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State of Justice in Chittagong Hill Tracts: Exploring the Formal and Informal Justice Institutions of Indigenous Communities

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ABBREVIATIONS

ADC	Additional Deputy Commissioner
ADR	Alternative Dispute Resolution
AL	Awami League
BLAST	Bangladesh Legal Aid and Services Trust
CHT	Chittagong Hill Tracts
DC	Deputy Commissioner
HRLS	Human Rights and Legal Aid Services
LCL	Local Community Leaders
HDLGC	Hill District Local Government Council
LIC	Law Implementation Committee
PCJSS	Parbattya Chattagram Jana Samhati Samity
SB	*Shanti Bahini*
UPDF	United People's Democratic Front
UP	*Union Parishad*

ABSTRACT

The justice system of Chittagong Hill Tracts (CHT) is characterized by the existence of a dual justice system - the formal one according to the law of the country and the customary laws of indigenous people. The broad objective of the study is to explore the formal and informal justice system of the ethnic communities in CHT in regards to assist Human Rights and Legal Aid Services (HRLS) programme of BRAC for effective extension in this area. Five ethnic groups with highest representation in the region were included in the study. They are Chakma, Marma, Tripura, Mro and Bangali. Both quantitative and qualitative data were used. For quantitative analysis, 601 samples have been observed. In contrast qualitative tools including 25 in-depth interviews, 25 case studies, 25 informal discussions and observation of four *Shalish* from 24 villages/*paras* were used. Most of the cases reconciled by the informal justice system had some advantages in terms of easy accessibility and less time and money required for making decision. Most common disputes were on fighting, stealing, land grabbing, intra- and inter-household disputes including rape and murder cases. Some inhuman punishments were executed by the customary legal system. Most people in the region preferred customary laws for having a short trial procedure, less transportation hassle and availability of witness. A number of people opined for legal aid intervention in this area. At the same time hill people are much more inclined to keep their laws stronger as a part of their identity.

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EXECUTIVE SUMMARY

Chittagong Hill Tracts has its own distinctive feature in justice sector. This area is not within the domain of usual rules of Bangladesh. The justice system of CHT possesses the distinguished characteristic, the existence of dual justice system, one is the formal one within the laws of the country and another is the customs and rituals of indigenous people. Rules for Territorial Circles in the Chittagong Hill Tracts, 1884 divided the area into three circles (Amendment in 1892): the Chakma, the Bohmang, and the Mong (Chakma 2007). Each circle was governed by a local chief, responsible for collecting revenues and managing internal affairs. Each circle was in turn divided into *taluks* (estates), administrated by the *dewans* and *taluks* were further sub-divided into '*mauza*-circle' lands (localities), conventionally administrated by the Headman respectively Each *mauza* was divided in to villages/*paras*, usually administrated by the *Karbaris* under the Headman (Chakma 2007).

The broad objective of the study is to explore the formal and informal justice system of ethnic communities in CHT. BRAC, HRLS programme – the largest legal NGO in this world has its coverage in 61 districts of Bangladesh excluding the region of CHT. Therefore, the study was conducted with the expectation to assist Human Rights and Legal Services (HRLS) programme of BRAC for effective extension in this area. The study has purposively selected the names of ethnic communities- Chakma, Marma, Tripura, Mro and Bangali on the basis of their proportionate representation in CHT demography. Primarily the study categorizes three types of *para* based on the ethnic composition. Three types of *para* are a) pure indigenous b) indigenous-mixed and c) indigenous-Bangali. Both quantitative and qualitative tools of data collection received equal emphasis in this study. For quantitative tools, 601 sample has been drawn from 24 villages *(paras)* purposively based on ethnic representation and categories assumed.

It is observed that both informal and formal justice systems are simultaneously functioned in Chittagong Hill Tracts. The nature of cases and involvement of parties settles on whether it would go informal or formal resolving mechanism. Though, most of the cases were reconciled through the informal justice system, possessed some advantages in terms of easy accessibility and less time (one to five sittings) and money (Tk. 50-500) required for making decision. The most common trends of disputes are fighting, stealing, land grabbing, intra and inter household disputes, quarrel and including the rape cases and murder cases. Interestingly, all of these disputes particularly in pure indigenous villages, whether petty criminal or civil matters were initiated to solve through *Karbari* and Headman was not entitled to do that according to the law of government. On the contrary traditional law becomes inapplicable and less effective particularly when any incident involves Bangali settlers and an ethnic group. Various customary institutions, local government bodies and army were found to be involved in the procedure of *shalish*. Moreover, the access of

ethnic groups to formal justice institutions and the complexities they face from different stakeholders have been addressed to understand the functionality of government promulgated laws or formal laws in CHT. These problems of formal justice systems are common in CHT. These problems get intensified to the extreme in CHT because of geographical nature, political history, distinguished court structure and ethnic identity.

In CHT, problems related to formal justice system are almost common with other parts of Bangladesh long trial procedure, corruption etc. Such problems get coupled with other problems like communication problem transport hassles for the poor clients. For hectic transport, witnesses are not even inclined to appear in court.

However, women from Chakma, Marma, Mro and Tripura communities enjoy greater freedom in participating in *shalish* than Bangali women. It was also noticed that women from indigenous community received greater opportunities through *shalish* in establishing their gender rights including raising voice and protesting against maljudgments. Besides ethnic women can participate in *shalish* without any hesitation and fear but they cannot raise their voices adequately. No female *Karbari* or Headman was found within the indigenous groups and the customary courts can be said to be dominated by all male jurors result is difficult for a male juror to understand the sufferings of female victims and patriarchal structure of customary court is creating limited space for female victim's voice. Moreover, there are no specific customary laws to protect women rights in CHT. Most of the Headman and *Karbari* consider women rights typically based on raising voice and receiving verdict.

Verdicts included some inhuman forms of punishments including balding head, humble pie, garland of shoes, living with pigs which are contrary to dignity of human being. Some inhuman forms of punishments were also implemented through this mechanism. In spite of inhuman punishment, failed to ensure justice, most of the people from the studied indigenous communities gave significance to customary law rather than formal law.

Most of the indigenous people have very little knowledge on formal justice system including *Karbari* and Headman has little or no conception on human rights and justice. Primarily they are the potential justice providers for the indigenous communities. In some cases, the customary court is found to be biased to the rich people and politically powerful persons.

HRLS programmatic intervention should be followed considering the historical background of the grievances (human rights violation and demographic engineering) of indigenous people from the state of Bangladesh. A number of people opined for legal aid intervention in this area. At the same time hill people are much more inclined to keep their laws stronger as a part of their identity. From that consideration we offer two different time periods recommendation for starting any legal aid services. Before launching legal aid services, programme will make advocacy with Circle Chief, *Karbari* and Headman, campaigning with involve indigenous people in their areas about the works of HRLS programme. Furthermore, HRLS programme should start

their work through Headman and *Karbaris* or UP chairman and gradually move into micro level intervention. Importantly, Traditional Dispute Resolution Mechanism should be strengthened by codifying and reviewing customary laws. After involving traditional *shalishkar* and campaigning human rights, HRLS programme forming groups in every *para* to protect human rights and communication with programme facilitators. Programme has to make ensure women's active participation and presence of the representative of HRLS programme as monitor and facilitator in the traditional dispute mechanism. Besides, Regional Council and Hill Council, Land Commission would be activated for dispute resolution. Finally, the rights of the indigenous people has to be acknowledged in the Constitution.

INTRODUCTION

Background

The Chittagong Hill Tracts (CHT) occupies an area of 5,093 sq. miles (13,295 sq. km) which constitutes approximately ten per cent of the total land area of Bangladesh (Gain 2000). The region encompasses Rangamati, Khagrachari and Bandarban hill districts. Geographically CHT can be divided into two broad ecological zones: (a) hill valley, and (b) agricultural plain. It is surrounded by the Indian states of Tripura on the north and Mizoram on the east, Myanmar on the south and east and Chittagong district on the west. The districts comprise seven main valleys formed by the Feni, Karnafuli, Chengi, Myani, Kassalong, Sangu, and Matamuhuri rivers (Shelley 1992). The average height of the hills ranged from 1,000 to 2,900 feet, whereas the highest pick Kyokra-Dong is 4,034 feet high (Rafi 2001). Indigenous people from 11 different ethno-linguistic groups have been living in the region for many centuries (Mohsin 2003). They still form the majority of the population. Unlike the rest of Bangladesh, where Bengali-speaking Muslims form the majority of the population, the indigenous people of CHT are largely Buddhists, Hindus and Christians (Roy 2002). They collectively identify themselves as the Jumma[1] people, the first people of the CHT. They are Chakma, Marma, Tripura, Tanchangya, Mro, Murung, Lushai, Khumi, Chak, Khyang, Bawm, Pankhua, and Reang. The Jumma people are distinct and different from the Bangalis in respect of race, language, culture, religion and ethnicity.

Primarily the very ethnic composition of CHT portrayed the area as restricted since British regime. Besides, CHT enjoyed a pro-autonomous ruling system and received state protection in return of a fixed revenue. After the independence of Pakistan, during 1957-63 serious crisis became apparent when the then government initiated to establish a hydroelectric dam, locally known as Kaptai dam, in Rangamati to produce electricity. Almost more than one lakh indigenous people were dislocated and approximately 1,036 sq. km of land submerged along with the residences due to the lake producing the dam (Shelley 1992; Adnan 2004). A significant number of displaced people crossed the international border and took shelter in India as refugees and others migrated to nearest hilly areas. This incidence created a deep mistrust on the state and produced immense insecurity among the indigenous people. In 1962, a new Constitution was adopted in Pakistan and as a consequence, the status of CHT was given a status of “Tribal Area” from “Restricted Area” (Adnan 2004). Another most important phenomenon in post-Kaptai dam period was in-migration of Bangalis in CHT from plain land. Despite theses anomalies, during 1958-68, CHT people had gone through few development activities including

[1] *Jumma*, also used as *Jummia* people, indicates as same as *Pahari* people from different ethnic groups. These terms mention that these people are permanent residents of hills and their subsistence food traditionally comes from *Jhum* cultivation (Slash and burn cultivation).

establishment of primary schools which were rare during the British regime (Shelley 1992). After the independence of Bangladesh, grave concern cropped up when the first Constitution ignored the ethnic identity of the indigenous people and Bangali nationalism did not include their culture, ethnicity, emotions and dreams. In this context, in 1972, MN Larma, member of the parliament at that time from CHT raised four point demands to the former President Bangabandhu Sheikh Mujibur Rahman including the autonomy of CHT but got refused (Mohsin 2000). In response, the first political organization named *Parbatya Chattagram Jana Samhati Samity* (PCJSS), was formed among the CHT people (Mohsin 1997). Subsequently, a military wing of PCJSS, *Shanti bahini* (SB) was formed in 1973 to carry out the dream of regional autonomy of CHT (Shelley 1992). Aftermath, Bangladesh government considered the armed struggle as threat to national security and deployed armed forces in CHT. Army intervention in CHT resulted in coercive activities including torture, killings, rape and other forms of violence to control CHT movement (Adnan 2004; Mohsin 1997). After 1976, the situation became worse when full scale militarization and counter insurgency operations began and *Shanti bahini* (SB) literary took the political control over CHT. Moreover, PCJSS/SB received immense support from the indigenous people and eventually Bangladesh government took strong counter-insurgency measures to handle the incidence. Apart from the strategies, government aid "demographic engineering" which included massive population transfer to CHT from plain land. Consequently the population composition of CHT was changed over the decades and beside this, military intervention produced severe insecurity for indigenous people. A significant portion of indigenous people migrated to India to cope with the situation. The settler Bangalis became majority in CHT and began to control over economy and society under the assistance of cantonment. One estimates (Adnan 2004) mentioned that approximately 10,000 *Paharis* were killed in 1981. In 1988, Ershad government decided to provide few incentives to CHT and as part of the strategies, five percent of all government jobs was reserved for indigenous people (Shelley 1992). Moreover, in parallel with counter insurgency activities, Ershad government initiated to establish three Hill Districts Local Government Councils (HDLGC). Under these circumstances, CHT became a burning issue for Bangladesh and received immense attraction of the international communities. Neither government nor international communities took any initiative to resolve the crisis, but civil society including human rights activists began raising their voice after the restoration of democracy after 1990. As a consequences during BNP regime all parties parliamentary committee was formed in 1992. On 2 December1997, a peace accord was eventually signed between PCJSS and the then Awami League led Government. Thus, the two decades long armed struggle stopped apparently and SB cadres surrendered their arms. It was expected that the government will implement each and every component of the peace treaty but unfortunately it did not happen immediately. This disappointment, however, encouraged a group of *Pahari* people to reject the peace accord and eventually another political party for the CHT people was formed named United People's Democratic Front (UPDF) (Adnan 2004). Not surprisingly, the conflict between PCJSS and UPDF split the political conformity of the *Pahari* people. Along with political struggles, the underdevelopment of CHT area and the backwardness of the indigenous communities has become a crucial issue for Bangladesh.

A study (Roy 2002) reveals that the population transfer program worsened the situation rather than stopping the insurgency, and moreover, it made the situation more volatile by artificially adding an 'ethnic' overtone to the CHT problem by 'civilianizing' the conflict. Furthermore, the settlement process drastically altered the demographic make-up of the region by reducing the indigenous people to almost minority in their ancestral homeland. An estimate shows that Bangali population in the region has grown from 2% in 1872 to an estimated 49% in 1991 (Roy 2002). Most importantly, it led to the dispossession of thousands of acres of lands belonging to indigenous people, which they are yet to recover. In accordance with the 1997 Accord and subsequent legislation, a commission on land has been formed to resolve disputes over land, but the commission is yet to start its work. Therefore, land related disputes increased in the recent years and neither the customary system nor the formal judiciary system show its efficiency to resolve that kind of disputes, especially occurred between *Pahari* and Bangali settlers. This particular situation eventually increased tension involving ethnic conflicts, politico-religious chaos, military and police intervention which resulted in tremendous human rights violations for the *Pahari* people. Moreover, the distinct customary land ownership pattern of the *Pahari* people has been violated frequently causing displacement and allowing private sectors to promote eco-tourism spots and commercial plantation including tobacco cultivation. Furthermore, *Pahari* villages loose its distinct characters due to in-migration of Bangali people resulting in various socio-legal problems. Inevitably, all communities including Bangalis experience intra and intra-household disputes along with severe ethnic conflicts.

