Defining ‘Indigenous’ in Bangladesh: International Law in Domestic Context

Kawser Ahmed*
Advocate, Supreme Court of Bangladesh

Abstract
Bangladesh is one of the 11 states which abstained in voting on the United Nations (UN) Declaration on the Rights of Indigenous Peoples. The reason as stated by the representative of Bangladesh at UN is that the term ‘indigenous peoples’ has not been clearly defined or identified in the aforementioned Declaration. In fact, the government of Bangladesh has been persistently denying many of the marginal communities’ claim to recognition as indigenous peoples. The article argues that the state of non-dominance is one of the determining criteria of the definitions of indigenous peoples in international law. Drawing on the discourses of subaltern historiography and internal colonialism, this article further argues that the said marginal communities of Bangladesh indeed meet all the criteria including non-dominance inasmuch as they are entitled to recognition and legal protection as indigenous peoples. Case studies on historical profiles of three marginal communities of Bangladesh are provided as factual evidence in support of the above proposition.

Keywords
indigenous peoples; Bangladesh; non-dominance; Chakma; Santal Khasi

1. Introduction

Bangladesh is a multination state.\(^1\) The present geographical mapping and communal matrix of Bangladesh was set largely through the dominant influence of British colonialism over a period of about 200 years. During the British period, many of the marginal communities of the Indian subcontinent of which a part was Bangladesh were identified as tribal or aboriginal populations.\(^2\) Towards the

---

\(^*\) LLM in International Legal Studies (NYU). The author would like to thank S.M. Aslam for his valuable research assistance. The author is also grateful to M. Badiuzzaman and A.R.M. Khalid for their constant encouragement and support.

\(^1\) See W. Kymlicka, Multicultural Citizenship (Oxford University Press, New York, 1996) p. 11.

\(^2\) In general, these communities are ethnically distinct, numerically inferior and politically insignificant than the majority populations. Hereinafter, I shall refer to them as marginal communities. As we will see, some of these communities might have possessed the attributes of nationhood at the time of colonial conquest. In this article I have used the terms ‘people’, ‘peoples’, ‘communities’ and ‘groups’ interchangeably and without assigning any legal implications.

© Koninklijke Brill NV, Leiden, 2010 DOI 10.1163/157181110X12595859744169
end of the British colonial period, religious communalism turned into a predominant factor in the national politics of the subcontinent, and after the promulgation of Lahore Resolution by Muslim League in 1940, the whole subcontinent split up into two political camps under the banner of Hindu and Muslim. The marginal communities which were not of dominant religions and cultures remained relatively insignificant in the mainstream national politics. The overarching dominance of religious communalism in politics made it impossible for these communities to espouse their own political cause. Consequently, in 1947 when the Indian subcontinent was partitioned into two separate nation-states, namely India and Pakistan, these marginal communities fell within each state's boundary giving rise to the dichotomy of state boundary and nation boundary. In the process of partition, the province of Bengal Presidency was also divided: two-thirds of it joined Pakistan and the remaining one-third joined India. From 1948 onwards, a kind of secular political movement, chiefly built around the Bengali language movement of 1952, began to crystallize in East-Pakistan, which in the long run marked the threshold of independence under the leadership of Bangabandhu Sheikh Mujibur Rahman. In 1971 the province of East Pakistan

---

3) D. Page, *Prelude to Partition* (Oxford University Press, Delhi, paperback 1999) p. 73. Page noted: “After the introduction of the Reforms, however, and particularly after the subsidence of Khilafat and non-co-operation movements, communal unity gave way to communal antagonism, the fraternity of 1919 seemed an aberration, and many parts of North India were plunged into scenes of bloodshed and strife which were to have no parallel until Partition itself.”

4) The third paragraph of the first resolution at Lahore reads as follows: “That it is the considered view of the Session of the All-India Muslim League that no constitutional plan would be workable in this country or acceptable to the Muslims unless it is designed on the following basic principles, viz., that geographically contiguous units are demarcated into regions which should be constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in a majority as in the North-Western and Eastern zones of India, should be grouped to constitute Independent States in which the constituent units shall be autonomous and sovereign.” For a detailed account of the situation in the aftermath of the Lahore Resolution, see S. Wolpert, *Jinnah of Pakistan* (Oxford University Press, Delhi, paperback 2005) pp. 184–203.


7) The Indian Independence Act, 1947 provided that the province of Bengal would cease to exist. Sir Cyril Radcliffe was appointed the Chairman of Bengal Boundary Commission to accomplish the demarcation of Bengal. For details see N. Sengupta, *Bengal Divided: The Unmaking of a Nation (1905–1971)* (Penguin Books, India, 2007) pp. 156–170. I have used the word ‘Bengal’ to mean the undivided Province of Bengal Presidency before partition. By ‘East-Pakistan’ and ‘Bangladesh’ I mean that part of Bengal which joined Pakistan and later became independent in 1971. By the terms ‘Bengali’ and ‘Bangladeshi’ I mean the ethnic identity of the majority population of Bangladesh without any reference to religion.


9) He is the founding Father of the Nation. He was also the first elected Prime Minister of Bangladesh.
seceded from Pakistan through a liberation war and became the People’s Republic of Bangladesh. In the newborn Bangladesh the situation concerning the marginal communities continued to be the same as it had been before partition as well as during the Pakistan regime. On 22 June 1972 Bangladesh ratified the International Labour Organization (ILO) Indigenous and Tribal Populations Convention of 1957 (hereinafter ILO Convention No. 107).\(^{10}\) Though ILO Convention No. 107 was ratified prior to the adoption of the Constitution of Bangladesh, no provision has been incorporated in the Constitution recognizing any of the marginal communities as indigenous peoples. In effect, the marginal communities have remained missing factors in the politics of Bangladesh which simply has renewed their identity as marginalized peoples.\(^ {11}\) The Constitution as a solemn expression of Bengali nationalism has *ipso facto* sought to impose the same on the marginal communities, again giving rise to the dichotomy of state boundary and nation boundary.\(^ {12}\) At present, there are more than 30 marginal communities in Bangladesh who are officially recognized as tribal populations.\(^ {13}\)

Bangladesh is one of the 11 states which abstained in the voting on the United Nations (UN) Declaration on the Rights of Indigenous Peoples. The reason as has been expressed by the representative of Bangladesh is that indigenous peoples have not been defined or identified in clear terms in the UN Declaration on the Rights of Indigenous Peoples.\(^ {14}\) Till today, Bangladesh has not recognized any of the marginal communities as indigenous peoples.\(^ {15}\) The approach of Bangladesh

---

\(^{10}\) This is popularly known as the ILO Convention No. 107. See online <www.ilo.org/ilolex/cgi-lex/ratifce.pl?C107>.

\(^{11}\) The above situation has been highlighted in a parliamentary speech delivered on 25 October 1972 by Manobendra N. Larma, the only member of the First National Assembly from Chittagong Hill Tracts region. He said: “This Constitution does not recognize the existence of other national communities in Bangladesh… it comes as a surprise to me that the framers of Constitution have forgotten my land, my people… We have been deprived of our rights, the country has become independent, but we continue to have a cursed life…” See Government of Bangladesh, *Bangladesh Jatiyo Sangsad Bitorko: Sarkari Biboroni* (Parliamentary Debates), volume 2 (Dacca, 1972) pp. 292–295.

