

The Exploration of the Legal Gaps and Institutional Hurdles to Indigenous Land Rights in Bangladesh: Legal Framework for Protecting the Lands of Santal Community

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ABSTRACT: Indigenous land rights continue to be an important issue of concern because of their marginalization, lack of legal recognition and growing pressure from development activities. The study in this paper is a qualitative nature and it is based on legal research with respect to land rights issues experienced by the plain land Santal Indigenous community of Bangladesh. It reviews the national and international legal frameworks, current land governance systems and practices, and identifies gaps that facilitate violations of traditional land rights. The aim of the study is to examine the impact of the absence of recognition of custom land rights on the security of Santal ancestral lands. The paper, after reviewing literature, field data and expert views, draws attention to legal and institutional issues and makes recommendations to the policy makers and stakeholders. It is important that the rights to their customary lands be recognized and that effective legal tools be created to ensure the identity, dignity and livelihood of the Santal community in Bangladesh.

1. Introduction

Though the historical, political and social contexts vary, Indigenous Peoples throughout the world have been faced with similar problems of marginalization, discrimination and insecurity. State policies in many parts of the world from Asia to Africa, the Americas to Europe have tried to assimilate indigenous communities into mainstream society, with a focus on land rights being denied (Torres, 1991). This has undermined the capacity of Indigenous Peoples to defend their traditional lands and sustain their culture. So, the traditional claims must be recognized, the culture protected, economy rights must be respected and political participation must be guaranteed in order to protect Indigenous rights (Torres, 1991).

The same problems affect the Indus-Genetic plain land indigenous communities, especially the Santal community, in Bangladesh. They want their rights to ancestral land ownership, cultural practices and participation in social and political processes recognized. But lack of formal recognition of Indigenous identity and inadequate legal protection has helped to result in the loss or deterioration of their traditional and

ancestral land rights. In many cases, strong individuals and groups have exploited gaps in the legal and administrative framework to claim Indigenous territories, thereby challenging the Indigenous rights to land and other resources (Wiessner, 1999). Hence, the current study explores the legal issues pertaining to the rights of the Santals over land use in Bangladesh by examining various national laws and international standards and judicial developments and suggests appropriate ways to further strengthen the protection of the rights of the Santals in the context of land use.

2. Background of the Study

Bangladesh is a culturally diverse country with many Indigenous groups having very different traditions, social systems and languages. Chittagong Hill Tracts and plain land communities are predominantly the home of these communities. The Santals are one of the largest plains land tribes in the northwestern part of Bangladesh, who have been living there for a long time. While the anthropological studies of the culture, lifestyle and identity of the Santal people have been documented so far, there has been limited legal literature on traditional land rights. The discussion of land rights among the Indigenous communities in Bangladesh has been more or less directed towards the Indigenous communities of the Chittagong Hill Tracts, and the vulnerability of the plain land communities have not been well explored. The present study attempts to fill this gap by examining the legal insecurity of the Santal community, as a result of lack of adequate recognition of customary land ownership.

Land conflicts have occurred with indigenous peoples throughout the world due to policies, development projects, and inadequate legal protections. The connection between Indigenous Peoples and the land must be acknowledged on the national and international level in a legal way (Daes, 1999). ILO Convention No. 107, ILO Convention No. 169, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) offer important guidelines for the protection of Indigenous land rights. Bangladesh has ratified ILO Convention No. 107 in 1972 and made commitments on issues related to the protection of indigenous rights. But communities like Santals still have a problem as their traditional land rights and recognition as indigenous people have not been given adequate legal recognition. For protection to be effective, however, there is a need for legal reform but also for practical implementation mechanisms such as land registration, dispute resolution and recognition of customary rights.

The Santal community of Bangladesh is one of the important plain land indigenous communities who have a historical identity, cultural tradition, and customary relationship with their ancestral lands. Their social organization and traditional

practices illustrate several of the features that are often considered typical features of Indigenous Peoples: collective resource management, intergenerational continuity of culture and the attachment to land. Yet, despite these qualities, the legal and institutional context in Bangladesh has failed to put in place proper recognition of Indigenous customary land systems. This lack of formal recognition has left a huge space between the traditional indigenous land use practices and the state based land governance systems. Bangladesh has also been a victim of the processes of assimilation through policy and exclusion in administration since the time of independence. The lack of recognition of the community ownership of land, as opposed to individual ownership which dominates the modern land administration system, has been especially problematic for the Santal people. While the Constitution of Bangladesh does not mention Indigenous communal ownership, it does allow the state and cooperative and private ownership. This means that the formal legal system still allows traditional land relations of the communities like Santal to be vulnerable.

