POWER, LAW, AND HISTORY: EPISODES IN CONSCIOUSNESS OF LEGALITY

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Abstract: Chittagong Hill Tracts (CHT) is home to 13 different ethnic groups in Bangladesh. Here, I present a historical account of CHT, which suggests that the British, the Pakistani and the later Bangladeshi regime enacted laws to create and continue their domination in the CHT. The CHT case also shows that the state has taken a ‘softer’ policy on CHT over the last decade, and this shift from state domination to a dialogue has produced a ‘peace treaty’ between Bangladesh government and the indigenous peoples’ representatives in 1997. However, although the treaty guarantees a legal safeguard for indigenous people, their ‘real freedom’ has been undermined by the state’s misinterpretation, or non-implementation of various clauses of the treaty. The state even changes these laws without proper consultation with the indigenous organizations. This particular tactic of the state creates a procedural problem for indigenous people and captivates them into administrative complexities, and often indigenous people do not have enough expertise to overcome these bureaucratic ‘red-tapes’. It is a puzzle for these people where they can neither neglect the state and choose a path of renewed resistance, nor can they get equal rights and enough cooperation from the state. In such a situation, indigenous people are even more vulnerable to an internal conflict than the period of their violent struggle against the state.

Introduction

The notion of ‘law’, although apparently very neutral, starts to lose much of its innocence once we begin to discover the making of law and its connection with the larger socio-political domain it is born. Fitzpatrick argues modern law as grounded in relations of imperialism and distinctions of ‘race’ (Fitzpatrick: 1992 cf. Merry 2000: 19). Viewed from this perspective, law becomes a tool for imposing or transplanting ideologies and interests of the dominant. This is particularly true for colonial settings where laws are transplanted in from alien mysteries. Transplanted laws, although widespread in the contemporary world, is a critical but understudied process; critical in terms of how this transplantation happens and what its implications are (Merry 2000: 260). In such settings, “law clearly embodies the desires and interests of groups in power” (Ibid.: 264). This paper is an attempt to study the changing relations between lawmaking and power relations in Chittagong Hill Tracts (CHT), Bangladesh. In this paper, I show the exploitive and shifting patterns of creation and application, or non-application of law in CHT in its colonial and post-colonial settings. Also, I show the ways laws have been reflecting the wills of indigenous people in CHT. At the end, I examine the relationship between the state and indigenous people in the ‘pre’ and ‘post accord’ CHT and discuss the emerging trends of complexities faced by the indigenous communities there. I argue that the problems faced by indigenous peoples in CHT are largely ‘procedural’. Methodologically, I emphasize on external connections of the ‘local’ in its historical settings.

The Chittagong Hill Tracts

Chittagong Hill Tracts (CHT), a remote region of Bangladesh, geographically is a part of hilly areas that branches off from the Himalayan ranges to the south through Assam and hill Tripura to Arakan and Burma, presently Myanmar. The Hill tracts lie between 90°45¢ and 92°50¢ to the East longitude and 21°35¢ and 23°45¢ to the North latitude. It is surrounded by the Indian states of Tripura on the North, by Mizoram on the East, by Arakan State of Burma on the South and East, and on the west by the Chittagong district of Bangladesh. CHT covers an area of 5,093 sq. miles, which is about 10 percent of the total land area of Bangladesh. CHT’s vast natural resources far outweigh its demographic significance in the country (Bertocci 1989: 139).

The topographical distinction and the wide population variation of Chittagong Hill Tracts have given it a different background than the rest of Bangladesh. Since the Mughals conquered the region in 1666, CHT has been under four different
rules-the Mughals, the British, Pakistani and the Present Bangladesh regime. The Mughal's kept the internal structure of communities intact and it was only after the British rule of the sub-Continent in 1760 that these communities went through massive changes (Huq: 2000). The foreign rulers had their local allies and CHT experienced domination from both the power centres and the local Bengali elites (Ibid.: 2000). After the British rule, Chittagong Hill Tracts became a part of East Pakistan in 1947, and later on in 1971, it became a part of Bangladesh.

