

# Gray Image of Humanity in the Enclaves Zone



**National Human Rights Commission, Bangladesh**



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## Cover Design

Nurun Nabi

## Print Management

Chhoyan add.

Cell : 01711 363030

Published in May, 2013

Published by

National Human Rights Commission

Gulpheshan Plaza (Level-11)

8, Shahid Sangbadik Salina Parvin Sarak

Maghbazar, Dhaka-1217

Phone : 02-9336863, Fax : 8333219

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www.nhrc.org.bd

**ISBN : 978-984-90611-0-6**

## Dedication

Dedicated to the caged people of enclaves.  
May this book bring happiness to their life.

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## Foreword

Plight of the displaced persons whether displaced internally or across the national frontiers has always been a key human rights issue and a national human rights institution like the NHRC cannot be oblivious to this problem. However, various constraints in terms of finance, logistics and capacity stood in the way of addressing the issue by the NHRC. The NHRC, therefore, was happy to entertain a proposal of collaborative engagement with the UNHCR, Dhaka. The main thrust of the engagement was to assist the NHRC to conduct its activities in threefold areas: accelerated campaign to raise public awareness on refugee rights; lobby with the government to sign and ratify the 1951 UN Refugee Convention; and undertake comparative study to accumulate first-hand information on the human rights situation in the 'enclaves'.

The NHRC has always been an ardent supporter of the 1951 Convention and has reasons to believe that ratification of this instrument would benefit Bangladesh in numerous ways. Moreover, given the benefits that the Bangladeshi refugees were blessed with during our liberation war in 1971, we think it is morally incumbent upon Bangladesh to ratify the instrument. In order to pursue this agenda and sensitize the general people about the benefits of ratification vis-à-vis the pitfalls of non-ratification, the NHRC organized national consultations. The NHRC always advocated for promotion and protection of the rights of the *Rohingya* refugees in the country. We never deviated from our principle position.

The question of protection of the rights of the *Rohingya* refugees assumed a critical character in mid 2012 when deteriorating internal conflict situation in Myanmar led to a huge influx of fresh asylum seekers and the Government of Bangladesh decided not to receive further 'refugees'. The NHRC was expected to make its position clear at that juncture and we did so: while advocating for the rights of the asylum seekers and refugees in general, the NHRC also stated that pursuant to Art.33(2) of the 1951 Convention the position of Bangladesh cannot be outright rejected and ignored as violative of international law in general and refugee rights in particular. The NHRC further stated that despite being an LDC and accompanying constraints, Bangladesh has been shouldering the burden of

approximately 29000 registered and almost 400000 unregistered Rohingya refugees since early 90s of the last century. Burden sharing by the international community during the same period has been so scanty as to make it invisible. The NHRC believes that the record of Bangladesh vis-à-vis Rohingya refugees may not have been highly commendable but not totally unsatisfactory as well.

This study on the human rights of persons living in the 'enclaves' is unique not only in the sense of being a pioneer on the topic but for the first time the researchers have been able to put forward crude facts of life necessitating the presence of the 'state' for promotion and protection of human rights. The study would not have been possible without active and unflinching support of the Ministry of Foreign Affairs, Government of Bangladesh, Bangladesh High Commission in Delhi, Deputy High Commission in Kolkata, West Bengal, India and of the Ministry of Foreign Affairs, Government of India. We truly believe that the findings of this study will assist both the neighbouring countries to revisit their respective policies towards the residents of the enclaves and take necessary steps to further the cause of human rights promotion and protection.

We are indeed happy to have had this opportunity to collaborate with UNHCR. This initiative has significantly contributed to better understanding of the refugee rights, better perception of the multifaceted problems of the *Rohingya* refugees and effectively devising a pragmatic approach to resolving the situation of the people living in the enclaves. The path unfortunately has not been a smooth one and the NHRC might have been 'misunderstood' by different quarters for different reasons. However, at the NHRC we firmly remain committed to protection of 'human dignity' in all its manifestations. We truly believe in our motto: 'Human rights for all, equally, everywhere.'



**Prof. Dr. Mizanur Rahman**  
Chairman  
Jatiyo Manobadhikar Komishon (JAMAK)

Dhaka  
30 April, 2013

## Acknowledgements

We are greatly indebted to all the government agencies, UNHCR country office, academics, civil society and private sector representatives who lent their time and knowledge to this study. This work could not have been accomplished without the financial support and cooperation of UNHCR. We deeply appreciate the splendid support and cooperation of South Asian Wing, Ministry of Foreign Affairs, GoB, Ministry of Home Affairs, GoB, Office of the Deputy Commissioner, Lalmonirhat, Police, BGB and local leaders of Lalmonirhat district. We would also like to acknowledge the assistance given to the team by the UP Chairman of Dohogram- Angorpota Union.

We duly acknowledge the contribution of the following researchers in completing the Research work: Mr. AQM Nasir Uddin, Mr. Kazi Arfan Ashik, Ms. Azmi Akter, Mr. Mohammad Fhakrul Islam and Md. Jubaer Saiful. Finally we would like to acknowledge all sorts of cooperation given by the people of Dohogram-Angorpota, Moshaldanga, Kochua, Falnapur, Nolgram enclaves.



## 1. Introduction

"Humanity is a fine art of skilled penmanship where every single dot is equally important for the entire picture." So every individual who enjoys the supreme status of citizenship is entitled to get a long, healthy and creative life without any discrimination. This theme also booms through the Vienna Declaration and Programme of Action "All human rights are universal, indivisible interdependent and interrelated .The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis."<sup>1</sup> So neither any individual and nor any community should be the subject of isolation and exclusion on the ground of their unique geographical location. Our research will focus on the enclave people who are legally the citizens of their respective states but they are often unable to access their facilities citizenship because of administrative restrictions and inconvenience. The residents of the enclaves consider themselves people without identity who have been bearing irreparable damage of life and livelihood since very long time. Abdul Mutalib, of Madhya Masaldanga. Said that "We were born like this, Our fathers were born like this. Neither side claims us. But our land is here. What else can we do? Where can we go?" In this respect Mr. Idris Ali said that "we can't be able to present our claim before any superlative force which leads us to believe that statelessness will not be our ultimate fate". It must be mentioned that we find the overwhelming evidence in favor of their comments after observing the sufferings of people whom we met in enclaves. We had to face enormous harassment had to make relentless quest for spotting the enclaves situated in Kuch Behar, India. People of Kuch Behar were disinclined to assist us in this regard. Finally however we moved towards enclaves without any brief. When we asked local people about the location expressed about their ignorance. At last we embarked there and witnessed the destruction that has taken place in these twilight zones called enclaves. We covered the areas such as Kochua, Falnapur, Masaldangha and Nolgram. Those innocent people of enclaves are regularly denied access to food, shelter and medicine severely. We feel that this situation should be changed for the greater causes of humanity.

### Ongoing Effort

Fortunately, 2011 marked a renewed effort by both the Indian and Bangladeshi government to stimulate the exchange of the enclaves. It is said that this effort has promoted people's range of choices through the annexation of right to option principle and make people to be able to enforce their choices in respect of their citizenship.

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1 Vienna Declaration and Program Of Action (New York: United Nations Department of Public information) 1993 para 5(pt 1).Adopted by the United Nations World Conference on Human Rights, 25 June, 1993.

They can relocate themselves to the country of their existing citizenship or accept the citizenship of the state to which the territory is transferred. Under this milestone agreement, the 37,334 nominal Indians living inside Bangladesh will become Bangladeshis, if they wish, and the 14,215 Bangladeshis on the Indian side of the border will become Indians.<sup>2</sup> Anyone who wishes to move across the border will be permitted to do so, but officials on each side say any major movement is unlikely. People said that this ray of hope will be sustained through the proper and smooth functioning of the agreement. Expert has pointed out that through the right to option principle in effect the residents of enclave will choose their citizenship which may appear to be a rich man's dilemma as multiple nationalities are on offer, there is still a chance of persons becoming stateless after the exchange.

