



DISSERTATION

ON

**Safeguarding the Rights of Ethnic Minorities in Bangladesh:
Assessing Domestic Legal Frameworks from the International
Human Rights Perspective**

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CONSENT FORM

The dissertation titled “Safeguarding the Rights of Ethnic Minorities in Bangladesh: Assessing Domestic Legal Frameworks from the International Human Rights” prepared by Md Rabbi Rahman, ID: 2019-3-66-033 submitted to Md. Pizuar Hossain, Senior Lecturer, Department of Law to complete the requirements of Course LAW 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

Signature of Supervisor

DECLARATION

I, Md Rabbi Rahman, ID:2019-3-66-033, solemnly declare that the research presented in this undergraduate thesis is solely my own original work. I have not incorporated any portion of this thesis without proper permission and acknowledgment. This work has been completed by me and has not been previously submitted for any academic qualifications, certificate, diploma, or degree to any other organisations or institutions. I take full responsibility for the content, analysis, and findings presented in this thesis, and I affirm the authenticity and integrity of the information contained herein.

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ABSTRACT

This thesis is a legal study of safeguarding the rights of ethnic minorities in Bangladesh within the framework of domestic and international law. Bangladesh, a nation known for its rich cultural diversity, is home to numerous ethnic minority groups who face unique challenges and vulnerabilities. In countries like Bangladesh, it's highly improbable to witness the effective enforcement of laws safeguarding the rights of ethnic minorities. From political freedom to cultural practices, education, and economic rights, these communities often encounter obstacles that hinder their access to various sectors. The aim of this paper is to investigate the deficiencies within the legal systems that contribute to such deprivation. It will primarily concentrate on the legal frameworks pertaining to minority rights in Bangladesh. Furthermore, the paper will include a comparison between national and international laws that protect the rights of diverse ethnic minority groups. study explores the domestic legal landscape in Bangladesh, focusing on the Constitution, legislation, and judicial decisions relevant to ethnic minority rights. Furthermore, this research delves into the international legal instruments and conventions that Bangladesh is a party to, such as the Universal Declaration of Human Rights and evaluates the extent to which they are effectively integrated into domestic law and practice. In conclusion, this paper tends to offer recommendations for legal and policy reforms to better safeguard the rights of ethnic minorities in Bangladesh, emphasizing the need for a harmonized approach that aligns domestic legal frameworks with international standards.

CHAPTER ONE

INTRODUCTION

1.1 Background

Although Bangladesh is signatory to many human rights treaties and other international instruments, Bangladesh history of safeguarding the rights of ethnic minorities is not a matter to be proud of.¹ Indigenous people are often recognised by several names in several parts of the world, as like ‘Janajati’ in India and ‘Adivasi’ in Nepal where the minority groups are generally referred to as "tribes" or “Adivasi”.² A formal notice was given by the government of Bangladesh in 2019 to call the indigenous people as "ethnic," "tribal," or anything similar.³ Till the year 2011, The Bangladeshi ethnic peoples were not acknowledged under the constitution. The government opted to describe ethnic minority peoples as “tribes, minor races, ethnic sects, and communities” by the 15th Amendment to the Constitution in 2011.⁴ have their own culture and language and maintain their way of life by living in a specific geographic location. It is mentioned in the Constitution of the People’s Republic of Bangladesh that the state shall adopt all kinds of measures needed to protect and develop the culture and rights of the ethnic minorities.⁵ Bangladesh has ratified numerous conventions and is a signatory to the "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”.

The ethnic minorities in Bangladesh very often face backlashes and are deprived of their rights. They cannot properly enjoy their basic rights, let alone the other rights as citizens of this democratic country.⁶ The number of cases of violations of rights of the ethnic minorities is increasing every day. Every government promises these people different things to improve their lives, but as always, it is just the papers and promises. Even after inserting a provision in the country's constitution the state has failed to ensure the rights of, it's ethnic minorities. They

¹ Manusher Jonno Foundation, *Rights of the Ethnic People (Indigenous Peoples)* (Thematic Strategy Paper, 2018).

² Md. Tanzimul Haque and Zeba Farah Haque, ‘Rights of the Ethnic Minorities under International Law: A Legal Monograph on Bangladesh and South Asia,’ (2019) 7(2) Kathmandu School of Law Review, 57-70.

³ Directive [Ref. No. 03.07.2666.660.66.49219.888] issued by the NGO Affairs Bureau, regulatory body of Bangladeshi NGOs, on 18 December 2019.

⁴ Constitution of the People’s Republic of Bangladesh 1972, art 23A.

⁵ Ibid.

⁶ Sanjeeb Drong, “Attacks on the Mro damage the dignity of Bangladesh” *The Daily Star* (8 January 2023) <<https://www.thedailystar.net/opinion/views/news/attacks-the-mro-damage-the-dignity-bangladesh-3215791>> accessed on 30 October 2023

cannot study in their mother tongue; they are deprived of their own home.⁷ The scariest part is most of them are not aware about their rights and legal protection.

1.2 Research Objectives

The objective of this research is to assess the legal perspective of the rights of ethnic minorities in Bangladesh. To what extent their rights are being violated and what are the loopholes in the domestic legal framework of Bangladesh.

The specific objectives this paper are:

- To analyse the specific constitutional rights and domestic legal protections of ethnic minorities in Bangladesh.
- To analyse the international human rights conventions ratified by the government of Bangladesh, especially article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
- To find out the loopholes in the legal system and find ways to enhance the legal protection of the ethnic minorities.

1.3 Research Questions

This research addresses two questions mentioned below:

1. To what extent do the domestic legal protections for ethnic minority rights conform to Article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities?
2. How can the protection of ethnic minority rights in Bangladesh be enhanced, if necessary?

