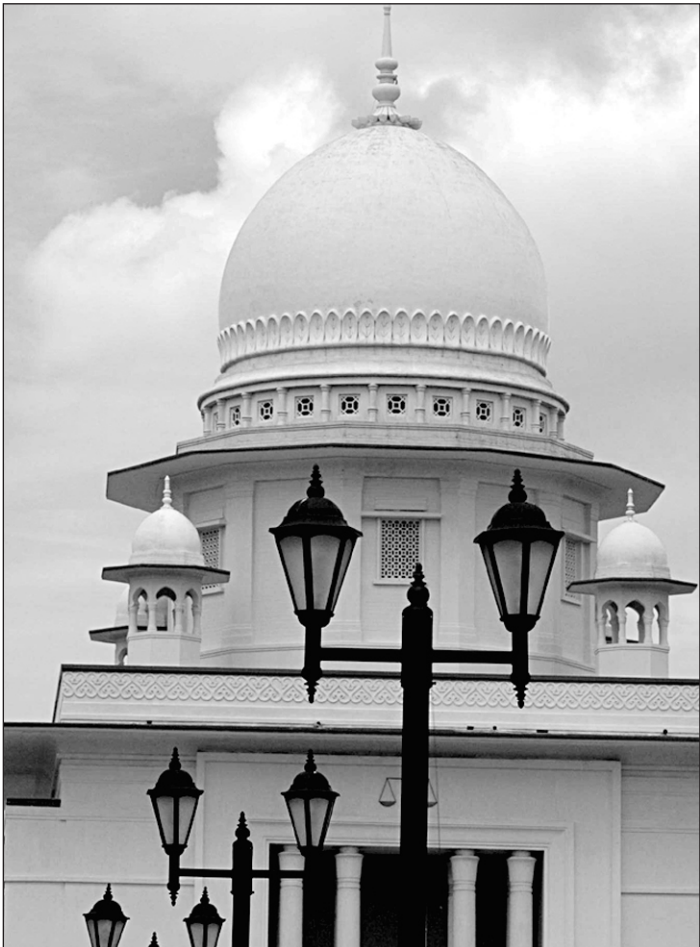
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Judiciary, Justice and Bangladesh

SHAMSHER CHOWDHURY

Justice in this country sometimes appear to operate on a selective basis. Nothing deserves the cause of justice more than its unequal and selective application. You often see court directives being routinely violated subtly and directly both by lawmakers and individuals with power bases. One only has to take the example of this longstanding issue of separation of the Judiciary from the Executive. The way this one single fundamental issue of making the judiciary independent is being continually and willfully set aside time and again, is alarming. How can a magistrate a comparatively lower ranking "official of the government" even think of being just when his allegiance and accountability is tied with an administrative wing of the government? In the process access to justice is gradually becoming the pampered privilege of the elites and the powerful, instead of being the peoples dearest imperative in seeking human freedoms. Prevalence of such travesty of justice and the judicial system give rise to popular upsurge and often leads to prolonged chaos, confusion and avoidable tragedies, the way it is with Bangladesh.

On the other hand yet another cardinal weakness in our system is that it has been systematically rendered weak and powerless by irresponsible behavior and utter lack of "vision " on the part of its



custodian at all levels. Judges are Judges and often "hand out what is just in the eyes of the law" for imple-

mentation at various levels of the society. It is then the business of the implementers to see to their just

execution. Unfortunately in this country both the players in the "system", the dispensers and the implementers are equally to blame. The implementers operate solely on the basis of vested interests and muscle power, the classical blend between power and justice is essential for upholding the institution of the Judiciary for effective meting out of social justice at all levels.

This thought is best expressed in

Parliament directly. In a truly functioning democracy it has to be answerable to the people.

Our judges and lawyers must not become mere instruments hidden behind their "robes". They should also be able to defend, protect and cherish law and justice with an eye for history and heritage dictated by purest elements of morality and ethics. This issue has found its classical and immortal expression in

"Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together"-Daniel Webster

the words of Blaise Pascal I quote "Justice without power is inefficient; power without justice is tyranny. Justice without power is opposed, because there are always wicked men. Power without justice is questioned. Justice and power must, therefore, be brought together, so that whatever is just may be powerful, and whatever is powerful may be just". Unquote. Here in our beloved country, the powerful it is the more unjust it is.

The other related issue is, Judicial Accountability. I am afraid even in that sphere there is much to be said. All Public Power is a peoples' trust and judicial power is no exception. While Executive power is accountable to the Parliament and the parliament to the people, the judicial power is not accountable to either the Executive or the

the words of Jerome Frank in the Courts of Trial, I quote "An immature society may need or like to fear its rulers, but a vital and developing America can risk full equality. A judge who is of a legal system serving present needs should not be clothed in the quaint garment of the distant past. Just as the robe conceals the physical contours of the man, so it needlessly conceals from the public his mental contours. When the human elements in the judging process are, covered up, justice operates darklingly." Unquote.

The dispensation of justice by a nation's judiciary is also reflective of the political philosophy it pursues and its moral and ethical character. I believe it is worthwhile to quote here an excerpt from Harold J Laski's, A Grammar of Politics --- pp54142. I

quote, " Obviously therefore, the men who are to make justice in the courts, the way in which they are to perform their function, the methods by which they are to be chosen, the terms upon which they shall hold power, these, and their related problems, lie at the heart of political philosophy. When we know a nation-state dispenses justice, we know with some exactness the moral character to which it can

pretend." Unquote. Yes political philosophy of holding on to power in all its dimensions by various political parties small and big, in and out of axis of power of government has also largely contributed to the very unstable existence of the Judiciary and Justice.

Given the will and sincerity of purpose judiciary in Bangladesh can be greatly improved. It is interesting to note that judiciary in neighboring India whose political philosophy and its workings are in essence no different from that of Bangladesh, continues to be of high integrity and effective in responding to nearly all major issues of concerns of the people.

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RIGHTS

column



USA: Guantánamo detainees must not be returned to more abuse

Guantánamo detainees who are returned to Afghanistan may be at risk of torture, ill-treatment, and other human rights abuses, warned Amnesty International as the USA announced an agreement with the Afghan government to send back around 110 Afghan nationals. The USA also announced plans for similar arrangements with Yemen and Saudi Arabia.

"No government should force people to return to a country where they may be at risk of human rights abuses," said Sharon Critoph, North America researcher at Amnesty International. "The USA's own State Department reports serious human rights violations in all three of the countries to which it is planning to return detainees."

The 2004 US State Department Report for Afghanistan reported that prisoners were beaten, tortured, or denied adequate food. Torture and ill-treatment are common practices in Saudi Arabia, as are harsh prison conditions and indefinite detention without charge or trial. Arbitrary arrest and detention without charge or trial in connection with the "war on terror" is a long-standing concern in Yemen, as are conditions of detention.

"The USA should close Guantánamo and either charge the detainees under US law or release them," said Sharon Critoph. "Afghanistan and other countries receiving Guantánamo detainees should ensure they are released and allowed to live a normal life if they are not to be charged and tried."

Source: Amnesty International.