### **Recent Glory**

We have one optimistic example of progress, however: the Tin Bigha Corridor, connecting a Bangladeshi enclave with its 'mainland' – although it took twenty years to happen, met heavy opposition and cost people's lives. After that achievement, people of Dahagram and Angorporta experience the charm and benefit of state presence and their living standard rocketed high. Tin Bigha Corridor is a unique magnet which creates bond between state and the citizen of Dahagram and Angorporta. Though the community still has some impoverished sectors but some of those are now in a far better position than before. We put some examples which help us to identify the significance of state presence. We aimed to make a comparison between Dahagram and Angorporta with state presence and Bangladesh enclaves in Kuch Behar without state presence to establish the urgency of state presence in places which remain underprivileged due to non-existence of state presence.

### **Motivation of the Research**

Well-being of mankind basically depends on the fulfillment of minimum basic necessities safeguarded by the state. If people are not entitled to achieve that minimum basket of basic necessities the entire process becomes a mockery. Enjoyment of civil and political rights motivate society for practicing the good conscience and the exercise of good conscience always requires the suitable environment where people can be able to uplift their physical and spiritual potentialities. For the realization of civil and political rights, a well-nourished and active mind human beings are obligatory. The proof of pudding is in the eating and research has to be done on what is happening in the field. So in the light of field visit experience we assume that the people of enclaves need minimum basic facilities.

Since the issues of sovereignty, territorial integrity and especially the unwillingness to let the other side seem to 'win' is so sensitive for both India and Bangladesh, the Kuch Behar

2 [http://www.economist.com/blogs/banyan/2011/02/enclaves\\_between\\_india\\_and\\_bangladesh](http://www.economist.com/blogs/banyan/2011/02/enclaves_between_india_and_bangladesh)

enclaves complex probably isn't going to disappear soon. But the principle of 'good-neighborliness' may come into play for the happy ending of that decade old crisis. We must keep in mind that the Bangladesh Citizenship Act 1951 and the Indian Citizenship Act will encourage the acquisition of citizenship through incorporation of a territory. This exchange, presents an interesting challenge for both governments to ensure that no one becomes stateless after the exchange. Both of the states must put their spotlight under the inhumane condition of enclave's people and will co-operate in good faith and in a spirit of partnership in the fulfillment of the successful territory exchange. Hopefully, these two states will unfold their latent potentialities to create an environment where in the dignity of the human person is preserved and ensured in all its manifestations. The word "them" Symbolizes the urge of state presence for enclaves people.

Let there be justice for them  
Let there be peace for them  
Let there be work, bread, water and salt for them.

\_Nelson Mandela Presidential Inaugural Address, Pretoria, South Africa, 10 May 1994. The words Symbolizes the urge of basic needs for entire community.

## 2. Historical Background of the study

Bangladesh is surrounded by its largest neighboring country India with three sides. The boundary line between India and Bangladesh was divisive from the beginning. On the time of demarcating the boundary line by Sir Radcliff, the enclaves were emerged. All Bangladeshi enclaves are located in Indian Territory and most of the Indian enclaves are located in Bangladesh.

If we look at the history of the ancient time, it must be clear to us that enclaves is the result of a series of chess game between the Maharaja of Kuch Behar and Maharaja of Rangpur. They gambled on their games by using villages as currency. Brender R. Whyte, an academic, describes the enclaves are the "result of peace treaties" in 1711 and 1713 between the Kingdom of Kuch Behar and Mughal empire, ending a long series of wars in which the Mughals extracted several districts from Kuch Behar.<sup>3</sup>

In partition time of Indian Subcontinent in 1947, the Maharaja of Kuch Behar choose to move with Indian Union and the neighboring districts of Rangpur and Dinajpur became parts of the then East Pakistan. Such a decision twisted Indian enclaves inside Pakistan and Pakistani enclaves inside India. In the early days after partition, there was no bar on the free movement of the people to their respective mainland but because of the increasing tension between the two countries led to the restriction on such movement.<sup>4</sup> As soon as Bangladesh emerged in 1971, it inherited this problem.

3 [http://www.economist.com/blogs/banyan/2011/02/enclaves\\_between\\_india\\_and\\_bangladesh](http://www.economist.com/blogs/banyan/2011/02/enclaves_between_india_and_bangladesh)

4 Brig Gen Abdus Salam Chowdhury, 'Bangladesh India Land Border Issues and Management,' *NDC Journal*, Vol. 2 no. 1 June 2003 p-63

How many Bangladeshi enclaves are situated within India, it becomes a subject of controversy as there is dearth of information about it. The mostly accepted information shows it has 111 enclaves land of India within Bangladesh-nearly 70 square kilometers. Bangladesh has 51 enclaves of its own, comprising 28 square kilometers surrounded by India.<sup>5</sup>

The enclaves of Bangladesh we have visited are given below:

| Name of enclaves                 | Area (acres) |
|----------------------------------|--------------|
| Dohogram (linked with mainland)  | 3,877.05     |
| Angorpota (linked with mainland) | 739.80       |
| Falnapur                         | 506.56       |
| Nalgram                          | 1,397.34     |
| Kochua                           | 119.74       |
| Dakshin Mashaldanga              | 571.38       |
| Paschim Mashaldanga              | 29.49        |
| Modhya Chhit Moshaldanga         | 11.87        |
| Purba Chhit Moshaldanga          | 35.01        |
| Purba Mashaldanga                | 153.89       |
| Uttar Mashaldanga                | 27.29        |
| Modhya Moshaldanga               | 136.66       |

Source: 1. Census Hand Book, 1961, India;

2. Whyte (2002)

## 2.1 Indo-Bangladesh relationship and the enclaves issue

Since independence in 1971, Bangladesh has pursued its principle of **friendship towards all, malice towards none** and Bangladesh has enjoyed favorable relationship with its largest neighbor India from the very beginning. It ought to be mentioned here that Bangladesh has a long border with India as also linguistic and socio-cultural affinities. Although both countries uphold friendly relation to each other, the controversial border issue is still remaining.

5 [http://articles.timesofindia.indiatimes.com/2012-08-03/interviews/33002254\\_1\\_enclaves-diptiman-sengupta-land-boundary-agreement](http://articles.timesofindia.indiatimes.com/2012-08-03/interviews/33002254_1_enclaves-diptiman-sengupta-land-boundary-agreement)

The main features of India- Bangladesh relation are-

- i) geographical contiguity
- ii) socio-cultural affinity
- iii) common security concerns
- iv) economic development
- v) harnessing common river

There are some common security threats for both countries like cross-border criminal movement, smuggling, small arms proliferation and drug trafficking. These problems can be resolved through joint action. Mutual concerns have made close cooperation between the two countries an imperative.<sup>6</sup>

India's role in the liberation war of Bangladesh determined close ties between both the countries. India emerged as an important economic partner of newly independent Bangladesh. Mujib's visit to India in May 1974 resulted in the signing of some important agreements regarding trade and investment in Bangladesh, improvement of communication link etc. As an evidence of sound and solid friendship among Bangladesh and India an agreement was signed between the countries on 16 May, 1974 by Sheikh Mujibur Rahman, the then Prime Minister of Bangladesh and his Indian counterpart Mrs. Indira Gandhi on 16 May, 1974. This agreement is known as Land Boundary Agreement, 1974.<sup>7</sup> Bangladesh has ratified the agreement in the Parliament immediately and handed over the relevant part of the South Berubari to India in the same year. However, India has not ratified the agreement yet.