\(^{12}\) *Ibid.*, p. 452. In this context Manobendra N. Larma addressed the First National Assembly on 31 October 1972 in the following terms: “You cannot impose your national identity on others. I am a Chakma not a Bengali. I am a citizen of Bangladesh, Bangladeshi … they (Hill People) can never become Bengali.”


in relation to its marginal communities is indicative of a typical Asian attitude.\textsuperscript{16} The position of Bangladesh in this regard represents a kind of ambivalence and inconsistency in policy and action. For example, though Bangladesh has frequently expressed that definition is required for safeguarding the rights of indigenous peoples,\textsuperscript{17} it has further proposed to replace the term ‘indigenous’ with something more suitable.\textsuperscript{18} In contrast to her proposition that the situation concerning indigenous peoples should not be regarded as confined to Native American Stereotype only,\textsuperscript{19} Bangladesh has not accorded the status of indigenous peoples to any of her marginal communities who inevitably do not match with the Native American Stereotype. In addition, Bangladesh has stated that the term ‘indigenous peoples’ was not applicable to her since the entire population had been living on the land for the past several millennia, making everyone indigenous to the land.\textsuperscript{20} The majority populations of Bangladesh trace their ancestry back thousands of years; however some ethnic groups of tribal origin live in the country’s south-eastern hill districts who are distinct from the mainstream population.\textsuperscript{21} On another occasion, Bangladesh has stated that the entire 120 million population of Bangladesh are all indigenous.\textsuperscript{22} Despite the above statements, it is not impossible to discover the actual stance of Bangladesh on the indigenous issue. Bangladesh follows a highly integrationist domestic policy with regard to all of the marginal communities including those who claim that they are rightfully entitled to the status of indigenous peoples.\textsuperscript{23} In sum, Bangladesh thinks that since her entire populations are indigenous, there is no moral or political justification to accord such special legal status to any particular section of its populations against the majority Bengalis.

Nevertheless, the marginal communities of Bangladesh have stressed the need for official recognition as indigenous peoples.\textsuperscript{24} They have also emphasized the importance of recognition of their right to land and control over natural resources.\textsuperscript{25} The indigenous representatives have expressed their concern about


\textsuperscript{17} See U.N. Doc. E/CN.4/Sub.2/1996/21, para. 34.


\textsuperscript{23} For detailed analysis, see A. Mohsin, The Politics of Nationalism: The Case of Chittagong Hill Tracts Bangladesh, second edition (The University Press Limited; Dhaka, 2002) pp. 49–75.

\textsuperscript{24} See U.N. Doc. E/CN.4/Sub.2/2002/24, para. 42. Indigenous peoples from Bangladesh, Indonesia, Japan and Kenya reported that their countries had failed to protect their rights as indigenous peoples as a result of non-recognition.

development issues related to use of land despite the signing of an agreement with the government.\textsuperscript{26} They have pointed out the fact of expulsion and displacement of thousands of indigenous peoples as a result of government-sponsored settlement programmes into the indigenous regions.\textsuperscript{27} The indigenous peoples have brought to notice that little had been done in the past years to improve the condition of health and sanitation.\textsuperscript{28}

Against the above background, this article takes the view that the international concept of indigenous peoples has already been sufficiently crystallized through international treaties, UN practices, organizational activities, etc. to the extent of universal application. Many of the marginal communities of Bangladesh meet the requirements of the international legal concept of indigenous peoples inasmuch as they are entitled to recognition as indigenous peoples. We shall argue that non-dominance or subordination is an imperative criterion of the international legal definition of indigenous peoples. The state of non-dominance of the indigenous peoples began with classical colonialism and further continued at the hands of nation states after decolonization had taken place. We shall take help from the discourses on subaltern historiography to elaborate on the aspect of non-dominance of the marginal communities in the Indian subcontinent \textit{vis-à-vis} Bangladesh. Thereafter, case studies on the historical profiles of three marginal communities will be presented as factual evidence in support of the above propositions. Thus we shall argue that the claim of the marginal communities in Bangladesh to the status of indigenous peoples cannot be defeated on the ground of a lacking or unclear definition or for the excuse that the entire populations of Bangladesh are indigenous.

2. Defining Indigenous: The State of Non-dominance

There has been heated debate over the international legal definitions of indigenous peoples in the preceding years because neither the indigenous peoples nor the state parties are satisfied with the international legal definitions of indigenous peoples.\textsuperscript{29} On top of that, the indigenous peoples have preferred self-identification\textsuperscript{30} and denied any need for definition. However, it has been contended that self-identification could not be reserved as an exclusive right of

\textsuperscript{30} Self-identification is the first of the two steps involved in recognition of the legal status of the indigenous peoples. The other is recognition by an international sovereign entity or institution. See U.N. Doc. E/CN.4/Sub.2/AC.4/1996/2/Add.1, para. 5.
indigenous peoples at the international level and with regard to situations in Africa and Asia and it could create very serious conceptual and practical problems.\textsuperscript{31} For instance, Bangladesh has stated that a procedure based on self-identification could be self-defeating and the agenda for indigenous people should not be allowed to be confused with the agenda of other sub-national and tribal groups that constituted minorities within their respective countries.\textsuperscript{32} The position of Bangladesh in relation to the definition of indigenous peoples at international level represents a positivist approach which treats indigenous peoples as a legal category requiring precise definition on the basis of which it should be possible to determine who are or who are not indigenous peoples.\textsuperscript{33} Like other Asian states, Bangladesh relies on a definitional argument to oppose recognition of the rights attached to indigenous peoples.\textsuperscript{34} The above statement of Bangladesh deserves strict scrutiny having regard to the fact that Bangladesh is a signatory state to the ILO Convention No. 107, the only binding international instrument on indigenous rights till today. Although the ILO Convention No. 107 has made the first attempt to define indigenous peoples,\textsuperscript{35} it has been later unanimously concluded that the integrationist language of the Convention No. 107 is outdated and that the application of this principle is destructive in the modern world.\textsuperscript{36} As a result ILO adopted Convention No. 169 in 1989 incorporating a new definition of indigenous peoples.\textsuperscript{37} While the term

\begin{footnotesize}
\begin{enumerate}
\item[33] Kingsbury, supra note 16, p. 414.
\item[34] Ibid., p. 433. According to Benedict Kingsbury the Asian states presents three arguments against the concept of indigenous peoples, namely the definitional argument, practical argument and policy argument. The definitional argument is lexical, resting on a view of ‘indigenous’ as entailing prior occupancy, and stipulational, associating ‘indigenous peoples’ with deleterious effects of European colonialism.
\item[35] The ILO Convention No. 107 defines indigenous peoples as “members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong”. It may be noted that according to ILO Convention No. 107 being tribal or semi-tribal is a precondition to becoming indigenous peoples.
\item[37] Indigenous peoples according to the ILO Convention No. 169 are “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural and political institutions”.
\end{enumerate}
\end{footnotesize}
indigenous was subsumed under the term tribal in Convention No. 107, the Convention No. 169 attempts to widen the indigenous-tribal distinction by contrast.\textsuperscript{38} Both of the ILO conventions specify that indigenous peoples are descendants from earlier populations in a country or a geographical region. As regards the definitional standpoint, however, the international approach including that of the United Nations seems to be highly influenced by the seminal work of UN Rapporteur J. Martinez-Cobo. His “Study of the Problem of Discrimination against Indigenous Populations” contains the most notable exposition of the concept of indigenous peoples. Cobo’s definition presupposes the historical event of a community suffering invasion or colonization, self-identification as distinct community, non-dominant status and determination to preserve ancestral land as the desiderata of the indigenous peoples.\textsuperscript{39} The concept of indigenous peoples developed by Mrs. Erica-Irene A. Daes, the Chairperson-Rapporteur of the UN Working Group on Indigenous Populations, seems to be also based on the Cobo definition. The Working Paper on the Concept of Indigenous Peoples includes the following criteria as definitional factors, such as: (a) priority in time, with respect to the occupation and use of a specific territory; (b) the voluntary perpetuation of cultural distinctiveness; (c) self-identification, as well as recognition by other groups, or by state authorities, as a distinct collectivity; and (d) an experience of subjugation, marginalization, dispossession, exclusion or discrimination.\textsuperscript{40}

The aforesaid elucidations of the concept of indigenous peoples in general entail the following elements: (1) prior inhabitants of a particular place,\textsuperscript{41} (2) special


\textsuperscript{39} See \textit{Study of the Problem of Discrimination against Indigenous Populations}, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4. (U.N. Sales No. E.86.XIV.3), para. 379. Cobo defines indigenous peoples as “communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.” For analysis see Thornberry, \textit{ibid.}, pp. 110–111.