From time immemorial, indigenous people have resorted to their own traditional dispute resolution system for resolving disputes (Schendel 1992). All the indigenous communities have formed their own conventional mechanism of dispute resolution following their customary laws. Aftermath, British regime accepted their customary system through the legislation of 1900 regulation. Using the power under Rule No. 18 of the Regulation 1 of 1900, government amended and modified Rules for the Administration of the Chittagong Hill Tracts, 1892 which was knows as 'Hill Tracts Manual'. This legislation gave the power to Circle Chief and Headman for resolving some social disputes.

Rules for Territorial Circles in the Chittagong Hill Tracts, 1884 divided the area in to three circles (Amendment in 1892): the Chakma*,* the *Bohmang,* and the *Mong* (Chakma 2007)*.* Each circle was governed by a local chief, responsible for collecting revenues and managing internal affairs. Each circle was in turn divided into *taluks* (estates), administrated by the *dewans* and *taluks* were further sub-divided into '*mauza*-circle' lands (localities), conventionally administrated by the Headmen respectively. Each *mauza* was divided in to villages/*paras*, usually administrated by the *Karbaris* under the Headman (Chakma 2007).

All these personals were appointed by the chiefs with the concurrence of the Deputy Commissioner. This post came from the post 'Superintendent' established in British regime. There are now three Deputy Commissioners for three districts in CHT. The Deputy Commissioners are the civil administrator representing the government of

Bangladesh. They acted as District Magistrates with jurisdiction to civil and criminal matters.

The Headmen are responsible for resource management, land and revenue administration, maintenance of law and order and administration of traditional justice in the *mauza* circle. The Headmen in turn are assisted by *Karbaris* or village heads, particularly in maintaining law and order and dispensing traditional justice. The Chiefs are empowered to regulate the acts of the Headmen and acted as an appellate court. Moreover, a recent study (Focus: Asia Report to the UN Parliament Forum on Indigenous Issues 2007) reveals that the overall justice system in Bangladesh is seriously dysfunctional, its services to the general population are worsening and access for indigenous peoples is particularly limited. Most interventions seeking to enhance access to justice have been inadequate and largely insensitive to cultural distinctiveness, further marginalizing the rights of indigenous peoples. However, this particular scenario discourages the indigenous people to seek justice in court and eventually discourage the indigenous people in seeking justice.

CHT has its own distinctive feature in justice sector. This area is not within the domain of usual rules of Bangladesh. The justice system of CHT possesses the distinguished characteristic- the existence of dual justice system, one is the formal one within the laws of the country and another is the customs and rituals of indigenous people. Except in some areas, the whole administration is on the hand of Bengali people. In parallel, the indigenous people have their own system. '*It is the juxtaposition of two which marks the peculiarity of Hill Tracts'* (Bessaignet 1958).

Unlike other parts of Bangladesh, no criminal court was established in CHT till 01 July 2008 and the civil matters used to be dealt by Deputy Commissioner. In one hand, Deputy Commissioners of three districts and Divisional Commissioners of CHT resolve the dispute of civil and criminal natures following the laws of Bangladesh (until 01 July 2008), on the other hand the stakeholders of traditional dispute resolutions of CHT resolve the disputes applying their unwritten customary laws.

It would be mentionable that a strong contradiction might be observed between the formal justice system[2] and the indigenous informal justice system[3] which is strongly associated with culture, basically based upon socio-cultural heritage of informal justice practices within communities rather than the legacy of formal laws. For this instance an in-depth understanding of indigenous informal justice institutions should be depicted to perceive the forms and nature of customary justice seeking process, and the problems associated with informal as well as formal justice institutions. Moreover, in reality, studies on dispute resolution mechanism and the role of the institutions has been neglected. Very few or no research works has been initiated to understand the dynamics of justice system in CHT. In this ground, this paper should

[2] In this study, formal justice institutions/system indicates formal regular judiciary system that follows the Constitution and laws of Bangladesh includes upper and lower court.

[3] Informal justice system indicates the customary justice system of the *Pahari* groups practiced by Chiefs, Headman and *Karbari* also recognized by CHT regulation act of 1900 and further amendments and also by the CHT peace accord of 1997.

be considered as an initiative to understand the state of justice in CHT with an in-depth focus on the issues like ethnicity, identity, human rights and gender.

Assisting HRLS programme of BRAC for effective intervention in CHT

The study was conducted with the expectation to assist Human Rights and Legal Services (HRLS) programme of BRAC for effective extension in this area. BRAC, HRLS programme –the largest legal NGO in this world has its coverage in 61 districts of Bangladesh excluding the region of CHT. It works in the following ways (HRLS brochure 2009):

a. Providing human rights and legal education course to women
b. Doing alternative dispute resolution (ADR) in the legal aid clinic to resolve the dispute and giving legal assistance to the clients in court
c. Forming law implementation committees (LIC) to monitor the community, help in conflict mediation and ensure access to legal resources
d. Providing lawyers who work as legal representatives for the clients in the court.
e. Arranging local community leaders workshop (LCL) to increase gender awareness, encourage participation and develop human rights awareness amongst union level leaders

HRLS programme's present mission is 'to protect and promote human rights through legal empowerment especially for the poor and marginalized' (BRAC HRLS brochure 2009). It intends to include ethnic minority in their target groups (BRAC HRLS brochure 2009) which made them express their plan to enter into CHT region. The study has kept this intention in mind and endeavoured to provide recommendations for HRLS so that they can extend their mission to CHT also.

Recent change in the court system of CHT and scope of the study

The High Court on 24 February 2008 directed the government to set up three separate civil and criminal courts and Nari-O-Shishu Nirjatan Domon (Suppression of Violence against Women and Children) Tribunals in Rangamati, Khagrachari and Bandarban districts in the CHT, as soon as possible, and no later than one year from the date of judgment.

The judgment was given in a writ petition filed in 2006 by the Bangladesh Legal Aid and Services Trust (BLAST) and others, on behalf of the peoples of three hill districts, seeking directions upon the Government to give immediate effect to existing laws which provide for the establishment of such courts in the CHT and to implement the Constitutional mandate for separation of the judiciary. According to that judgment, the formal justice system of CHT got changed from 01 July 2008.

Now three lawyers of court have been established. Cases dealt by first class magistrate will be dealt by additional chief judicial magistrate, and cases dealt by

second and third class magistrate will be handled by judicial magistrate. Session court will be there to take the cases from judicial magistrate. From 01 July 2008 two judges will be appointed (Fig. 1).

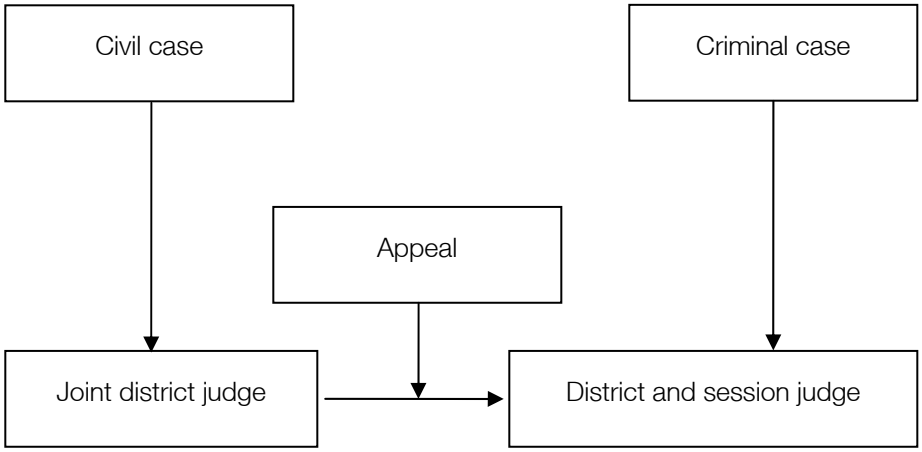
1. District and session judge, and
2. Joint district judge

Civil cases will go to district judge and district and session judge will deal with criminal cases and civil appeal. Though from 01 July, judicial cases will be conducted by district and civil judge. The amendment made in 2003 (Amendment Act No. 38, 2003 in CHT Regulation) gave Divisional Commissioner power to review the decisions of the district and civil judge. Previously, there was no court fee in CHT, but now court fee is introduced.

This study was conducted in a time when this court system of CHT did not function. As this court system was about to start, the study touched this issue of the upcoming development in the in-depth interviews.

Figure 1. CHT court after 1 July 2008

Chittagong Hill Tract Regulation, Amendment Act No. 38, 2003



Objectives of the study

The broad objective of the study is to explore the formal and informal justice systems of ethnic communities in CHT. This study, however, has some specific objectives to answer the core research questions on the ground of which this research stands. The objectives are:

- To explore distinct customary laws of ethnic groups including Chakmas, Marmas, Tripuras, Mros and Bangalis

- To identify major disputes arisen from communities and use of customary law
- To recognize major advantages and challenges in customary disputes resolution system to protect human rights
- To explore the access of indigenous people in formal court
- To understand difficulties the ethnic groups faced by informal judiciary system for in comparison with Bangali communities.
- To analyze fundamental differences in customary and formal laws regarding ethnicity, culture and politics
- To make a pathway for HRLS programme's intervention in CHT overcoming existing challenges in both informal and formal laws

METHODS

The sampling of the study has been purposively selected from different ethnic communities: Chakma, Marma, Tripura, Mro and Bangali on the basis of their proportionate representation in CHT demography. Primarily the study categorizes three types of *para* based on the ethnic composition. The *paras include:* a) pure indigenous b) indigenous-mixed and c) indigenous- Bangali. It is assumed that disputes might have some common trends but it might also have varied in nature on the basis of ethno-demographic composition of the *paras*. As we came to know that the conflict among the indigenous groups and with Bangali settlers has increased in recent decades and eventually ethnicity has become a strong agenda in the disputes. Therefore, this study undertakes the approach of categorizing the *para* to understand significant differences and similarities of the disputes and the resolution mechanism whether it is formal or customary. Then the study focuses on each and every group selected earlier for the study. The study areas and subsequently samples have been selected from three hill districts including Rangmati, Bandarban and Khagrachari considering the concentration of ethnic representation i.e., Chakma from Rangamati, Marma and Mro from Bandarban and Tripura from Khagrachari whereas Bangali from three districts.

Both quantitative and qualitative tools of data collection received equal emphasis in this study. For quantitative tools, 601 sample has been drawn from 24 villages *(paras)* purposively based on ethnic representation and categories assumed (Table 1).

Table 1. Total number of surveyed population

Group	Total number	Percent
Chakma	127	21.1
Marma	173	28.8
Mro	128	21.3
Tripura	125	20.8
Bangali	48	8.0
Total	601	100

To understand the basic informal and formal justice system, a semi-structured interview questionnaire has been used to gather primary information. As many other stakeholders are involved with the system, in-depth interviews (25), case studies (25), and informal discussions (25) have been conducted to explore an in-depth and critical understanding of the system. Among the potential stakeholder victims, perpetrators, *Karbaris*, Headmen, elder citizens, advocates, court officials and related persons received maximum priority in qualitative research. Moreover, few (4) *shalish* have been observed during the field research which also enriched the insights of the researcher on customary legal procedure. Nevertheless, few written collections

on indigenous customary procedures have been used in this study. Accordingly secondary sources of data including books, journals and electronic resources along with primary data have been incorporated. The quantitative data has been analyzed through SPSS and presented by tables, graphs and figure where required. The qualitative data were analyzed manually and presented as citations, quotations, and in figures.

FINDINGS

CHT circles and informal justice system under the law

The formalization of the justice system of CHT started with Rules for Territorial Circles in the Chittagong Hill Tracts, 1884 (Chakma 2007). Through that regulation, CHT was divided into three circles- Circle of King (*Raja*) *Horishchandra*, Circle of *Mong* King, *Bomang* circle, and two *mohals* including Sadar sub-divisional *khas mahal*, Sangu sub-divisional *khas mahal*.

There are almost 377 *mouzas* in CHT and for those *mouzas* 377 Headmen are there. Moreover for some 4,098 Paras (Villages), 4098 *Karbaris* (Village chief or elder) are selected (Rafi 2001).[4] At present three kings have been recognized officially- the Chakma king, the Mong king and the Bomang king.

The role of Circle Chief (Raja)

According to Rules for the Administration of the Chittagong Hill Tracts 1900, Circle Chief has some administrative and judicial power. As a Circle Chief, the King or Circle Chief performs the duty of the advisor to Deputy Commissioner (Rule No. 38). After the Deputy Commissioner, the Circle Chief is the sub-collector or the collector of the revenue of the government (Rule No. 43). Circle Chief can advice the Deputy Commissioner in administrative manner (Rule No. 39). The Circle Chief can advice the Deputy Commissioner to appoint and dismiss a Headman. Though the Deputy Commissioner is not bound to act according to his advice, his advice deserves the utmost consideration (Rule No. 48). S/he can advice and order the Headman for revenue collection. Maintenance of law and order situation and preventing crime are within the duty of the Circle Chief (Rule No. 38). Collecting and storing the revenues of government are also his duty (Rule No. 38). He can influence on the spread of education and health awareness of the locality (Rule 38). He is not entitled to force his people for unpaid labour (Rule No. 38). He will enforce the order from the Deputy Commissioner in his own circle (Rule No. 38). If dispute is going on in the court of Deputy Commissioner relating to traditional law and social custom and Deputy Commissioner asks for any advice from the King regarding any explanation of that law and custom, the King will give such explanation. The three districts of Chittagong Hill Tract are divided into 369 *mouzas* (Chakma 2007). Under the Chittagong Hill Tracts Administrative Rule 1892 (Rule No. 4), *mouzas* are demarcated as 1 to 20 square miles under 30 taluks. In each *mouza*, there is one Chief or Headman. Under Rule No. 48 of the Act of 1892 Deputy Commissioner will appoint a Headman consulting with the Circle Chief, though the Deputy Commissioner is not bound to

[4] This estimate drawn from the data of BBS, 1992A, 1992B, 1992C according to the idea that each *mouza* and Para consists of one *Headman* and *Karbari* respectively.

act according to the advice of the King (*Raja*). From these provisions, it is clear that the power of the King (*Raja*) is subject to the discretionary power of the Deputy Commissioner under law. In reality, the King is under the administration of the government to exercise his limited power.

