



LAW *vision*

Freedom, background and education: Some reflections

"The point is to think neither ill nor well of development. Freedom also presupposes coercion and so does law. Extending freedom to one would at the same time impose restraint on another. In this case, it did facilitate some, keep 'the' hope for some and diminish any such possibilities for thousands."

MOSTAFA HAIDER

I have recently been contacted by a friend, who was also previously a top favourite student of mine. I did some tutoring (private coaching type stuff) during my College and University years. The little boy who I taught in his early student life wrote on my facebook wall: "Hello, I am going off to the UK to study Law at 'Moon University'.....let me know what you think." I could not think of anything for a moment. Ideally, I would not think much about this. Yet, I wanted to think and this article is an immediate reflection of my thinking about this Moon University bound boy (I consciously hide the real name of the University to maintain the confidentiality of my friend). This, I suggest, could also be a background story for some lawyer/law students in Bangladesh.

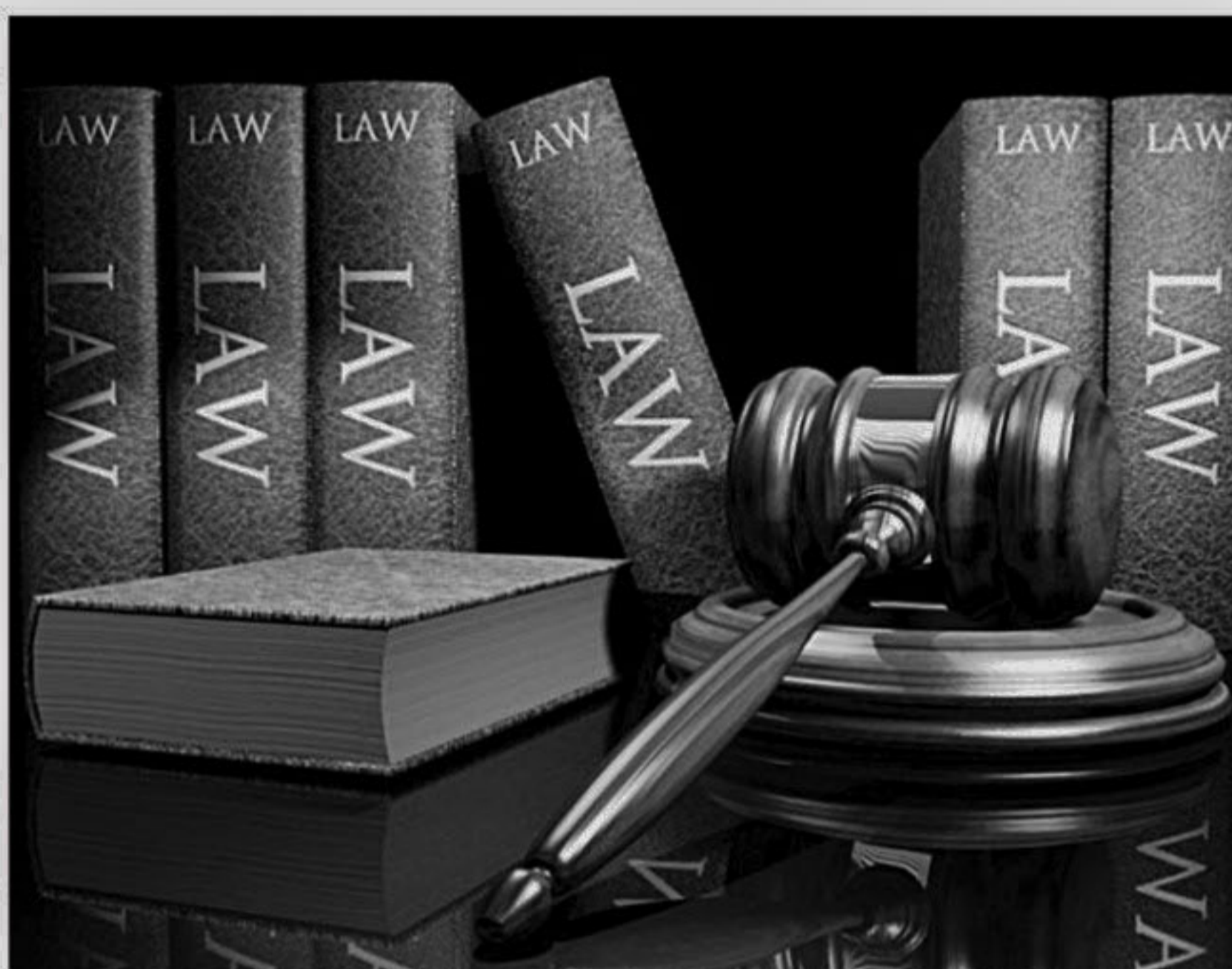
I sorted out small number of background "freedom" or "capabilities" around this boy: a brief profile so far as I am allowed! He is from a well-off family. His father is a businessman, but does some cultural work too. His mother is a housewife, educated and modern. His grandfather was also a known person in the locality. Briefly, impressive economic capabilities! The boy was, in every sense, meritorious. Initially enrolled in a good Bengali medium school, he was then taken to English medium when he was in grade two. I met him right at that time and taught him until his grade seven. I guess, English medium fervour was in its full swing by that time. I also sensed that his parents were respectful toward their own "Bangla" upbringing, but could not keep much faith when it came down to their own son.