There is limited protection under the State Acquisition and Tenancy Act 1950, which regulates the transfer of Indigenous land to non-Indigenous people in Section 97. Enforcement, however, has been weak and there are several administrative constraints, in addition to limited legal awareness and challenges for Indigenous communities to access legal remedies, that have reduced the effectiveness of the provision. Collective ownership and customary possession of land are not always documented, making it difficult for many Santal families to assert ownership of their ancestral land.

3. Literature Review

Land has traditionally been recognized as an important part of Indigenous identity, culture, living and social continuity. Indigenous use of the land is frequently more than economic ownership – it may also be spiritual, cultural and communal. The indigenous customary systems differ from traditional property systems that emphasize individual rights to land and formal agreements and documentation as a way to manage land, in that they see land as a resource that can be managed collectively and communally (Daes, 1999). Therefore, historical occupation and customary rights to lands will be a determinant of the entitlement of Indigenous land rights. Hence, it is necessary for the legal framework to recognize both historical occupation and customary relationships to territories for the protection of Indigenous land rights.

The world's discussion of Indigenous rights has undergone many changes in the past few decades. Torres (1991) states that this marginalization has been well documented in the experiences of Indigenous Peoples all over the world as a result of assimilation policies by the state and the denial of their traditional rights. The elements of Indigenous justice are recognition of claims, cultural protection, economic rights, and political participation, says Torres. Similarly Wiessner (1999) highlights the importance of Indigenous identity and legal status to ensure Indigenous rights are safeguarded, since the individual-centred approach to the law does not reflect Indigenous circumstances.

The connection to land has also become a central issue in international human rights law, between Indigenous Peoples and land. The United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) underscores a number of rights of Indigenous Peoples that include their rights to maintain their cultural identity, to possess their traditional lands and the right to participate in the decisions made about their lands. Indigenous peoples' land is not just their physical resource; it is also the foundation of their cultural life and survival (Daes, 1999).

The literature on land rights is full of a discussion of the conflict between the formal regime and customary land rights regimes. Collective ownership systems, which are often based on historical occupation, relationships and community authority, are often used by indigenous communities. However, in more recent years the focus has shifted to documentation and the issuance of land ownership titles, making it hard for Indigenous communities to assert their land claims.

Yamada (2005) notes that Indigenous land rights need to be viewed in the context of their collective economic, social and cultural rights. Yamada says that not acknowledging customary ownership is one of the drivers of social exclusion and economic vulnerability of Indigenous communities. Similarly, Deloria and Lytle (1984) point out a strong connection between Indigenous sovereignty and cultural identity with control over ancestral lands.

This is a legal battle particularly among the plain Santal of Bangladesh. Although, the Santals have cultural connections with their country for ages, their traditional land ownership system has not been recognized in the national legal frame. State, cooperative, and private land ownership are not specifically recognized in the Constitution, which does not fully support Indigenous communal land ownership regimes. This section focuses on the present research and legal issues of the right to indigenous land in Bangladesh. The existing research and legal issues of indigenous land rights in Bangladesh have been emphasized.

The study of Indigenous communities in Bangladesh has tended to be anthropological, cultural, and concerns to identity and not legal protection of land. Past studies have shown that the indigenous groups, including the Santal, are under-represented and denied of justice, land ownership and access to justice (Roy et al., 2007). Most of the academic debates on Indigenous rights have, however, focused on the Chittagong Hill Tracts, which has resulted in a relatively under-studied area of plain land indigenous communities in Bangladesh.

The Santal are one of the greatest tribes of the plain in Bangladesh. Their security of land is an integral part of their survival, given their history, their distinct culture and use of homeland lands. But the lack of formal recognition of Indigenous identity and customary land systems has made them more vulnerable to displacement and land grabs. There is some limited protection under the State Acquisition and Tenancy Act 1950 Section 97 which limits transfers of Indigenous land. However, the current research shows there are institutional capacity constraints and difficulties in accessing formal justice systems, which makes laws not work effectively (Halim & Eshan, 2017). This means that many Indigenous communities have been deprived of their lands, in the face of protective laws.