Presently, at least 13 different indigenous groups live in CHT. These ethnic groups are socially, linguistically and culturally different from the majority Bengalis. Different indigenous groups also have variations between themselves. The major groups in CHT are the Chakma, the Marma, and the Tripura. Some of these groups live in valleys close to rivers and streams, and some on hillcrests. Some small groups live in between rivers and hillcrests. All of them practice some forms of Jhum cultivation along with other economic activities. All groups are distinct in their languages, and some of them have written scripts. Most of these groups are Buddhists, the Tripuras are Hindu, and few of them have their own indigenous beliefs. There are convert Christians in CHT as well.

**CHT under British Rule**

**The Indian Forest Reserve Act of 1865**

Unlike others the British went to the sub-Continent for economic profits (Wolf: 1982). Although CHT did not offer any market for British goods, but it did offer itself as an attractive source of raw materials like timber and cotton (Huq: 2000). Timber could greatly satisfy the British demand of woods to build railways throughout the world. All other industries based on timber could also make same profits from CHT. On the other hand, cotton handicraft was the main force of the then Indian economy. The control of cotton could enable the British to control the whole Indian market.

Understanding the commercial value of the forest and intrigued by the colonial interest, the British rule introduced the Forest Reserve Act in 1865. The rule restricted indigenous people’s access to these forests they have been using for centuries and which has been an integral part of their livelihood and culture (Ibid.: 2000). The British rule brought these resources under state’s authority. In 1875 the law further differentiated between ‘Reserve Forest’ and ‘District Forest’. Reserve Forests Act absolutely forbade indigenous peoples access to those forests and in other words to those lands which built 24% of the total landmass of CHT. Thus, the colonial power acted to transform these lands into different types of property of their own (Adnan: 2004). The Colonial power, in this way declared all lands of CHT as the state land and the indigenous people became landless as they did not have any concept of private ownership; according to indigenous ideology lands could only be leased to individuals and not owned or possessed by anyone. The free people thus became a rent-paying subject of the colonial state (Huq: 2000). The forest resource reservation curtailed Hill people’s subsistence opportunities and displaced them from their traditional habitats (Roy 2000: 93-94).

Timber became a useful resource for the British rule. Indian handicrafts, such as cotton based crafts, were destroyed overtime (In the beginning, British authority extracted tribute from CHT in the form of cotton) (Wolf: 1982). “Indian surpluses enabled England to create and maintain a global system of free trade.” (Ibid.: 261). “India became a key foundation of the emerging worldwide capitalist edifice.” (Ibid.: 261).

**The Chittagong Hill Tracts Regulation Act of 1900**

It was the basic regulation of civil administration in CHT. This Act demarcated the right of entry and residence in CHT, which did give the impression of protecting the indigenous people there. To control Bengali influence and settlement in CHT, the British rule declared the region as a ‘backward Tract’ in 1920 and in 1935 as a ‘totally excluded area’. This ultimately made the British authority absolute and unhindered (Huq: 2000), and severed its political link with the province of Bengal (Adnan: 2004). Thus, the Act actually cleared local links of CHT that the
colonial power thought disturbing. While this act guaranteed the continuation of traditional administration in CHT, it also placed them under the authority of a newly created Deputy Commissioner.

This Act restricted non-indigenous peoples’ residence in CHT and made the indigenous people and the Bengalis each others competitors. This helped the British rule in two different ways—it weakened the links between the Bengalis and the Indigenous people that helped the British rule operate smoothly without any fear of sudden uprising which could have happened, had there been a good relation between the Bengalis and the Adivasis. On the other hand, it made tax collection more efficient for the ruler (Huq: 2000). These rules, thus, served only colonial interests and its continuance. Particularly, the reserve forest Act had devastating effect on the CHT life.

**Pakistani Regime and the CHT**

After the partition of the Indian sub-continent in 1947, East Bengal (present Bangladesh) became part of Pakistan. The East Bengal provincial government ruled East Pakistan, surprisingly, however, the central government of Pakistan ruled CHT. Pakistan maintained the legal and administrative structure established by the British; the 1900 act was the guiding principle. In 1956, the constitution of Pakistan retained CHT as an excluded area that meant constitutional recognition of distinctiveness of CHT and its people. It also meant that now CHT people were full citizens of state who had voting rights that they did not have previously. Though this intervention apparently gave more rights to CHT people, strategically these people were forcefully incorporated into the state system for the first time. Once free people, they now became citizens of a state that they did not want to be a part of and were obligated by the state rules that were foreign to them and often contrasting to their lifestyle (Huq: 2000).