The role of Headman and Karbari

The post of Headman is not hereditary. But the son of a Headman gets preference in taking the position. According to Rule No. 38 of 1900 Act, the duty of the Headman is related with *Jhum* cultivation and revenue collecting. He gives his recommendations on government land lease, mutation etc. He has to abide by the order of Deputy Commissioner and *upazila* administrative officer. He is also in charge of preserving the natural resources of the *mouza.* He will maintain the law and order situation in his area. He can be dismissed for in competency and misbehavior by the Deputy Commissioner informing the Circle Chief. Without any exceptions in Rule 40 of Chittagong Hill Tract manual 1900, the Headman of a particular *mouza* can give decision in the dispute among the residents of the *mouza*. He can fine maximum 25 Taka and he can retain the stolen property until the further order of the Deputy Commissioner. Circle Chief has also the same power but in hierarchy he is above Headman and can fine maximum 50 Taka. They can conduct the dispute resolution according the social norms. From their decision, appeal can be preferred to Deputy Commissioner no court fee is required in the dispute resolution of the Headman and Circle Chief.

Local *Karbari* or Headman can settle the dispute related to tribal, cultural and social issues bought by the tribes of CHT. Local *Karbari* or Headman can settle the issue among the tribes using the custom and rituals.

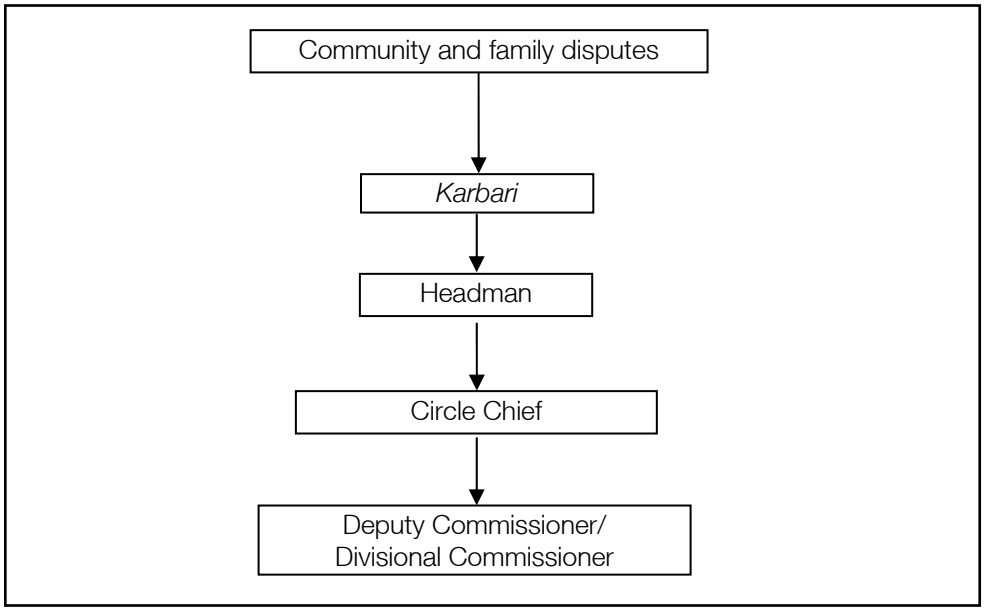
The cases which are outside the jurisdiction of the Circle Chief and Headman are related to crimes committed against state, riot which can be reason of grievous hurt and conducted with heavy arms, crime against person including murder, culpable homicide, grievous hurt, rape, abduction etc, unlawful trespass, crimes again property above 50 Taka etc, forgery and crimes related to heavy arms. According to data and literature, social crimes include – *Jhum* cultivation in another person's land, forcibly taking away the '*fashal*', stealing away domestic animals, killing other's domestic animals without his or her consent, wasting the source of water for vested interest which is used by all, destroying other's garden and plants, destroying peace in the society, and creating public nuisance etc.

The 1989 Act of CHT (No. 19, 20 and 21) has provided a hierarchy of justice system for the disputes related to tribal, social and cultural issues. Appeal can be made to Headman. The decision of the Headman can be appealed to Circle Chief and the appeal from the decision of Circle Chief can be made to Divisional Commissioner of Chittagong. Circle Chief or Commissioner will consult with three persons nominated by the respective tribes. According to rules for the administration of the Chittagong Hill Tracts,1900, Rule No. 40, the decision of the Circle Chief is subject to appeal before Deputy Commissioner. On the other hand, according to Hill District Council

Act, Section 66 (2) and 66 (3), appeal from the decision of Circle Chief can be made before Divisional Commissioner, Chittagong. This contradiction between two laws is still remained unresolved.

Though the regulation of 1900 of CHT has no provision for '*Karbari*', the post '*Karbari*' has been recognized in Hill District Council Act (section 66.1). In the case of dispute within the indigenous villages it became the primary duty of *Karbari* to settle the dispute (Fig. 2). Usually, it is the Circle Chief who appoints *Karbari* in every village of a *mouza*. If *Karbari* fails to resolve the dispute in his area, he refers it to *mouza* Headman. Headman usually resolves the dispute in consultation with a mediation committee (the members are appointed by Headman in consultation with *Karbari* and local elites) including the *Karbari*.

Figure 2. The justice system for resolving social dispute according to rules for the administration of the Chittagong Hill Tracts,1900 and Hill District Council Act

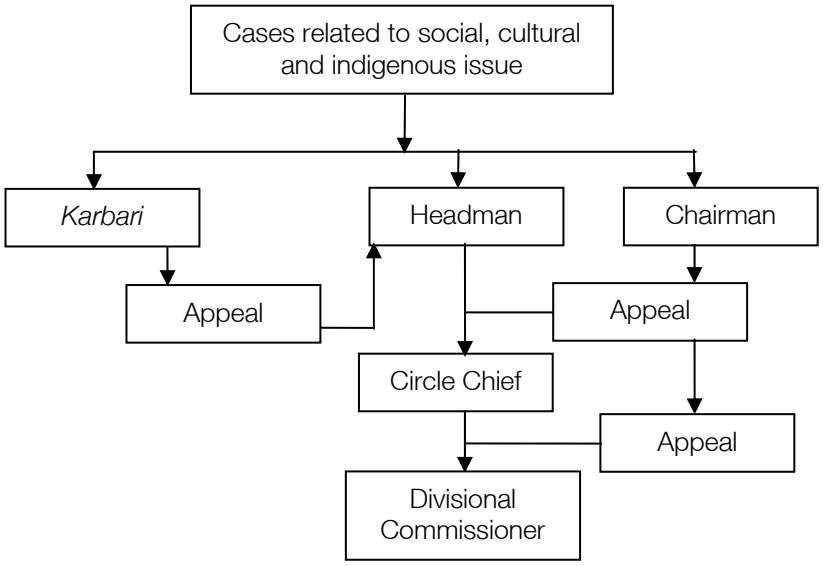


Headman and *Karbaris* are mainly in charge of resolving inter and intra household disputes and land disputes through conducting *shalish* in their own area. Usually Headmen are responsible for maintenance of law and order in the *mauza* circle and *Karbaris* are there to maintain law and order and dispensing traditional justice in village/*para*. Each *Karbari* has one or two *Roanchi*[5] for carrying and circulating his notice to ensure scheduled justice session. First of all, anyone can appeal to *Karbari* for conducting *shalish*. Land disputes, thieving, quarrel among the families or

[5] Usually each *Karbari* has one or two *Roanchi* means messenger who is supposed to announce and convey *Karbari's* message to public. But presently the tradition of having *Roanchi* is rarely found.

neighbours, family disputes, money disputes and illegal relation are the main issue to come to the *shalish* in CHT region. *Karbari* tries to understand the motive and condition of the appealed case. In the very beginning of the mediation, he use to advice the applicant to resolve the issue in their family level. If the applicant does not agree with the given advice or determined to go to *shalish*, s/he has to submit a written application with prescribed amount of money on one plate to *Karbari*. This money varies on the basis of severity of cases from Tk. 5 up to Tk. 500. This money is refundable if the verdict would go to applicant's position. It is mentionable that a trend has been followed in CHT that accused has to pay double from submitted money of the applicant. After submitting the application, *Karbari* announced the date, time and place for *shalish* and further inform both the parties and respectable person of that particular village *para*. In presence of both the parties *shalish* starts on scheduled date. Parties seeking the justice pay respect to *Karbari* touching his legs. A person is responsible to make an announcement on the accusation and introduce the petitioner of the claim and the respondent to the *shalish* house. Usually, both the parties including witnesses have the opportunities to give their statements. Then *Karbari* asks question to both the parties. *Karbari* can ask for submitting any evidence from both the parties. Then *Karbari* and his associates take time to evaluate the opinion of both the parties and announce a verdict. Time to resolute the *shalish* varies according to the nature and intensity of *shalish,* however, it requires 7 days to three and half months. In most of the petty cases, *shalish* needs only one sitting. Especially when the verdict of the *Karbari* is disobeyed or not satisfactory to any of the party then any party can appeal to the Headman. Headman's *shalish* also follows the same sequences like the one of *Karbari.* If Headman's verdict faces challenges then the disputes usually go to the *Raja*.

Figure 3. The existing hierarchy of CHT informal justice system



Customary laws of Chakma, Marma, Tripura and Mro

Each of the ethnic community has its own customary laws which constitute distinct justice system whereas their social systems broadly follow a more or less unique model of disputes resolution. Customary laws are not practiced based on any written documents; rather the laws are orally followed considering its traditional roots and compromising with the expectable deviation caused by modernization. This section does not necessarily deal all the traditions of indigenous communities but some of the significant rules, rituals and customs which are seemed to be relevant with domestic and community affairs and with the idea of justice.

Customary laws of Chakma community

Chakma community is the majority in number among the indigenous people (Chakma 2007). They belong to Buddhist Hinyana school. As a Buddhist community of Bangladesh, they are supposed to follow Hindu Inheritance Law of 1925. The Chakma people in Chakma, Bomang and Mong circle have their own rituals and customs having the force of law in their lives. The Chakma and Magh villages are distinctive because of closely built dwellings implying their strong community bonding (Ahmed 1956). This bonding has been reflected in their laws.

Chakma communities perform their marriage through rituals and taking the opinion of the elder people in the family. They perform some premarital rituals, like blessing ceremony to the potential bride. If the premarital rituals are performed among the community and then one party unilaterally breaks the initiatives for marriage, it amounts to a social offence in Chakma community. In that case, the party who has broken the prospect of marriage has to give financial compensation (*Lajvar*) to other party. In case number-1/2006 in Chakma royal court, Chakma King gave a judgment that breaking up the prospect of marriage after performing blessing ceremony to the potential bride and then fixing the potential groom's marriage in some where else, attach social stigma to the potential bride and her family. He ordered the potential groom's family to give financial compensation (ten thousands taka) to the potential bride's family (Chakma 2007). Once blessing ceremony is done, no one is allowed to send marriage proposal to that bride. If some one is aware of the blessing ceremony of a potential bride and still sends marriage proposal to that bride, it amounts to social offence.

In Chakma community, it is the potential groom who has to give bridal price (*Dava*) and the jewelry according to the demand of the family of the bride. Marriage becomes recognized among the community through performing the rituals named '*chumulang, jodonbanahah and khana shirana'*. In Chakma society, the competency for marriage is confined in the criteria of attaining adulthood, physically and mentally soundness. They are not bound to follow the minimum age limit under the law in the country. Chakma people have prohibited relations in which marriage is not recognized, like step sisters and brothers (whose father is the same), sons and daughters of paternal uncles, niece, etc. In Chakma language such prohibited relations are called '*Gorba Kudum'*. The intensity of punishment for such offence

depends on the closeness of that bond of that prohibited relations. If the relationship is among far blood related relations, the punishment will be less.

Marriage by eloping is not an unusual incident in Chakma community. As a punishment for this offence, boy has to give a pig, some money and one bottle of alcohol and the girl has to give a cock, some money and a bottle of alcohol. After that they are purified through the rituals by Buddhist monks. After performing the other traditional rituals they are accepted in the society. Parents can deprive a boy from the property for such offence of eloping.

Widow marriage is accepted in Chakma community but in that case she is not entitled to get maintenance from her previous husband's property. Polygamy is also permitted in Chakma society. A husband can have as many wives as he wishes. Usually, if a husband takes more than one wife, community does not interfere. A Chakma man can take another wife if the first wife is impotent or mentally insane or physically seriously ill or gets imprisoned for many years or lives separately for a long time without taking consent from husband or have extra marital affair with another guy or gives consent to husband for second marriage.

When a Chakma man takes second wife, usually he need not go through any accountability from the society. Under the laws of Bangladesh, if husband takes second wife without the consent of the previous wife, he is entitled to punishment under the Penal Code of Bangladesh (494, 495 section).

In Chakma society the proof of the marriage need not be registered. The proof of the marriage is verified according to the performance of the rituals, presence of *Karbari* and Headman in the rituals, testimony of the monk who performed the rituals etc. After marriage, wife has to stay with her husband and perform the just orders of the husband. Husband will be entitled to give maintenance to wife. If wife is minor, husband will be his guardian. Though Chakma society has no rule for the competency of age for marriage, it can be said that marriage under eighteen is not also prohibited here.