1.4 Literature Review

The topic I have selected for my research is a narrow topic which is very less discussed in this country and around the globe. As the first part in my literature review, I want to mention the book named “The Adivasis of Bangladesh” authored by *Father R W Timm*. Father R.W. TIMM, CSC, has lived and worked in Bangladesh for over 35 years. He was born and educated in the USA, where he took degrees at the University of Notre Dame and the Catholic University of America. The author has mentioned the struggles faced by the ethnic minorities in his writing focusing on the land issues, this gives us an insight into the life of ethnic people, but it lacks

⁷ Ibid.

the coverage on the legal framework; also, as it was published back in the 90's it lacks the information on the present context.

Another article I want to mention in my literature review is "Rights of the Ethnic Minorities under International Law: A Legal Monograph on Bangladesh and South Asia" written by *Md. Tanzimul Haque* and *Zeba Farah Haque* on the Kathmandu School of Law Review (KSLR), Volume 7, Issue 2, 2019. This article has addressed the issues we are dealing with in my research. It has provided discussions on the domestic and international framework of Bangladesh and other South Asian countries. The comparative analysis between the countries provides a more proper understanding of the lacking's for safeguarding the rights of the ethnic minorities. I have liked this article the most because of its transparency and detailed work.

The books and articles I have studied for my research address the issues faced by the ethnic minorities on a regular basis, but these do not bother to specify the reasons to protect the rights of these people. The question remains how to enhance the protection of the ethnic minority rights in Bangladesh. I will try to discuss those loopholes that have not been addressed yet. I sincerely hope it will be a contribution to the future researchers.

1.5 Research Methodology

This research will follow a qualitative research methodology, using a content analysis approach. The data for this research will be collected from primary and secondary sources. The primary data will be collected from statutes and case laws. The secondary sources include books, articles, journals, online databases etc.

1.6 Research Limitations

This research has several limitations.

One of them is the limited Time frame. For completing this research, the time frame was very limited, due to the short time period many aspects of the ethnic minorities remained untouched. The time constraint did not allow to cover all the scopes of the protection of ethnic minorities rights in Bangladesh.

Another limitation is the limited scope. The topic of the research only covers the protection part of ethnic minority rights which is very limited comparing to the vast discussion of ethnic minorities in Bangladesh. Furthermore, because of the present situation of the country the

movement was restricted and access to hard materials like books in the library was very limited.

1.6 Chapter Outline

This paper will consist of five chapters. The first chapter is Introduction which includes the background of the topic, research questions, research objective, literature review, research methodology and research limitations. The second chapter is Conceptual Framework and Bangladesh Context defining ethnic minorities, rights of ethnic minorities and problems faced by them in Bangladesh. After that, chapter three will be about the Legal framework of protection of ethnic minority rights consisting of both national and international framework. The chapter four is all about the comprehensive analysis of the legal frameworks and issues and to find the answer of the first question of this research. This paper shall be ended with chapter five which includes the answer to the second question of this research and concluding remarks.

CHAPTER TWO

CONCEPTUAL FRAMEWORK AND BANGLADESH CONTEXT

2.1 Introduction

This chapter will contain the definition of minorities, ethnic minorities and other terms used in the research. Then it will present the discussion on the rights of ethnic minorities. Furthermore, the discussion will be about the problems of ethnic minorities in Bangladesh context.

2.2 Ethnic Minorities

‘Ethnic’ group means a group or class of people who consider themselves or is considered by others as a contrasting group by means of specific characteristics that will aid to separate the group from the adjacent communities.⁸ In addition, "ethnicity" is a better phrase than "race" to characterize the differences among people. This is due to the fact that the term "race" is now debunked and merely recognized as a social construct that served to separate people according to their perceived superiority and skin colour.⁹ Since our genetic makeup is nearly same, there is only one "race," and that is the human race.¹⁰ For practical purposes, the definition of "minority" cannot be achieved by taking the word at face value. The minority is typically understood to be the antithesis of the majority.¹¹ It is determined by the numerical ratio to the total population in a certain location in democracies.

However, the term "minority" is frequently employed in a more limited sense in international law.¹² It now denotes a specific type of group that is distinct from the state's prevailing group. In most countries around the world there is an ethnic group with a larger number covering the greatest number of the population. Alongside them, there are some other communities with fewer numbers who has different cultural traditions. Those groups are considered as the ‘Ethnic

⁸ The National Youth Council of Ireland, “Ethnicity and Ethnic groups- an explanation of these terms” (2016) <https://www.youth.ie/articles/ethnicity-and-ethnic-groups-an-explanation-of-these-terms/#:~:text=An%20'ethnic%20group'%20has%20been,group%20from%20the%20surrounding%20community> accessed 29 October 2023.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Dr. Satish Chandra, *Collective Human rights of Peoples vis-a vis Minorities in National and International Laws*” (Yoram Dinstien , 3rd edition, 1985) 57

¹² Ibid.

Minorities'. Despite common characteristics, there is no single accepted definition of indigenous people that captures their diversity as peoples. Self-identification as indigenous or tribal is usually regarded as the fundamental criterion for determining whether the groups are indigenous or tribal, sometimes in combination with other variables such as "language spoken" and "geographical location or concentration".¹³

The UNHR laid out the criteria's to be a member of the ethnic minorities. These are:

- In the states where they live, indigenous peoples may make up linguistic, religious, or ethnic minorities. Neither one precludes the other nor infringes upon any rights that may be applicable to minorities or indigenous people.¹⁴
- The entirety of a State, not just one of its political or territorial divisions, is the "territory" to be considered when evaluating whether or not a group is a linguistic, religious, or ethnic minority.¹⁵
- A primary objective criterion used to assess whether a group is considered a minority in a state is its numerical composition. Being a minority inside a state's borders indicates that one is not the majority. That indicates, objectively, that a country's population is less than 50% made up of an ethnic, religious, or language group.¹⁶

2.3 Rights of Ethnic Minorities

Every state has the responsibility to safeguarding the rights of its citizens. The word 'citizen' consists of the whole population residing there permanently. It shall not bother to distinguish its majority and minorities. Like, every other person in a state the ethnic minority group also has all the basic and fundamental rights. In addition, the international law emphasizes on securing them some additional rights as they are under privileged people. The state must consider safeguarding the collective human rights of not merely its major groups but of all the other minority groups including the ethnic minorities.¹⁷

The permanent Court of International Justice gave an idea on the essence of the International Protection of minority system, in its Advisory opinion on Minority schools in Albania:¹⁸

¹³ Indigenous and Tribal Populations Convention, 1957 art 4.