The context of their citizenship, however, shows that it was given to them less for the state’s concern for the Hill people and more for the interest of the power centre of a geographically separated but administratively single state. Soon after the Pakistani regime came into being, the relation between Pakistan and East Pakistan worsened to a significant level. The Pakistani regime alienated Bengalis from power and this gave birth to Bengali nationalism (Mohsin: 1997). Given the antagonism between these two different centres, it was strategic for Pakistan to bring in some more citizens who would defend their views in East Pakistan because of their historical hostilities with the Bengalis. The context in which CHT people were given voting right, thus, was more a case of exploitation than rights. Also, it further alienated them from the Bengalis and Bengali nationalism later would have no place to accommodate them (Ibid.: 1997).

**CHT as a Tax Free Zone:**

Pakistan declared CHT as a tax free zone to accelerate its development, but in practice it only helped to create a bourgeoisie of a few privileged families from West Pakistan. By 1962, only 43 families held as much as 72% of all the assets in the stock market (Huq: 2000). The establishments set up for development of CHT further alienated the indigenous peoples’ livelihood. The Kaptai Hydro-electric project was commissioned in 1961 to help industrializing the region with electricity which ultimately became the worst project ever in the region. The project inundated 303 sq. miles of land, including the best 40% of the cultivable land in the area, and 90,000 to 110,000 people became homeless. The project also inundated 90 miles of roads and 10 sq. miles of reserve forests (Ibid.: 2000).

In 1962, Pakistan adopted a new constitution which relaxed the status of CHT from an ‘Excluded area’ to a ‘Tribal area’, and in 1963-64 even its tribal status was stripped off (Adnan: 2004). The reason for this was to guarantee Pakistan’s political interest that could not have run smoothly, had they denied the growing demand of Bengalee power holders’ interest in the region; to open the region for the Bengalis (Huq: 2000). Ultimately, in 1964 Pakistan lifted the ban on entry, settlement, and acquisition of
land by outsiders in CHT. The region subsequently was inundated by Bengalee populations. Local tribal officials were transferred to other districts and Bengali officials were given the charge to run the local administration. Thus, a process of Bengalization of both the inhabitants and the administration was initiated by enacting changes in the legal code for the interest and continuation of central Pakistani rule. However, another view is that Pakistan opened up the region for Bengalis to further problematize the relation between the Bengalis and the Adivasis that would also serve their interest. We can not ignore this view when we see that the majority of the indigenous people did support Pakistan in the liberation war of Bangladesh against Pakistan in 1971.

The Bangladeshi Period

The New Constitution:

Independent Bangladesh adopted its new constitution on November 4, 1972. The constitution did not pay any particular attention to the Hill districts. Irrespective of peoples’ ethnic and cultural variations, a Bengali nationalism was imposed on all citizens of Bangladesh (Mohsin 1998: 108). Thus, the constitution itself gave formal recognition to unfettered Bengali nationalism which led to a policy of cultural assimilation (Mohsin: 1997: 59).

One reason for continuing such a policy was some Hill people’s collaboration with the occupying Pakistani force in the war. Another reason was CHT’s vast natural resources, such as oil and gas and, most importantly forests. CHT also constituted the ‘hinterland’ of the Chittagong port, the biggest port (Adnan 2004: 26) that connected Bangladesh with the rest of the world. Thus, keeping a hard grip on CHT was considered very important for the state and it was reflected in the policies and their implementing strategies supported by legal codes- the Constitution. The new Bangladesh also continued the policy of in-migration of Bengalis in the region. Being disadvantaged by having no legal guarantees, Hill people organized themselves politically, supported by armed wings. Bangladesh at this time was also worried by some of the tribal leaders’ connection with India and its potential threat of taking control of CHT. This situation led to an armed conflict in the region between the Bangladesh Army and the Pahari (Hill people) guerillas.

In 1983, government announced suspension of further in-migration of Bengalis into the region and starting from mid-1990s, Bangladesh government took softer policies on CHT, mainly because of the continuing expense of the military operation and for their failure to stop the violence. Such an approach was launched to gain the confidence of the Hill people (Adnan 2004: 31).