\textsuperscript{41} Compared to the Cobo definition, the expression ‘descent from populations’ tends to indicate racial purity based on blood relationship. \textit{Contra} L. Sweepton, ‘Indigenous and Tribal Peoples and International Law: Recent Developments’, 30:2 \textit{Current Anthropology} (April 1989) p. 260. Sweepton’s observation is that the ILO thinks that the term indigenous in the ILO perspective raises the question of historical precedence and does not address the question of physical or cultural situation of the groups. Benedict Kingsbury, on the other hand, thinks that the Cobo definition takes a potentially limited and controversial view of indigenous peoples by requiring historical continuity with pre-invasion and pre-colonial societies that developed on their territories whereas by contrast the ILO has a more diffuse historical requirement. See Kingsbury, \textit{supra} note 16, p. 420.
attachment to land, distinctive society and culture, colonialism, and non-dominance. Of them the first three elements deal with the inseparable attributes concerned to the existence of indigenous peoples. Colonialism is the catalyst which reconciles between the first three elements and the last one. The first three elements have a mixed historic, economic and cultural overtone. The very last element, namely non-dominance, constitutes justification for recognition of the legal rights of indigenous peoples. The simple reasoning is that no entrenchment of indigenous peoples' rights would be necessary had there been no incidences of subordination of the indigenous peoples at the hands of a dominant social or political formation. A deep structured reading of the above elements will show that the first three of the abovementioned elements are ineluctable desiderata for indigenous peoples. Though it is desirable for the indigenous peoples to conserve these elements, they have been unable to do so because of their non-dominant position which they have been experiencing since colonialism. Entrenchment of legal rights is necessary in order to enable the indigenous peoples to overcome the state of non-dominance for the purpose of conserving the abovementioned elements.

As argued earlier, non-dominance constitutes one of the most important elements of the concept of indigenous peoples. The state of subordination of the indigenous peoples is invariably associated with colonialism as its resultant consequence. Indigenous peoples all over the world have not only been conquered by colonial powers but also found their way of life assaulted and disrupted. Colonialism affected indigenous peoples in a number of ways such as demographic deterioration, enslavement, punishment for resistance, warfare, malnutrition due to destruction of the natural environment or over-exploitation of land and labour, disease and outright extermination. The concept of indigenous

42 See Final Working Paper: Indigenous Peoples and their Relationship to Land, U.N. Doc. E/CN.4/Sub.2/2001/21, para. 13. It is difficult to separate the concept of indigenous peoples’ relationship with their lands, territories and resources from that of their cultural differences and values. The relationship with the land and all living things is at the core of indigenous societies.
43 The very concept of indigenous embraces the notion of a distinct and separate culture and way of life, based upon long-held traditions and knowledge which are connected, fundamentally, to a specific territory. See U.N. Doc. E/CN.4/Sub.2/1993/28, para. 1.
44 In this article, the terms non-dominance, marginalization and subordination are used interchangeably. Non-dominance includes political subordination, economic deprivation, legal discrimination and racism.
47 Wiessner, supra note 38, p. 57. In this regard, the view of Rennard Strickland is noteworthy. He maintains that there were legal genocides against the American Indians in the form of enactment and policy which obliterated their life and culture. See R. Strickland, ‘Genocide-at-Law: An Historic and Contemporary View of the Native American Experience’, 34 University of Kansas Law Review (1985/1986) pp. 718–721.
peoples, apart from all its possible legal significances, implies reaction and resistance to colonial domination as well as ‘primitivization’ of the native peoples. \(^{48}\)

Historic injustice\(^ {49}\) which is invoked as providing a contextual basis for the concept itself in reality is thought to have stemmed more from the thoughts of the colonizers than the muzzles of guns. \(^ {50}\) Therefore, the cultural or ideological aspect of colonial domination cannot be disregarded in order for an appropriate understanding of the magnitude of non-dominance of the indigenous peoples. However, the contemporary paradigm of non-dominance of the indigenous peoples cannot be fully conceived without the knowledge of internal colonialism. \(^ {51}\) The subordination of the indigenous peoples began with classical European colonialism. The historic injustice suffered by the indigenous peoples did not really end with the demise of classical colonialism and subsequent emergence of nation states. \(^ {52}\) It should be mentioned that while state sovereignty over distant or external colonial territories was eroding, it remained relatively unchanged in relation to the indigenous groups and worked to keep them outside the realm of international concern. \(^ {53}\) With regard to customary laws not being reinstated after decolonisation, land being expropriated by the dominant groups, indigenous languages not used

---


\(^ {49}\) The United Nations Declaration on the Rights of Indigenous Peoples has affirmed that indigenous peoples have suffered from historic injustices as a result of colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests. See United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (13 September 2007).

\(^ {50}\) S.P. McSloy, ‘“Because the Bible Tells Me So”: Manifest Destiny and American Indians’, 9 St. Thomas Law Review (1996/1997) pp. 37–38. The author explained, ‘How were American Indian lands taken? The answer is not, as it turns out, by military force. The wars, massacres, Geronimo and Sitting Bull—all that was really just cleanup. The real conquest was on paper, on maps and in laws. What those maps showed and those laws said was that Indians had been “conquered” merely by being “discovered”’. It may be mentioned, for example, that Pope Alexander VI of 1493 granted title to Spain the lands of New Worlds discovered or to be discovered which were not already possessed by other Christian kings or princes by Christmas 1492. See I. Brownlie, Principles of Public International Law, ELBS edition (Oxford University Press, 1993) pp. 147–148.


in schools, the situations of concern to indigenous peoples in the decolonized states are identical to those of the indigenous peoples of other regions. Indigenous peoples who were subjected to classical colonialism continue to suffer from internal colonialism within the nation-states. The basic feature of internal colonialism is that the more developed core of a country dominates the periphery politically and exploits it materially. Internal colonialism resembles colonial domination because the groups who dominate the peoples on the periphery belong to a different culture and the domination is based on racism. Internal colonialism condemns the peoples of the periphery to an instrumental role and legalizes metropolitan hegemony. The typical consequences of internal colonialism include inequitable distribution of national wealth, employment and educational opportunities. The local resources and income are used primarily to serve the interests of the dominant ethnic or religious groups wielding state power.

Particularly indigenous peoples that were once externally colonized have continued to live on the periphery in the nation-states. Internal colonialism like classical colonialism is responsible for causing a number of factors like numeric inadequacy, economic and political subordination, etc. which brought about the present state of non-dominance of the indigenous peoples.