¹⁴ Ibid.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Govinda Chandra Mandal." Rights of the Minorities: The Case of Bangladesh". Academia. 2019.

¹⁸ Ibid.

The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a state, the population of which differs from them in a race, language, or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority and satisfying the ensuing special needs.¹⁹

The court clarified that there were two main objectives behind incorporating the International Protection of the Minorities system. Those two objectives are as follows:

- To ensure the equality of the minorities related to the majorities.²⁰
- To ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions, and their national characteristics.²¹

There are several provisions in different kinds of statutes and conventions in various states and international law to describe and protect the rights of minorities. But there are two collective human rights which are incorporated by the international law to every minority in everywhere in the world.²²

Rights to Physical Existence is one of them. Acts that are physically or biologically harmful, carried out with the intention of totally and partially destroying" national, ethnic, racial, or religious groups", constitute genocide, i.e., international crimes under customary and customary international law. The term "national, ethnic, racial, or religious" group is broad enough to cover not only people but also minorities. Usually of the three types of minorities who are entitled to protection, only purely language groups are not mentioned in the 1948 Genocide Convention.²³

Another one is the Right to Preservation of Separate Identity. It is stated in an international convention that in which states the ethnic and other minorities exist, they shall be given the right to enjoy their own culture, to profess and practice their own mother tongue.²⁴ This is a very significant article in the matter of ensuring the existence of these ethnic minorities as a separate community. There are many other rights of an ethnic group in a state, such as Rights

¹⁹ Minority Schools in Albania, (AB/64) 17(1935).

²⁰ Ibid.

²¹ Ibid.

²² Mandal (n 18).

²³ Chandra (n 11) 88.

²⁴ International Covenant on Civil and Political Rights, 1966 art 27.

to food, rights to health, rights to life, rights to protection before law, rights to property and many more.

In the southern part of the Asia, most of the states has declared the rights of their ethnic minorities through their respective codified constitution.²⁵ For example, if we look at the Indian constitution it covers several aspects to lay out the rights of its ethnic minorities. Every Indian citizen is guaranteed certain fundamental rights under Part III of the Indian Constitution.²⁶ These general rights and responsibilities strongly encourage the safeguarding of minorities.

More specifically, these rights include equality before the law; protection from discrimination on the basis of race, caste, sex, or place of birth; equal opportunities in public employment; the abolition of untouchability; freedom of expression and association; the right to free education until the age of fourteen; the freedom to profess, practice, and propagate religion freely; the right of religious denominations to manage their personal affairs; protection from taxes intended to promote any specific religion; and protection against religious instruction in state-funded educational institutions.²⁷ The constitution of Pakistan also has insertion of provisions regarding the rights of ethnic minorities in their constitution. The constitution of Bangladesh also recognizes the ethnic minorities and their rights under its specific provisions. These states can also make other special laws to give special rights or to safeguard the rights of the ethnic minorities within their state. Furthermore, there are several international convention and treaties are signed by the states around the world to ensure the rights of ethnic minorities which will be discussed briefly in the next chapter of this research paper.

2.4 Bangladesh Context: Problems with Ethnic Minorities.

Bangladesh is country full of rich culture and diversity. Though more than 96% of the population belongs to one community there are around 30-55 recognised groups in this country.²⁸ From the several news articles and research projects, we can tell that, the number of people in these groups are close to TWO million. But the minorities differ in this matter. As per their claim, the number is much higher. In Bangladesh, ethnic minorities fall into two main categories: those who live in the northern divisions, typically known as plainland ethnic groups,

²⁵ Joshua Castellino & Elvira Dominguez Redondo, *Minority Rights in Asia: A Comparative Legal Analysis* (Oxford University Press, 2006) 58-60.

²⁶ Constitution of India 1950, art 16, 17, 19, 21, 25, 26, 27 & 28.

²⁷ Ibid.

²⁸ There is no specified correct data regarding the number of ethnic groups in Bangladesh. Several articles, projects, research shows several numbers. According to the last government census in 2011 there are 50 groups.

and those who live in the Chittagong Hill Tracts (CHT), in the Chattogram Division's southeast.²⁹ These groups are spread over more than 35 districts in Bangladesh. There are few dominant and famous groups among them which are recognised by most of the population. Chakma, Marma, Sawtal are three of those groups. Though there are several other groups leading to the number 50 these three groups hold the greatest number of people among them.³⁰ Chakma the leading tribe alone holds almost the half of the population of these groups. [̅̅̅̅]

The constitution which is considered as the supreme amongst the existing laws of Bangladesh itself has given rights to the ethnic minorities. Through the provision of the constitution, it has been incorporated that the stated shall take all measures to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sets and communities.³¹ In addition, in the part III of the constitution, it is described that all citizens of this country are equal before law and no one shall face any kind of discrimination because of their caste, race, religion i.e.³² Along with the provisions of the constitution and other international conventions signed by the government of Bangladesh, the ethnic minority groups are fully entitled to enjoy their rights such as practicing their religion and language, celebrating their ow rituals and functions, their way of life. They shall not be deprived of these rights.³³