Special Economic Area (SEA): In 1983 Bangladesh government declared CHT as a special economic area targeted for promoting trade and commerce, employment and overall agro-economic development. The announcement offered tax holidays, low interest loans and an administrative favour to allocate 10% of development projects to be handed over to tribal contractors. Government announced ‘Military Civic Action’ which was an attempt to integrate the military more with the local communities and development projects by providing cash and kind incentives for aggrieved tribals and non-tribals. The programme contained compensation for damages done by military action, medical facilities for the locals by the military in collaboration with civil administration, and the aim was to win the Hill peoples’ hearts. Although this was intended to win tribal confidence but the military was not withdrawn from CHT. The main target of the strategy was stated as to ‘integrate tribals and non-tribals’- still an assimilationist policy (Adnan: 2004).

Reserved seats for Tribals:

As stated earlier, government reserved 10% of the development projects for the tribal contractors. By the mid 1990s government also reserved a certain quota of seats for Hill students in all higher education institutions in Bangladesh (Shelly 1992: 136). In 1988, 5% of all government jobs were reserved for tribals (Ibid.: 136).
In 1989, Bangladesh government enacted law to establish three separate local government councils for Rangamati, Khagrachhari and Bandarban districts to placate Pahari (Hill) self-government. However, government endorsed elections to form these councils, and the election was carried out under heavy security by the military and other forces in the face of growing resentment by the local communities; a fact that portrayed the role and strength of the state at that time (Mohsin: 1997). In a nutshell, Bangladesh legal codes on indigenous people can be argued as born out of the changing context and relationship between the two parties.

The Peace Accord

A ‘Peace Accord’ was signed between Bangladesh Government and the Hill peoples representatives on December 02, 1997. Under the treaty, Hill ‘militants’ agreed to surrender and de-commission their arms for general amnesty, enactment and amendment of laws concerned with indigenous life, and for the rehabilitation programmes offered by the government (Adnan 2004: 33). Apart from setting a Ministry of CHT Affairs headed by a hill man, government also agreed to repatriate CHT refugees in India, resolve land disputes, and cancel illegal leases to non-Paharis and non-residents (Ibid: 33). The treaty also declared to create a new body called ‘Regional Council’ to look after the entire region. Thus, the treaty endorsed a partial release of power to the indigenous authority; even though the devolution of power was limited with the final say ultimately coming from the government (Ibid: 33). The treaty also modified anomalies between the CHT Regulation Act of 1900 and The Local Government Council Act of 1989. However, it failed to stop the violence in its entirety and scattered fighting is not uncommon even now-a-days. To date, the government implemented only a limited number of provisions such as the amendment of laws for the Hill District Councils (Hill District Local Government Councils were proposed to be renamed as Hill Districts Councils in the treaty) and enactment of laws for the new Regional Council. Hill leadership expressed their frustration with the implementation of the treaty (Adnan 2004: 34).

Implementation of the Accord

Though the accord offered good prospect at the beginning, PCJSS (Parbattya Chattagram Jana Samhiti Samiti) argues (PCJSS: 2004) that its implementation has not been made that successful. The non-implementation of the accord and in some cases violation and/or misinterpretation of vital clauses of it led the present situation in CHT turbulent again (PCJSS 2004: 3). Jumma People faces pressure from administration manned mostly by non-Indigenous people and attacks sponsored by security forces. Here I will show some examples from many of the cases where the state has either overlooked, misinterpreted or violated vital clauses of the accord. The Accord has four sections; Part A is titled as ‘General’, Part B as ‘Hill District Local Government Council/ Hill District Council’, Part C is titled as ‘Chittagong Hill District Regional Council’ and Part D as ‘Rehabilitation, General Amnesty and other Matters’. The examples shown here are largely drawn from the PCJSS publication (PCJSS: 2004) on the implementation of the treaty.

Part B of the Accord: Hill District Local Government Council/ Hill District Council

- Identification of the “Non-Tribal Permanent Residents” of the Region

Clause 3 of this part defines “Non-Tribal Resident’ shall mean a person who is not a tribal and who has lands of lawful entitlement in the hill districts and who generally lives in the hill districts at a specific address”.