The state of indigenous peoples as non-dominant sectors of society reflects the general experience of most indigenous peoples all over the world. Non-dominance appears to exert adverse impact on the general attributes of the existence of the indigenous peoples. For example, the resultant effect of non-dominance with regard to prior inhabitation is expulsion, extermination, enslavement, etc. In the same way, when connected with special attachment to land, subordination brings about dispossession and when connected with distinctive society and culture results in racial discrimination or loss of identity. Though it has been contended that a particular group does not cease to be indigenous as soon as it is

55) Iorns, supra note 51, p. 300.
56) Ibid., p. 299; Sornarajah, supra note 51.
57) R. Blauner, ‘Internal Colonialism and Ghetto Revolt’, 16 Social Problems (1968/1969) p. 396. According to Blauner, one of the basic components of colonization is racism. He thinks racism is a principle of social domination by which inferior groups are exploited, controlled and oppressed socially and physically by a superordinate group.
58) Sornarajah, supra note 51.
stripped of its state of non-dominance,\textsuperscript{61} it nevertheless constitutes a determining factor for recognizing the status of a group as indigenous peoples. For example, the majority Bengali population having been organized into a state is no more in need of the status of indigenous peoples. On the other hand, the Chakma peoples of Chittagong Hill Tracts in Bangladesh conform to the definitional elements of indigenous peoples including non-dominance. At present they are bargaining with Bangladesh on the status and rights of the indigenous peoples. If the Chakma can organize themselves into a state, they will no longer be in need of such recognition from Bangladesh.\textsuperscript{62} As a matter of fact, the reality of indigenous peoples implies an asymmetric relationship between the indigenous and the state. The indigenous peoples could neither be effectively integrated into the state without losing identity nor are they able to be organized into new states.\textsuperscript{63} The international legal concept of indigenous peoples has opened an alternative avenue for the indigenous peoples to realize their cultural and political rights perhaps without having recourse to either of the above options.

3. Indigenous Peoples in Subaltern History

In his celebrated discourse, \textit{Notes on Italian History}, Antonio Gramsci has analyzed the political formation and development of the modern state in Italy in terms of a binary relationship of two classes of actors, namely the ruling class or the elite class and the subaltern class.\textsuperscript{64} The history of the ruling class is essentially the history of the state and their historical unity is realized in the state. The supremacy of the ruling class entails two essential characteristics which are domination and intellectual and moral leadership. On the other hand, the subaltern classes are not unified and cannot unite until they are able to become a state. Though a tendency to unification exists among subaltern classes, such an attempt is continually interrupted by the ruling class. According to Gramsci, people belonging to a subaltern class are always subject to the activity of the ruling class. Consequently, the history of subaltern social classes is necessarily fragmented and episodic.\textsuperscript{65} The term subaltern

\textsuperscript{62} Cf. T. Eagleton, \textit{The Idea of Culture} (Blackwell Publishers, 2000) p. 59. Terry Eagleton said: “The nation-state does not unqualifiedly celebrate the idea of culture. On the contrary, any particular national or ethnic culture will come into its own through the unifying principle of the state, not under its own steam.”
\textsuperscript{64} A. Gramsci, \textit{Notes on Italian History, Selection from Prison Notebooks}, Q. Hoare and G. Nowel Smith (eds. & trans.) (Orient Longman, 2004) pp. 52–120. Gramsci in his writing used the term subaltern to denote non-dominant proletariat class in opposition to hegemonic bourgeois class.
\textsuperscript{65} \textit{Ibid.}, pp. 52–59. According to Gramsci for this reason the history of the subaltern class is intertwined with that of civil society and thereby with the history of states.
class appeared in the historiography of India with a newer dimension nearly two and a half decades ago. Though the word subaltern actually means inferior rank in army, it purports, according to the subaltern school of historiography, a general attribute of subordination in South Asian society including class, caste, age, gender and office or any other way. Subordinate or subordination was understood in terms of a binary relationship the other counterpart of which is dominant or domination. The term ‘elite’ has been used to signify the dominant groups. The social groups and elements included in the term ‘subaltern’ represent the demographic difference between the total population and all those who are known as elites. The word ‘subaltern’ was conceived in a variable sense. It includes classes of peoples who belong to non-dominant position in society and state. Therefore, subaltern historiography is opposed to elitist historiography of the colonialist or the neocolonialist type. In the context of the above theoretical background, the historians belonging to the subaltern school have found no difficulty to include in the subaltern class the marginal communities now aspiring to the status of indigenous peoples. They have written extensively on the plight of the marginal communities under colonial rule as well as that of nation-states.

67 See R. Guha, ‘Preface’, in R. Guha (ed.), Subaltern Studies I, paperback (Oxford University Press, New Delhi, 1994) pp. vii–viii. About the aim of subaltern study of history he wrote, “to promote a systematic and informed discussion of subaltern themes in the field of South Asian studies, and thus help to rectify the elitist bias characteristic of much research and academic work in this particular area”.
68 Ibid.
70 Ibid. Ranajit Guha has said: “The same class or element which was dominant in one area according to the definition given above, could be among the dominated in another. This could and did create many ambiguities and contradictions in attitudes and alliances, especially among the lowest strata of the rural gentry, impoverished landlords, rich peasants and upper-middle peasants all of whom belonged, ideally speaking, to the category of ‘people’ or ‘subaltern classes’… It is the task of research to investigate, identify and measure the specific nature and degree of the deviation of these elements from the ideal and situate it historically.”
The historians of the subaltern school have meticulously pinpointed the various modes of interaction between empire and the native marginal communities who were primarily affected by British colonization in India to the detriment of their political power, land tenures, cultural distinctiveness, economy, etc. Since the beginning of colonial subjugation, the British government had recourse to a number of novel land revenue experiments which produced an unprecedented agrarian crisis in Bengal. Property was created in land, leading to the growth of the market for land and the money lending business. The recording of rights and the induction into a modern and streamlined revenue system came as a complete novelty to the marginal communities. The introduction of an exotic and unprecedented land tenure system in the colonized territory caused dispossession of many tenants, chiefs and headmen belonging to marginal communities. Colonial capitalism along with alien traders, landlords and colonial administrators was able to control the land and other resources in the territory inhabited by the marginal communities. Furthermore, the entire economic system in British-India was backed up by a superimposed legal system and a powerful army. As a result, dispossession increased and traditional rights over land had diminished to the extent of giving rise to rebellions among the marginal communities. Many of the marginal communities who had once been politically autonomous lost their autonomy which they exercised at the time of initial colonization. In many cases, these peoples were compelled to change their occupations and became labourers under the auspices of colonial administration. The destruction of the

---

72 Ibid.
73 See N. Kaviraj, ‘Peasant and Adivasi Uprisings (1765–1885)’, in N.R. Ray et al. (eds.), Challenge: A Saga of India’s Struggle for Freedom (People’s Publishing House, New Delhi, 1984) p. 113. During the Mughal regime the peasants enjoyed occupancy rights which were generally inviolable. The peasant could not be ejected from land as long as he paid revenue. Under the Company rule, the landlords who were collectors of revenue became hereditary owners of land.  
74 In Bengal private property was first created in land by the Permanent Settlement, 1793. By virtue of Permanent Settlement the landlords were declared the absolute owners of land. They were allowed to transfer land. The successors to landlords were permitted to inherit land according to law of succession. See S. Islam, ‘Permanent Settlement and Peasant Economy’, in S. Islam (ed.), History of Bangladesh 1704–1971, volume 2, 2nd edition (Asiatic Society of Bangladesh, Dhaka, 1997) pp. 265–292.
75 Swapan Dasgupta discussed the resultant effect of colonial property law on the aboriginal peoples in Midnapur district of West Bengal. See Dasgupta, supra note 71, pp. 101–122.
76 Ghosh, supra note 71, p. 13. As a result, the British government in Bengal amended the Bengal Tenancy Act, 1885 in 1916 imposing restriction on aboriginal land alienation.
78 About the process of becoming a labourer from raiding hill-men Kaushik Ghosh remarked: “All the specificities of language, of religion, of proud histories of autonomy from sedentary states; all that was wiped out rapidly and was replaced by a monolithic identity beaten out from the labour contracts...The transformation of the primitive terror of the raiding hill-man into the docility
existing agrarian structure most adversely affected the life of the marginal communities. They became the victim of two-fold oppression – feudal and colonial.\textsuperscript{79} In effect subaltern historiography has captured the broad picture of colonial law and politics which were imposed on the marginal communities bringing about acute subordination. Thus many aspects concerned with historic injustices suffered by the marginal communities, for example, colonial domination, attachment to land, state of non-dominance, cultural and racial distinctiveness, have become subject matters of subaltern historiography.