Soon, Bangladeshi English medium school, for his parents, proved to be not enough. He was being prepared for another move. This time too, I was

involved in his future-building or one could also say, became a part of a "complicitous" project. We all were determined to get him a position in one of the best Indian schools. He was outstanding, 'successfully' managed to get a place there. I have been occasionally in touch with him and his family since then. They were, as they are till today, immensely kind to me. This note is my later realisation of what I now consider as background education that takes fuller shape in the foreground of a free market society.

I have very briefly, charted the "development" paradigm for this boy. Let me draw on the thematic which is at work here. This would be double reflection for those who read Amartya Sen's "Development as Freedom" (published in 1999), a popular book that asks us to think of Development differently (?). In a few words, the book is about human freedom and human capabilities. Freedom requires good education, health, food, housing etc. in other words, a good upbringing. Freedom means the ability to own property and participate 'freely' in a market economy to develop one's potential. The state should not limit freedom by breaching human rights or impeding markets but should also aim to expand human freedom, by providing security and promoting the fulfilment of basic human needs. The idea that capabilities and freedom could be promoted directly rejuvenated the discipline/study of law, as both means and ends to secure human freedom.

Let me return to the boy to understand his conditions of "freedom". The boy was relatively a 'free' agent. His country/state, Bangladesh, did never prevent him from doing what he considered necessary. He gave up his 'Bangla' education when it lost its "currency" in his class. His parents encouraged him to undertake different (Indian?) education when it was deemed



better than the 'Engrezi' education in Bangladesh! I call him free agent because he also thinks that these decisions, taken on his behalf by his parents, were right. The boy is so grown up now, freer to decide for himself, or maybe, undecided for himself!

But how has it become so easy for this boy to go ahead with whatever he/his parents wanted? No doubt that the boy has immense economic capital to his possession. He could afford various kinds of education at home and abroad. He was capable of doing many things and freely exercised some. I have, for this article, constructed capabilities only in economic terms. There are indeed other aspects of his enjoyment of freedom and flourishing of various capabilities. He is not, at least, one might say, confined to one language/culture/state. He can transact or communicate between two languages/cultures/states: in this case between India and Bangladesh. As he is going off to the UK, one might hope, he would be able to do the same between the UK and Bangladesh in future.

In the meantime, I retrieve another piece of information about one of my distant cousins. Disappointingly, he wants (or, dares) to be a lawyer too! His parents are yet struggling to get him the basics - food, clothes etc. He is now, very

much confusingly, doing what I had been doing some years ago: Tutoring (or, acting in complicity) in the mechanics of the production of 'at home and abroad' class - who are able to do the necessary market transaction! This cousin of mine, if successful in his venture, might be promoted to a rank or two higher in his class position like me! Let me hope, again.

Amartya Sen could hold these different (free and unfree) groups together, but that was still only Sen's freedom; and in my doing it came undone. To me, Sen's 'Development', imagined in this way, could free human being, but only to legitimise itself. The point is to think neither ill nor well of development. Freedom also presupposes coercion and so does law. Extending freedom to one would at the same time impose restraint on another. In this case, it did facilitate some, keep 'the' hope for some and diminish any such possibilities for thousands. My narrative suggests that 'Development as Freedom' is prone to be appropriated by upwardly class mobile people like me or this 'successful' boy. However, many narratives are likely to run in counter of my construction here. I welcome and look forward to seeing some of those!