The definition of the ‘non-Tribal permanent resident’ has been changed by the government by replacing the above italicized ‘and’ with an ‘or’ in the Act No. 9, 10, and 11 of the Amended Rangamati Hill District Council Act 1998, without the knowledge of the hill authority (PCJSS: 14). This definition was enacted to include Bangali settlers in the process of administration and election of the district councils and therefore maintain the imbalance of power between Bangalis and Hill peoples.
• **Issuance of Permanent Resident Certificate by the concerned Circle Chief.**

Clause 4 (5) provides, “Whether a person is non-tribal or not and, if so, which community he is a member of, shall be determined, subject to his producing a certificate from the concerned Mauza Headman/ Union Council Chairman/ Municipality Chairman, by the concerned circle chief and without a certificate in this connection being received from the Circle Chief, no person shall be eligible as non-tribal to be candidate for the post of a non-tribal member”

The Bangali dominated administration still violates and misinterprets this law saying this provision is applicable only for the election to the post of members of the Hill Districts Councils and the DC is still issuing Permanent Resident Certificate to the Bangali settlers that affects local employment (PCJSS: 15). Recently, Ministry of CHT Affairs has issued a letter giving DC the power to issue such certificates. However this is an illegal construction, as because such an executive order can not overrule any provision of law passed in the Parliament.

• **Preparation of Voter List and Provision on it.**

Clause 9 provides, “A Person shall be entitled to be considered as legally eligible for establishment in the Voters’ List if he is (1) a citizen of Bangladesh, (2) not below 18 years of age, (3) not declared by any competent court to be of unsound mind, (4) a permanent resident of the hill district”.

In violation of this law all non-permanent Bengali residents of not under 18 years of age and some cases below aged persons were fraudulently included in the voter lists made from 15 May to 24 June, 2000 and 300000 out of 400000 Bengali voters were non-permanent Bengali residents of the CHT (PCJSS: 17).

• **Provisions on Appointment of Jumma Officers and Employees**

Clause 13 provides, “It shall be provided in sub-section (1) and (2) of Section 31 that a Chief Executive Officer of the rank of a Deputy Secretary to the government shall be the Secretary of the Council and the tribal officers shall be given preference for appointment to this post”.

This provision is yet to be implemented. As a result, Bengali employees are running the administration of the CHT as per their will. The Indigenousisation of the CHT administration, which has been a major goal of the accord, is being denied (PCJSS: 21).

• **Formation of Police Force (Local)**

Clause 24 provides, “Notwithstanding anything contained in any other law for the time being in force, Sub-Inspectors and all members of rank subordinate thereto of the Hill District Police shall be appointed by the council as per regulations and prescribed procedure and the Council shall be competent to transfer them and take punitive action against them in accordance with the procedure prescribed by the regulations; Provided that, the tribals of the district shall have preference in case of the said appointment”.

PCJSS argues nothing has been done in giving priority to Jumma people for the police force, instead the government has not yet transferred this subject and function to the Hill District Councils (PCJSS: 23).

**Part C of the Accord: Chittagong Hill Tracts Regional Council**

• **Sub-clause (a) of the Clause 9 provides “The Council shall coordinate all the development activities carried out by the three Hill District Councils, and shall also superintend and harmonize all the affairs of land assigned to the three Hill District Councils. Besides, in the event of lack of harmony or any inconsistency being found in the discharge of responsibilities given to the three Hill District Councils, the decision of the Regional Council shall final”.**

In reality none of the government bodies are respecting this provision and denying the authority of supervision and coordination of the Council. As an example, Rangamati Hill
District Council has ignored Regional Council’s decision on correcting irregularities and cancellation of appointment of 71 teachers by the District Council in 1998 (PCJSS 2004: 29).

- **Supervision and Coordination of the General Administration and Law and Order Situation**
  
  Sub-clause (c) of the Clause 9 provides, “The Regional Council shall coordinate and supervise the three Hill districts in matters of general administration, law and order and development”.

The present officials responsible for law and order situation have been denying the authority of the RC. Pre-dominance of Bengali employees are responsible for such an anti-Jumma sentiment. Present authorities are serving bureaucratic interest and a part of the government is opposed to the Accord as well (PCJSS: 31). There are cases when officials haven’t even attended meeting called by the RC.

- **Coordination of NGO Activities, and Disaster Management and Relief Operation**
  
  Sub-clause (d) of the Clause 9 provides, “The Council shall coordinate the activities of the NGOs in addition to disaster management and carry out the relief programmes”.

This provision is yet to be implemented and the law is enacted only on paper. A committee under the authority of DC is carrying out the task of disaster management and relief operation, and the allocations of funds are being allocated as it happened previously (PCJSS 2004: 32). Ministry of Relief & Rehabilitation and Hill District Councils are operating without the consent of Regional Council.