Divorce is known as *'charachari'* or *'shurkagoj'* in Chakma community. Husband and wife can have *shurkagaj* through giving mutual consent in traditional court, or the decision of traditional court or the affidavit of notari public. A husband and wife can have *shurkagaj* for several reasons like for impotency, extra marital affair, second marriage without the consent from first wife, cruelty, mentally insane, imprisonment, becoming monk or nun etc. After *shurkagoj*, if husband and wife come to an understanding, they can again start conjugal life through performing the ritual named '*chumulang*'. After *shurkagaj* husband and wife lose their rights from each other and they can again get married with another person. If wife is pregnant during the time of *shurkagaj* and the child belongs to the husband, then the child is entitled to the share in the property of the husband and wife will get maintenance.

In inheritance, Chakma women have hardly any share. If the dead person has no son, only then daughters can have share in the property of the father. Sons always

get priority in the property of the dead person. Widow is entitled to get maintenance from the property of the dead person.

Father is the lawful guardian of minor child in Chakma society. If father dies, mother gets the status of guardianship. In case of divorce, usually mother gets the guardianship, but the traditional court can decide otherwise. If the son remains with mother, he does not get any share in father's property.

Chakma people have rights over lands by heritage. If there is any *khas* land which is not within another man's possession, one can put bamboo in the land and express his possession over the land. This sign is called '*saga*'. If someone is able to put *'saga'* on the land, he gets the right to cultivate that land and rights over the natural resources in the land for one year. If the land has been used for '*Jhum* cultivation' once, it has to be left without cultivation for several years after the *Jhum* cultivation. This land is called '*ranaya*'. Once any land is proved as '*ranaya*' of one person, no one can initiate *Jhum* cultivation on that land again without taking consent from that person. This is considered as land right among the Chakma community.

Customary laws of Marma community

Marmas are mostly Buddhists. As in Bangladesh, there is no separate code for the Buddhist people, Marma Community are supposed to follow the 1925 Indian Inheritance Act. In practice, Marma community in Bomang circle follow digest of Buddhist law and laws of Menoo of Myanmar (Chakma 2007). Besides, Marmas have their own customs to deal with family disputes.

Marma law does not have specific requirement for marriage. They believe marriage should be done between an adult girl and boy. However, who is adult is determined by the common perception of the society, not by the national law which provides minimum age for marriage for boys and girls (e.g Child Marriage Restriction Act, 1929). The criteria set up for Marma marriage do not refer taking consent from both the parties, they only refer to the prohibited relationships through marriage, obedience to some rules, gaining adulthood and performing some rituals (Chakma 2007).

Marma law has restriction for marriage or physical relationship between some specific relations like- among first cousins, between uncle niece, etc. If the marriage is performed according to the criteria, husband and wife can have right over each other, wife will be entitled to maintenance and their children will be legitimate inheritant of the property.

In Marma community, marriage by eloping is an usual incident. It is called- *briro*, or *ohokho nijai cho*. If the girl and boy elope and have physical relationship later, they are punished by the community. As a punishment, boy has to give a pig, some money and one bottle alcohol and girl has to give one hen, some money and one bottle alcohol. If the marriage is between prohibited relations, then they are purified by the rituals of the Buddhist monks for acceptance in the society.

In Marma society, widow marriage is accepted. If the widow gets separated from the family of her previous husband after her marriage, she will not be entitled to get maintenance from the property of the previous husband. If the widow remains in her dead husband's family, she is entitled to get maintenance from husband's property.

In Marma community, polygamy is accepted. A Marma husband can go for second marriage if his wife is barren, suffering from some deadly disease, mentally insane, gets separated for long time, has affair with some one else or gives consent to husband's second marriage. It should be noticed that even if wife is suffering from disease, or lives separately from husband and if husband does not take consent from his first wife, he is entitled to punishment under section 494 and 495 of Bangladesh Penal Code, though under Marma law he may not be entitled to get punishment.

According to Marma law, the proof of the marriage is confined with in the rituals, living together as husband and wife in the society etc, but not in any registered document (on the other hand in the formal courts of Bangladesh, proof of marriage is registered *kabinnama* (the written contract of marriage). After marriage husband is bound to give maintenance to wife, on the other hand wife is bound to obey husband's order. If husband is cruel, or tortures the wife or gets married for second time, wife can reside separately from husband and get maintenance from husband. Wife can also seek redress to traditional court for restitution of conjugal rights. Wife has also the right to protest against the second marriage of husband.

Divorce is termed as *'khoyacha'* in Marma community. '*Khoyacha'* can be performed through the mutual decision by the husband and wife, or appearing before their traditional *shalish*, through the decision of the traditional *shalish*, or through documents having the seal of notary public.

Husband or wife can demand *khoyacha* for the reasons on impotency, insanity, extra marital affair, living separately, imprisonment, remarriage, commission of any immoral act, becoming nun or monk, mental and physical torture, not giving maintenance to wife, negligence to family.

After divorce, wife is not entitled to use and own husband's property, surname. If wife is pregnant during the time of her marital life, that child will be entitled to be the inheritant of husband's property. After divorce, wife can have the custody of the child till he or she becomes adult. If the child does not take mother's breast feeding, husband can take the custody of the child according to traditional court, Though there is no specific provision for giving maintenance to wife after divorce, husband has to pay some amount if there is something he is supposed to give as 'bride price'.

According to Marma inheritance law, the sons of the dead person are entitled to the share of the property. In Bomang circle, wife and daughters of the dead person can also inherit the property, though they get less than the sons. In Mong and Chakma circle, wife and daughters do not get any share of the property. If husband or father makes will in the name of daughters or wife, then they can get the share according

to the will. If the dead person has no son, then the daughters and wife can get the share in the property in Bomang, Mong and Chakma circle. In Bomang cirle, widow gets priority to get the share in her husband's property. In Mong and Chakma circle, widow is entitled to maintenance from the co-owners of husband's property. Widow lost her rights if she leads an immoral life,

The designation of Circle Chief and Headman is not elective. 1900 Regulation, 48 Rule has accepted the customs of Bomang circle to assign the post of Circle Chief and Headman according to the seniority. In a case Ongshoi Pru Chowdhury vs Kya Shein Pru Chowdhury Gong, 1997 where the executive of Bangladesh government gave appointment to Kya Shein Pru Chowdhury as a Bomang Circle Chief ignoring the rules of seniority, the Appellate Division considered that 'the court will only inquire whether the selection has been made following the tradition, custom and usage which govern the selection in question. If so made the judiciary will not intervene. If extraneous considerations have influenced the executive decision, the court has certainly the power to declare the selection to have been made without lawful authority, all the susceptibilities of the tribal people should not be ignored.

As the selection was not done maintaining the seniority, the court came to the conclusion that the selection of Bomang chief has not been done on the right and relevant considerations. The court declared the appointment without lawful authority (Chakma 2007).

In Mong circle, the son of the Mong Circle Chief will be assigned as Mong Circle Chief. The song or daughter has to be blood related child. Adopted child will not be entitled to hold the post. Even in the appointment of Headman, the issue of seniority and blood relations get priority.

Customary laws of Mro community

In Mro society also, young people are preferred for marriage considering the growth of their body. Mro people also have some prohibited relations for marriage. If a minor girl is get married, then his husband gets more rights over her as a guardian than her parents. In Mro society, divorce is termed as '*takhoya'.* The basic rules on *takhoya* are almost same as in the Marma community. Divorced wife's children will not be entitled to have maintenance and share in the property from father. Wife is entitled to get maintenance from the husband as long as the marriage continues. She has the right to seek divorce on the grounds like- husband is cruel, lives separately or gets married second time without taking her consent. She can also go to the traditional court for restitution of conjugal rights. In Mro society widow has the right to get married for second time. Widow has the share in the property of the husband, gets maintenance from the property of husband and can become custodian of the minor child and the property. If she gets married again, she cannot enjoy the rights on the property of her previous husband.

In inheritance, only sons get share in the property. If the dead person has no son, daughter gets half of the property. Husband and wife can inherit the property of each other in the death of any of them. Pointing the inferior status of women in Mro

community, the proverb goes- '*ma ma rogo thabing cho poyong*'- it means 'women are worthless as torn cloths'.

Customary laws of Tripura community

Most of the Tripura people live in Khagrachori within Mong circle. Marriage is performed in various steps with different rituals. '*Kaijalaiemung*' is a mandatory ritual to make the marriage acceptable in the community.

Tripura community does not have any minimum specific age for marriage as prescribed in the laws of Bangladesh. There are some prohibited relations in Tripura community for the consideration of marriage, like marriage between uncle and niece. If any couple gets married within prohibited relations, they are socially isolated. If marriage is performed through due rituals, husband and wife can establish rights over each other in the community. Their children become legitimate inheritant of the parents. Wife gets maintenance from husband and is entitled to use his title. Marriage through eloping is seriously discouraged in the community putting the provision of punishment of social isolation for the eloping couple. Widow marriage is accepted in the community. Polygamy is sanctioned in the community on the grounds like insanity on the part of wife, having consent from the wife etc. People from Christian community within Tripura community cannot practice polygamy.

Illegal sexual intercourse is punished severely. For that punishment accused man has to wear underwear, accused woman has to wear *thami (their traditional piece of cloth)* accorss her body and cut their hair into four parts. Then they have to put intestine, broken vessel and broom with a rope in their neck and visit door to door to beg pardon.

In Tripura community, husband can divorce his wife for her bad character. If in traditional court it is proved that wife has weak character, fifteen days are given to rectify the character. If the character is not changed, husband can divorce his wife. If during the time of divorce, there is proof that wife had physical intimacy with another man, she does not get any maintenance. Divorce is termed as '*kaklaimung*'. Husband or wife can demand 'Kaklaimung' on the grounds like impotency, extra-marital affair, imprisonment etc.

Divorce is usually discouraged in Tripura community. If husband and wife have any problem, the traditional court gives three or four times chance to solve the problem mutually. After divorce, wife and husband lose their rights over each other. They can go for marriage with other person after divorce if the couple have sexual intercourse with each other, the intercourse will be considered illegal. The child from illegal intercourse will be considered illegitimate. After divorce, if husband and wife decide to have their conjugal relations, they have to perform the social rituals '*kajalaimung*' to get the acceptance of their renewed married life from the community. If during the time of divorce, wife is pregnant and the child belongs to the husband, wife will get maintenance from the husband for the child. Mother will be entitled to the custody of the child till she or he attains adulthood.

In inheritance law, sons get the share in father's property excluding the daughters. Daughters can be given share in father's property through will. Now a day, practice is gradually gaining forme to give daughter and wife share in the property. If daughter has got married to some one from another community, she will not be entitled to get property.

In Tripura community also, right to *Jhum* cultivation is established through putting a sign on the specific land called *'lowa'*. Some rituals are performed during the time of putting *lowa*. Once some one puts *lowa* in the land, no one can give another *lowa* in that land.

Paradoxes between customary laws of indigenous people and the laws of Bangladesh, the Constitution and Human Rights

Indigenous people have their own customs and rituals to regulate their social dispute. According the Article 152 of Bangladesh Constitution, 'law has been termed as any ordinance, order, rule, sub rule and any custom or rituals having the force of law'. Under this definition, the customary laws of indigenous people can be considered as 'law'. The rituals and customs of indigenous people are widely accepted as law among their community and have been used to deal with the dispute for a long time. Such customs and rituals are considered as 'law' among the indigenous people. It has also been confirmed by judicial pronouncement. In a case Aung Shwe Prue Chowdhury vs. Kyaw Sain Prue Chowdhury and others, 18 BLD(AD), 33, the Appellate Division recognized the Bomang circle's custom and usage and did not introduce any other criteria that would add to the customary requirements of that office.

However, the crucial question comes when some laws of indigenous people become inconsistent with the Constitution of Bangladesh. According to Surendra Lal Tripura the laws regarding marriage and inheritance are almost similar among the Chakma and Marma community because of their proximity of living areas. After analyzing the customary laws, it can be concluded that indigenous women do not enjoy equal status with men in inheriting property and guardianship. Though wife can give divorce like husband, but absence of any mandatory maintenance for the wife certainly discourage the women to take such move. At the same time unequal share in father's property will make the situation of women dependent on husband's wish despite of their miserable situation in married life. The practice in educated people to give share to the daughters of the property is a good sign. Polygamy is not punishable crime as it has been in the laws of Bangladesh. Ultimately the whole pattern – giving no or less share to women of father's property, getting no maintenance during the time of divorce, putting the provision of polygamy with the consent of first wife make the status of women too inferior and vulnerable in married life. Article 27 of the Constitution of Bangladesh and human rights are in favour of providing equality to women. However, it should be considered that the women of Bangladesh also do not enjoy equal status in inheritance and family matters under the personal laws of Bangladesh.

The laws and proof of incidents in indigenous community are confined in rituals and customs rather than in written documents as prescribed in the laws of Bangladesh. In the areas of child marriage, maintenance, consent of both the parties in marriage, there are conflicts with Bangladeshi law. Child marriage is prohibited according to the laws of Bangladesh which is not prohibited in the laws of indigenous people. Though child marriage is unknown and the marriageable age has been rising during the past decades (Lewin 1869) absence of any prohibition may lead to such conflict. On the other hand the law that husband will be a guardian of a minor wife, indirectly sanctions marriage below eighteen years in the community. The existence of full and free consent from the bride and groom is absent among the criteria for marriage. The recent judgment from the Royal Court in Chakma community is a ray of hope for adopting such good provision in the laws of Chakma community. In this case the court emphasized the need for taking full and free consent from the women for marriage and did not sanction the marriage where rituals were performed, the father of the bride gave consent, but the consent on the part of the bride was not present. In that case (case no. 3/2004, the Royal Court) the Royal Court took a progressive approach in interpreting the Chakma laws. The court took the view that the past rituals and customs need to be reconsidered under the present human rights and women rights norm. The other communities are not bothered about taking full and free consent from both the parties during the time of marriage which may cause forceful marriage breaking the human rights norms. However, in another case the Royal Court did not maintain this approach. In a case of 152 number *gorasthan mouza*, where grand son and grand daughter of two real brothers got married through performing the 'affidavit' of notary public, Chakma King gave the opinion that such type of marriage is not valid according to Chakma law. Even if their marriage is performed through a legal procedure, their marriage is not accepted with in Chakma community. The King advised to separate them and make them return to their own family (Chakma 2007). It should be mentioned here that the case did not take into consideration the laws of Bangladesh and the basic human rights norm. According to that norm every adult man and woman has the right to get married with their full consent.