But the scenario relating to the ethnic minority groups are very much different from the on-paper speculations. Even after getting equal rights as citizens under the constitution, the ethnic minority groups are denied of their fundamental rights and often being evicted from their own land. On January 2, 2023, at the start of the new year, the Mro village in Bandarban's Lama was tragically attacked.³⁴ Their occupants were attacked, and their homes were set on fire and defaced. This also occurred a year ago, but nothing was done about it. It's true that the land the Mro people inhabit appears to not be theirs is a common complaint.³⁵ We are aware that ownership of land requires ownership of the title.³⁶ However, because they have been residing

²⁹ Geoffrey Macdonald, *The Challenges Facing Plainland Ethnic Groups in Bangladesh: Land, Dignity, and Inclusion* (February 4, 2021) < <https://www.iri.org/resources/new-bangladesh-report-examines-needs-of-plainland-ethnic-groups/>> accessed on 30 October, 2023.

³⁰ Father R.W. Timm, *Adivasis of Bangladesh* (Minority Rights Group International 1991) 1.

³¹ Constitution of The People's Republic of Banglades 1972, art 23A

³² Ibid, art 27-28.

³³ Timm (n 31), 3.

³⁴ Sanjeeb Drong, "Attacks on the Mro damage the dignity of Bangladesh" *The Daily Star* (8 January 2023) < <https://www.thedailystar.net/opinion/views/news/attacks-the-mro-damage-the-dignity-bangladesh-3215791>> accessed on 30 October 2023

³⁵ Ibid.

³⁶ Transfer of Property Act 1882.

in these lands, forests, and hills for millennia, Indigenous people all over the world do not own such titles. They possess what are known as customary rights. The international legal system recognizes these ancestral or customary rights to land. In 1972, the government of Bangladesh also ratified the ILO Convention on Indigenous and Tribal Populations.³⁷ This implies that the Indigenous people who inhabit our hills, forests, and other places have recognized ancestral rights to the land they inhabit.

The instance of the Mro people is just few of many instances where the rights are being violated on a regular basis. It is the responsibility of the state to uphold the rights of the people residing in it whether it is the greater number of the population or the minorities. The state has to demonstrate that it stands by the oppressed people in its midst and will take action against those who harm minorities.³⁸ That is what distinguishes a developed and civilized country. But regrettably, we are still seeing violations of Indigenous peoples' human rights all throughout the world, including in Bangladesh.³⁹

In this country, the ethnic people face discrimination at the highest level. They are victim of this problem in every sector. They face systematic discrimination in workplace, education, health care and many more. Even after working hard and reaching level they are always looked down by the others. We can categorize 3 places where they are being discriminated almost every day. Which are there: I) Social Life, II) Workplace and III) Education centre. The major problems that they face in these sectors are:

1. They are often left out.
2. They do not get the equal treatment the other majority gets.

Another major problem of ethnic minorities is that they do not have proper political representation.⁴⁰ Political representation plays a much bigger role for formulating law and orders to safeguard the existing rights and giving them other rights to tackle the problems they face in regular basis. They have a huge lacking in this sector. Big political parties give them promises and hope before election to gain their support and precious vote, but after when a

³⁷ Bangladesh has been an active Member State of ILO since 22 June 1972 and has ratified 36 ILO Conventions and one Protocol, including eight of the ten fundamental Conventions, and two of the four governance Conventions.

³⁸ Sanjeeb Drong, "Attacks on the Mro damage the dignity of Bangladesh" *The Daily Star* (8 January 2023) <<https://www.thedailystar.net/opinion/views/news/attacks-the-mro-damage-the-dignity-bangladesh-3215791>> accessed on 30 October 2023.

³⁹ Ibid.

⁴⁰ Timm (n 31), 16.

government is formed most of their demands and needs goes unheard due to absence of their enough representation.

CHAPTER THREE

Legal Framework of Protection of Ethnic Minority Rights

3.1 Introduction

In this chapter, the discussion will take place about the existing legal framework of protection of ethnic minority rights. After giving a hint about the legal framework, the chapter will dive into the national legal framework which is mostly covered by the Constitution of Bangladesh. After that it will discuss about the international framework where international treaties and conventions will be thoroughly analysed.

3.2 Overview of Legal Framework

To assess the situation of a state, we overview the legal system of and analysis the legal system of that state. Like that, to understand and safeguard the rights of ethnic minorities in Bangladesh and international perspective: we shall look over the existing legal framework to the protection of ethnic minority rights. This chapter will be a brief discussion about the provisions in the legal system of Bangladesh and the international conventions and declarations in those Bangladesh is a signatory. This chapter will be divided into two parts where we will discuss the national legal framework in the first part and international framework in the lateral part.

3.3 National Legal Framework: Constitution and Other Safeguards

The Constitution of Bangladesh covers the most part of the national legal framework of the ethnic minority rights. The Constitution of Bangladesh is not just a codified law in paper, it is an outcome of the nine months long bloodshed of the independence war: that puts into a separate class from the constitutions of the other countries.⁴¹ The minds working behind the constitution made it very apparent and declaratory that the people are the main source of the power of the state and the constitution⁴² It is considered as the supreme amongst the other existing laws of Bangladesh and it shall prescribe the powers and limitations of legal statutes and governments of Bangladesh.⁴³ There are several provisions in the constitution that declares the fundamental rights of every citizen of the state and any kind of steps cannot be taken by any person or any government or legal entity to violates those given rights.⁴⁴

⁴¹ *Dr. Mohiuddin Farooque v. Bangladesh*. (1997) 49 DLR (AD) 1, para 41.

⁴² Mahmudul Islam, *Constitutional Law of Bangladesh* (Third edition, Mullick Brothers 2019) 19.

⁴³ *Ibid*, 20.