Subaltern historiography has elaborated on the relationship between the dominant and the non-dominant to the extent that it justifies legal recognition of the marginal communities. The marginal communities who aspire to the status of indigenous peoples in Bangladesh belonged to the non-dominant class as against the British colonialists. At present, they still belong to the non-dominant class as against the majority Bengali populations although colonial domination had ended long ago. In the above circumstances, what we owe to subaltern historiography is the insight that ‘the non-dominant’ are very much on unequal terms with ‘the dominant’ in respect of social, political or economic aspects of life. The statement of Bangladesh that the total populations of Bangladesh are all indigenous is simply fallacious. This very statement which purports to deny the claims of the marginal communities to the rights and status of indigenous peoples on the excuse of unreal equality represents the discriminatory approach of the state.

4. The Profi led Communities

Earlier we have argued that non-dominance or subordination is an imperative criterion in relation to the concept of indigenous peoples. In addition, subaltern historiography has provided us with an outline as to how the marginal communities in this region have been suffering from subordination at the hands of dominant groups who are racially and culturally different from them. In this part we shall discuss the historical profiles of three marginal communities of Bangladesh as factual evidence of historic injustice suffered by them. They are the Khasi, the Chakma and the Santal.

4.1. The Khasi

The general assumption is that the Khasi belonged to a section of Austric people known as \textit{T’sin-Taing} or \textit{T’sin-tien} or \textit{Synteng} who together with \textit{Jaintia} and
Kha-Chai or Khasia migrated from China in the pre-historic period. Some scholars are of the opinion that the ancient Khasi peoples had pioneered rice cultivation in Vietnam’s Red River delta, and when conquered by the Vietnamese, they moved into Yunnan (China), and across northern Burma entered Assam, Sylhet and the Ganges basin. However, the Khasi had established settlement in the ‘Khasia’ and ‘Jaintia’ hills. Later this settlement became a kingdom known as ‘Jaintia’ having an elected chief or Raja (King) from the Jaintia group. Besides the Jaintia hills, the Jaintia kingdom comprised some portion of the Meghalaya district and Nowgong district of Assam and had its capital at Jaintipur in Jaintia Parganas of the Sylhet district of Bangladesh. According to the earliest survey-map prepared under Major James Rennel in 1777, the Khasi were in virtual possession of a considerable area of 485 square miles between the foot of the hills and the river Surma. With the help of historical and non-historical data, it is possible to provide the history of the area now called Sylhet district from the seventh century AD. It is known from the records of the East India Company that Jaintia kingdom was never conquered by the Muslim rulers and the Khari had dominated areas now falling into Sylhet district until conquered by the British in 1835. From 1783 to 1790 many military expeditions were launched in order to drive the Khali out of their plain-land possession into the hills. In 1789 Mr. Willes wrote:

[T]he Cosseahs (Khasis) [should] never be allowed to purchase lands or become residents within the Company’s limits. It can answer no good purpose. A Cosseah never cultivates the soil. He employs Bangalee Ryotts (Bengali cultivators), comes down at the time of the Harvests, and carries off the Produce. The Cosseahs have obtained stronghold of this district either by artful management of the Bangalee Chaudries (Bengali landlords) or by agreements taken from such Chaudries whom they have forcibly taken off into the hills.

On a separate note, Mr. Lindsay had referred to Jaintia Raja as the most powerful and most civilized of the whole, holding large possessions, both on the mountain and in the plains. Nevertheless, the Company regarded Sylhet as a part of

---

83 Rizvi, supra note 80.
84 Ludden, supra note 81, p. 3.
85 B.C. Allen et al., Gazetteers of Bengal and North East India (Mittal Publications, Delhi, 1984) p. 420.
86 Islam, supra note 77, p. 150.
87 Ludden, supra note 81, p. 41.
88 Robert Lindsay was the first English official who seriously turned attention to the Khasi. In 1772 he became the Resident of Sylhet. Lindsay was keen on commercial gain in the hills. See N. Guha, ‘The Khhas and the English’, in N. R. Ray et al. (eds.), Challenge: A Saga of India’s Struggle for Freedom (People’s Publishing House, New Delhi, 1984) pp. 130–132.
Bengal, and by 1800 the company could have driven away the Khasi from the undefined lowland of the Surma basin either by diplomacy or by military invasions. In 1824, at the beginning of Burmese war the Company entered into an agreement with the then Jaintia Raja promising that the independence of his kingdom would be maintained. Despite the above agreement, the East India Company finally annexed Jaintia kingdom in 1835. The Jaintia Raja was taken to Sylhet as a prisoner and later pensioned off. Thereafter, the Company replaced the earlier land administration and revenue system of Jaintia kingdom. From 1835 until 1947 the agricultural lands of the former Jaintia kingdom were settled as temporarily settled estates. From 1836 to 1892 six land settlements were held, of which the first was conducted by Captain Fisher who set the assessment of Rs 35,988 for one year. The second survey and settlement was carried out by Lieutenant Thuiller in 1838, which actually continued up to 1840. During the second survey, Lieutenant Thuiller brought most of the rent-free estates under the revenue system. From the year 1836 to 1897, the amount of assessment was raised up to Rs 221,728. Meanwhile in 1853 in a report Mr. Mills made a proposal for levying house-tax and establishing a police station. In 1856, there was an attempt on the Company's behalf to collect taxes from the hilly areas. In 1860 the colonial authority imposed house-tax which gave rise to an uprising among the Khasi peoples. The British authorities again took steps to impose income tax, which caused another great uprising among the Khasi under the leadership of U-Kiang Nongbah. He demanded that there be no taxation and interference with traditional religious rites, the Jaintia Raja be reinstated, the troops and police be withdrawn. U-Kiang was arrested and executed in 1862. However,
the resistance went on and other principal leaders did not surrender until 1863. The abovementioned tax regime, as it may be discerned, brought about devastating consequence for the Khasi peoples.

The Khasi had been gradually divested of plain land formerly held in their possession and concentrated in hilly areas. The British economic ventures, namely the establishment of tea estates, intensified the dispossession. Due to colonial rule the district which once upon a time was mostly inhabited by the Khasi peoples became a Bengali Muslim populated area. The result of the forcible purge of the Khasi from plain land of Sylhet was the following: “tracts of land north of the Surma formerly owned by Khasis and Bengali Khasis, had been occupied by Bengali cultivators, who ‘[had] become very willing and eager to enter into regular engagements to pay Revenue’”. Thus the Khasi became official aliens, disallowed from participating fully in what became for the first time a definitively Bengali agrarian territory. The first boundary of Bangladesh defined Sylhet as a Bengali territory in British-India where alien Khasis might live and work but could never really belong.

4.2. The Chakma

The origin of the Chakma peoples and the Muslim names of the Chakma chiefs of 18th century has been a matter of debate among scholars for many years.