Following the land boundary agreement on 7 October, 1982, another agreement was signed between Shri P.V. Narashima Rao the then Indian Foreign Minister and Mr. A.R. Shams-Ul-Doha, the then Foreign Minister of Bangladesh where the people of Dohogram-Angorpota enclaves had got limited access to the Tin Bigha corridor<sup>8</sup> for movement between the main land and the enclaves. However, it was not until 1992, that the corridor was finally opened amidst strong protest from anti-movement committee.

In 1986, from the Bangladesh side the then President Hossain Mohammad Ershad visited the Dohogram-Angorpota enclave, becoming the first head of the state to visit enclave. Ershad proposed a number of solution to solve the Dohogram-Angorpota enclaves problem, including constructing a flyover so that people could cross the Tin-Bigha Corridor without ever touching Indian soil.

6 Moonis Ahmar, *Paradigm of Conflict resolution in South Asia*, 2003, University Press Limited, Dhaka, Page-188

7 Mohammad Golam Rabbani, "Stateless in South Asia: Living in Bangladesh-India Enclaves", *Theoretical Perspective*, Vol. 12 & 13, Centre for Alternatives, Dhaka, 2005-06.

8 Tin Bigha is a corridor that connects the Bangladesh mainland to its enclaves of Dahagram and Angorpota.

The visit to Dhaka in February 1990, by the then Indian Foreign Minister, I.K. Gujrat, marked a new era in Indo-Bangladesh relations. The relation received a boost when the Indian Supreme Court, in a landmark judgment, proposed the transfer of the Tin Bigha Corridor to Bangladesh which was a unremitting issue between the countries.<sup>9</sup>

On 26 March, 1992, the government of two countries had signed another Protocol relating to security, control and use of the corridor for movement of people and vehicular traffic between India and Bangladesh. Then Bangladesh enjoyed the right to use the passage for each alternative hour starting from 6 am to 6 pm.<sup>10</sup> But the residents had a demand to use this corridor for 24 hours.

On June 2001, the then opposition leader of Bangladesh Sheikh Hasina discussed with Mr. Atal Behari Vajpayee about 6.5 Kilometers disputed borderland between India and Bangladesh. She also added the problem of some enclaves and occupied lands. This news was published in India's national newspaper "The Hindu" on June 20, 2001. At that time the access of 6-hours was increased to 12-hours use of the corridor (6.30 am to 6.30 pm) by the initiative of Bangladesh government. The corridor was given lease for 99 years to Bangladesh.

The year 2010 marked a renewed effort by both the Indian and Bangladeshi government to facilitate the exchange of enclaves. Bilateral talks and enthusiasm of mutual cooperation between both countries created a speculation that an agreement might be signed in September, 2011 during the time of Indian Prime Minister's visit to Bangladesh. However, in continuation of the boosting effort, on September, 2011, the Prime Ministers of the two countries (Manmohan Singh of Indian and Sheikh Hasina of Bangladesh) signed an accord on border demarcation and exchange of enclaves.<sup>11</sup> The residents of Dohogram-Angorpota have got the chance to use the Tin Bigha Corridor for 24 hours.

## 2.2 Table: History of Enclaves at a glance (1971- February, 2013)

| Date/ Year      | Event  |
|-----------------|--|
| 16 May, 1974    | Mujib-Indira signed Land Boundary Agreement, 1974. Bangladesh has ratified the agreement; India has not ratified the agreement yet.                          |
| 7 October, 1982 | Another agreement between the Foreign Minister of Bangladesh and India by which the people of Dohogram-Angorpota got very limited access to Bangladesh part. |

9 Moonis Ahmar, *Paradigm of Conflict resolution in South Asia*, 2003, University Press Limited, Dhaka

10 BANGLAPEDIA, *op. cit*

11 <http://www.economist.com/blogs/banyan/2011/09/border-agreements>

|                 |   |
|-----------------|---|
| 1990            | A landmark judgment by Indian Supreme Court to transfer of the Tin Bigha Corridor to Bangladesh   |
| 26 March, 1992  | Signed another protocol relating to security, control and use of the Tin Bigha Corridor for each alternative hour starting from 6 am to 6 pm                                      |
| 2001            | The access of 6-hours to Tin Bigha Corridor was increased to 12 hours. The corridor was given lease for 99 years to Bangladesh.   |
| September, 2011 | the Prime Minister of the two countries signed an accord on border demarcation and exchange of enclaves. The access to Tin Bigha Corridor increased to 24 hours.                  |
| February, 2013  | Cabinet of India approved the agreement, waiting for the ratification from the Parliament of India. After that border demarcation and swap will take place between two countries. |

### 3. Literature Review

| Name of Article/ Book   | Writer/Editor             | Summary of content  |
|---|---------------------------|---|
| Paradigm of Conflict Resolution in South Asia   | Edit. Moonis Ahmed (2008) | The chapter named "India and its Northern and Eastern Neighbors: Confidence Building through Cooperation" written by Smruti S. Pattanaik gives emphasis on confidence building among South Asian countries. This article pointed out common security threats of India-Bangladesh and mentioned that none of the problem can be resolved through individual action. Thus bilateral cooperation is necessary. |
| Socio-Economic Condition of People Living in Enclaves: An Exploratory Comparative Study | RMMRU (2006)              | This research assesses the socio economic conditions of the people of Dohogram-Angorpota enclaves of Bangladesh and 16,17 no. enclaves of India. It gives an idea of absence of fundamental rights in enclaves. It also indicates the sources of insecurity in enclaves.  |

|  |   |  |
|--|---|--|
| A new bond: Citizenship in the Enclaves (2011)   | Rashpal Garcha (2011)   | This article discussed about the right to nationality of enclaves dwellers and their possibility to become stateless.  |
| International Law and Human Rights; 17th Edition | Dr.H.O. Agarwal (2010)  | Nationality, citizenship, statelessness, Human Rights are well described in this book.   |
| Human Rights and Empowerment                     | Edit. Dr. Mizanur Rahman (2001)   | This publication makes it crystal clear: we cannot and we must not continue living in a society that fails to guarantee the fundamental Economic, Social and Cultural Rights to the vast majority of its population.     |
| Refugee Law                                      | Harun ur Rashid (2000)  | 'Stateless and Refugees' chapter of this book gives legal definition and explanation of statelessness.   |
| A Human Security Dilemma                         | Fedrik Barton (December 15, 2012)   | Unlawfully citizenships and benefits are restricted in some specific cases. The writer mentioned that in many instances this is the result of intentional discrimination.  |
| A study of Statelessness                         | United Nations Department of Social Affairs (1949)  | This study described Statelessness as a situation of wide amplitude and it is impossible to precisely define "Statelessness". Statelessness is a circumstance recognized both by municipal law and by international law. |
| "Hope for Indo-Bangladesh enclaves". NDTV        | <a href="http://www.ndtv.com/article/india/hope-for-indo-bangladesh-enclaves-132956">http://www.ndtv.com/article/india/hope-for-indo-bangladesh-enclaves-132956</a> . (12 September 2011) | This article indicates that 51,000 residents of these enclaves have remained effectively stateless, unable to vote in India or Bangladesh, and their well-being is neglected by both governments.                        |

#### 4. Operational definitions

##### *Enclaves:*

The enclaves, where pockets of one country's territory are surrounded by the other, appeared as "islands of land" that means enclaves are piece of land, which is situated in one country but claimed by another.