The writer works with BRAC University.



RIGHTS *corner*



Comprehensive Global Strategy needed to engage and end abuses

THE US Senate should quickly approve a bipartisan bill that sets out a new strategy for US engagement in the struggle to end violence against women worldwide, Human Rights Watch said on September 28, 2010. The Senate Foreign Relations Committee is scheduled to take up the bill on Wednesday, September 29, 2010.

The draft International Violence Against Women Act (IVAWA) would require the State Department to adopt a five-year plan to reduce violence against women in up to 20 target countries. The approach calls for increased legal and judicial protections against violence against women, strengthened health services to respond to such violence, increased educational and economic opportunities for women, and changes to social norms that perpetuate violence against women. Special attention is given to responding to violence against women in the context of humanitarian disasters and armed conflict situations.

"Violence against women is a complex problem, but we can be smarter in fighting it - and that's what this bill is about," said Meghan Rhoad, women's rights researcher at Human Rights Watch. "The Senate bill has real potential for lasting positive impact to the lives of women and girls around the globe."

The bill has 33 cosponsors in the Senate. Lead sponsors in the Senate are John Kerry, Democrat of Massachusetts; Barbara Boxer, Democrat of California; and Olympia Snowe and Susan Collins, Republicans of Maine. The House of Representatives version of the bill, which has been referred to the Committee on Foreign Affairs and the Committee on Armed Services, has 123 cosponsors. Lead sponsors in the House are Bill Delahunt, Democrat of Massachusetts; Ted Poe, Republican of Texas; and Jan Schakowsky, Democrat of Illinois.

The United Nations estimates that one of every three women in the world has been a victim of violence. Human Rights Watch reports have documented rampant violence against women, both in armed conflicts and in homes and workplaces throughout the world. Much of the violence goes unpunished, especially where insufficient legal protections are compounded by poor enforcement. Recent Human Rights Watch investigations exposed degrading forensic examinations conducted on rape survivors by medical personnel in India and the frequent abuse of women with disabilities in northern Uganda.

"The persistence of violence against women around the world is not only a challenge to our consciences, but a major impediment to economic, political, and social development," Rhoad said. "It is a problem that we literally cannot afford to fail to solve."

There is mounting evidence of the debilitating effect of violence against women on economic development. In some countries, violence and sexual harassment in schools prevent women from obtaining an education and contributing fully to their communities. The health care costs and workplace absenteeism associated with injuries from domestic violence also take a significant financial toll.

The Senate bill would complement the Violence Against Women Act, which addresses these issues within the United States. Similar legislation was introduced, but not voted on, in the last Congress.

Human Rights Watch repeated its call for the US Senate to ratify the Convention on the Elimination of All Forms of Discrimination against Women. The US is only one of seven countries in the world not to have ratified the major global women's rights treaty.

Source: Human Rights Education Associates (HREA).

LAW *campaign*

Indigenous peoples: Need constitutional recognition

MD. RAISUL ISLAM SOURAV

PEOPLE who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies presently governing those territories are generally known as 'indigenous people'. The word 'people' creates a controversy. Part one, Article One of The United Nations International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966 state that all people have the right of self-determination by virtue of which they "freely determine their political status and freely pursue their economic, social and cultural development". Some state governments oppose use of the term "people" in regards to indigenous people because they fear its association with the right of succession and independent statehood. Those states prefer the terms "tribes" or "populations". On the opposite side, indigenous people like to use the term "people" because of its association with inherent recognition of a distinct identity.

Indigenous people worldwide number between 300-500 million, embodies and nurtures 80% of the world's cultural and biological diversity, and occupies 20% of the world's land surface. The indigenous people of the world are very diverse. They live in nearly all the countries on all the continents of the world and form a spectrum of humanity, ranging from traditional hunter-gatherers and subsistence

farmers to legal scholars. In some countries, indigenous people form the majority of the population; others comprise small minorities. Almost all the indigenous people strive to preserve traditional ways of life, while others seek greater participation in the current state structures. Indigenous people recognise their common plight and work for their self-determination; based on their respect for the earth.

Despite such extensive diversity in indigenous communities throughout the world, all indigenous people have one thing in common - they all share a history of injustice. Indigenous people have been killed, tortured and enslaved. In many cases, they have been the victims of genocide. They have been denied the right to participate in governing processes of the current state systems. Conquest and colonisation have attempted to steal their dignity and identity as indigenous peoples, as well as the fundamental right of self-determination.