---

100) Ibid.
101) Wild tea was found in Surma basin around 1855 and the first tea garden was established in 1857. By 1903 there had been 143 tea gardens in greater Sylhet and by 1910 there had been 11 tea gardens in Jaintia. The British tea-plantation ventures absorbed a lot of tribal people as labourers in tea gardens. In 1871 more than 38,000 workers were being migrated from the lower plains of West-Bengal to work in tea gardens. In 1890, about 71,950 workers were being migrated to tea gardens and in the next ten years the number of migrant workers doubled. This Labour Importation Policy served the British Empire in two ways—firstly, it helped to supply labourers at the tea plantations at a very low cost, and, secondly, in this way a mixed community was created to check any future uprising of the local indigenous people against the British Empire. Rizvi, supra note 80, pp. 135–136.
102) The earliest estimate of the population was made by John Willes in 1789 who reported that there were altogether 492,945 inhabitants in Sylhet district. In 1808, there were 492,495 inhabitants in Jaintia. The British tea-plantation ventures absorbed a lot of tribal people as labourers in tea gardens. In 1871 more than 38,000 workers were being migrated from the lower plains of West-Bengal to work in tea gardens. In 1890, about 71,950 workers were being migrated to tea gardens and in the next ten years the number of migrant workers doubled. This Labour Importation Policy served the British Empire in two ways—firstly, it helped to supply labourers at the tea plantations at a very low cost, and, secondly, in this way a mixed community was created to check any future uprising of the local indigenous people against the British Empire. Rizvi, supra note 80, pp. 135–136.
103) The abovementioned tax regime, as it may be discerned, brought about devastating consequence for the Khasi peoples.
104) Ludden, supra note 81, p. 52.
105) See A. M. Serajuddin, “The Chakma Tribe of the Chittagong Hill Tracts in the 18th Century”, Journal of the Royal Asiatic Society of Great Britain and Ireland (1984) p. 90. Lewin believed that the Chakmas are descendents of the Mughal soldiers and Arakanese women. Following an encounter of the Mughals with the Arakanese, a number of Mughal soldiers had been taken captive. Later,
Some of the authors suggest that the origin of the tribe should be sought in the regions of Indo-China and Thailand, and not in the Gangage basin. In spite of the irreconcilable controversy regarding origin, most of the writers are of the opinion that the Chakma had migrated from Arakan. It deserves mention that the district of greater Chittagong including the Chittagong Hill Tracts (CHT) constituted part of Arakan from 1459 until conquered by the Mughal governor Shaista Khan in 1666. In Mughal revenue parlance, the CHT was known as kapash mahal or cotton estate. Except for collecting the fixed amount of cotton, the Mughals hardly interfered in the hill people’s internal affairs. According to Chakma legend, their ancestors were Kshatriyas (Warrior dynasty) of North Indian origin, who invaded Arakan towards the end of the 14th century, settled there and intermarried with the local people.

According to the history of Arakan, a Chakma chief left Arakan and settled at Ali Kadam during the 15th century. In 1434–1435 the Chakma had put up a strong resistance on behalf of Muslims when the then Arakanese king Meng Khari in a military campaign proceeded up to Ramu. However, the Chakma were
ultimately compelled to yield up some part of Ramu to the king of Arakan since no reinforcement arrived from the Sultan of Bengal.\textsuperscript{112} In 1518 a Chakma chief called Chanui accepted the vassalage of the king of Arakan and sent him two lime painted elephants. The Arakanese king in return bestowed on him a title ‘Kulangphru’ and married his daughter.\textsuperscript{113} From the early revenue record it appears that Chundan Khan, Ratan Khan and Kuttooah were the Rajas (kings) of the Chakma peoples from 1711 to 1714.\textsuperscript{114} As regards their early dealings with the Mughals, it appears that Jalal Khan, a Chakma chief, first obtained permission from the Mughal emperor Farrukhsiyar to trade with the people of the plain land on payment of tribute in cotton.\textsuperscript{115} But Jalal Khan, in breach of agreement, defaulted on the payment of tribute, and in the face of attack from the Mughals he fled to Arakan.\textsuperscript{116} Later, Shermast Khan, another Chakma chief from Arakan, renewed the agreement with the Mughals. Moreover, he agreed to pay additional tribute to the Mughal in return for a grant of waste land in Chittagong.\textsuperscript{117}

The district of Chittagong was ceded to the East India Company in 1760.\textsuperscript{118} In 1763 Mr. Henry Verelest, the chief of the Chittagong Council, by a proclamation declared that the local jurisdiction of Shermast Khan be “[a]ll the hills from the Pheni river to the Sang, and from Nizampur Road to the hills of the Kuki Raja”.\textsuperscript{119} Sher Daulat Khan succeeded to Rajaship in 1765.\textsuperscript{120} In 1776 Sher Daulat Khan flouted the Company’s authority and withheld payment of revenue of his estate at Rangoonia. Under the leadership of Sher Daulat Khan, Jan Baksh Khan and Ranu Khan defied the Company’s authority in Chittagong Hill Tracts.\textsuperscript{121} The rebellion of the Chakma people in Chittagong Hill Tracts originated from the Company’s revenue policy on the one hand and the multifarious exploitation of the Company’s farmer and speculators on the other.\textsuperscript{122} From 1777 to 1781, three

\textsuperscript{112} Ali, \textit{supra} note 108, p. 335.
\textsuperscript{113} \textit{Ibid}.
\textsuperscript{114} Chundan Khan took the title Tein Khan. Ratan Khan, the son of Tein Khan, succeeded to his father. Kuttooah the son of Ratan Khan succeeded to the Rajaship for 1713–1714. They paid no revenue or tribute to the government. \textit{See} Serajuddin, \textit{supra} note 105, p. 95.
\textsuperscript{116} \textit{Ibid}., p. 135.
\textsuperscript{117} \textit{Ibid}.
\textsuperscript{118} Islam, \textit{supra} note 109, p. 123.
\textsuperscript{119} Hutchinson, \textit{supra} note 105, p. 24.
\textsuperscript{120} Serajuddin, \textit{supra} note 105, p. 96.
\textsuperscript{121} Mr. Law, the Collector of Chittagong, reported that Ranu Khan and his people had been making constant attacks on the landholders and farmers of the plains and in consequence the Company’s revenue collection was delayed and sometimes the Company incurred a loss. The Company’s farmers were complaining against the hill people finding their interest from revenue collection declining, Mr. Law also reported that Ranu Khan did not recognize the authority of the Company. Chakraborty, \textit{supra} note 115, p. 139.
\textsuperscript{122} \textit{Ibid}., p. 150.
full-scale military expeditions under the command of British officers were sent against the rebels but failed.\(^{123}\) In 1782 Sher Daulat Khan died; however his son Jan Baksh Khan and his retainer Ranu Khan continued with the resistance.\(^{124}\) The Chakma resistance finally ended in 1786. In 1787 Jan Baksh Khan accepted British suzerainty and agreed to pay cotton tribute on a regular basis in return for the right to trade with the peoples of the plains.\(^{125}\) In 1791 the cotton tax was abolished in favour of cash payment. Upon the death of Dharam Baksh Khan, the estate came under the Court of Wards, Chittagong in 1830. In 1855 Kaleendi Rani was declared Sarbarakar (tax collector) of the Kapas Mahal.\(^{126}\) Although Kaleendi Rani was serious about getting recognition of proprietary right in land, the right to permanent settlement was never recognized by the government.\(^{127}\)

The autonomy of the hill peoples was preserved until 1860. By the Act XXI of 1860, the CHT was made into a separate district and placed under the administration of a Superintendent of the Hill Tribes.\(^{128}\) The colonial government proclaimed ownership of land in 1868.\(^{129}\) The Chittagong Hill Tracts Regulation of 1900 (popularly known as the CHT Manual) came into effect on 1 May 1900. The CHT Manual confirmed territorial division under three revenue circles, namely the Chakma Circle, Bohmang Circle and the Mong Circle.\(^{130}\) The Government of India Act, 1935 designated CHT as a ‘Totally Excluded Area’.\(^{131}\) In 1947, the Bengal Boundary Commission awarded CHT to Pakistan.\(^{132}\) The 1956 Constitution of Pakistan retained the status of CHT as ‘Totally Excluded Area’. This status of CHT was changed in the 1962 Constitution, providing for

\(^{123}\) Islam, *supra* note 77, p. 150.