The word "enclaves" crept into the jargon of diplomacy rather late in English in 1868 coming from French the "lingua franca" of diplomacy, with a sense of inherited from late Latin *inclavatus* meaning shut in locked up.<sup>12</sup> In Bengali, the term enclave is known as 'Chhitmohal', the lexicographical meaning of it. Chhitmohal is one or more holdings lying separated from the country of origin.

BANGLAPEDIA has defined enclaves as "small and scattered pieces of landmass belonging to the one country located or surrounded by another. It emphasizes on its location within another country."<sup>13</sup>

According to the Oxford Dictionary, "An enclave is a portion of territory, entirely surrounded by foreign dominions."<sup>14</sup>

Encyclopedic World Dictionary in 1971 refers enclave to a country, an outlying portion of a country, entirely or mostly surrounded by another country.<sup>15</sup>

Consequently, an enclave is a geographical territory which is utterly surrounded by another foreign country. There is an intrusion of the foreign countries.

On the basis of physical structure enclaves are divided in three categories, such as-

- Enclave; the territory of one country located in another country.
- counter-enclave; enclave within the enclave i.e. the domestic territory laying in or surrounded by the enclave territory of other country. There are 21 counter enclaves of Bangladesh in Indian territory and 3 counter enclaves of India in Bangladesh.
- counter-counter-enclave; an enclave laying within a counter-enclave i.e. a detached part of the principal enclave laying in or surrounded by the counter-enclave of that enclave. India has 1 counter-counter enclave.<sup>16</sup>

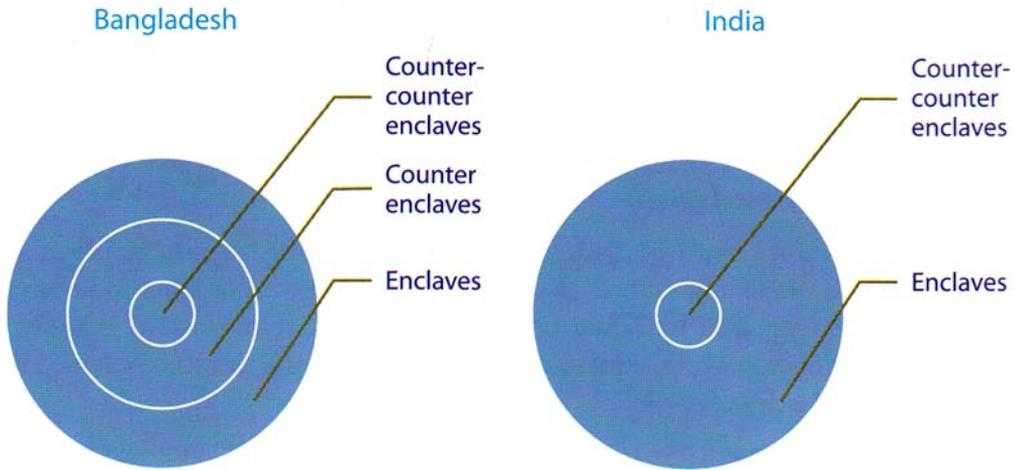
12 Robinson, G. W. S. (September 1959). "Enclaves". *Annals of the Association of American Geographers* 49 (3, [Part 1]): 283–295.

13 Shirajul Islam, *BANGLAPEDIA*, Vol. 3, Bangladesh Asiatic Society, 2003

14 Oxford English Dictionary (1989, v5, 211 & 508)

15 Mohammad Golam Rabbani, "Stateless in South Asia: Living in Bangladesh-India Enclaves", *Theoretical Perspective*, Vol. 12 & 13, Centre for Alternatives, Dhaka, 2005-06.

16 *ibid*



## Nationality

Nation-state is derived from the concept that humanity is divided into nations, that nations are bound by common links and held together by a will to live together whether they are homogenous or not.<sup>17</sup>

Individuals of a particular nation are supposed to owe allegiance to their States. Such individuals who owe permanent allegiance to a State are known as nationals of a State. Nationality may therefore be defined as the 'status of natural person who is attached to a State by the tie of allegiance.'<sup>18</sup> Thus, Nationality is the legal tie connecting an individual and a Nation state.

Oppenheim has very rightly stated that nationality of an individual is his quality of being a subject of a certain State.<sup>19</sup>

Nationality normally confers some protection of the individual by the state, and some obligations on the individual towards the state. Nationality affords the state jurisdiction over the Person and affords the person the protection of the state.

Article 15 of the Universal Declaration of Human Rights states that "Everyone has the right to a nationality," and "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

According to Article 24 of the International Covenant on the Civil and Political Rights, every child has the right to acquire a nationality.

17 Harun ur Rashid, "An Introduction to Peace and Conflict studies", Page-105, The University Press Limited, Bangladesh, 2005

18 Dr. H. O. Agarwal, International Law and Human Rights, 17th Edition, Central law Publications, India, 2010,

19 *ibid*

Article 9 of the Constitution of the Peoples' Republic of Bangladesh states that "The unity and solidarity of the Bengali nation which deriving its identity from its language and culture attained sovereign and independent Bangladesh through a united and determined struggle in the war of independent shall be the basis of Bengali nationalism.

Modes of Acquisition of Nationality:

The modes of acquisition of nationality are not uniform. They differ from state to state. Following are the modes by which nationality may be acquired:

| Acquisition of nationality | Modes of acquisition   |
|----------------------------|--|
| By birth                   | person whose birth takes place within territorial limits of a state acquires the nationality of that state                                   |
| By descent                 | on the basis of the nationality of either parent   |
| By Naturalization          | nationality by birth may, later on, change   |
| By Resumption              | the lost nationality by naturalization may acquire again   |
| By subjugation             | nationality through subjugation after conquest   |
| By cession                 | if a part of the territory of a state is ceded to another state, all the nationals of the former acquire the nationality of the latter state |
| By option                  | in time of state's partition, the nationals of the former state have an option to become the nationals of any of the successor states        |
| By registration            | acquire nationality of a state through registration  |

### Citizenship

The term citizenship differs from nationality. While nationality is the quality of belonging to a particular state by which the person is internationally known, citizenship denotes the relation between the person and municipal law. The most common distinguishing feature of citizenship is that citizens have the right to participate in the political life of the state, such as by voting or standing for election but the nationals may not enjoy full political rights despite their domicile in the country.

The concept of citizenship is composed of three main elements or dimensions.<sup>20</sup>

20 Cohen, J., 1999, "Changing Paradigms of Citizenship and the Exclusiveness of the Demos," *International Sociology*, 14 (3): 245-268.

The first is citizenship as legal status, defined by civil, political and social rights. Here, the citizen is the legal person free to act according to the law and having the right to claim the law's protection.

The second considers citizens specifically as political agents, actively participating in a society's political institutions.

The third refers to citizenship as membership in a political community that furnishes a distinct source of identity.

According to the Constitution of the Peoples' Republic of Bangladesh-

Article 6(1), the citizenship of Bangladesh shall be determined and regulated by law

Article 6(2) - the citizen of Bangladesh shall be known as Bangladeshis.