- **Tribal Law and Community Adjudication**
  
  Sub-clause (e) of the Clause 9 provides, “Tribal law and community adjudication shall be within the jurisdiction of the Regional Council”.

Both the civil and military administration in CHT still continues to interfere with these issues. For instance in 2000, Bandarban DC (DCs are not part of Regional Council) interfered with a Marma case (PCJSS: 33). There are other instances where Military directly got involved into these cases mainly to safeguard Bengali interests.

**Part D of the Accord: Rehabilitation, General Amnesty and Other Matters**

- **Rehabilitation of Internally Displaced Jumma People**

Clause 1 of this part guarantees that a Task Force will undertake rehabilitation programme for the internally displaced persons. In reality, so far no internally displaced Jumma people have been rehabilitated by the Task Force and on top of that a process of rehabilitating local Bengalis is taking place even though CHT treaty allows such rehabilitation only for the Jumma people (PCJSS: 42).

- **General Amnesty and Withdrawal of Cases**

Clause 14 provides, “The Government shall declare amnesty for those members who will deposit arms and ammunitions on the scheduled date. The Government shall withdraw all those cases which were lodged against them”.

Sub-clause (b) of the clause 16 at its end provides “....If any member of the Jana Samhati Samiti (JSS) is in jail. He too shall be set at liberty”.

The PCJSS argues that there are many instances where cases are not withdrawn. Moreover, JSS members have been subjected to systematic harassment. It is quite understandable that such a legal transformation of handing over a big part of administration from the power center to local authorities by itself is a very complicated and time consuming process; however, unwillingness from any part is quite a different proposition.

**CHT and International Law**

Bangladesh ratified International Labour Organization’s Convention No. 107 on Indigenous and tribal populations in 1972. Article 11 of the convention provides-
• “The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized.”

Article 13 (2) provides—
• “Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of the customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members.”

Bangladesh has been violating these international laws for a long time. The ILO has raised this issue on different occasions, particularly on its 80th session in 1993 which mentions the application of the convention in Bangladesh—

“[it] also recalls that many thousand of non-tribals have been settled in the Hill Tracts area, often on the lands traditionally occupied by tribal families.....it therefore hopes that appropriate procedures will be established to resolve land claims by tribals for the recovery of tribal lands” (cf. Roy 2000: 121).

The Chakma King, Raja Devasish Roy (1997: 185) claims that the absence of legislation and vigilance are the main problem to bring Bangladeshi and CHT law in conformity to the international law. He also states that indigenous people face serious procedural problems in going through law courts and administrative tribunals (Ibid.: 184). These very examples reveal the role of ‘power’ and ‘interest’ in the implementation of law. State is too powerful a body for the International Labour Organization to enforce its laws.


State and the CHT: Dominance and Dialogue

The 1900 Regulation of CHT preserved and protected special status of CHT and its people. In 1920 and in 1935, CHT was declared as ‘Excluded area’ and ‘Totally Excluded Area’ respectively. Although many argue these Acts as mechanisms to keep indigenous people isolated, but at least these rules recognized the distinctiveness of the CHT people. CHT was incorporated into a Muslim state in 1947, and in 1955 its status was relaxed to a ‘Tribal Area’. In 1964, CHT’s distinctness was denied even by withdrawing its ‘Tribal Area’ status. This 1964 Act endorsed Bengali settlement in CHT, and after the independence of Bangladesh all people including that of the CHT were treated as ‘Bengali’ in the constitution (Kamal, M., Chakma, B., Sabri, A., Khaisa, D.: 2004). After independence the First Bangladeshi president rejected and threw away Hill peoples demand for their own autonomy and reenactment of the1900 Act. This was an attempt to create a Bengali dominated homogenous state ‘under the rubric of Bengali/Bangladeshi nationalism’ (Mohsin 1997b : 17 ).