\(^{124}\) Chakraborty, *supra* note 115, p. 146.

\(^{125}\) Islam, *supra* note 77, p. 153. Jan Baksh Khan went to Calcutta in 1787 and signed an agreement with the Company government that he would be recognized as the chief of Chittagong Hill Tracts.


\(^{128}\) *Ibid.*, p. 12. The British first began to interfere with the administration of the Hill Tracts from 1860. Before 1860 the internal government of the Chittagong Hill Tracts district was in the hands of two hill chiefs, the Chakma Chief and the Bohmong, assisted by a number of subordinate village officials.


\(^{131}\) About the decision of Boundary Commission O. H. K. Spate explained that of the population of CHT Muslims were 2.8 percent whereas Hindus were 2 percent and the remainder were aboriginal peoples. The sentiment of the aboriginal peoples would supposedly be unflattering to the Congress and League alike. Thus geographically, Sir Cyril’s decision that CHT should go with Chittagong district could be hardly contested although it was criticized in India. O. H. K. Spate, ‘The Partition of Punjab and Bengal’, 110:4/6 *The Geographical Journal* (October/December 1947) p. 215.
the appellation of ‘Tribal Area’ instead, but finally repealed in 1964. During the Pakistan era, the construction of Kaptai Dam (1957–1962) devastated a nearly 400 square mile area including 54,000 acres of cultivable land. According to revenue records and census figures, no less than 80,000 people of whom most were Chakmas became displaced due to the Kaptai Dam project. In 1972, soon after Bangladesh had become an independent state, Mr. Manobendra N. Larma set forth four demands for the hill people of CHT including autonomy for CHT with its own legislature. As these demands were rejected, Larma formed a political party called Parbattya Chattagram Jana Sanghati Samity (JSS). After the assassination of Prime Minister Sheikh Mujibur Rahman in 1975, Larma went underground and organized Shanti Babini (SB) as the military wing of JSS. The CHT Manual was amended in 1979, abolishing restriction on settlement of outsiders in CHT region. Since then, thousands of Bengali settlers were brought into this region under a government-sponsored settlement programme causing further displacement of the local communities. In the backdrop of military oppressions, armed conflict ensued between SB and Bangladesh’s armed forces. After two decades of unrest, a formal peace treaty was signed between JSS and the then prime minister of Bangladesh on 2 December 1997.

4.3. The Santal

The Santal are regarded as the earliest inhabitants of the Indian sub-continent. From the racial point of view, they are Dravidian. In Bangladesh the Santal habitations are mainly located in the Barind region which is comprised of the Dinajpur, Rajshahi, Bogra and Chapai Nawabganj districts. Edward Tuite Dalton,
one of the earliest ethnographers of British India, located the Santal settlements as follows: “in a strip of Bengal extending for about 350 miles from the Ganges to the Baitarani, bisected by the meridian of Bhagalpur or 87° east longitude, and comprising the following districts –Bhagalpur, The Santal Parganas, Birbhum, Bankura, Hazaribagh, Manbhum, Midnapore, Singbhum, Mayurbhanj and Balasore”.\(^{143}\) The language spoken by the Santal people is known as ‘Santali’. Linguistically Santali belongs to the Kolarian family of language.\(^{144}\)

Except for the notes taken by the early British ethnographers, there is no manuscript of Santal history before the 18th century. The Santals began to settle in the place named ‘Daman-i-koh’ between 1790 and 1810.\(^{145}\) Prior to that, they had been living in Birbhum district. From the unpublished manuscript of Buchanan Hamilton it appears that a number of Santals had settled in Dumka subdivision by 1809.\(^{146}\) Between 1815 and 1830 there had been a further spread of the Santal settlement. In 1818, the Santals were found engaged in clearing forest in Godda subdivision. By 1827 many of them had settled in the extreme north of the same subdivision. In the course of time, Daman-i-koh became the abode of the Santal people.\(^{147}\) In 1837 Mr. Pontet was placed in charge of its revenue administration under the title of Superintendent of the Daman-i-koh.\(^{148}\)

However, the imposition of increased rent by the colonial government, oppression of the Hindu money-lenders and landlords, forced labour by the European railway contractors and the derogation of the rights of Manjhi (Santal headman) occasioned grievances among the Santals.\(^{149}\) They tried to inform the British Administration of their miseries. They even petitioned the Chief Divisional Commissioner, but all the efforts they made were in vain as their miseries were not of much importance to the British Administration.\(^{150}\) Consequently, the Santals of Daman-i-koh and the adjoining districts in alliance with other marginal communities (such as the Domes, the Bauris, the Lohars, the Gowalas and others) rose in a formidable revolt against the British colonial rule in 1855.\(^{151}\) The rebellion was termed ‘Hool’ in Santal language. The Santal uprising was fiercely

\(^{143}\) See E. T. Dalton, Descriptive Ethnology of Bengal (Cosmo Publications, 1973) p. 207.

\(^{144}\) Risley, supra note 142, p. 224.


\(^{146}\) Ibid.

\(^{147}\) Ibid.

\(^{148}\) Ibid.

\(^{149}\) According to Hunter, the most important reason for Santal uprising was the exploitation by the Hindu usurers and merchants. See W. W. Hunter, The Annals of Rural Bengal (Smith, Elder, and Co., London, 1868) pp. 228–230.

\(^{150}\) Ibid., pp. 237–238.

\(^{151}\) In June of 1855 the Santals set out for Calcutta in an association comprising of 30,000 people to present their demand to the Governor-General. See W. W. Hunter, The Indian Empire: Its Peoples, History, And Products (AMS Press, Inc., New York, 1966) p. 98.
subdued by the Company’s government.\footnote{152} It was nevertheless admitted that the
wrongs of the Santals were chiefly due to the insufficiency of the administration.\footnote{153} The magnitude of the Santal uprising was so great that it is only comparable with the Mutiny of 1857 and the forty year-long Wahhabi movement in the subcontinent.\footnote{154}

Notable administrative changes took place in Daman-i-koh in the aftermath of the Santal rebellion. Regulation XXXVII of 1855 was enacted to create a new district known as ‘Santal Parganas’ comprised of Daman-i-koh and other areas taken from the districts of Bhagalpur and Birbhum.\footnote{155} The operation of the general laws and regulations remained suspended in the district of Santal Parganas. A very simple form of administration was introduced, according to which their village headmen were brought into direct contact with the English officer in charge of the district.\footnote{156}

Following another Santal unrest in 1871, it was decided that a rough land survey should be carried out in the Santal Parganas by a settlement officer untrammeled by detailed procedures. With this end in view the Regulation III of 1872 was passed.\footnote{157} However, the inevitable after-effect of the rebellion was that the Santals plunged into poverty and many of them moved into the Barind region of Bangladesh. As regards the Santal migration to Barind, the Census of India 1931 reported: “The Santals are spreading north and east, and the full effect of the movement is not exhausted in the districts that adjoin Santal Parganas, but makes itself felt even further way, in those parts of Dinajpur, Rajshahi and Bogra which share with Malda the elevated tract of quasi-laterite known as the Barind.”\footnote{158} Their choice of Barind was influenced by the availability of cultivable land. The local landlords engaged the Santals in clearing jungle and levelling high lands. Thus, the Santals from Daman-i-koh settled here as poverty-stricken sharecroppers without any proprietary right in land but played an important role in the extension of agriculture in this region.