### Statelessness

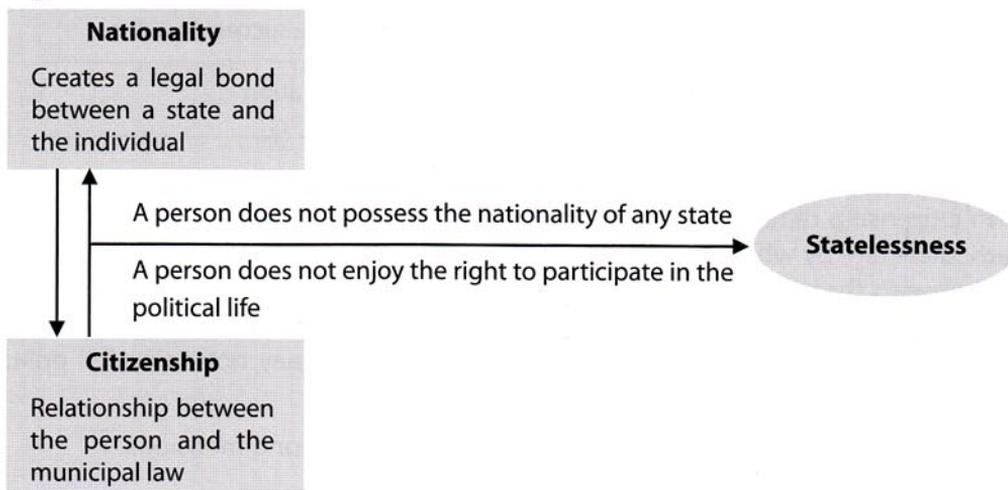
Once a person does not possess the nationality of any state, he is called a stateless person. A person may be stateless either by birth or after birth. Indeed the word was contrived to describe a person who cannot enjoy the protection of any state.

An international legal definition of statelessness came into being. A stateless person is "a person who is not considered as a national by any State under the operation of its law" (Article 1 of the 1954 Convention relating to the Status of Stateless Persons).<sup>21</sup>

### Convention Relating to the Status of Stateless Persons (1960)

This Convention establishes a state's obligation to "facilitate the assimilation and naturalization of stateless persons" (article 32) as well as a stateless person's right to the basic freedoms.

Figure



21 <http://www.unhcr.org/464dca3c4.html>

## Human Rights

Human rights-“the rights of man”- are, literally, the right that one has because one is human.<sup>22</sup> These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. Human rights also referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. It must be clear that human rights are not just abstract values such as liberty, equality, and security. They are rights, particular social practices to realize those values.<sup>23</sup>

The idea of human rights is bound up with the idea of human dignity. All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent may be termed as human rights.<sup>24</sup>

All human rights are equal in importance and are inborn in all human beings. The United Nations system has recognized two sets of human rights-

| Kinds of Human Rights                | Covered areas of human rights  |   |
|--------------------------------------|--|---|
| Civil and Political Rights           | Civil Rights-<br>*right to life, liberty and security of persons,<br>* right to privacy,<br>*home and correspondence<br>*right to own property<br>*Freedom from torture<br>*inhuman and degrading treatment<br>*freedom of thought<br>*conscience and religion<br>*freedom of movement | Political Rights-<br>*right to vote<br>*right to be elected at periodic elections<br>*right to take part in the conduct of public affairs |
| Economic, Social and Cultural Rights | Such rights are referred to collective rights.<br>*right to adequate food<br>*clothing<br>*housing<br>*adequate standard of living<br>*freedom from hunger<br>*right to work<br>*right to social security<br>*right to physical and mental health<br>*right to education               |   |

22 Jack Donnelly, *Universal Human Rights in Theory & Practice*, 2nd Edition, 2003, Cornell University Press, Ithaca and London

23 *ibid*

24 Dr. H. O. Agarwal, *International Law and Human Rights*, 17th Edition, Central law Publications, India, 2010

## Economic, Social and Cultural Rights

Economic, Social and Cultural rights are related to the guarantee of basic needs without which human being can not exist as human being. These rights are mostly known as positive rights which require active intervention of states.

Some important articles from International Convention on Social, Economic and Cultural rights are mentioned below-

### *Article 11*

*1. The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...*

*2. The State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger...*

### *Article 12*

*1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

### *Article 13*

*1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms...*

Economic, Social and Cultural Rights are counterpoint to the first generation of Civil and Political Rights, with human rights conceived more in positive (right to) than negative (freedom from) terms.<sup>25</sup> Even though there is a close relationship between Civil and Political Rights and Economic, Social and Cultural Rights, the United Nations has recognized two sets of rights in two separate Conventions. Both categories of rights are equally important for proper realization of rights and its existence. If we look at the developing countries, it has been rightly realized that civil and political rights have no meaning unless they are accompanied by social, economic and cultural rights.

## Land Boundary Agreement 1974

The Government of the People's Republic of Bangladesh and the Government of the Republic of India concerning the demarcation of the Land Boundary between Bangladesh and India and related matters signed an agreement on 1974. This agreement is known as Land Boundary Agreement 1974.

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<sup>25</sup> Dr. H.O. Agarwal; International Law and Human Rights; 17th Edition (2010); Page-733

1. The Land Boundary Agreement 1974 is the primary legal agreement that deals with the issue of undemarcated border, adversely possessed land and the enclaves.
2. Both governments have expressed a desire to find a viable solution while keeping in mind the spirit of the Land Boundary Agreement.
3. Article 1 section 12 and section 14 of the Land Boundary Agreement 1974 deals specifically with the exchange of the enclaves.

Section 12. Enclaves- The Indian enclaves in Bangladesh and the Bangladesh enclaves in India should be exchanged expeditiously, expecting the enclaves mentioned in paragraph 14 without claim to compensation for the additional area going to Bangladesh.<sup>26</sup>

Section 14. Berubari- India will retain the southern half of South Berubari Union No. 12 and the adjacent enclaves, measuring an area of 2.64 square miles approximately, and in exchange Bangladesh will retain the Dahagram and Angorpota enclaves. India will lease in perpetuity to Bangladesh an area of 178 metres× 85 metres near 'Tin Bigha' to connect Dahagram with Panbari Mouza (P.S. Patgram) of Bangladesh.<sup>27</sup>

4. Article 3 of the Agreement states that, the people shall be given the right of staying on as nationals of the state to which the area is transferred.
5. Article 3 of the Land Boundary Agreement also calls for the maintenance of peaceful conditions pending the exchange.

For the Land Boundary Agreement 1974 to come into force the government of India must ratify the agreement immediately and the ratification instruments must be exchanged as per Article 5 of the agreement.

### **5. Protocol to the Land Boundary Agreement, 2011**

On 6 September 2011, during a two-day visit by Indian Prime Minister Manmohan Singh to Bangladesh, the two governments signed a boundary protocol that will pave the way for the elimination of the 162 territorial enclaves. In delimiting the final outstanding sections of their continuous land boundary, the Bangladesh and India have agreed to exchange their respective enclaves without any claims to additional compensation. Both states had committed to this exchange in a 1974 land boundary agreement, but ever unable to implement the arrangement until now. This latest protocol follows recently completed survey work that mapped the full length of the continuous boundary. Based on this recent mapping, the final sections were described in more detail within the recent protocol which will direct demarcation work that is due to follow.<sup>28</sup>

<sup>26</sup> See Land Boundary Agreement between Bangladesh and India, 1974

<sup>27</sup> *ibid*

<sup>28</sup> [https://www.dur.ac.uk/ibru/news/boundary\\_news](https://www.dur.ac.uk/ibru/news/boundary_news), 8 September, 2011

This Protocol shall be subject to ratification by the Government of the People's Republic of Bangladesh and the Government of the Republic of India and shall enter into force on the date of exchange of Instruments of Ratification.<sup>29</sup>

## **6. Minimum empowerment of Economic, Social and Cultural Rights cure social exclusion of enclave dwellers.**

Economic, social and cultural rights are related to the guarantee of minimum necessities of life to human beings. In absence of these rights, the survival of human being is likely to be endangered. It has been rightly realized by the developing countries that civil and political rights have no meaning unless they are accompanied by social, economic and cultural rights.

The 2005 World Summit Outcome also stated that:

"We affirm that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis. While the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, all states, regardless of their political, economic and cultural systems have the duty to promote and protect all human rights and fundamental freedoms."