This state decision led Manbendra Larma, the first indigenous leader who founded the Parbatya Chattagram Jana Samhi tamari (PCJSS) in the 7th March of 1972, to believe that in the new state they must protect themselves (Ibid.: 19). The PCJSS organized themselves both through political and military means and within a few years time, sometimes through foreign help, they became an opposing and threatening force for the new state. To counter these movements, government deployed large number of Army and Navy in CHT. In 1975, after the assassination of the first president of Bangladesh, CHT was even more militarized. Secular nationalism of Bangladesh turned towards Islamic nationalism in the constitution and the PCJSS was outlawed (Ibid.: 20). India did not expect this political regime in Bangladesh and supported and trained PCJSS members in Indian state of Tripura (Ibid.: 21). In 1997, Shanti Bahini (SB)- the guerilla wing of PCJSS had a force of 15,000 fighters and 50,000 trained youths into different militia units within their six major territorial sectors of operation (Ibid.: 24). Following such guerilla and political advancement,
CHT had been turned into an army camp by the government with nineteen infantry battalions, eleven BDR battalions, three artillery battalions, one engineer battalion, eighteen Ansar battalions, and four armed police battalions (Ibid.: 25). Numerically there have been 230 army camps, 100 BDR camps and 80 police camps which make a ratio of one security force member for every fifteen Jumma people (Arens: 46).

Military force, in effect, had taken control of the political and economic life in CHT at that time (Mohsin 1997b: 24-26). CHT people needed military authorization to hold meetings, perform religious ceremonies, and to publish newspapers. The Local Government Council which ruled CHT before the peace treaty was a brain child of the military rule (Ibid.: 26). The Military force also tried to divide CHT leadership by creating pro-state indigenous organization and forming Bangali politico-cultural association. The military also committed religious conversion and persecution, forced eviction and massacres in CHT (Ibid.: 30-38). All these forces created a situation of extreme nationalist hegemonism in CHT which left indigenous people either to mainstream themselves with Bengalis or to face extermination (Ibid.: 39).

In the face of such circumstances, in August 1992, the PCJSS unilaterally declared a cease-fire in CHT and expressed willingness for a political settlement. Bangladesh Government also accepted it against increasing national and international criticism (Arens: 1997). Huge military expenditure in CHT was another reason for the government to support political mechanisms. These developments gave a way out for PCJSS to set out a number of political demands for autonomy of the Hill people. Briefly, these are –

(I) the constitution shall recognize regional autonomy of CHT as a special administrative unit and the land shall be renamed Jummaland. (II) It should be administered by autonomous Jummaland regional Council (JRC). (III) All land in CHT, except some important state land, shall be placed under the jurisdiction of JRC. PCJSS also calls for ban on Bengali settlement in CHT and out posting of Bengalis who settled there after August 17, 1947. (IV) Special indigenous quotas in the state service, relaxed service rule and set up of a bank for CHT development. (V) Parliament seat of CHT constituency shall be reserved for Hill people. (VI) Solely an autonomous indigenous hill police force will provide security of the region with BDR (Bangladesh Rifles) in the border. (VII) Constitutional recognition of small nationalities and set up of a radio station. (VIII) Rehabilitation of the internal and international Jumma refugees and Shanti Bahini members.

The government delayed negotiations and was unwilling to accept JSS demands (Arens: 1997). However after a long process of delay and negotiation an accord was signed between Bangladesh government and PCJSS in 1997. Named as the CHT Accord or the Peace Accord, it declared CHT as a ‘Tribal-inhabitant Region’ which is recognition of CHT’s distinctness, its’ law, customs and customary rights over land. The treaty also promises to rehabilitate internal and international refugees and to withdraw non-permanent military camps from CHT, in wake of decommissioning of arms by SB fighters. The Accord also led the formation of CHT Regional Council, Hill District Councils and a separate ministry for CHT affairs where indigenous population will be numerically dominant. Thus, the treaty, in accordance with the PCJSS demand, has laid ground for the self- rule of the indigenous people of the CHT.

Although the treaty has been a considerable advancement for indigenous people, non-implementation of the treaty is the new nature of Bengali domination. As a result, law and order in CHT have began to deteriorate just after a year of signing the Accord (Kamal, M., Chakma, B., Sabri, A Ali., Khaisa, D.: 2004). The government claims that 95% of the treaty has been implemented, where the PCJSS demands that only 5% of the treaty has been implemented (Mohsin 1997: 215). The formation of these proposed administrative bodies are crucial for the implementation of the treaty and for the self rule of CHT people. Unfortunately, however, power has not been transferred from
former controlling bodies of CHT to these newly created one's and these new bodies can not exercise power and self-ruling (Kamal, M., Chakma, B., Sabri, A Ali., Khaisa, D.: 2004). The formulation of rules and regulations required for functioning of these councils, which is a responsibility of the government, has not yet been formed and there is a lack of political will on the part of the government (Ibid.: 2004). This obtrusiveness created multiple authorities and opaque governance in CHT. Such a situation led to a fragmentation of administration in CHT; few leaning towards the former administration (most Bengalis and some of the indigenous population) and the others towards the new one (mostly adivasis). Non-implementation of the main clauses of the peace treaty has been discussed earlier in the paper.