Roy et al. (2007) highlight the economic limitations, institutional inadequacies and failure to recognize customary practice as a stumbling block to justice for Indigenous people in Bangladesh. They state that there can be no alleviation of marginalized groups' disadvantages without legal equality. Land dispossession is also a current and worldwide dilemma for Indigenous peoples, recognized in the literature. Yet, traditional territories have been dispossessed and traditional people uprooted as a result of development projects, resource extraction (e.g., logging, mining, farming), and administrative policies and practices, including population pressure. Development policies tend to overlook Indigenous relationships with land, and they are contributors to environmental and social conflict (Colchester and Lohmann, 1993).

Land competition and population growth has created an escalating land crisis in Bangladesh. Land conflicts with Indigenous communities have been intensified due to population pressures and competition for land in Bangladesh. Territories are also a vital economic and social asset, and communities with less political power may find it difficult to be able to defend their territories. The Santal community has also been experiencing the same problems regarding land grabbing, lack of land documentation and institutional protection.

This is such a process of “unpeopling” as Barakat (2016) has termed, a process by which Indigenous communities increasingly relinquish control of their ancestral lands in a manner that is enacted through political, economic and administrative means. Demographic and institutional processes can be drivers of marginalization of Indigenous people by diminishing their visibility and weakening their rights to land and resources, Barakat said.

Comparative legal literature reveals that other common law jurisdictions have important laws and principles that are invoked to safeguard Indigenous land rights. McNeil (1989) defines Aboriginal title as a legal acknowledgment of the Indigenous interests that are based on historical occupation and customary uses of the land. Judicial decisions in the late 1970s and 1980s in Canada and Australia were significant in the development of Indigenous land rights. These advances have led to the conclusion that same indigenous communities can have legal rights to their ancestral lands even if they do not have traditional land title (McNeil, 1989).

There has also been significant jurisprudence in Malaysia on NCR. Including traditional practices in court reasoning, the recognition of the rights of the Indigenous people over their land has been discussed by Bulan (2007). The oral evidence and historical occupation is also important as in Indigenous land claims cases such as *Sagong bin Tasi v Kerajaan Negeri Selangor* and *Nor Anak Nyawai v Superintendent of Lands & Surveys*. The lessons to be learned from these comparative experiences are beneficial to Bangladesh. Judicial solutions could be implemented in Bangladesh, as a common law state, to recognize custom land relations and offer more protection to the communities, such as Santals.

4. Research Gap

Although there is a considerable amount of literature, both at a global and national level, on the progress of indigenous land rights, there are some gaps. Firstly, the studies and documents on indigenous land rights have been largely confined to the Chittagong Hill Tribes, and very few legal studies were focused on indigenous people of the plains. Secondly, the study of indigenous land rights have paid attention on only one or two communities of the Chittagong Hill Tribes and very few studies have been carried out on other indigenous communities of the Chittagong Hill Tribes. Second, studies tend to concentrate on culture and social vulnerability, rather than on customary land rights, and are not as detailed in their analysis.

Third, there is little research that has examined the potential of applying international Indigenous rights standards and common law principles to promote better protection of land rights of the Santal community. Therefore, the aim of this study is to fill this gap, that is, to explore the connection between customary land practices, national land law and international law.

5. The focus of the research

This research discusses the customary land rights of the Santal people in Bangladesh and reviews the legal, administrative and institutional hurdles to the protection of these land rights. The study focuses on the issue of land rights and not issues of all human rights violations faced by indigenous communities. It examines national laws and conventions, international Indigenous rights standards and common law developments to find potential ways to enhance land rights protection.

In addition to judicial developments in the UK, the research also covers judicial developments in other jurisdictions where courts have established principles for the recognition of Indigenous customary land rights, such as Canada, Australia, Malaysia and South Africa. The lessons learned from these comparative experiences are possible lessons for Bangladesh to work towards a legal framework for the country that is more accommodating and respectful of the traditional Indigenous land relationships, without going completely outside of the legal parameters.

6. Methodology

This study employs a qualitative socio-legal research methodology to critically examine the legal status, challenges, and prospects of land rights protection for the plain land Santal Indigenous community in Bangladesh. A socio-legal approach is adopted because the research investigates not only the formal legal framework but also the interaction between law, customary practices, social realities, and institutional responses affecting Indigenous land ownership.

The research primarily follows a doctrinal legal analysis by examining relevant national and international legal instruments; including the Constitution of Bangladesh, the State Acquisition and Tenancy Act 1950, land-related policies, and administrative mechanisms governing Indigenous land protection. The study also analyses international Indigenous rights standards, particularly the principles reflected in ILO Convention No. 107, ILO Convention No. 169, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to evaluate the compatibility of Bangladesh's legal framework with emerging global norms on Indigenous land rights.