Some punishments related with illegitimate relations, include balding heads, making the accused roam around the village wearing underwear. These practices are something which does not confirm the human rights norm of prohibition of any inhuman punishment. Such punishment also goes against the spirit of the Article 31 and Article 32 of the Constitution of Bangladesh granting right to life and liberty. Life under this provision includes human dignity decency (Vikram vs. Bihar. AIR 1988, SC 1782)

Customary land rights without any registered documents are creating the incidents like land grabbing at the hands of Bangali settlers which should be taken into consideration cautiously. Though the indigenous communities have some sort of laws for regulating their personal life, there are no specific laws for the criminal offence. There are incidents where criminal offences are also tried in traditional courts but these judgments do not have any legal value under the laws of Bangladesh.

The judgments of traditional courts have legal value through several domestic legislations and precedents with which the traditional courts and customary laws on social and family matters have been given legal backup. Judgments of the traditional courts have also serious limitations as the laws are dependent on the unaccountable discretion of the Headmen and *Karbaris*.

Socioeconomic and demographic profile of the respondents

This section primarily deals with the socioeconomic and demographic profile of the respondents to draw a fundamental picture on major ethnic groups of CHT (Table 2). Though the sample is not representative, the information provides essential opinion on respondents' perceptions of informal and formal justice institutions. Among the respondents, a significant portion of male and female are illiterate and involved in agricultural activities including *Jhum* cultivation. Among the ethnic groups, 80% male Mro and 86% female Mro are engaged in agricultural activities. This scenario is totally reverse in case of Bangalis (13% Bangali male and 12% Bangali female are engaged in agricultural activities). Occupational diversity among the ethnic groups seems very low as only 30% of the Bangali male are involved in services including Government and NGO jobs. The number of students is very poor which illustrates a frustrating scenario in education and might be identified as one of the major cause of backwardness in CHT. Very few respondents are seemed to be involved in business activities and not surprisingly Bangali settlers dominate this sector. A significant portion of the female among the ethnic groups except Mro is involved in domestic activities. The poor occupational diversification and literacy rate portrays the area as deprived zone in compare with other areas of Bangladesh.

Table 2. Demographic profile of the respondents (%)

Occu-	Education	Chakma		Marma		Mro		Tripura		Bangali	
pation		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Agri-	Literate	32.8	1.5	15.9	5.5	10.6	6.5	35.9	1.6	26.1	.0
culture	Illiterate	42.6	16.7	70.7	62.6	80.3	85.5	39.1	3.3	13.0	12.0
Service	Literate	4.9	4.5	1.2	1.1	7.6	—	6.3	9.8	30.4	—
	Illiterate	1.6	.0	1.2	3.3	.0	—	.0	.0	4.3	—
Student	Literate	—	—	8.5	3.3	—	3.2	3.1	1.6	—	—
Business-	Literate	6.6	.0	2.4	—	—	.0	4.7	—	13.0	4.0
man	Illiterate	3.3	1.5	.0	—	—	1.6	1.6	—	13.0	.0
Domestic	Literate	—	24.2	—	4.4	—	1.6	—	18.0	—	28.0
activities	Illiterate	—	51.5	—	19.8	—	1.6	—	65.6	—	56.0
Day	Literate	3.3	—	—	—	.0	—	3.1	—	—	—
labour	Illiterate	4.9	—	—	—	1.5	—	6.3	—	—	—

— = Data were not found

Trends of common disputes within and among the ethnic groups

The nature of disputes follows a common trend within and among the ethnic groups. Generally, all the societies experience intra and inter household disputes as common social phenomena. It does not necessarily mean that neither formal justice

institutions nor customary laws are functional. However, the dissimilarities of perceptions among the members of society might be considered as one of the fundamental cause of these kinds of incidences. Moreover, the hierarchical social structure, gender inequality and lack of awareness stimulate the occurrence of the incidences.

Table 3. Incidences reconciled through customary law (%)

Incidences	Chakma	Marma	Mro	Tripura	Bangali	Total
Fighting	97.6 (124)	79.2 (137)	81.3 (104)	98.4 (123)	91.7 (44)	88.5 (532)
Stealing	94.5 (120)	48.0 (83)	68.8 (88)	96.8 (121)	70.8 (34)	74.2 (446)
Mugging	33.1 (42)	6.9 (12)	.8 (1)	36.8 (46)	25.0 (12)	18.8 (113)
Land grabbing	71.7 (91)	43.4 (75)	20.3 (26)	94.4 (118)	37.5 (18)	54.6 (328)
Family disputes	82.7 (105)	75.1 (130)	74.2 (95)	97.2 (122)	68.8 (33)	80.7 (485)
Rape	3.9 (5)	22 (12.7)	.0 (0)	44.0 (55)	20.8 (10)	15.3 (92)
Murder	1.6 (2)	2.9 (5)	.0 (0)	3.2 (4)	4.2 (2)	2.2 (13)
Marriage by eloping	88.2 (112)	39.9 (69)	35.9 (46)	98.4 (123)	41.7 (20)	61.6 (370)
Quarrel	89.8 (114)	80.9 (140)	85.9 (110)	92.0 (115)	87.5 (42)	86.7 (521)
Intimidation	1.6 (2)	8.1 (14)	5.5 (7)	.0 (0)	.0 (0)	3.8 (23)
Post marital affair (*Parakya*)	.0 (0)	.6 (1)	4.7 (6)	.0 (0)	2.1 (1)	1.3 (8)
Divorce	.0 (0)	.6 (1)	3.1 (4)	.0 (0)	.0 (0)	5 (.8)
Others	1.6 (2)	1.7 (3)	2.3 (3)	.0 (0)	6.3 (3)	1.8 (11)
Total	21.1 (127)	28.8 (173)	21.3 (128)	20.8 (125)	8.0 (48)	100 (601)

∗ multiple responses are counted

Table 3 reveals that most common forms of disputes are fighting, stealing, land grabbing, intra and inter household disputes, and quarrel. However, all forms of incidents were reconciled through customary justice institutions even including the rape cases and murder cases. Fighting was the common incidence and found in higher proportions irrespectively among the ethnic groups (percent responses were - Chakma 97.6, Marma 79.2, Mro 81.3, Tripura 98.4 and Bangali 91.7) and it required *shalish* for resolving such disputes. Tripura community has shown greater percentage in bringing cases of land grabbing (94.4), stealing (96.8), mugging (36.8) and rape cases (44.0) before *shalish* compared to other ethnic groups.

> I am not supposed to do *shalish* in case of murder. When an ethnic girl is raped I conduct the *shalish*. A quick resolution can be given in case of rape. Rape is tough case which requires *thana*, hospital and court. The system is very much sloth. Moreover, a huge amount of money is required to conduct the case. We people are poor as well as do not know the legal process. Moreover, a rape victim faces tremendous social pressure and trauma. Neither victim nor the family is eager to make the incidence to be public. They often initiate to keep it secret within the community. Therefore, they prefer *Karbari* or Headman court rather to go for remedy from formal court.
>
> - Surendralal Chakma, *Karbari*, Age-65.

The statement may not be justified under the formal law, but in practice *Karbari* and Headman highlighted the logic behind trying this kind of cases under customary law. In this case, they put more emphasis on the reputation of victims than punishment of perpetrators.

Land grabbing was faced more by Tripura, Chakma and Marma community than Mro and Bangali settlers. In most of the cases of land grabbing, Bangali settlers were found to be perpetrators. Mros, because of residing in remote hilly area, faced less of such incidences. Other incidences like elopement, stealing, divorce etc prevailed among different groups and were brought in *Karbari* and Headman court for resolution.

Table 4. Nature of disputes and resolution mechanism

Category of *para*	Nature of disputes	Dispute resolution mechanism	Time required	Cost of justice	Punishment
Type 1: Pure indigenous (within indigenous group)	Family and community matters: quarrel, love-affairs, pre-marital and extra-marital relationship Petty criminal offences: fighting, stealing, mugging, drunk case, threats Severe criminal offence: murder, rape Civil matters: *Jhum* related disputes	Through *shalish* by *Karbari* and Headman: murder involves police station (PS)	One to five sittings	Tk. 50-500 as service charge	Balding head, Humble pie, Garland of shoes, Living with pigs, Pecuniary punishment

(Table 4 continued)

(Table 4 continued)

Type 2: Indigenous mixed (indigenous-indigenous)	Family and community matters: Love-affair, quarrel, petty criminal offences: stealing, threats, political chaos Civil matters: Land and *Jhum* related disputes Criminal offences: Rape, murder	Through *shalish* by *Karbari,* Headman, UP chairman, member, even *Raja* Murder involving police	One to seven sittings (depends on nature of disputes)	Tk. 50-500 as service charge	Balding head, Humble pie, Garland of shoes, Living with pigs and Pecuniary punishment
Type 3: Indigenous-Bangali	Civil offence: Land grabbing Petty criminal, offences: Love-affairs, threats, business related disputes, political chaos, Criminal offences: Rape, murder, sexual harassment	Through UP chairman, police station, deputy commissioner, formal court	Two years to twenty five years	Tk. 2,000-15,000 for advocates, court officials, materials, witnesses and other stakes	Negotiation and as per law: Imprisonment or pecuniary punishment or both

It is observed that in pure indigenous villages, most of the disputes whether petty criminal or civil matters were initiated to solve through customary laws (Table 4). However, *Karbari* and Headman involved police in murder cases. In some cases, it was found that rape cases were also reconciled through *shalish* though *Karbari*/Headman was not entitled to do that according to the law of government. Usually, one to five sittings was required to solve a normal dispute and Tk. 50-500 was needed to meet the *shalish* cost. Verdicts included some inhuman forms of punishments including balding head, humble pie, garland of shoes, living with pigs which are contrary to dignity of human being. In mixed indigenous villages, the incidences involved both *Karbari*/Headman and the locally elected leaders. Some inhuman forms of punishments were also implemented through this mechanism. When a dispute involves both indigenous people and Bangali settlers, it created complexities requiring both traditional and elected leaders along with police officers, politicians and even army officials. Firstly, all the stakeholders try to resolve the dispute through negotiation. If this effort fails, then it is placed to formal court. The disputes like ethnic conflicts and land grabbing usually take few years in court and require huge amount of money and time to bring any satisfactory results. Most of the cases with this nature are in pending situations in lower courts.

Socioeconomic status and customary laws

It is very difficult to show any relationship, if any between the perceived economic status of the indigenous people and their enrollment in *shalish*. Likely with other study (Rafi 2001), majority of the total respondents (80-90%) perceived their household economic status either sometimes or always in deficit or in equal situation. This particular scenario represents that most of the households belonged to poor economic condition. It is evident (Table 5) that respondents who are struggling for better life rely more on *shalish*. In other words, most disputes occur in poor income families, and as consequences, respondents have to face *shalish* more than those, who are in upper strata.

Table 5. Experience of appearing *shalish* according to perceived economy by respondents (%)

Group		Always Surplus	Some times surplus	Equal	Some times deficit	Always deficit	χ
Chakma	Yes	0	.0 (0)	18.6 (11)	71.2 (42)	410.2 (6)	.21
	No	0	4.4 (3)	26.5 (18)	63.2 (43)	5.9 (4)	
Marma	Yes	3.4 (4)	7.6 (9)	26.1 (31)	42.9 (51)	20.2 (24)	.89
	No	1.9 (1)	11.1 (6)	25.9 (14)	44.4 (24)	16.7 (9)	
Mro	Yes	4.2 (3)	8.5 (6)	49.3 (35)	31.0 (22)	7.0 (5)	.03
	No	3.5 (2)	12.3 (7)	33.3 (19)	24.6 (14)	26.3 (15)	
Tripura	Yes	.0 (0)	8.3 (3)	25.0 (9)	63.9 (23)	2.8 (1)	.00
	No	1.1 (1)	4.5 (4)	13.5 (12)	24.7 (22)	56.2 (50)	
Bangali	Yes	.0 (0)	12.0 (3)	36.0 (9)	48.0 (12)	4.0 (1)	.10
	No	.0 (0)	17.4 (4)	47.8 (11)	17.4 (4)	17.4 (4)	

Data revealed that rich families of Bangali and Chakma hardly appeared in *shalish* by which it could be said that either they can solve their problem by themselves or they face very few disputes. In other sense, it is mentionable that the poorer section of indigenous communities rely more on traditional *shalish* and they might consider it as one of the best options to resolve their disputes.

Gender justice and customary laws

The interrelationship between customary law and gender rights is one of the fundamental agenda which this study initiated to understand. Is the practice of customary laws within the indigenous communities effective enough to bring gender justice? It is commonly assumed that *pahari* women enjoy more freedom in raising voice, movement, mate selection and decision making. This section deals with the degree of participation and freedom of *pahari* women in practice of customary law which can be considered as indicator of gender rights. Indispensably, implementation of gender rights is one of the prerequisite to bring gender justice.

Table 6. Women's position in practice of customary law (%)

Scoring	Chakma	Marma	Mro	Tripura	Bangali	Total
0	.0 (0)	5.8 (10)	7.0 (9)	4.0 (5)	25.0 (12)	6.0 (36)
1	2.4 (3)	11.0 (19)	8.0 (23)	6.4 (8)	7.0 (4)	9.5 (57)
2	11.8 (15)	8.7 (15)	1.6 (2)	12.8 (16)	8.3 (4)	8.7 (52)
3	85.8 (109)	74.6 (129)	73.4 (94)	76.8 (96)	58.3 (28)	75.9 (456)
Total	21.1 (127)	28.8 (173)	21.3 (128)	20.8 (125)	8.0 (48)	601 (100)

(Three questions were asked to know the women's position and role in the *Shalish*. Positive answer is numbered as one and otherwise zero is counted as lowest women's position and role in the *Shalish*. Eventually, higher score (2, 3) indicates favorable situation regarding issues.)