Another dimension of the peace treaty reveals internal conflicts within these indigenous groups and in their leaderships. Traditional system in CHT recognizes land as held by the community which also endorses individual right over land for agriculture and domestic purposes (Roy 2000: 56). The traditional administration recognizes three power centres for three levels, i.e. Karabri, Dewan and Raja for village, mauza and territorial level administration consecutively. The Peace accord places power ultimately on the regional council and Hill district councils that are led by newly emerged leadership class born in the struggle against Bengalis. The Raja, who was traditionally the centre of power, gets little power in the treaty which reflects the will of these new indigenous leaders. Thus, the treaty, as demanded and accepted by PCJSS, is not a pure reflection of their traditional distinction; although the whole movement was built upon the idea of this distinction. As a result, a section of indigenous people initiated anti-accord demonstration under the banner of political organizations, such as ‘United People’s Democratic Front (UPDF)’. They rejected the accord saying that the accord was not a reflection of indigenous demands and condemned it as a 'sell-out' (Roy 2000: 163). These two groups often end up in violence (Ibid.)

The relationship between the state and indigenous people in CHT, thus, has been more complicated than a simple form of dominance and control. The relationship has its own dynamics and transformation. Indigenous people’s persistence on CHT manual Act of 1900 and on the Peace Accord of 1997 reflects these Acts ability to fulfill the self-rule of CHT inhabitants. Between 1960's to 1990's, indigenous people suffered high level of alienation through legal and all other means. The violent relation between these two parties at that time reflected this contention. Starting from the middle of the 1990s, government started to engage in dialogue with the Hill people and also started to give more legal benefits to them than they previously enjoyed. However, after the peace treaty when law becomes more indigenous to indigenous people, state is unwilling to implement these laws; a critical juncture that reflects what once was a struggle for creating a favourable indigenous legal body, now turned into a struggle for implementing those rules. This adumbrates a renewed adivasi movement in CHT.

Conclusion

A historical account of the way CHT has been ruled, and the context which produces laws and regulations for such rulings, manifests the power relations of law making. The British, the Pakistani and the later Bangladeshi regime enacted law in CHT as a means to create and continue their domination. CHT has a legal system which is essentially different from the rest of the country (Roy 1997: 195). The example of CHT thus, denies law as an absolute neutral and rational entity. Different laws active in CHT also show that the power relation is not a case of simple form of dominance and control between state and indigenous people; rather laws also reflect a shift from strict domination to a dialogical nature. But in such a case, the state does not hesitate to misinterpret, non-implement or even to change laws through means which is often legally unacceptable. This particular tactic of the state creates a procedural problem for the adivasi people and captivates them into administrative complexities, and often adivasi people do not have enough expertise to overcome these bureaucratic ‘red-tapes’. It is a puzzle for these people where they can neither neglect the state and choose a path of renewed
resistance, nor can they get equal rights and enough cooperation from the state. In such a situation, they are even more vulnerable to an internal conflict than the period of their violent struggle against the state. The opposition between PCJSS and UPDF is a good example of this.

One way out of this almost ‘no way’ zone, for the adivasis, is to seek international legal interventions. The CHT case, however, shows that the state takes a counter strategy against this where state ratifies, and thus pacifies, international convention, and then simply ignores it. It is a ‘double role’ play by the state where it acts very differently to two very different parties. This double play confirms that the state is rather more serious to save its impression than its population. If the international conventions are to be truly effective, the CHT case suggests, the international agreements require having not only a legal body, but also vigilance and a strategy to implement these laws.

Notes

1. ‘Adivasi’ is a Bengali term to refer to ‘indigenous’ people originally stemming from Sankskrit. Here I use both of them interchangeably without drawing any thick difference between them.

2. A local term to refer to indigenous people

3. ‘Bangali’ is a local version of the term ‘Bengali’ which is an English construction. I used both of them in the paper.

References