The above statement appears to be true as all the rights derive from the inherent dignity of the human person and are essential for his development. After the brainstorming field visit we feel that this notion must come into force in the life of enclaves peoples so that they are entitled to get the minimum basic necessities.

### **Case study : Silence is the most powerful outcry**

Rajiv Burman, a resident of Madha Masaldanga<sup>30</sup> a Bangladesh enclave in West Bengal's Koch Behar district shared his sufferings with us. Technically he is a citizen of Bangladesh. Certainly his humanhood is challenged because of the administrative inconvenience. It must be mentioned that five years ago his wife had lost her eyesight for the reason that she failed to prove her identity card as an Indian. She was taken to the hospital situated in Indian Territory. "My wife lost her eyesight because she was refused to get treatment in time. She could not cross the Indian border swiftly as she did not have any valid document to prove her identity", said Rajiv Burman who is among the 37,000 people of Bangladesh enclaves in India. He also said that "If we had been in Bangladesh, we would have been connected to the road; we would have a school, health facilities, electricity." Mr. Burman mentioned "But we have none of those. At times I wonder, are we human being or are ruin in the jungle." So it seems that those people are left out from the society.



Mr. Rajiv Burman is sharing his terrible experience

29 Protocol to the Land Boundary Agreement, 2011

30 Madha Masandanga: First-order enclave within India, area combined with that shown for the larger Dakshin Masaldanga (#74).

This traumatic experience and horrifying memory haunted Rajiv each and every passing hour. When we asked him about his choice in respect of citizenship, he instantly replied “we are not ready to afford any risk in relation with our existence and we always prefer active geographical bond with our state”. Add to this when we asked about his future plan surprisingly he remained silent. This silence is just like a dry season looked as though it would last forever.

This silent moan describes the unbearable sufferings which have been suffered by those people from timeless period. They feel that they are out from the society. They consider themselves as an “untouchable” in the society. Undoubtedly state is a unique magnet through which people have got the access to all the benefits of their citizenship. Technically enclaves people are the citizens of Bangladesh but virtually they have no government, no school, no police and no medical facilities. There is also no infrastructure for water or electricity. Taposh Kumar, a resident of Falnapur said “We appreciate Indian Citizenship because we have carried real and effective bond with India. India is geographically more convenient for us than Bangladesh. Now we have to face great hardship in relation to basic needs. Identity crisis is now becoming our destination. Though we are citizens of Bangladesh, we don't enjoy any right or privilege as Bangladeshis. Bangladesh doesn't give us anything. We can't go to Bangladesh and we're considered foreigners by India, which says it has no obligation towards us. That's why we are stateless citizens.” It is the basic duty of a state to put their people at the Centre of development and to focus on their needs and their potentials and administrative inconvenience prevails in enclaves make the whole process worthless. Soleman Ali of Kochua enclave said “The enclave residents have no official right to receive government jobs. They live without basic health care and are also deprived of facilities such as subsidized food and free primary education. They have been compared to stateless people because no country takes responsibility for them.”

**Table: Question of Nationality**

| Individual interview | Total interview | Question of citizenship             | Core concern of enclaves population | Nature of participants   |
|----------------------|-----------------|-------------------------------------|-------------------------------------|--|
| Moshaldanga 50       | 200 people      | 90% are claiming Indian citizenship | Fulfillment of basic needs          | *Teachers, law administrators, mediators of Nagirhat and Shitolkuti Union, Koch Behar<br><br>*Mass people of Moshaldanga, Nolgram, Kochua and Falnapur |
| Nolgram 60           |                 |                                     |                                     |  |
| Kochua 40            |                 |                                     |                                     |  |
| Falnapur 50          |                 |                                     |                                     |  |

Sometimes economic and social rights are just as essential as a political freedom or more so. The right to vote will lose its worth for someone who is starving or illiterate. Indeed political freedom will always be fragile until basic economic and social rights are guaranteed. We choose to focus on the economic and social rights of enclaves dwellers in the entire paper. In this regard we are encouraged to follow newly emerged "Indivisibility approach" for analyzing the situation in a holistic way.

To move beyond theory and conceptual analysis Indivisibility of human rights as a notion is mostly linked to that of interdependence, together meaning that "ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."<sup>31</sup>

Indivisibility in practice fundamentally means applying a holistic rights-based approach to activities aiming to protect and promote human rights, including economic, social and cultural rights. The case study named "Silence is the most powerful outcry" is the echo of that indivisibility approach. Deprived of basic needs Rajiv Burman, being an angry fueling person, has to determine his upcoming state presence where his adequate standard of life lies at the center of everything. We also find the majestic inspiration in favor of this notion from the preamble of the Constitution of People's Republic of Bangladesh. Constitution pledges attainment of a substantial degree of economic, political and social equality and expresses a constitutional concern for providing facilities and opportunities to the people to reach at least minimum standard of health, economic security and civilized standard of health, economic security and civilized living.<sup>32</sup>

There is one landmark example of progress, however, Tin Bigha Corridor, connecting a Bangladeshi enclave with its 'mainland' – although it took twenty years to happen, met heavy opposition and cost people's lives. 24 hours operation of Tin Bigha Corridor makes peoples life easier and which proves to be one of the milestone attempts among the diverse initiatives. Now People come to know about the significance of effective state presence. Chairman of Dahagram and Angorporta said "Now we feel the operation of state and feel the sky over our head." Before that tremendous annexation people suffered a lot concerning their self-identity and dignity. A matter of great concern is that as the entrance to the mainland was given up to 6.30 p.m., the people of the enclave had to face massive obstacles. If they wanted to go to Upzilla Sadar after scheduled time, they had to suffer harassment as the BSF never allowed them to go through the corridor. Without prompt and smooth functioning of right to passage people will not be able to enter into the compound of health services. Right to passage is addressed as civil and political rights and right to adequate health care includes social, economic and cultural rights.

31 See the OHCHR Website, on Human Rights in Development: [www.unhcr.ch/development/mainstreaming.html](http://www.unhcr.ch/development/mainstreaming.html)

32 Preamble of the Constitution of Bangladesh.

These boundaries emerged during the Cold War era, when the communist bloc stressed ESCRs and their emphasis on individual rights that benefit society, while many Western states emphasized CPRs, which are seen as important for strong democracies. Through the experience we have gained it is evident that these two groups of human rights are interrelated, traditional boundaries exist between them. Surprisingly in the following case study we will find lack of right to passage hampers the sound health of a mother as well as the life of a child.

### Untold Agony

Ms. Rokeya Begum, inhabitant of Dahagram, a pregnant lady aged 30, has the experience of persecution at the gate when after the scheduled time she accompanied by her husband tried to go to the mainland for the labour pain. It was an incident occurred one year back. It was evening when she was caught by pain and the local doctor attended her and advised her husband to take her to the Patgram Upzilla Sadar Hospital immediately. Then Rokeya accompanied by her husband set her journey for Patgram. But as the planned time for entering the enclave was over, the gate was closed. Then at the gate they had to manage the BDR to talk with their Indian counterparts at the corridor. When the BDR communicated with the BSF, they came to the gate and asked some questions about the sick person. BSF went to get permission from their superior authority. After one and half hour they came and allowed Rokeya and her husband to cross the border. Before the arrival she had got miscarriage. It was terrible night for her.



Rokeya Begum was haunted by her past memory.