Table 6 shows that women from Chakma, Marma, Mro and Tripura communities (85.8, 74.6, 73.4, 76.8) enjoy greater freedom in participating in *shalish* than Bangali women (58.3). Bangali women enjoyed limited opportunity in raising voices during *shalish* compared to other ethnic groups. Similar positive scores were noticed among different ethnic groups that revealed women from indigenous community received greater opportunities through *shalish* in establishing their gender rights including raising voice and protesting against mal-judgments. In contrast qualitative data produces a different view that women can participate in *shalish* without any hesitation and fear but they cannot raise their voice adequately. Even when women are sexually harassed they do not feel free to express their opinions in the court which can be characterized as male dominant. In case of drawing verdicts, *Karbari* and Headman usually apply their common sense just following their inherited customary laws. In addition, traditional law becomes inapplicable particularly when any incident involves Bangali male and any ethnic female. Usually, in such cases army personnel and police get involved. Moreover, there are no specific customary laws to protect women rights in CHT. Most of the Headman and *Karbari* consider women rights typically based on raising voice and receiving verdict. *Karbari* and Headman contend that their traditional law can protect and ensure women rights from their stereotype conceptions.

> In traditional indigenous law women can speak, move and work everywhere. Women have the right to mate selection. We consider them equally under customary laws. In customary laws, the perpetrator is punished even if he is her husband. Therefore, women receive rights in all sphere of society except inheriting property
>
> -Monh Hla Ching, Marma Headman, 55 years, conducted more than 100 *shalish*

> Two decades ago, our traditional law did not provide women right properly. In recent times we took few initiatives to protect women rights but still we often fail to keep it properly. We deal rape cases though we are not entitled to do. We just resolve the disputes ensuring pecuniary punishment according to our customary law.
>
> -Domong Mro, *Karbari*, 49 years, conducted 100 *shalish*

Community responses to informal justice institution

There are two kinds of laws that are practiced in CHT among the indigenous communities. Each community has their own customary law and informal justice

institutions to implement the laws. Beside, they are the citizens of Bangladesh and under the Constitution of Bangladesh. At the same time, they can be also bought under government promulgated law.

Most of the people from indigenous communities gave significance to customary law rather than formal law. Among the ethnic groups (Table 7), Mros are observed in prioritizing their customary laws (71.7%), whereas 46.8% Chakmas, 64.7% Marmas and 52% Tripuras recognized customary laws as their first priority.

A significant portion of Chakma (40.3%) and Bangali (25%) respondents show confidence on hybrid form of Government promulgated and customary laws. Three fifths (58.3%) of the Bangali respondents depend on only government promulgated law. However, indigenous people lack confidence on this kind of law. A significant portion of respondents did not give their opinion on the issue. One reason for that may be they considered this issue as a paradox which might work against community bonding. Not surprisingly Mros, who are usually inhabitant of deep inside hills and socioeconomically backward condition rely more on their customary law in compare with Chakma, Marma and Tripura- who are considered as advanced among the ethnic groups.

Table 7. Which law ethnic groups prefer (%)

Ethnic group	Which law they own?				Total
	Bangladesh law	Customary law	Both Bangladesh and customary law	Don't know	
Chakma	3.2 (4)	46.8 (58)	40.3 (50)	9.7 (12)	124 (100)
Marma	0 (0)	64.7 (112)	17.3 (30)	17.9 (31)	173 (100)
Mro	2.4 (3)	71.7 (91)	8.7 (11)	17.3 (22)	127 (100)
Tripura	0 (0)	52 (65)	10.4 (13)	37.6 (47)	125 (100)
Bangali	58.3 (28)	0 (0)	12 (25)	16.7 (8)	48 (100)
Total	5.9 (35)	54.6 (326)	19.4 (116)	20.1 (120)	597 (100)

The fundamental issue in practicing customary law is how indigenous people conceive the idea of justice and human rights. Most of the respondents have no comprehensive idea about- what justice is. Interesting thing is they (76.5%) recognized the positive role of *shalish* in bringing justice (Table 8). One of the respondents mentioned,

> In *shalish* everyone is familiar with each other. Everyone has the opportunity to speak and get opinion from everyone. In this way customary law can ensure justice.
>
> - Surendral Chakma, Ziptali, Bandarban

However, there are some alternative opinions on the issue where the respondents are not convinced with the role of customary law in practice. They claim that verdicts coming from *shalish* often try to satisfy both the parties irrespective of the nature the disputes and ultimately cannot produce justice. Some of the respondents argue that political identity always hamper the fairness of *shalish* procedure. Almost ninety percent of the respondents acknowledge the importance of *shalish.*

The *Karbari* and Headman court cannot bring justice. It is a process which usually maintains both parties satisfaction and never upholds victim's position properly.

-Mangshi Tripura, Headman, Matiranga, Khagrachari.

We people have little knowledge of law. At present, we give same sort of treatment according to intensity of cases. We always try to resolute the case. Here *shalishkar* often tends to give verdict according to the party's political alignment or influence. Even verdicts vary on the basis of whether the victims are rich or poor.

-Panchakumar, Matiranga, Khagrachari.

Shalish helps to keep poor people's rights through clarifying claimant's and disputant's statement. *Shalish* prioritizes parties' satisfaction. *Karbari* and Headman play impartial role in establishing justice in *shalish*.

-Ong Shai Mong, *Union Parishad* Chairman

Table 8. People's responses on some issues of informal justice system (%)

Issues on informal justice institution	Yes (%)	No (%)	Don't know (%)
Positive role of *shalish* to bring justice	76.5	23.5	
Importance of *shalish* in establishing justice	90.3	3.2	6.5
Effectiveness of *shalish* to ensure human rights	81.2	18.8	
Opportunity to speak for women in *shalish*	83.7	13.6	3.7
No deprivation for being a woman	89.5	10.5	
Deprived because of indigenous identity	5.8	88.7	5.5
Verdicts are always implemented	70.9	26.3	2.8
Customary law- in practice needs improvement	50.9	36.3	12.8

Most of the respondents have no clear idea about what human rights is. A significant portion of the respondents (81.2%) claimed that *shalish* is effective enough to ensure human rights. This response is somehow contradictory as what they actually meant by the very concept of human rights was not clear to themselves.

Most of us have no idea on human rights -Mongpru Marma, Headman, Bandarban

Freely living, speaking, worshipping and having security of life is human rights.

- Binay Kumar,UP Chairman

Some times we declared some penalties like balding head, taking bath with the water used by the monks. We don't know whether it is violation of human rights or not.

- Khamly,Thanci, Bandarban

Whatever the verdicts have been decided, data shows that there are tremendous difficulties in implementation of verdicts. Almost thirty percent of the verdicts have not been implemented. When a certain dispute involves more than one ethnic group, in that case ethnic identity slightly (5.8%) matters in materializing justice. In these regards, approximately half of the respondents (50.9%) feel the necessity of improving the customary laws in practice. Very few respondents have the ideas on how they can improve customary justice institutions.

A significant portion of the respondents have no or very little idea on legal aid NGOs. When the respondents were briefed on the activities of legal aid NGOs, most of the respondents considered it positively (Table 9). A significant portion of respondents (Chakma 77.2%, Marma 39.9%, Mro 38.6%, Tripura 82.4% and Bangali 77.1%) would like to appreciate the NGOs activities in this sector. Some of the respondents prescribed the potential areas where NGOs can make efforts.

Table 9. Necessity of legal aid NGOs among the communities (%)

Scoring	Chakma	Marma	Mro	Tripura	Bangali	Total
0	.0 (0)	23.1 (40)	17.3 (22)	.8 (1)	2.1 (1)	10.7 (64)
1	1.6 (2)	6.9 (12)	14.2 (18)	2.4 (3)	.0 (0)	5.8 (35)
2	21.3 (27)	30.1 (52)	29.9 (38)	14.4 (18)	20.8 (10)	24.2 (145)
3	77.2 (98)	39.9 (69)	38.6 (49)	82.4 (103)	77.1 (37)	59.3 (356)
Total	21.2 (127)	28.8 (173)	21.2 (127)	20.8 (125)	8.0 (48)	601 (100)

Three questions were asked to explore the necessity of NGOs that could provide legal aid services. Positive answer is numbered one and otherwise zero is counted as negative answer. Therefore, scores higher indicates favorable magnitude of situation regarding issues.

> Firstly we need to know about fundamental law and human rights. Otherwise how can we justify what is just or unjust. So, NGO can give us training and we can understand what violence is and what crime is.
>
> -Binay Kumar, Chairman

> Codifications of our customary law and its dissemination are very much necessary for us. Here, NGO can help to develop it. As a result, people of hill area will be concerned about illegal activities and those who are *shalishkar* will remain conscious in drawing judgment.
>
> - Mongpru, Bandarban

> NGO can provide training and necessary guidelines to Headman, *Karbaris* and common people especially on-what women and human right is. NGOs can provide knowledge on law; by which we could learn about justice.
>
> -Pancha Kumar, *Karbari*

> Free legal aid services should be restricted only for women. How NGOs will work I don't know.
>
> - Asutosh, Rangamati.

Findings on formal justice system in CHT

CHT court structure, the arbitrary intervention of the administration and the misery of the common people

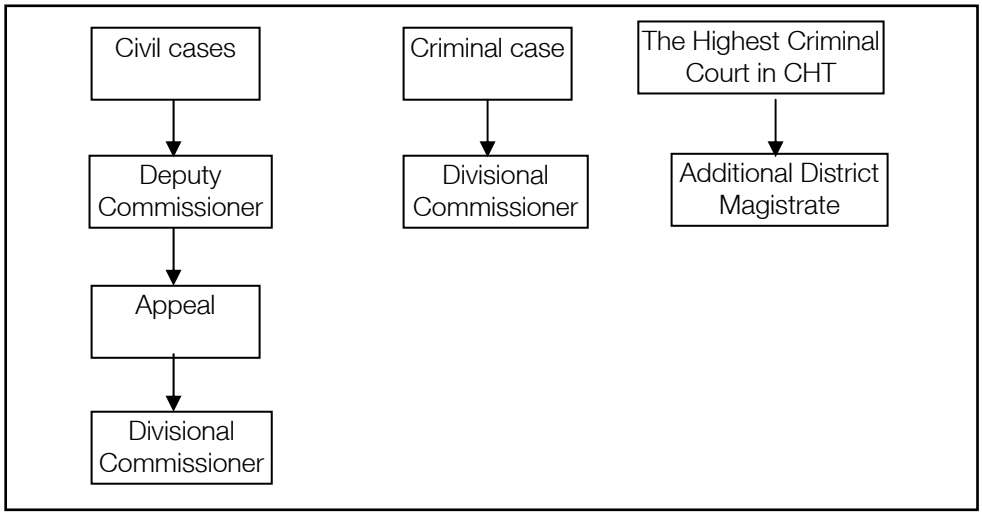
> As a lawyer I am practicing in a place of Bangladesh, where no session division has been declared. The citizens of CHT give tax to the government like the other citizens of Bangladesh, then why they are deprived?
>
> – Advocate Ilias Ali, General Secretary, Bandarnban Bar (before the separation of the court)

Before 01 July 2008, the civil administration used to possess huge control over CHT formal justice system. The judicial system of the three districts was earlier governed

by the Chittagong Hill Tracts Regulation 1900 that sanctioned such executive controlled judicial system. According to section 7 of CHT Manual, civil cases will be forwarded to Deputy Commissioner of Rangamati, Khagrachari and Bandarban. Criminal cases like rape, murder, extortion, robbery will be forwarded to Additional Divisional Commissioner of Chittagong for session trial. No district or sessions judge court was ever been established in the three hill districts. Consequently, there was no separation of the judiciary from the executive relating to cases within the CHT.

In Chittagong two Additional Divisional Commissioners used to conduct the cases of CHT- one was for criminal case and another was for civil appeal. The highest criminal court in three hill districts was lead by an- Additional District Magistrate. Petty case used to go to magistrate court (Fig. 4).

Figure 4. Formal justice system of CHT (before 01 July 2008)



The civil administration used to rule over the criminal cases. As Divisional Commissioner was an administrative officer, he could not give time and the cases got prolonged for a long time. It was found that maximum, he used to give two days in a week for such judicial function and the cases got stockpiled years after years. One lawyer wondered that whether any final decision came from the murder case or armed case from the thousands pending cases in the Divisional Commissioner's court. Around 3,500 criminal cases filed by hills people since independence to date remain pending with the Chittagong court (http://www.bangladeshnews.com.bd/ accessed on 02 February 2008). As Divisional Commissioner belonged to the executive, lawyers claimed him sometimes as politically biased. The DC belonged to administrative cadre and it could not be expected that his justice would have the same transparency, fairness and accountability as a judicial cadre would have. They even used to do trial without prior knowledge of law.

The cases under '*Nari o Shishu Nirjatan Domon Ain*' (Act for Suppression of Violence against Women and Children) used to go to two types of court- some were tried in

the special tribunal in Chittagong for the particular ACT and some were tried in the court of Additional Divisional Commissioner's court.

This court system also brought misery for the people who lived in remote hilly place like *thanchi* (*Bandarban*). The person lives in *Thanchi* had to start seven days ago from the date of sitting of the court in Chittagong and spend huge expenditure. Although the Chittagong Hill Tracts Regulation (Amendment) Act, 2003 provided for establishing civil and criminal courts in the three hill districts and later, Section 26 of the *Nari-O-Shishu Nirjatan Domon Ain-2000* also provided for establishing separate *Nari-0-Shishu Nirjaton Domon* Tribunals, no steps were taken by the government to act on this legislative mandate. In the last year, despite legislative and administrative steps having been taken for separation of the judiciary from executive pursuant to the celebrated judgment in Masdar Hossain case, popularly knows as separation of judiciary case (http://www.supremecourt.gov.bd/history.php), no steps were taken to extend these steps in the CHT. Though judicial power of the administrative officials ended with separation of the judiciary from the executive on November 1, 2007, the Deputy Commissioner still retained the civil judges' posts while the Divisional Commissioner acted as district and sessions judge according to Chittagong Hill Tracts Regulation, 1900.