⁴⁴ The Constitution of the People's Republic of Bangladesh 1972, Part III.

In the beginning times, the Constitution of Bangladesh did not recognize the ethnic minorities. But in the recent times after incorporating a new provision to the constitution, the state recognized the ethnic minorities under the codified law. The provision states:

The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.⁴⁵

This article is a declaration of the ethnic communities as an individual group for the very first time in the history of the constitution. This interprets as that the government of Bangladesh shall always look over the ethnic minorities and treat them as such. They shall do all the necessary to protect the rights of these groups. The rights of the citizens of the state are described in the part III⁴⁶ of constitution. The ethnic minorities are as equal before the law as the other citizens of the state. Because the constitution states: “All citizens are equal before the law and are entitled to equal protection of law”,⁴⁷ as well as “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.”⁴⁸

This means that the ethnic minorities shall be treated as equal to most of the people and there shall be no discrimination against them. It is specified in the supreme version of the law that just because the ethnic minorities are living in some specified areas, or they follow different culture & traditions, they cannot be discriminated in any sector. Also, there are some rights described in the part III which are considered as the absolute rights⁴⁹:

1. Article 29 - *Equality of opportunity in public employment.*⁵⁰
2. Article 33- *Safeguards as to arrest and detention*⁵¹
3. Article 41- *Freedom of religion*⁵²
4. Article 44- *Enforcement of Fundamental Rights.*⁵³

⁴⁵ Ibid, art 23A.

⁴⁶ Ibid, art 26-47.

⁴⁷ Ibid, art 27.

⁴⁸ Ibid, art 28(1).

⁴⁹ Md. Abdul Halim, Constitution, *Constitutional Law and Politics: Bangladesh Perspective* (Seventeenth edition, Beacon Publications 2021) 102.

⁵⁰ There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.

⁵¹ (No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice).

⁵² Every citizen has the right to profess, practise or propagate any religion.

⁵³ The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.

Apart from the constitution, there are some other laws and conventions formulated which safeguard the rights of ethnic minorities in Bangladesh. Which are:

1. The CHT Regulation (1900)

In order to protect the Jumma people from economic exploitation by non-indigenous people and to preserve their traditional socio-cultural and political institutions based on customary laws, community ownership of land, and so on, the British government enacted the CHT Regulation 1 of 1900 and declared CHT as a 'Backward Tracts' and later totally 'Excluded Area' in 1900 and 1935 respectively.⁵⁴ The overall administrative structure was established as District, Sub-division, and Thana, while the traditional structure was established as Circle, Mouza, and Villages.⁵⁵ The Deputy Commissioner was given administrative authority over the CHT district. Furthermore, he/she was charged with the tasks of exercising power as a revenue collector as well as a CHT magistrate. On the other hand, the Circle Chiefs and Headmen (mouza heads) were made accountable for income collection as well as other functions such as litigation and enforcement of customary laws and social justice. For more than a century, the CHT Regulation 1 of 1900 served as a barrier against Bengali Muslim encroachment on Jumma property.⁵⁶ In fact, various clauses of the Regulation, 1900 served as a safeguard for the Jumma people, and it forbade non-indigenous peoples from owning land or migrating into the CHT.

2. The Hill District Council Acts (1989)

The government then took various legal and executive actions. The Hill District (Repeal and Enforcement of Law and Special Provision) Act of 1989, the Bandarban Hill Tracts Local Government Council Act of 1989, the Khagrachari Hill Tracts Local Government Council Act of 1989, and the Rangamati Hill Tracts Local Government Council Act of 1989 were all passed by the Parliament in February of that year. The government established the Special Affairs

⁵⁴ CHT History & Struggle, (Brief History and Struggle of the people of the Chittagong Hill Tracts) <<https://www.pcjss.org/cht-history-struggle/#:~:text=In%201900%20the%20British%20government,their%20traditional%20socio%2Dcultural%20and>> accessed on 20 november,2023.

⁵⁵ Ibid.

⁵⁶ Ibid.

Ministry in July 1990 to oversee the CHT's operations. Each of these actions produced a favourable result. Initially, a step toward autonomy was taken. Second, after being mostly excluded from politics for a long time, the lesser tribes started to participate for the first time in the Chakma, Marma, and Tripura political processes. The newly established district councils, which were made up of elected tribe leaders, took over primary education, agriculture, health, and family planning.

3. The Chittagong Hill Tracts (CHT) Peace Accord of 1997

The government of Bangladesh and the Parbattya Chattogram Jana Samhiti Samiti (PCJSS—Chittagong Hill People's Solidarity Association) signed the Chittagong Hill Tracts Peace Accord on December 2, 1997, putting an end to a protracted armed conflict between the Bangladesh Army and the tribal people of the southeast region of Bangladesh. Stability in the area was promised under the pact.⁵⁷ But the Accord has not yet paid off 15 years after it was signed. The area remains the most unstable in the nation, and the tribal people's discontent is growing daily as a result of the Accord's incomplete implementation. The signing of the Accord has also resulted in a new conflict: following its formation, a faction within the PCJSS movement founded the United People's Democratic Front (UPDF), a political party dedicated to "full autonomy" as opposed to the Accord's execution.⁵⁸ The security of the nation is seriously threatened by the recurring conflicts between the PCJSS and the UPDF as well as between the tribal people and the "Bengali Settlers."⁵⁹

4. The CHT Land Disputes Resolution Commission Act (2001)

The CHT Land Disputes Resolution Act was formulated back in 2001. However, given the absence of a procedural rule, the commission has mostly done nothing. The Chattogram Hill Tracts Land Dispute Resolution Commission Act 2001 was modified by the government in 2016 to acknowledge the customary rights of the Jumma populations and to ensure that land disputes in the hills will be settled in accordance with the CHT's existing laws, customs, and practices. Following the modification, minority communities submitted over 22,000 applications to the commission; however, none of them have been addressed.