Insufficiency of actual legal bond always appreciates denial of social, cultural and economic rights. Enclaves dwellers do not have basic capabilities to live in dignity. It is noticeable that "Minimum essential levels" of the rights to food, education and health were absent in this twilight zone tremendously because of administrative inconvenience. Ensuring the right to Safe motherhood is closely connected with the notion RIGHT TO LIFE. In this regard we would like to mention that as the primary addressee of international human rights law, States parties and their governments have the principal obligation to respect, protect and fulfill human rights. This is echoed in Rebecca Cook's contribution, "Advancing Safe Motherhood through Human Rights," of which the main message is that many forms of maternal mortality are preventable if there is legal framework, which establishes legal obligations and accountability for governments. In this regard, Cook also provides examples of performance standards, which could be used by courts and treaty-monitoring bodies to measure government compliance with their legal obligations, both national and international.<sup>33</sup>

33 See, for example, CESCR General Comments Nos. 12 (right to food), 13 (right to education), 14 (right to health), all in UN Doc. HRI/GEN/1/Rev.5, pp. 66-109), and 15 (right to water), UN Doc. E/C.12/2002/11

Cook rightly points out that

*the preventable rate of maternal mortality is but a...tragic symptom of a larger social injustice of discrimination against women and violation of women's human rights that societies are unwilling to prevent, remedy and punish....The overarching challenge in applying human rights to advance safe motherhood is to characterize women's multiple disempowerments, not just during pregnancy and childbirth, but from their own births, as a cumulative injustice that governments are obliged to remedy.*<sup>34</sup>

Keeping in tune with this concept Bangladesh Government has taken different initiatives through NGOs. Bangladesh has some important legislation regarding this. Before the 24 hours operation of Tin Bigha Corridor the term 'safe motherhood' was completely unknown to the people. Now Tin Bigha Corridor has made the proper state connection with Dahagram and Angorporta. Several NGOs like ASA, BRAC, RDRS starts to provide maternal care smoothly after this landmark initiative. We find that they can provide their service to 90% of the total pregnant women. Government is taking different initiatives through NGOs and now the people of Dahagram and Angorporta are having the taste of sate presence. So, Tin Bigha Corridor is the entrance of getting social, economic and cultural right. The rights to work, an adequate standard of living, housing, food, health and education lie at the heart of people's welfare. Our field research is mostly concentrated on social, economic and cultural rights. The presumption of the supremacy of civil and political rights has, as Leckie notes, led to gross violations and neglect of economic and social rights. He said:<sup>35</sup>

When people die of hunger or thirst, or when thousands of urban poor and rural dwellers' are evicted from their homes ,the world still tends to blame nameless economic or developmental force or the simple inevitability of human degradation before placing liability at the door step of the state. Worse yet, societies increasingly blame victims of such violations for creating their dismal fates, and in some countries, they are even characterized as criminals on this basis alone.<sup>36</sup>

State is the supreme enterprise that has the power to give effect of basic needs. Lota Burman, resident of Madha Masaldanga said "active bond proves through ensuring the minimum standard of life which means food, health etc."

So showing negligence towards social, economic and cultural rights may be proved as suicidal attempt. In this research paper we put our concentration on Economic, Social and Cultural rights for the smooth functioning of active state presence after the ratification of

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34 *ibid*

35 S.Jekie."Another Step Towards Invisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights"20 HRQ (1998)81at.p.82

36 *Ibid*

1974 Land Boundary Agreement. Through this paper we are sending wake up tune towards the government which signifies Social, Economic and Cultural rights of the people of that unique geographical zone named Enclave should not be ignored.

In the favor of this contention we refer to the Text of the Draft International Covenants on Human Rights, UN Document:<sup>37</sup>

“Human Rights could not be clearly divided into different categories nor could they be so classified as to be so classified as to represent a hierarchy of values. All rights should be promoted and protected at the same time. Without economic, social and cultural rights, civil and political rights might be purely nominal in character; without civil and political rights, social and cultural rights could not be ensured.” It must be mentioned that Constitution of Bangladesh welcome economic, social and cultural rights warmly. The Constitution sought to establish a Welfare State which was further strengthened by the fundamental principles of state policy which set out the economic, social and cultural goals of the Constitution and those principles were declared to fundamental to the governance of Bangladesh and a director to the interpretation of the Constitution and the laws of Bangladesh.<sup>38</sup>

### **7. Active nationality will protect enclaves’ people from ruin**

Nationality is the most frequent and sometimes the only link between an individual and a state, ensuring that effect be given to that individual’s rights and obligations at international law. It may be defined as the legal status of membership of the collectivity of individuals whose acts, decisions and policy are vouchsafed through the legal concept of the state representing those individuals.<sup>39</sup>

One of the best passages descriptive of the status is that contained in the judgment of the British –Mexican Claims Commission in *Re Lynch*:

“A man’s nationality forms a continuing state of things and not a physical fact which occurs at a particular moment, a man’s nationality is a continuing legal relationship between the sovereign states on the one hand and the citizen on the other. The fundamental basis of man’s nationality is his membership of an independent political community. This legal relationship involves rights and corresponding duties upon both-on the part of the citizen No less than on the part of the state.”<sup>40</sup>

So nationality is a relationship which is wrapped by thousands of promises and is capable to empower individual’s identity. On the voyage of our research, we witnessed that for

37 Annotations on the Text of the Draft International Covenants on Human Rights ,UN Doc.A/2929(1955),7 para 8.

38 *ibid*

39 Annual Digest of Public International Law Cases,1929-1930 p221 at 223

40 Definition by the International Court of Justice in the *Nottebohm Case*(Second Phase)ICJ 1955,23.

enclaves people identity crisis is the greatest agony among all. Mr. Rahim Sekh, resident of Kochua shared that “Our self- identity is based upon a common experience of isolation and exclusion developed within the enclaves.” In the case of nationality two key themes named Rights and Obligation plays the central role but awkwardly the residents of enclaves are often unable to access for all the benefits of their citizenship because of the lack of state presence. Nationality and citizenship are fundamental elements of human security because they provide people with a sense of belongingness and identity. Moni Ratna residents of Masaldanga said “We do not feel any sense of belonging”. Following Case study is the living proof of their unberable misery.

### 8. Case Study: Searching the identity

Muhammad Nazir Hussain, who lives in the enclave of Nalgram, (Bangladeshi enclave in India) certainly hopes that the question of his citizenship will soon be resolved undisputedly. He lives on a land his family has farmed for generations and considers himself Indian. But his village is authoritatively part of Bangladesh. His cousin's house a few hundred yards away is in India, though half of his fields situate in Bangladesh. Even the pond that borders Mr. Hussain's rice paddy is divided between the two nations, though the ducks that skimmed it did not seem to notice.



Evergreen mind of Nazir Hussain is not ready to give up hope.

“It is a very difficult problem,” he said, with considerable understatement. Mr. Hussain's younger brother, Manik Mia, has an Indian voter ID card because he was able to register at the home of a relative in an Indian village. Every family, it seems, is divided in this way. “I do not have Indian ID card. Though technically I am a citizen of Bangladesh but I do not carry any valid identity card and travel document so that I am refused to get benefits provided by government.”

In the case of enclave citizen we must say real and effective bond with motherland is extremely absent. In some cases citizenships and benefits can be restricted. In many instances this is the result of intentional discrimination.<sup>41</sup> In this regard, however, the enclave residents are not able to access the benefits of citizenship because of administrative inconvenience rather than an outright denial of citizenship rights. Whatever the cause, the results are the same. Enclave residents are not able to enter all the rights owed to them. Lack of active state presence leads effective statelessness.

41 Fedrik Barton, “A Human Security Dilemma”, Commission on Human Security December 2002. Accessed December 15 2012.

## Bangladesh enclaves turn out the lights in protest over citizenship

Effectively stateless residents of several Indian enclaves in Bangladesh made an unusual protest to demand implementation of an agreement giving them Bangladeshi citizenship.<sup>42</sup> It was conducted through keeping their homes in darkness at night. This protest manifests the outcry of enclave citizen for urging their citizenship right.