A comparative legal research method is incorporated to analyze judicial developments from selected common law jurisdictions, including Canada, Australia, Malaysia, and South Africa, where courts have recognized Indigenous customary land rights through doctrines such as Aboriginal title and native customary rights. These comparative experiences are examined to identify possible legal approaches applicable to the Santal community in Bangladesh.

The study also incorporates secondary empirical materials, including scholarly literature, institutional reports, policy documents, and expert opinions, to understand the practical dimensions of land dispossession, legal insecurity, and barriers to access to justice.

The collected data are analyzed through thematic interpretation, focusing on four key themes:

- (i) recognition of customary land ownership,
- (ii) legal and institutional gaps,
- (iii) causes of land alienation and
- (iv) Possible pathways for legal reform.

Through this integrated methodological framework, the study seeks to bridge the gap between formal legal structures and Indigenous customary realities and proposes a rights-based framework for strengthening the protection of traditional land rights of the Santal community in Bangladesh.

7. The discussion and analysis: Legal gaps, Institutional challenges and struggle of the Plain Land Santal community

7.1 The Intersection of Law and Land Use and Development

The legal, institutional and traditional aspects of the land rights of the plain land Santals community in Bangladesh is complex in terms of linkages. Land is much more than an economic commodity or even private property for the Santals, it is core to their cultural, social, religious and life ways. However, the Santal people continue to face insecurity in their homeland due to lack of legal recognition, poor institutional protection and difficulties accessing justice.

The formal land governance system of the state of Bangladesh and the customary land practices of the indigenous people are at the heart of the conflict. The collective and community-based approach to land management is observed among Indigenous

peoples such as the Santals, while the state law primarily recognizes land ownership by individual title, registration and documentation. This imbalance has caused a number of weaknesses which have made traditional lands vulnerable to encroachment, legal claims and alienation.

7.2 The legal limitations and omissions in the recognition of indigenous land rights

The lack of constitutional recognition of communal land ownership (CLA) is a root cause of the conflict. One of the underlying causes of the conflict is the lack of a constitution to provide for CLA. One of the biggest gaps in the law that affects the Santal is the absence of any constitutional assurance of the ownership of the land by the people. Under the Constitution of the Republic of Bangladesh, it has been acknowledged that there are three types of ownership such as State ownership, Cooperative ownership and Private ownership. It does not however officially recognize the communal ownership practices of many Indigenous communities.

The Santals have the history of ownership based on collective, not individual rights. Land is a common resource with connotations of ancestry, culture, and sense of community identity. If it does not exist in law, Indigenous people are structurally disadvantaged or disadvantaged because they have to demonstrate ownership to the standards which are not indicative of their traditional practices. This makes it hard for many Santal communities to obtain protection for their land use rights as customary rights are unlikely to be formally documented. This gap between customary land ownership and government recognition has contributed to the lack of security of land ownership and its vulnerability to land grabs. Although the legal framework for land is relatively robust, in fact, it doesn't offer sufficient protection for the right to land.

There are some laws and regulations in Bangladesh regarding the protection of Indigenous lands that are, however, not sufficient. There are restrictions on land transfers to non-Indigenous people in Section 97 of the State Acquisition and Tenancy Act 1950. Poor implementation, administration and effective monitoring have greatly weakened its effectiveness, however, if we let it go unenforced, a law will not offer any protection. In many cases influential men/women and sometimes groups have manipulated administrative weaknesses, forged documents or otherwise wielded political influence to acquire land from Indigenous people. The issue is not just lawlessness; it is also that no institutions are ensuring that the rule of law to be upheld in practice.

7.3 Institutional barriers for protecting the rights of Santal people over lands

7.3.1 Weak Administrative Implementation

In Bangladesh administrative institutions are a key factor in land management and dispute resolution. But, there are challenges for Indigenous communities as local administrative systems are not sufficiently cognizant of customary land practices. Occupations in the past, community evidence and customary land use are not always taken into account and formal land title documents are used by government officials.

However, it is not always equitable to communities such as the Santals who traditionally have used land systems that are not always written down. As a result, lands that were once under the control of Indigenous peoples can be considered as government land or can be the subject of competing claims.

7.3.2 Barriers to access justice

Widespread lack of access to justice continues to be a problem for the Santal. There are a number of factors that restrict their ability to claim, such as poverty, ignorance of the law, complexity of procedure and social inequality. For Indigenous land claims, documentation of ownership is generally required to be made in the formal judicial system, while approaches of oral history, collective memory and customary practices are used. In court, Indigenous peoples are disadvantaged if these kinds of evidences are not recognized.