⁵⁷ Helal Uddin Ahammed & Md Masud Faisal & Md Morshed, Niaz, 'The Chittagong Hill Tracts Peace Accord in Bangladesh: An Overview' (2018) 4.

⁵⁸ Ibid.

⁵⁹ Ibid.

3.4 International Legal Framework (UN Declaration and others)

When the United Nations first started out, special rules were not necessary as long as individual human rights were upheld, particularly when it came to the barring of discrimination based on factors like race, nationality, religion, or ethnicity. Since there was not much progress in the concept of "minority rights," the rights were safeguarded under the general doctrine of human rights, which strongly implied that minorities who enjoyed individual equality of treatment could not reasonably demand facilities for the safeguarding of their ethnic specialization.⁶⁰ The attitude to this altered substantially throughout the 1960s and into the 1970s. The adoption of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1965 was the first step.⁶¹ Although the goal of the Convention was to outlaw all forms of discrimination based on religion, colour, race, nationality, or ethnicity, it also provides specific particular processes for the advancement of racial or ethnic groups, which is regarded an intrinsic recognition of minority rights.⁶²

The important conventions regarding the rights of ethnic minorities are:

1. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992

IT is one of the first international procedures with universal applicability that was specifically focused on minority concerns. It was adopted by the United Nations General Assembly in 1952. With its non-binding instrument, it has a great deal of moral weight.⁶³ There has been a noticeable improvement in the standards pertaining to minority rights, and this has had a substantial influence on the advancement of more recent and forthcoming minority rights theories.⁶⁴ Regarding the rights of minorities and the obligations of nations toward them, it is one of the most comprehensive international documents. It outlines the obligations of the States in Articles 1, 4, and 5, and primarily fixes the rights of minorities in Article 2. While rights are invariably outlined as individual rights, states' obligations are partially established as obligations to minority groups.⁶⁵

⁶⁰ Haque & Haque (n 2) 57, 59.

⁶¹ International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, adopted on 21 December 1965

⁶² Ibid.

⁶³ Natan Lerner, 'The 1992 UN Declaration on Minorities' (1993) 23, Israel Yearbook on Human Rights, 128.

⁶⁴ Ibid.

⁶⁵ Asbjorn Eide, 'Final text of the Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities', 2001.

2. United Nations Declaration on the Rights of the Indigenous People (UNDRIP)

This is regarded as one of the most significant pieces of legislation pertaining to ethnic minorities' rights. The UNDRIP's Articles 3 and 4 discuss the rights of indigenous people and ethnic minorities to self-determination.⁶⁶ It grants people the right to assert autonomy, choose their political status, and pursue their economic, social, and cultural rights; it makes no mention of the loss of land. Furthermore, states are required by Articles 25 and 26 to grant their land, territory, and resources legal recognition and protection while giving due consideration to the customs and traditions of the indigenous people with regard to their land tenure system.⁶⁷ Article 10 of the same legal document states that they cannot be evicted from their lands and territories by force. Without their free, prior, and informed consent, no relocation may occur. In addition, Articles 3, 20, 21, 23, 29, and 32 stipulate that people have the freedom to preserve and advance their institutions and political, economic, and social system as well as to ensure their own means of growth, including the rights to engage in customary and other economic activities.⁶⁸

3. International Covenant on Civil and Political Rights (ICCPR)

Article 27 of the worldwide Covenant on Civil and Political Rights, which is a legally binding treaty with universal acceptance, established the concept of minority rights as the worldwide standard.⁶⁹ It is explicitly mentioned here that no minority would have their freedom to practice or profess their own religion, enjoy their own culture, or speak in their native tongue restricted. Furthermore, the UN Human Rights Committee highlights the positive duties and obligations placed on states parties to actively safeguard minority rights from any sort of violation, both by the state itself and in the private sectors, by referring to the term "shall not be denied" that is specifically mentioned in the Article.⁷⁰ A significant number of other ICCPR articles, beginning with Article 27, are important for protecting the rights of minority populations. These include, among other things, the freedom of thought, conscience, and expression; the right to self-determination; the principle of non-discrimination; freedom of association; the prohibition against any advocacy of national, racial, or religious hatred that constitutes

⁶⁶ Haque & Haque (n 2) 57, 60.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Patrick Thornberry, 'Is there a Phoenix in the Ashes? – International Law and Minority Rights', (1980) 15, Texas International Law Journal, 443.

⁷⁰ Human Rights Committee, General Comment 23, U.N. Doc./GEN/1/Rev.1, 1994, p. 52.

incitement to discrimination, hostility, and violence; and equality before the law, as stated in the corresponding articles 1, 2, 18, 19, 20, 22, and 26 of the aforementioned covenant.

4. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

In the year 1965, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) went into effect. While it is acknowledged that this Convention forbids discrimination on the grounds of "religion, color, race, or ethnicity," it also implicitly recognizes the rights of minorities by guaranteeing special mechanisms for the advancement of racial or ethnic groups.⁷¹ The CERD Committee has utilized Article 5 of this instrument as a crucial tool to preserve minorities' rights to be shielded from injustice.⁷² This makes the document crucial for defending the rights of minorities.