Bangladesh context

In Bangladesh, according to the government estimate, around 12 lakh indigenous people of 27 ethnic groups live in the country. Non-government organizations however put the number of ethnic groups between 40 and 50 with a total population of 20 lakh. These communities mainly live in the southeast (Chittagong Hill Tracts) region, north, north-central plains, northeast region and in the coastal belt.

Now it is established that 'Adivasi' communities played a



significant role during the Liberation War in 1971. But the great matter of regret is that, they are still not recognised by the Government nor by the Constitution as Adivasi or indigenous people. The colonial term "tribal" or "Upojati" is still strongly enforced in all our official documents. Current government ordered government officials to call them "Upojati" (tribal). A superior

officer of the Foreign Ministry recently stated, "In Bangladesh there are no Adivasi or indigenous people; they are merely 'Upojati'" at a conference relating to indigenous peoples in UN.

The State refuses to recognise them as Adivasi. It prefers calling them "Upojati". Government evasively denied their justice. There are most likely views of alarm as once they get the status of indige-

nous people, then an obligation would automatically arise upon them to implement their rights.

Dispute of land

The malignant boil, which was planted by a despotic ruler, is still working as a cause of distress for the microscopic nationality. Many indigenous families were evicted from their ancestral land and homesteads as outsider settlers (dominant group) grabbed their lands. Historically, microscopic communities have no document concerning their ownership over their land. It is traditional that they do not require any paper document of their land. This is also acknowledged by Art. 25 of the Universal Declaration on the Rights of Indigenous Peoples. It enumerates: "Indigenous peoples have the right to keep and strengthen their distinctive spiritual relationship with their land and waters". Moreover, Art 26 added: "Indigenous peoples have the right to own and control the use of their land, waters and other resources. Indigenous laws and customs shall be recognised".

Customarily they are enjoying the ownership and possession of their land on the basis of assemblage. Usually, they also live in co-operative society. Further, they have a set of their own rules and regulations for themselves.

Nevertheless, settlers and local dominant group grabbed their lands fraudulently from them. They are involved to take this chance of non-presence of document of land and registered Adivasi's land in their name as per national law. It makes a conflict

between them. It is one of the major problems of Adivasis in Bangladesh. Sometimes State itself also instigate this land grabbing in the name of constructing park for the recreation of the large community.

Agony of suppression

The recently fervid sore of Bhaghaichari (19-20 Feb. 2010) is not detached from the heart of Adivasis, when we witnessed massive violation of human rights. Dominant group attacked them with the aid of law enforcing agencies. The "Peace Accord, 1997" is still not properly implemented. Each government avoids the lawful rights of those people by taking shelter of fraud, so that they expose reluctance to execute the accord fully. After withdrawing some military camp from a part of CHT area, during the period of 14 party alliance government groups of people are frantic to set up new camps of RAB there. However, CHT area is not beyond the area of Bangladesh as stated Art. 2 of the Constitution. Hence, that is why indigenous people are also entitled to enjoy same rights as of dominant group. Appointment of additional number of military or RAB forces reflected the mentality of suppression of the government. It shows that indigenous people are somewhat dissimilar from governing group.

Till now, those Adivasis dedicated their lives to protect their interest and ancestral land, State could be free from curse by arranging neutral trial of such. Indigenous peoples were buoyant when ruling government took

power. Because in their election manifesto they promised to do a lot of things for the benefit of them.

Representation from the respective communities is mandatory to resolve the matter fruitfully. Because all initiatives have failed which were taken at various time for the lacking of representation of Adivasi, bona fide will of govt. or for the lack of proper them of the settling authority. A number of opportunist people have been grown into their community who are always engaged to protect their self-interest even by abandoning group interest. If government selects these persons to mitigate these issues then it will be boomerang for the Adivasis.

It is the lawful demand of the microscopic nationality to safeguard their identities, languages and cultures by inserting provisions into the supreme law of the land. Once Constitution takes the liability to protect them then no one can deprive them from getting these rights. Constitutional recognition will remove all the barriers that come in the way of ensuring the basic rights and improving the social status of Adivasis. Though the Constitution has some provisions for the benefit of indigenous people in the name of "backward section of citizens", it is not sufficient. It is necessary to appoint representatives from the Adivasi communities in the recently formed committee for constitutional amendment to speak for their benefits.

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