In addition, the time-consuming process of litigation and the expense of litigation make it hard for those with low economic means to maintain a litigation contest regarding land. It has resulted in far too many families not being able to reclaim their ancestral lands, which they had been illegally occupying. As a result, many families in such areas cannot get their lands back that have been illegally taken.

7.4 Mediation between development policies and indigenous land rights

Development policies have also contributed to land insecurity among the indigenous peoples. Development projects and economic activities have been done without adequate regard for the rights of Indigenous communities to their customary lands in many instances. In Bangladesh land is an economic resource of great value and competition for land has resulted in additional stress for vulnerable communities.

Development-induced displacement not only involves loss of livelihood, but also displacement of the Santal culture. The loss of ancestral land has an impact on

traditional livelihood, social networks and relationship with heritage. For this reason, development planning should be participatory, respect Indigenous peoples' rights and should not infringe on their rights.

7.5 Comparative Lessons from Common Law Jurisdictions

The school values Indigenous Title and Customary Rights. The school recognizes Indigenous Title and Customary Rights. This has occurred through judicial interpretations and legislative changes in countries like Canada, Australia, Malaysia and South Africa, where the laws have embodied Indigenous land rights, albeit in a different way. These jurisdictions have recognized the existence of Aboriginal title and native customary rights, meaning that Aboriginal occupation and Aboriginal culture can be a means to a valid claim. These are valuable lessons for Bangladesh. Judicial processes can recognize Santal customary land rights, affording opportunities to protect their ancestral lands.

Comparative approaches may be thought of in the context of their social and constitutional background, which is important for Bangladesh, a common law country. Oral history, customary practices and collective ownership principles could be used to support Indigenous communities in their claims for their traditional lands.

7.6 Identity Recognition and connection to land rights

The issue of land rights for the Santal is closely related to the issue of recognition of indigenous identity. Indigenous communities are not recognized as rights-bearing groups with cultural/historical rights and are not legally protected from their rights to land. The issue of recognition of identity thus becomes a cultural as well as a legal and institutional need. Land protection is critical to Indigenous identity protection and it is just as critical to traditions, livelihoods, social systems protection.

A comprehensive approach is needed combining legal reform, institutional empowerment and recognition of customary rights to address the rights of the Santal. Steps that are necessary include the recognition of communal ownership in the Constitution, the effective implementation of existing laws, and the creation of specific mechanisms to deal with Indigenous land conflicts. A formalized institutional mechanism for the resolution of the plain land cases which includes Indigenous rights may provide culturally and accessible solutions. These changes would help us move closer to the formal system of law, and to the customary realities of Indigenous peoples.

8. Root cause analysis of Land Rights Violations happening in Santal Community

The insecure rights to land are a consequence of several historical, legal and socio-economic factors at play in the lives of the Santal people. The lack of harmony between the Indigenous communal land use and formal private land use is one of the significant contributing factors. The Santana people had a different concept of land in the past, viewing land as a resource for their community, rather than an economic benefit, and were associated with a sense of community identity and cultural survival.

Adverse impacts from modern land registration systems occurred after the introduction of them, as traditional lands were not registered. Consequently, strong persons and groups have been able to stake their claims on Indigenous lands, with the lack of proper documentation. Policy frameworks, such as the Vested Property framework, and other historical policies also contributed to the alienation of Indigenous lands from traditional users.

The extent of application of protective legislation has been insufficient to alleviate vulnerability. Laws are in place to restrict Indigenous land transfers, but they are not being enforced and this is continuing to lead to illegal land occupation and land disputes. No specialized institutional mechanisms to resolve land conflicts with Indigenous peoples have been established which has hampered Indigenous peoples' access to effective remedies.

9. The protection of Indigenous land rights and Common Law Development

International law demonstrates that customary relationships with the land may be recognized as a basis for the recognition of Indigenous land rights. The Courts in Canada and Australia developed notions of Aboriginal title and native title rights, to be held if Aboriginal communities had traditionally used the land, but had also for a long time occupied it. There are similarities in other common law countries. In Malaysia, native customary rights have been acknowledged through a historical method which is based on historical evidence, oral traditions and Indigenous practices. Through decisions such as *Sagong bin Tasi v Kerajaan Negeri Selangor* and *Nor Anak Nyawai v Superintendent of Lands & Surveys*, cases can be seen in which customary law can be incorporated into the modern legal systems. It's time for Bangladesh to learn from these. In Bangladesh, a common law nation, judicial solutions that recognize the land relationships of Indigenous peoples in a flexible framework of historical land claim could be considered.