5. The Indigenous Peoples of Bangladesh

In the preceding pages we have discussed the historical profiles of three marginal communities in Bangladesh (hereinafter the profiled communities) aspiring to

\footnote{152} Hunter, supra note 149, pp. 237–238.
\footnote{153} Ibid., p. 254.
\footnote{154} A. Mandal, ‘The Sonthal Problem in Nineteenth-century Bengal’, 4:1 Social Scientist (September 1975) p. 36.
\footnote{155} O’Malley, supra note 145, p. 54.
\footnote{156} Hunter, supra note 151.
\footnote{157} O’Malley, supra note 145, pp. 57–58.
recognition as indigenous peoples. In this section we shall examine whether the characteristics of the profiled communities are commensurate with the criteria of the international definition of indigenous peoples. First, the historical profiles sufficiently evidence that the profiled communities are comprised of peoples who are descendants of the earlier populations. They have been living in their respective region from time immemorial. Their pre-colonial existence has been noted by earlier ethnographers in a number of books and scriptures. Moreover, their present existence itself testifies to the fact of their historical continuity with pre-invasion and pre-colonial societies. That the profiled communities have a special historical tie with their respective territories has been sufficiently adduced. For example, the Khasi peoples were closely associated with Jaintia which now forms part of Sylhet district of Bangladesh. It is evident from the Moghul revenue records and the early written accounts of the East India Company that the Chakmas were among the original inhabitants of the Chittagong Hill Tracts region. The Santals concentrated parts of the Hazaribagh district and Birbhum district of Bengal in the distant past. Later, they gradually scattered in the following districts: namely Bhagalpur, Santal Parganas, Birbhum, Bancura, Hazaribagh, Manbhum, Mednipur, Singhbhum, etc.

Not only are the profiled communities distinct from the British colonialists or the majority Bengalis, they are distinguishable from each other. Each of the profiled communities has its own unique history, culture, tradition, religion, economy, social system, etc. For example, the Khasis have a matrilineal society. Originally, the Khasis were animist or spirit worshippers. Most of the Khasis in Bangladesh at present earn their livelihood by cultivating betel leaf. The Santals are of the Dravidian race. They speak the Kolarian language which was found in Bengal including Santal Pargana and Northern Orissa. The Santals are a patriarchal and agrarian community. Though the Santal pantheon contains

159 For example, Dalton had placed the Khasis and the Santals among the ethnic groups of Bengal. As regards the Chakmas, it seems he had mistaken them for Mugs. See Dalton, supra note 143, pp. 60–64, 110–112 and 217–219. See Hamilton, supra note 107, p. 404; see also W. Hamilton, The East-India Gazetteer, volume 2 (Low Price Publications, New Delhi, 1993) pp. 551–554.
160 Ibid.
161 Hamilton, supra note 107, p. 404.
162 According to Dalton, the location extended for about 350 miles from Ganges to the Baitarni bisected by the meridian of Bhagalpur or 87° east longitude in Bengal. See Dalton, supra note 146, p. 217.
165 Dalton also noted the Khasi people’s habit of chewing betel leaf. See Dalton, supra note 143, p. 63.
166 Risley, supra note 142, p. 224.
167 Ibid.
168 Sattar, supra note 141, pp. 87 and 93.
a few established deities, they propitiate ancestors, local devils, etc.\textsuperscript{169} The Santals are regarded as the earliest inhabitants of the Indian sub-continent.\textsuperscript{170} The physical attributes of the Chakmas are that of the Mongoloid people.\textsuperscript{171} Political power among the Chakma is transmitted from father to first-born son.\textsuperscript{172} The Chakma language belongs to the Indo-Aryan language group which is a corrupt form of the Bengali language written in a corrupt form of the Burmese alphabet.\textsuperscript{173} The majority of Chakmas are Buddhists.\textsuperscript{174} However, under the auspices of colonial administration, missionary activities brought about changes in the religious faith of the profiled communities.\textsuperscript{175}

The subordination of the profiled communities began with subjugation of territory by the colonial authority and subsequent replacement of the old land administration and revenue system. Though experience differs among each of the profiled communities in respect of colonial domination, it is not impossible to outline a common and general pattern of colonial domination – which chiefly includes military conquest, replacement of existing land administration, excessive revenue collection, etc. Colonial rule had upset the existing territorial and communal mapping of the sub-continent. Creation of new administrative units destroyed the earlier political boundaries to the detriment of territorial, political and communal integrity of the profiled communities. Colonial conquest followed by confiscation of land as well as introduction of new land tenure system threatened the socio-economic structure of the profiled communities. As dispossession increased and traditional rights were constantly curtailed, the question of land rights became the primary focus of attention for the profiled communities. In addition, a noticeable geographical reorganization was brought about by means of reshaping the numeric size, concentration and dispersion of the profiled communities in their respective regions. The Khasis were driven away into the hills from the Surma basin during the British period. The Santals were given impetus to settle in Santal Pargana and later they migrated to the Barind region of Bangladesh. The Chakmas were encouraged to remain confined in the area called Chakma Circle. All these incidents subsequently played an important role in determining the political locus, economic and political disposition of the profiled communities.

In every respect, the profiled communities constitute the non-dominant sector as against the majority Bengalis. The history of the profiled communities
epitomizes that depletion of the political and economic synergy of a community by way of external domination reduces them into non-dominant entities. At present, the situation concerning the profiled communities can be described as numerically inferior, economically exploited, politically powerless, legally unprotected and victims of violence. Moreover, the profiled communities have fallen victim to four principal threats; namely forced location, forced assimilation, militarization of their territories, and official denial of recognition. To offset this situation, the right to recognition as indigenous peoples, equality and self-determination, right to land, natural resources, cultural and intellectual property, economic rights, etc. are necessary. Since the international legal regime of the indigenous peoples offers a multicultural model of political ordering and incorporation of indigenous peoples into the fabric of the state, the marginal communities of Bangladesh under this regime will be able to join in the state mechanism in terms of equality, cultural integrity and not just individual citizenship. And recently, the marginal communities including the profiled communities have begun to assert their demands for constitutional recognition, land rights, participation in political process, preservation of cultural integrity, equal opportunity with reference to human rights, self-determination, historic precedence and the international concept of indigenous peoples.

6. Conclusion

In British-India, the majority populations belonging to the Hindu and Muslim religions came out victorious in the struggle against colonialism and could organize themselves into states. However, the marginal communities who were unable to organize themselves into states at the time of decolonization for whatever reasons have found themselves engulfed in the nation-states. The concept of

---

176) According to Bangladesh Population Census 1991, there are 252,858 Chakams, 12,280 Khasis and 202,162 Santals in Bangladesh, supra note 13, pp. 195–196.


179) Ibid.


181) One of the reasons is when nation-states succeeded to British-India; their political boundaries did not correspond with the pre-empire state boundaries. See Anaya, supra note 53, pp. 53–54.
indigenous peoples could prove to be immensely valuable in order to provide legal protection to the marginal communities against discrimination and racism as well as respecting cultural and other rights. Since the majority population of Bangladesh, i.e. Bengalis, has been able to form a state and has been in possession of sovereign political power to determine its own political rights and aspirations, it makes no sense to argue that the majority of Bengalis are indigenous in order to disapprove of the claim of marginal communities who are in actual need of such recognition to break through the chains of non-dominance. The sooner the government of Bangladesh realizes this, the better it will be for the citizens of Bangladesh.