5. ILO Convention No. 169 on Indigenous and Tribal Peoples

The Indigenous and Tribal Peoples Convention, 1989 (No. 169) replaced ILO Convention 107 after revision. Convention 169 establishes guidelines for national governments on the political, economic, and sociocultural rights of Indigenous peoples, including the right to a land base, while also recognizing their right to self-determination within a nation-state.⁷³ In the countries that have ratified the convention, it is legally binding. The minimal requirements of Indigenous peoples' rights are outlined in the 44 articles of the Convention, which are arranged into ten categories.⁷⁴ These articles acknowledge, among other things, "the aspirations of [Indigenous] peoples to maintain and develop their identities, languages, and religions, within the framework of the States in which they live, and to exercise control over their own institutions, ways of life, and economic development." The Convention protects the rights of Indigenous peoples to participate in decision-making processes pertaining to matters that may affect their own communities and territories, including the extraction of natural resources, if those communities, territories, and cultures are preserved. The Convention further recognizes the right to Indigenous

⁷¹ Haque & Haque (n 2) 57, 62

⁷² International Convention on the Elimination of All Forms of Racial Discrimination: 50 years of fighting racism (Committee on the Elimination of Racial Discrimination) < <https://www.ohchr.org/en/treaty-bodies/cerd/international-convention-elimination-all-forms-racial-discrimination-50-years-fighting-racism>> accessed on 28th November 2023.

⁷³ "The Adoption of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), (*Law and Anthropology*, Vol. 5, 1990) 221-235.

⁷⁴ Indigenous and Tribal Peoples Convention, 1989 (No. 169) < https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169>

peoples to prioritize their own development needs (Article 7).⁷⁵ The Convention calls upon the government to uphold these rights and to recognize Indigenous peoples' unique historical and socio-economic position within the state and their integral connection to their territories, the Convention further recognizes the right to Indigenous peoples to prioritize their own development needs (Article 7).⁷⁶ The Convention calls upon the government to uphold these rights and to recognize Indigenous peoples' unique historical and socio-economic position within the state and their integral connection to their territories and protects them against displacement. The Convention further guarantees the rights of Indigenous peoples to equal and fair employment opportunities (Articles 20-23), rights to health care (Article 25), and education (Article 27), including education in one's own language (Article 28). and protects them against displacement. The Convention further guarantees the rights of Indigenous peoples to equal and fair employment opportunities (Articles 20-23), rights to health care (Article 25), and education (Article 27), including education in one's own language (Article 28).

⁷⁵ Ibid.

⁷⁶ Ibid.

CHAPTER FOUR

ANALYSIS AND DISCUSSION

4.1 Introduction

In this chapter, the main objective is to dive into a comprehensive comparative analysis to answer the main research question of this paper: To what extent do the domestic legal protections for ethnic minority rights conform to Article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities? This question beholds great importance to safeguard the rights of ethnic minorities in the domestic legal frame. The frame light of this chapter will be on the Article 2 of the declaration. This article is a important document in the international law for recognizing and protecting the rights of minorities. After analysing this, we will be able to assess the conformities or dissimilarities between the domestic legal framework in this country and the recognised standards described in the Article 2.

4.2 Analysis

The main components of Article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities are discussed below: -

Cultural Rights: This article ensures that every person belonging to the minorities have their rights to enjoy their own culture. This also means that they have the freedom to protect and practice their cultural customs and heritage.

Religious Rights: This article ensures that every person belonging to the minorities have their rights to follow their own belief and practice their own religion. They shall not face any kind of hindrance to expressing their belief either it shall be in public or private.

Linguistic Rights: This article ensures that every person belonging to the minorities have their rights to use their own language. They shall not face any kind of discrimination while using their language in public.

Non-Discrimination: Article 2 presents utmost importance and expressly states that no one shall face any kind of discrimination based on race color or national or ethnic origin. This is to ensure the equality of the people belonging to the minority groups.

There are numerous international articles which resemble the same principles and emphasize on the Article 2 of the Declaration. Some of which are:

International Covenant on Civil and Political Rights (ICCPR): Article 27 of the ICCPR supports the linguistic and cultural rights of minorities, focusing on the rights of using their own language and following their own culture.⁷⁷

Framework Convention for the Protection of National Minorities (FCNM): Under the council of Europe, this convention provides a framework for safeguarding the rights of minorities like the principle of Article 2 of the declaration.

These treaties support and elaborate upon the principles which are incorporated in the article 2 of the declaration. They aid to the international legal framework by creating norms and standards to guide states in ensuring minority rights are safeguarded. The impact is apparent in domestic legal systems, encouraging adherence to globally accepted standards and creating a global commitment to safeguarding the rights of people who are from national or ethnic, religious, or linguistic minorities.

4.3 Discussion

The domestic legal framework of Bangladesh shows conformity and disparity both with the article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. For example, the constitution of Bangladesh recognizes the rights of persons belonging to the minority groups, like the principles of the article 2. The constitutional provisions that recognize the cultural, religious, and linguistic rights of peoples belonging to the minority groups are oriented with the international standards set by the article 2, showing a promise to maintain the diversity of its population.

Despite these general similarities, significant differences exist in the execution and efficiency of these rights at the legislative and practical levels. The constitutional provisions do not always translate seamlessly into everyday reality for ethnic minorities, creating questions about the efficiency of legal protection and enforcement processes.

Disparities and Loopholes: Though many of the provisions are on the same ground as the article 2 of the declaration but there are numerous problems that can be apparent withing the domestic legal system regarding the ethnic minorities in Bangladesh. For example, while the Constitution guarantees minorities' rights, the processes for enforcing them may be insufficient

⁷⁷ ” International Covenant on Civil and Political Rights "adopted on 16 December 1966 BY General Assembly resolution 2200A (XXI) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>

for ensuring full safeguarding. Furthermore, certain legislative gaps may allow for discriminatory activities, as demonstrated by examples where minority communities experience obstacles to freely practicing their religion, exhibiting their culture, or using their language. There are numerous examples where domestic legal provisions do not meet international standards, highlighted by the limited number of legal options that minority groups have to file complaints. The lack of special anti-discrimination laws safeguarding minority rights is a vital issue. These disparities highlight the need for a stronger legal framework that not only recognizes ethnic minority rights on paper but also ensures their effective execution.