The changes in court structure since July 2008

The high court on 24th February 2008 directed the government to set up three separate civil and criminal courts and *Nari o Shishu Nirjatan Domon* (Suppression of Violence against Women and Children) Tribunals in Rangamati, Khagrachhari and Bandarban districts in the Chittagong Hill Tracts, as soon as possible, and no later than one year from the date of judgment. The judgment was given in a writ petition filed in 2006 by the BLAST and others, on behalf of the peoples of three hill districts, seeking directions upon the government to give immediate effect to existing laws which provide for the establishment of such courts in the CHT and to implement the Constitutional mandate for separation of the judiciary. According to that judgment, from 1st July, the formal justice system of CHT got changed.

Now three layers of court have been established. Cases dealt by first class magistrate will go to additional chief judicial magistrate, cases dealt by second and third class magistrate will go to judicial magistrate. Session court will be there to take the cases from judicial magistrate. From 1st July two judges will be appointed.

District and session judge another one is joint district judge

Civil cases will go to join district judge and district and session judge will deal with criminal cases and civil (appeal). Though from 1st July, judicial cases will be conducted under district and civil judge, but still there is problem. The amendment made in 2003 of Hill Act in 2003, also gave Divisional Commissioner power to review the decisions of the district and civil judge. Previously, there was no court fee in Chittagong Hill Tract, but now court fee is introduced. Act of 1900 has been amended in 2003 but still after the judge court, the cases don't go to high court as

happen in other areas of Bangladesh in Chittagong Hill Tracts. According to the family courts ordinance of 1985, Chittagong Hill tracts have been excluded from the coverage of the ordinance as it was supposed to be safeguard in protecting indigenous customs. Though Bangali (55%) are majority in number now but advocates urged the necessity of launching Family Court in CHT.

A case of violence against women

Advocates informed that among cases Bangalis filed most on of violence against woman. Indigenous people prefer to solve the cases through Headman and *Karbari.* In legal matters, Bangalis appear to be more aware than the indigenous people. They have less reliance on chairman, and member. Indigenous advocates mentioned about biased nature of court in this region. The common perception is that as Bangalis has settled in this area with the patronization of the government, they will get usual favour from the government officers.

Another issue discourages the indigenous people to bring cases to formal court is that they would have to pay bribe. In a court case, from beginning to end, lots of money is required. Indigenous people are mostly poor. As a result, they had to remain satisfied with Headman, *Karbari shalish*. For example, in a *shalish* in *cowkhali* (Rangamati), a rape case was reconciliated only for 2000 Taka.

In *shalish*, the influence of *Karbari* and Headman is immense. If their interest is affected, they can create social pressure on the victim to act according to their wish, like they can make them socially isolated. Some times Headman and *Karbari* give wrong information to police. As filing criminal cases involve the hassles and lengthy time to go to Chittagong, the criminal cases tended to be solved through local *shalish*. The same incident was found in *Giptoli* union of Rangamati where the accused got released in the *shalish* for rape case giving monetary compensation. Some times, beating and wearing garland of shoes is given as punishment. If some one becomes pregnant for rape, the rapist has to bear the maintenance and the identity of father.

Communication problem in seeking justice

In CHT, problems related to formal justice system are almost common with other parts of Bangladesh- long trial procedure, corruption etc. Such problems get coupled with other problems like transport hassles for the poor clients. As a result, many clients cannot show up at the court on due date, which affects the case negatively. This is true not only for the cases going to Chittagong court, but also for the cases pending in city. Because coming from hills to city is hectic and troublesome matter for indigenous people. Before the expansion of mobile network in CHT areas, the situation was even worse when no scope was found to communicate with the clients urgently. For hectic transport, witnesses are not even inclined to appear in court.

> In 2001 Asutosh Boruya filed case against Keton Chakma alleging him of robbery. The appeal went to the court in Chittagong. The main problem they faced was

> transport problem. From Rangamati to Chittagong, the transport was expensive and time consuming He had to spend at least 60 to 70 thousand Taka, and visit the court for 25 to 30 times.
>
> - A case of Keton Chakma, Rangamati

Besides communication problem, another major problem faced by indigenous people is language barrier. Indigenous people cannot communicate with the lawyers and court officials properly. From court clerk to judge, every one speaks *Bangla*. As a result, indigenous people do not understand the court procedures which hinder their interaction with formal justice system.

Bail for indigenous people

The advocates also allege that court becomes very reluctant in considering bail for indigenous person. Army often arrest indigenous people on the basis of mere suspicion. The qualitative data shows that if a Bangali and indigenous people got arrested for arm case, bail become more difficult for indigenous people.

Unaccountable intervention of Army

Another crucial point in the justice system of CHT is - the unaccountable intervention of army. Army can arrest anyone in anytime and influence in *shalish* and even in formal court. Bangali people often complain to army against indigenous people and indigenous people have to go through the examination by the army personnel.

> I am a son of a *Karbari.* One Bangali settler made complain to army camp that his land has been grabbed by me. Army called me and I denied the allegation and showed proper documents.
>
> - Mong Mong Marma, *Kaukhali*, Rangamati

It should be observed that as he was aware, he kept the documents. Not all are privileged like him. It is also a question that on what legal basis army personnel can exercise judicial authority in this area. Some times for tiny matters or due to suspect, indigenous young people are arrested as terrorist. This incidence is occurring frequently even if they are randomly walking on the road. Indigenous people are seen as susceptible by the police and often harassed by army. One human rights activist termed it as a violation of freedom of movement. According to him *'people under 30 years in CHT have grown up amidst emergency in CHT*. According to an advocate, in reality there are three types of justice system in CHT. Besides the rule of civil administration and traditional court, there is rule by the army which possesses absolute indemnity.

> I was carrying ninety thousand taka to my relative's house to lend the money. On the way I was interrogated by Army. Army suspected that this money did not come from fair source. They arrested me instantly. For bail, I had to spend approximately fifty thousand taka. I and my lawyer believed that I was arrested only because of my ethnic identity. If there would be a Bangali people in place of me, and if he would have nine lakh money, he would never be arrested.
>
> - Ripon Bikash Chakma, *Naniachar*, Rangamati

Land-related problem

Most of the advocates affirmed that they get land related dispute in a large number, especially forcible acquisition of land. They mentioned that indigenous people are not aware of land rights and not particular in getting legal documents. That gives Bangali settlers a chance to grab the land by using force and power. Advocates also mentioned about cases where indigenous families eloped to another country during the time of conflict and when they came back, they found their land occupied by Bangali settlers. They characterized the land as dispute between *pahari* (people living in hills) and Bangali where Bangali settlers are backed by army personnel and government officers. In this context, some advocates stated that eighty percent land related cases are brought by indigenous people and only twenty percent cases are brought by Bangali people.

State vs. Individual indigenous people

Provat Kishore Chakma was residing in *Niribili Adam* for 15/ 16 years. In 2003, his and his neighbor's lands were claimed by agriculture extension department *(Krishi Somprsharon*). Provat Kishore Chakma filed case in Rangamati court in 2003. The case was dismissed in 2007. In 2007 he again made appeal in Chittagong court. The main problem he faced was transport problem to Chittagong. He has no relative in Chittagong court. To meet the lawyer in Chittagong, he had to start early in the morning from Rangamati. For every trip he had to spend two thousand taka including the charge of the lawyer.

Some indigenous advocates suspected that the burning Deputy Commissioner's (Khagrachhari) office where many legal documents of indigenous people's lands were kept was preplanned. It has been admitted by all the lawyers that after such destruction of documents, it has become very difficult for them to lead the land related cases in the absence of those documents. Advocates said that the difficulties faced by indigenous people in land related cases get extended when the question of implementation of judgment comes. If any judgment comes in favour of indigenous people whose land is in the areas of Bangali settlers, it does not become possible to regain the land with the order of the court. Even after measuring the land by *kanungu* (land officer*)* and magistrate as a part of implementing judgment, land is again grabbed. Such incidents take place mostly in Matibangar, Taidong, Tabalchori of Rangamati. The study shows that despite having proper document, indigenous people face serious discrimination in implementing the judgment of the court.

Indigenous vs. Bangali

The case was started in 1987 and judgment came in 2006. His land was occupied by a Bangali in the name of *Khas* land. He was working in D.C's office. DC sent officials to identify *Khas* land and they reported that there was no *khas* land within the border of his land. Still DC made documents declaring his land as *khas* land and that person occupied his land. Then he filed case. At first DC gave order for investigation. The investigation report came in his favour. Then DC dismissed the investigation report. DC again made the investigation and kept it again in favour of

that Bangali people. Then Sachin again made appeal to Chittagong court. In 2006, judgment came in his favour. Then again appeal was made in land appeal board. There also judgment came in his favour. Now he is planning to file another case of eviction. He had to spend two lakhs of taka for it. He thinks as DC was Bangali, he was in favour of Bangali.

Table 10. People's responses on some issues of formal justice system (%)

Issues on formal justice institution	Yes (%)	No (%)	Don't know (%)
Peoples knowledge on human rights	36.3	63.6	0.2
People's knowledge of fundamental rights as a citizen of this country	35.6	64.2	
Necessity of legal aid NGOs	66.6	19.8	13.6
People's idea on legal aid NGOs that provide free legal aid	3.0	96.7	0.3
Need to pay money or resources for getting justice in traditional *shalish* system	64.4	35.1	0.5
Having experience of Police station	15.0	85.0	
Getting enough support from Police station	52.2	47.8	
Having experience in going into Court	9.2	90.8	
Experience in continuing a case in court	3	97.0	
Financial constrain in carrying out a case	63.6	36.4	
Paid bribe in getting judgment	60	40	

The feelings of discrimination- whether justified or not?

Table 10 shows that only 15% people have the experience to face police station with their case and 52% of them received support from police station. A significant portion of the respondents (90.8%) have not visited court. A very small portion (3.0%) has the experience to visit court in continuing the case. Ninety seven percent among them have never visited to continue the case. Almost two thirds of the respondents (63.6%) have faced severe financial strain in meeting the expense of the cases. A significant difference is observed between Bangali and indigenous groups; whereas 10.9% Bangali faced the financial problem, 63.6% of indigenous people having the experience in this regard. In the formal justice system, police appears to be most discriminatory stakeholders among all groups (26.7%), whereas advocates are in second position. Those who have experiences in formal justice institutions, a significant portion (35.6%) has little knowledge on fundamental rights. Only very few of them (3%) have idea on the concept of legal aid NGOs, but two third (66.6%) of them can figure out the necessity of such kind of NGOs. Almost two thirds of the respondents (64.4%) claimed that they had to spend money for seeking justice in customary court. A large portion of the respondents (60%) among those who have experiences in court and police station had to pay bribe to get justice.

> I feel court can be purchased with money - Tripti Chakma, Rangamati
>
> Without money, no file can be moved. In DC office for file proceeding in each time, I had to give Tk. 1000-3000.
>
> - Jotish Condro Chakma, Mohajon Para, Khagrachori

The same experiences were found from Bangalis residing in CHT who had to spend a smart amount of money as bribe to seek justice. In formal justice system, both indigenous and Bangalis have to face similar kind of problems associated with time and money. The incidence of cases studied shows that when a dispute was arisen between two indigenous people or between two Bangali settlers, produced rigorous tension among the communities. When the either party is Bangali, these feelings get stronger on the part of indigenous people. It is obvious that ethnic identity does matter and related to the feeling of insecurity. The distinguished problems for ethnic identity is important in bailment, arrest by army and land disputes between Bangali and indigenous.

DISCUSSION AND CONCLUSION

This study was initiated to explore both informal and formal justice institutions of four major ethnic communities in CHT including Chakmas, Marmas, Mros and Tripuras along with Bangalis settlers. Primarily the study categories the villages in three types and put emphasis on the major and common disputes arisen in community. It was observed that all the communities faced same kind of disputes are followed same dispute resolution mechanism driven by customary laws. However, the verdicts and pattern of punishments were different than the plain land. The study further reviewed the existing pattern of customary laws of the ethnic groups both in text and in practice. Dispute resolution mechanism was observed thoroughly and the entire procedure was analyzed. Besides various customary institutions, local government bodies and army were found to be involved in the procedure of *shalish*. Moreover, the access of ethnic groups to formal justice institutions and the complexities they face from different stakeholders have been addressed to understand the functionality of government promulgated laws or formal laws in CHT.

Except in some cases, the problems indigenous people face in access to formal justice system is more or less like problems in other parts of Bangladesh. Exorbitant costs, excessive delays and backlogs, and a lack of knowledge or resources are major obstacles to those who seek justice in formal legal settings (Siddiqui 2003). The overwhelmingly rural poor have to bear travel and logistics costs that pose additional burdens (Siddiqui 2003). Formal justice system is elitist, corrupt and involved long delays most people avoid contact with it (Wardak 2002). These problems of formal justice systems are common in CHT. These problems get intensified to the extreme in CHT because of geographical nature, political history, distinguished court structure and ethnic identity.

Does ethnicity matter?

The common disputes arise within communities is petty criminal matters reconciled by customary court. In most cases, land grabbing incidences are perpetrated by Bangali settlers. However, indigenous people have no written evidences in proof of their ownership of land and therefore Bangali settlers can easily victimize the indigenous people. Land related disputes are inevitably linked with the history of CHT that acknowledges *pahari* people as marginalized and disadvantaged. Moreover, the customary court of indigenous people appears to be totally ineffective in this regard and cannot play any significant role to solve land related disputes. Local police and army personals are usually involved in this situation that most often produce benefits for Bangali settlers rather than indigenous people. Here ethnicity is a crucial matter that influences the verdict and in most of the cases *pahari* people are victimized. The state response to *pahari* people and the ethnic conflict produce the space for Bangali government officials to maximize state benefits for the settlers. Moreover, the

incidences of eviction from indigenous people's ancestor land are violation of human rights in CHT. Bangali settlers always get back up from government bodies as the settlers, are invariably seen by many government leaders and functionaries as "loyal citizens" amidst "revolutionary" minorities (Roy 2002). Local administrations are also used to patronize Bangali *settlers* as they are loyal citizens.