10. The findings of the study

- a. The study reveals that the most major problem is lack of recognition of the traditional land ownership of the Santal people. The study shows that non-recognition of the traditional land ownership of the Santal people is the most major problem.
- b. Individual ownership is the main principle of the existing land law system in Bangladesh which poses challenges for Indigenous communities whose land practices are collective.
- c. There is some legal protection in Section 97 of the *State Acquisition and Tenancy Act* 1950, but this has not been put into practice.
- d. Historical land policies and administrative practices have played a major role in dispossessing and rendering the Santal ancestral lands insecure.
- e. The formal documentation of land has reduced the rights of Indigenous communities to land ownership and/or unlawful occupation.
- f. The study finds that there is a disconnect between national legal processes and international Indigenous rights' processes in relation to customary land protection.
- g. Common law experiences show that a judicially recognized title can be a powerful tool for protecting Indigenous lands.
- h. The research concludes that the current dispute resolution options are inadequate when it comes to Indigenous land disputes with a history and culture.
- i. The lack of a formal recognition of Indigenous identity has resulted in a weakening of the legal protection for the rights of Indigenous peoples to access land.
- j. The lack of formal recognition of Indigenous identity has indirectly undermined the legal protection of the rights of Indigenous peoples to access their traditional land.
- k. Establishing sustainable protection of Santal land rights requires integration of customary methods, laws and better institutional structures.

11. Recommendations

- a. Bangladesh needs to give greater constitutional and legislative protection to the Indigenous communities and their traditional land rights.
- b. Ensure the inclusion of the principle of communal ownership in national land laws, in recognition of customary land ownership practices.
- c. The *State Acquisition and Tenancy Act* 1950 provision on Section 97 needs to be well implemented with clear administrative procedures and monitoring systems.
- d. It is recommended to create a land dispute resolution system for the Indigenous communities of plain lands, including the Santal people.

- e. Historical occupation and customary possession should be taken into account in land registration and documentation policies, not just formal ownership documents.
- f. Before acts that impact Indigenous lands, meaningful consultation and participation of Indigenous communities should be included in government development projects.
- g. Bangladesh needs to enhance the implementation of international Indigenous rights principles as set out in UNDRIP and other relevant ILO standards.
- h. Indigenous title and customary land rights should be taken into account in the context of comparative common law principles in judicial institutions.
- i. Ensure greater awareness, legal support and institutional assistance to Indigenous communities to effectively protect their land claims.
- j. National land policies need to be reformed to put in place the principles of equality, cultural diversity and protection of Indigenous ancestral territories.

12. Conclusion

Land is the basis for Indigenous Peoples' identity, culture, livelihood and collective being. For the Santals of Bangladesh the land is not just a piece of property or an economic resource, but a historic, cultural and spiritual heritage that is passed down through the generations. But, the lack of historical presence, poor legal status and lack of effective implementation of current laws have had a major impact on their access to ancestral land. Specifically, the use of Section 97 of the *State Acquisition and Tenancy Act 1950* – which would give protection to the rights of land for the use of plain land Indigenous communities – has not worked well in ensuring the protection of Santal land rights.

This research reveals that the problem is the conflict between the customary practices of the indigenous peoples and the formal laws of Bangladesh. There has been a lack of recognition of communal ownership systems, which has been an obstacle to protecting traditional land claims, and has been linked to land alienation and insecurity. International experience from common law countries such as Canada, Australia, Malaysia and South Africa suggest that the land and its associated customary relationships can be recognized by the judiciary and by legislative change.

Hence, it is essential to have a comprehensive legal framework to deal with the right to Indigenous land in Bangladesh. There should be a special chapter on Indigenous customary ownership and ancestral land protection in a dedicated national land

law/policy. Steps towards justice include constitutional recognition of communal ownership, effective implementation of current legal protections and the creation of specific mechanisms to address Indigenous land disputes. Lessons can be drawn from the experiences of the Indigenous peoples in the Chittagong Hill Tracts and international legal frameworks for an inclusive framework for Indigenous peoples of the plains. The affirmation and enforcement of their customary land rights would benefit not only the legal equality but also help preserve their culture ensure social justice and sustainable development in Bangladesh.

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