Effect of these provisions on ethnic minorities:

The practical effects of domestic law conformity or disparities with Article 2 have significant repercussions for ethnic minority populations. When there is harmony, ethnic minorities might come across a more inclusive and welcoming atmosphere, with increased opportunities to safeguard and express their cultural identity. Disparities, on the other hand, frequently result in disadvantaged and marginalized groups, since legal safeguards on paper are not implemented in their daily lives.

The authorities did not settle indigenous peoples' claims to land that was taken from them during the internal armed war (1975-1997),⁷⁸ as well as claims to recently occupied land by a growing number of Bengali settlers. Conflicts between the two populations, as well as the law enforcement services' failure to defend local indigenous people from attacks by Bengali settlers, resulted in numerous fights and casualties on both sides. On September 22, 2013, at least 20 persons were injured in an incident between indigenous people and Bengali settlers in Rangamati.⁷⁹ According to witnesses, security forces arrived on the site but were unable to stop the violence.⁸⁰ Torture, deaths, harassment, and sexual abuse against women and children, as well as seizures of indigenous people's land by Bengali settlers and military personnel, have all been recorded regularly in the Chittagong Hill Tracts (CHT) region.⁸¹

As a result of their ethnic identity, indigenous populations in Bangladesh are the most deprived of economic, social, cultural, and political rights.⁸² Land grabbing by important members of

⁷⁸ Timm (n 31).

⁷⁹ Rupak Bhattacharjee, 'Inclusive approach needed to resolve CHT ethnic conflict' BdNews24 (Dhaka, 11 June 2015) < <https://bdnews24.com/opinion/comment/inclusive-approach-needed-to-resolve-cht-ethnic-conflict> >

⁸⁰ Ibid.

⁸¹ Timm (n 31).

⁸² Ibid.

the mainstream population is a big issue for all minority populations. There are no adequate policies to protect the land of indigenous people. Indigenous peoples' traditional land rights are being ignored. These examples highlight the importance of completely addressing these issues and ensuring that legal obligations truly convert into the safeguarding and empowering of ethnic minority populations within the national context.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Concluding Remarks

In this paper, the discussion has been all about the domestic legal dimension alongside the international legal framework of the rights of the ethnic minorities in Bangladesh. Through the discussion, we have found out several loopholes in the system. These are created not only because of the resources and others but also the personal interests of several groups and political intentions. The governments only use these people as vote banks, and they had no vision or intention to do any good for these people. Before this current government, no one had taken any major steps for the welfare of the ethnic minorities. These government at least gave them recognition under the constitution, but still there are several factors which makes the ethnic minorities situation of Bangladesh a human rights case in the international context. The leaders from the ethnic minorities often complain that no government has implemented the peace deal. The Awami League government was the treaty's initiator, and they had taken some substantial steps to execute it, but not totally. The educational status of ethnic minorities is also significantly lower than the national average. Only tribal quotas in higher education have a role in minority student enrolment, while dropout rates in primary and secondary school are very high. Abuse by government authorities such as the forest department, land department, law enforcement agencies, and the military has also been frequently mentioned in news articles, as have claims by tribal leaders. Practical and personal preferences of the officials are also issues, but a lack of clear policy, recognition and a positive signal from the government are also factors. The ethnic minority community's biggest issue is land. They mostly lived on ancestral lands. Nevertheless, they are regularly dispossessed from their ancestral land by land grabbers and government departments. The government has yet to make any effective steps to find a solution. The political status is another matter of concern for the ethnic minorities. They do not get enough chance to represent themselves or bring their issues in front of the nation. They face discrimination on a serious note in the political field. Though in the upcoming 12th national parliament election, the current ruling party has nominated Kujendra Lal Tripura from Khagrachari, Dipankar Talukder from Rangamati and Bir Bahadur U She Shing from Bandarban regime but it is still not enough.

5.2 Recommendations for enhancing the protection of Ethnic Minority rights.

Based on analysis, discussion and findings throughout the research, this paper recommends that:

1. Formulate a Specific Law or Policy:

There shall be a proper law or policy formulated which will ensure all the rights of Ethnic Minorities, will talk about the violations and remedies in details. There are several laws and provisions for the rights of ethnic minorities as we discussed in the chapter three of this chapter. But there is no specific law which talks about all the rights of ethnic minorities. There shall be one specific law where the definition of ethnic people will be cleared, all the rights of them and measures to safeguard those rights will be proper mentioned. There shall be more development projects introduced for these people. These development projects will bring new policies which will enhance the protection of ethnic minority rights.

2. Ensuring more participation of Ethnic people in the education sector and increasing awareness:

There shall be more work on the ground level to strategize for decreasing the dropout rate of the children of ethnic minorities from primary and secondary level of education. The NGOs and other groups working for the Ethnic Minorities shall be given more space and opportunity for their work. This will play a significant role to safeguarding the rights of ethnic minorities in Bangladesh. There shall be enough seminar and activities to aware all the citizens of this state about the rights of Ethnic Minorities.

3. Implement all the acts and conventions on ground level:

The government shall take all the necessary steps to implement the legal provisions are there for the ethnic minorities in the domestic legal framework. And they shall also make sure the active participation of all the international treaties and conventions Bangladesh have signed for ensuring the human rights ethnic minority communities.

4. Learning from International best practices:

Bangladesh is far behind comparing to other countries for safeguarding the rights of ethnic minorities. The government shall make arrangements, or they shall follow the

modules of countries like Canada and South Africa where they accepted the multiculturalism and diversification at a notable level.

5. Monitoring Body:

To run a system or make something successful one of the key points is accountability. There shall be monitoring committee formulated by the government to monitor all these are taking part in their place. All the other bodies concerning to the rights shall be accountable to this monitoring body and this monitoring body shall be accountable to the government.

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