Major draw backs of existing system

Most of the indigenous people including *Karbari* and Headman have very little or no conception on human rights and justice. Primarily they are the potential justice providers for the indigenous communities. In some cases, the customary court is found to be biased to the rich people and politically powerful persons. No female *Karbari* or Headman was found within the indigenous groups and the customary courts can be said to be dominated by all male jurors. However, it is difficult for a male juror to understand the sufferings of female victims and patriarchal structure of customary court is creating limited space for female victim's voice. On the other hand, indigenous people have very little knowledge on formal justice system. In most of the cases, they try their best to avoid the formal system (Table 11). Otherwise, they have to be victimized in each and every stage of formal justice system. Some indigenous people have complained that this is contrary to the equal rights clauses of the national Constitution (especially Article 27 and 28) which forbids the state from negatively discriminating against any person on the grounds of race, religion or place of birth (Roy 2002). The situation of indigenous people represents a scenario of discrimination which is incontrast with the spirit of Constitution. Primarily they

Table 11. Challenges in informal and formal justice system for the indigenous people

System	Access	Procedure	Justice	Human rights
Informal justice institution	Some disputes like rape and sexual harassment also come in to *Karbari*/Headman court	All male juries in the court Women have less space	Ensure the satisfaction of both parties Satisfy political figures, power elites No or very few knowledge on justice	Inhuman nature of punishment Lack of knowledge on human rights
Formal justice institution	Inadequate knowledge on court procedure Fear on police station	Complexity Time and money consuming Bribe and illegal money involved	According to Bangladesh government promulgated laws Political and ethnic biases Cannot ensure justice in land related disputes	Sometimes violate human rights Majority biased

consider the formal system as complex, time and money consuming. Moreover, language is a great concern whereas most of the indigenous people are not able to understand the judiciary vocabulary and advocates have to face tremendous problems to give support. The hegemonic structure of state does not ensure the indigenous people who seek justice in formal court that will be ensured. In most of the cases, indigenous people become victimized and formal court procedure generates discrimination among the people (Table 11). For this reason, indigenous people considered themselves disempowered compared to Bangali settlers.

The paradox between laws and culture and HRLS programme's intervention

This study also intended to find out the pathway for the entry of HRLS programme of BRAC in CHT. For this intervention, the study recommended top-bottom approach of HRLS programme for the reliance of the community on the Circle chiefs, Headmen and *Karbaris.* The most complicated problem HRLS programme will face to balance between cultural value and human rights and Constitutional spirits.

All the verdicts follow the ancient customary law of indigenous people but do not essentially ensure justice for all. In most of the cases, verdicts only ensure the satisfaction of both parties whatever the nature of disputes is. Obviously indigenous people rely more on their customary justice seeking institution through they are not legally allowed to deal with this kind of incidence like rape and sexual harassment. Moreover, the implementation of verdicts often materialized through inhuman means of punishment which should be treated as violation of human rights and norms of the Constitution of Bangladesh. The indigenous culture of justice permits the stakeholders to follow this kind of punishment as the ancient rituals. Therefore, a paradox between the basic premises of the Constitution human rights and customary laws are severe found. However, the Constitution of Bangladesh declares its supremacy on all the laws through Article 7 of the Constitution and any other law which is inconsistent with the Constitution is void (Islam 2002). Referring the article, some practice of the customary laws of indigenous people can be judged, the conclusion may be legally correct but socially suicidal for any legal aid NGO which want to work in CHT through active community participation. The study also recommends for prioritizing community value for smooth intervention and policy level advocacy with the government on some burning issues of the indigenous people so that the HRLS programme may establish strong linkage with the community. Still, the steps for HRLS programme for entrance in CHT need to be taken very cautiously. As the study is of exploratory in nature and an initiative to understand the justice system for programmatic intervention, more studies are required to have an in-depth understanding of justice seeking behaviour of the community to plan for the incorporation of human rights in the customary law practice.

It is obvious that CHT is such a unique place in Bangladesh, where lots of parties are involved for own interest - ranging from political to economic. From government officials to foreign donors, regional political parties and army are directly or indirectly involved in CHT. Therefore, the footsteps of HRLS in CHT have to be kept considering all such complicated issues for long term programmatic works.

Current reformation: Marginalization or empowerment

Recently, Bangladesh government took many initiatives to establish justice in CHT through some reformation. However, the implementation of CHT peace accord and effectiveness of CHT Regional Council and the coordination with customary and local bodies are the crucial agendas of CHT to ensure justice. The formal justice system should gain confidence of indigenous people what has been lost like many other institutions. This is the consequence of the consistent violation of human rights faced by the indigenous people. This reflects the lines from the book, 'the CHT problem is a majority - minority conflict revolving around the politics of nation and state building, where in hegemony and centralization inherently alienate the minority population. The minorities themselves inevitably adopt the politics of identity formation as a strategy of counter insurgency' (Mohsin 2003). Therefore, the empowerment of customary justice institution is an important part to empower the indigenous people. However, with some difficulties, customary justice institutions have the potentials to bring justice among the indigenous people. Along with the system, formal justice system also has the opportunities to ensure justice through its role reformation. Moreover, legal aid NGOs should play the role in providing training to stakeholders and setting up help desks in both community levels to extend hands to provide legal support for the marginalized indigenous people. Though the present state of justice scenario in CHT is not up to the mark in terms of human rights, but the initiatives of state to reformulate its role from 'hegemonic' to 'pro-indigenous' might shift the total landscape of justice in CHT for the indigenous people.

RECOMMENDATIONS FOR HRLS INTERVENTION

CHT can be considered to be a very sensitive area for HRLS programmatic intervention. The interviews revealed that still the memory of atrocities resulted from *kaptai* dam, and the violations of human rights for the conflict and demographic engineering is fresh in the mind of indigenous people. At the same time, they are much more inclined to keep their laws stronger as a part of their identity. Though, quantitative data shows that there is need among the people for legal aid intervention in this area, that intervention must be initiated and followed considering the historical background of the grievances of indigenous people from the state of Bangladesh. From that consideration the following recommendations are given for starting any legal aid service.

Advocacy with Circle Chief, *Karbari* and Headman before starting any legal aid service

If BRAC HRLS programme wants to work in that area with long term plan should start their introduction in CHT through Circle Chief, *Karbari* and Headman. It has come out from the data that indigenous people possess overwhelming trust on Circle chiefs, Headmen and *Karbaris* for protecting their justice system. The way to enter into their community for legal aid intervention straightly lies in winning the reliability of the people whom the indigenous people give the status of the guardian of the community; they are obviously Circle chiefs, Headmen, *Karbaris*. Workshops can be arranged with Circle Chiefs, *Karbaris* and Headmen to let them clarify about the intention, plan and works of HRLS programme. They should be informed about the vast work of HRLS programme in other parts of Bangladesh. It will be better if they are asked to recommend on the planning of the HRLS works in that area which may create a sense of feeling important stakeholders at the same time give practical output. They have to be motivated enough to disseminate the information about HRLS programme among their local people. HRLS should confirm them that they will work with cultural sensitivity and not with any intention to alter the culture and community bonding.

Campaign in the indigenous areas about the works of HRLS programme

HRLS programme should campaign about their works of other parts of Bangladesh through posters or some other local NGO in the indigenous area before starting their work formally in CHT. It will create credibility among the indigenous people.

Involving indigenous people in the campaign programme

It is better if the campaign program can be carried on by the indigenous people and their local NGOs. It may give the image that HRLS programme is dominated by Bangali nationality.

HRLS programme should start their work through Headmen and *Karbaris* or UP chairman and gradually move in to micro level intervention

HRLS programme can primarily start their works through making Headman, *Karbaris* and UP chairman aware of human rights and the interpretation of the laws in favour of women. As they are the person in the community to apply the customary laws in a particular dispute, it can be a scope to send the message of human rights through the most reliable person of the community to the individuals of the community. After that gradually HRLS programme can start their work directly with the individuals in the community.

Strengthening traditional dispute resolution mechanism

The study has shown that transport hassles, language barrier, absence of family court in CHT are common constraints in access to formal court. Beside this, people considered traditional dispute resolution mechanism through Headmen/*Karbaris* as complementary to preserve their cultural values; therefore, traditional informal justice institution required much attention.

So, first emphasize should be given to reform the traditional dispute mechanism. For that the following measures should be taken.

1. Codifications and review of the customary laws

The customary laws of the indigenous people should be codified. Already some NGOs has taken the initiative to codify the laws, it should be extended further. Analysis of the personal laws shows that the laws are not in favour of women and the application of the laws are subject to the discretion of the Headmen and *Karbaris,* hence varies from area to area. However, the review of the customary laws must include community participation, otherwise posses the risk to go against community support.

Dialogue with Circle Chiefs, Headmen and *Karbaris* on how to incorporate the norms of human rights and women rights in the customary law practice can be an initiative for such step. Practice for inhuman punishment like making bald head, mandatory maintenance to divorced wife and children, equal share of women in inheritance, polygamy can be chosen for discussion with the stakeholders.

2. Active participation of women in the traditional dispute mechanism

Studies show that indigenous women are in better position in traditional dispute resolution. That should be fostered through introducing women *shalishkar* and making Headman and *Karbaris* gender sensitive more.

3. Presence of the representative of HRLS programme as monitor and facilitator

The staffs of the legal aid can be present in the traditional dispute resolution initially as a monitor and can help the Headmen and *Karbaris* in legal issues. Gradually,

he/she can start working as facilitator. Such representative must be chosen considering the identity of the community and a well educational background that may attract respect from the community.

Forming groups in every *para* to protect human rights and communication with HRLS programme

A particular group including local elites, men, women, young people should be made in every *para* to raise awareness on human rights and communicate with the HRLS programme in case of any human rights violations. HRLS programme has such committees (like legal rights implementation committee) in grass root level in Bangladesh.

A model committee, Tongpru para, Marma village

In this study, a committee was found in *Tongpru para* in a Marma village to protect law and order and preserve customary laws. *Karbari* has formed this committee with a combination of old and young people with educational background and experience of *shalish* and disputes. In different *shalish,* the opinion of the committee is taken and they act as watchdog in that *para* for protecting law and order situation.

Legal education in CHT

After making a credible standing among the indigenous people through advocacy with the stakeholders of traditional court, HRLS programme can move to intervene in the individual level of CHT. The crucial question is what HRLS programme should impart? Usually in other parts of Bangladesh, HRLS programme impart all the civil laws including the personal laws, Constitutional laws and criminal laws of Bangladesh. Legal education for indigenous people can include the criminal laws of Bangladesh, land laws[6] especially which is applicable to CHT, Constitutional laws, international human rights laws covering rights of the women, rights of the indigenous people under international documents which make Bangladesh government obliged. The international human rights laws and the rights of the indigenous people should be made simplified to be easily understandable. Legal education for Bangalis should include criminal, civil laws, personal laws, and land laws. At the same time, their legal education should include .international human rights laws covering rights of the women, and rights of the indigenous people under international documents which make Bangladesh government obliged. The Bangalis people should also know the rights of indigenous people which will make their mindset to respect their neighbour's rights. For choosing trainer of the legal education training, priority should be given to ethnic identity and the community. It cannot be expected that indigenous people would like to know about the laws some one from different community.

[6] According to the Peace Accord of 1997, a separate land commission is supposed to be formed in CHT but not yet initiated.

For dissemination of the norms of human rights and the Constitution, HRLS programme may use different posters, and leaflets in the simple language of indigenous people. It may create smoother communication with indigenous community.

Workshop with Bangali and indigenous lawyers, judges and indigenous elites and educated person

Dialogue is essential among lawyers, local elites and educated people among the communities to reduce mutual mistrust and non-co-operation for the sake of justice. Case studies revealed that some problems like ethnic tension, mistrust, language barriers are very common for indigenous people regarding formal justice system in CHT. Still indigenous people are used to consider that problems related with ethnic identity. If they can be felt that the Bangali people are also aggrieved on some same points like them, at least the feelings of discrimination should be mitigated to an extent. At the same time, this workshops will facilitate communication between the staffs of formal justice system and the justice seekers.

Issues on which HRLS programme is requested to do policy level advocacy

In interviews, it was asked that if HRLS programme was introduced in CHT, what would be its prospect. From Circle Chiefs to advocates, all believed that the intervention of HRLS programme would have positive effect. They recognized the necessity of effective legal aid in CHT. Advocates and human right activists suggested that if HRLS programme wants to work in the community, they need to prove that their real intention was to work for the cause of indigenous people. For that reason, HRLS programme should not confine their work only in micro or meso level intervention; rather HRLS programme should work in policy level to represent the voice of the indigenous people.

Establishing family court

As there is large number of Bangalis in CHT, family court should be introduced in CHT.

Activate the Nari-O-Shishu Nirjaton Domon (Suppression of Violence against Women and Children) Tribunals in every district of the CHT

Still, the special tribunal for Nari-O-Shishu Nirjaton Domon Ain has not yet been established. Strong advocacy should be made with the government to start this tribunal in this area.

Do advocacy to make the formal justice system representative of indigenous people

Case studies show that indigenous people feel that they do not belong to the formal justice system. In some cases, they have justified reason for that. It is better if filling

the posts of judges, police and magistrates for CHT courts; priority is given to people from indigenous community.

Activate Land Commission

Advocacy should be done with the other partner NGOs to activate land commission for the land dispute resolution in CHT as mentioned in CHT peace accord.

Activate regional council and hill council for dispute resolution

Regional council and hill council have the scope to play significant role in dispute resolution among indigenous people, but these are not active. Advocacy is badly needed to make these organizations active for this purpose.

Advocacy in national level to monitor the intervention of army

In some cases, indigenous people often get harassed by army. This issue should be raised in national level. The works of army in the matter of arrest and their influence in the formal justice system of CHT should be bought under strict supervision and monitored by the pressurize groups.

Acknowledge the rights of the indigenous people in the Constitution

This has been a long demand of the indigenous people to realize their rights through the Constitution of Bangladesh. HRLS programme can do advocacy with the government to make acknowledge the rights and the customary land rights of the indigenous people by amending the Constitution.

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