Thousands of people in the enclaves also marched on Saturday before refusing to light lamps at home in an attempt to draw the attention of authorities. On the other hand, Muhammad Rafat Hussain, who lives in the enclave of Nalgram, certainly hopes that the question of his citizenship will soon be settled. Effective nationality is the prime concern of enclave dwellers and the nature of nationality must contain the notion of continuity.

### Critically Stateless People: Enclave

Statelessness is a situation of wide amplitude and it is impossible to precisely define "Statelessness". Statelessness is a circumstance recognized both by municipal law and by international law.<sup>43</sup> It has indeed become in recent years a major problem of International Law, the very urgency and acuteness of which prompted the insertion of Article 15 in the Universal Declaration of Human Rights of December 1948 that everyone has the right to a nationality.<sup>44</sup> We observe in enclave area that statelessness arises there through the administrative inconvenience. Absence of frequent bond with state facilitates the condition statelessness critically and people have to suffer great hardship and lack of security. Enclave people are geographically cut off from their motherland and their condition may be compared with a vessel having no captain to guide it.

### Why they are stateless critically?

We find that for the peoples of Bangladesh enclaves in India valid identity card or travel document is required. They cannot be able to enjoy facilities provided by Bangladesh without the visibility of travel document or ID card.

It was held in the milestone case *Joyce v DPP* [1946] AC 347

"There are authorities to the effect that a duly authorized passport or passport like document (Travel document) is prima facie evidence of nationality, but there have also been decisions, both reported and unreported, that a passport like document is not to be relied on except in conjunction with other evidence of nationality, and is not conclusive on the question in the absence of such other evidence."

42 "Hope for Indo-Bangladesh enclaves". NDTV. 12 September 2011. <http://www.ndtv.com/article/india/hope-for-indo-bangladesh-enclaves-132956>. Retrieved 12 September 2011.

43 A study of Statelessness"(United Nations Department of Social Affairs,1949).

44 see Report of the International Law Commission on the work of its 5th Session (1953)para 22.

Peoples of enclaves do not possess any document which reflects their identity. We find that unlike many stateless people they simply feel like outsiders who have been rejected by the state. Proper documentation is important because it will provide the enclave residents with a sense of belonging and identity, as well as access to state protection and a legal basis for exercising civil, political, social and economic rights.

2. Through taking part in the election a citizen of a particular state may participate in the democratic process. In terms of Art.122 elections to parliament shall be on the basis of adult franchise. For the purpose of election to Parliament any citizen of Bangladesh of not less than eighteen years of age shall be entitled to be enrolled on the electoral role for a constituency and does not stand declared by a competent court to be of unsound mind.<sup>45</sup> It is a well-founded theory that people fuel their citizenship status and show their loyalty towards state through taking part in that democratic process.

Throughout the research we find that enclaves dwellers never take part in the election. Nobody seeks vote from them. In the words of enclave resident Ganesh Chandra from Nalgram "We are account of no supreme authority. We are the citizens of enclaves". So it is evident that their situation is just like stateless persons. Statelessness is discouraged grossly through adopting the convention named "Convention on the Reduction of Statelessness 1961". The 51,000 residents of these enclaves have remained effectively stateless, unable to vote in India or Bangladesh, and their wellbeing is neglected by both governments.<sup>46</sup>

## **9. The Government of India should move forward**

Chief Justice of India J.S Verma has rightly stated that "human dignity is the quintessence of human rights."<sup>47</sup> All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the minimum extent may be called human rights. We find that denial of those human rights cause chronic deprivation of resources and capabilities in the enclaves zone. Enclave people said that absence of effective state presence encouraged those denials of human rights. It is evident from the chain of history that series of historical efforts failed to establish the minimum standard of living which ensures the human dignity concerning the enclave people. In September 2011, the Indian Prime Minister Manmohan Singh, and the Bangladeshi Prime Minister Sheikh Hasina, signed an agreement in Dhaka to swap 111 Indian enclaves within Bangladesh for 51 Bangladeshi

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45 Ali Reza Khan v Election Commission, 50 DLR 58

46 "Hope for Indo-Bangladesh enclaves". NDTV. 12 September 2011.

<http://www.ndtv.com/article/india/hope-for-indo-bangladesh-enclaves-132956>. Retrieved 12 September 2011.

47 "The New Universe of Human Rights"p.3

enclaves within India.<sup>48</sup> In a proposed land swap, the two countries would exchange tiny enclaves, or 'chit mahals' that have existed as anomalies since official borders emerged between India and Bangladesh, then East Pakistan, in 1947. This renewed commitment was warmly welcomed by the people living in the enclaves. They are cautiously hopeful that their citizenship will finally be settled, but this is hardly the first attempt to solve a bedeviling problem.

The 2011 pronouncement by both governments to exchange enclaves has revived the Land Boundary Agreement 1974. Both governments have articulated their desire to find a viable solution keeping in mind the spirit of Land Boundary Agreement. But the exchange of enclaves is legally cession of territory and it demands constitutional amendment by both governments. It was held in *Kazi Mukhlesur Rahman v. Bangladesh*, 26 DLR (AD) 44<sup>49</sup> that "the agreement involved cession of territory which could not be done except by constitutional amendment. So the Land Boundary Agreement is insignificant unless the constitution is amended. Bangladesh has preserved her promise through the third amendment on November 28, 1974 in order to give effect to the Land Boundary Agreement 1974. The amendment brought changes to Article 2 of the Constitution in respect of exchange of certain enclaves and boundary lies between India and Bangladesh.

Still India does not take any attempt to amend the constitution in order to give effect to the Land Boundary Agreement 1974 which is the key to resolving this longstanding issue. The BJP claimed, in a resolution passed last October, that "the rights and interests of the local population" would be "severely compromised" by the land swap. But a senior BJP member admitted that the issue of the enclaves was "really a small issue that can be amicably resolved." He told the nation that the India-Bangladesh border ran through densely populated areas, and "the Indians living there are worried illegal migrants."<sup>50</sup> The ball is really in the court of India. So it is better to light a candle than to curse the darkness. Let us hope for the best. Fortunately, the Indian Cabinet Committee on Security indicated in March 2011 that they will enact a constitutional amendment to deal with the exchange.

After the desired amendment of the constitution the law of succession will come into force. Certainly the exchange of enclaves is a case of state succession. Succession means changes of sovereignty over territory. Avoiding the statelessness is one of the fundamental concerns in respect of succession. So the problem here is whether and to what extent the successor state can claim its nationals as citizens of the predecessor state. Prima facie, persons living or domiciled in the territory subject of change, acquire the nationality of the

48 "Hope for Indo-Bangladesh enclaves". NDTV. 12 September 2011.  
<http://www.ndtv.com/article/india/hope-for-indo-bangladesh-enclaves-132956>. Retrieved 12 September 2011.

49 26 DLR (AD) 44.

50 M.Rahman "Enclave survey to be done by mid – June, The Daily Star, May 24 2012.

successor. But there is no duty at international law upon the successor state to grant any right of option as to citizenship, nor correspondingly, is there any duty upon the predecessor state to withdraw its nationality from persons normally living or domiciled in the transferred territory. Most cases it is found have been regulated in detail by agreement. In the proposed exchange agreement the Bangladeshi enclaves will fall under Indian sovereignty and the Indian enclaves will join Bangladesh. The residents will obtain the opportunity to use the right to option principle. Using this principle they will relocate themselves to the country of their current citizenship, or accept the citizenship of the state to which the territory is transferred.

We find that there is a demand on the part of people living in these Bangladeshi enclaves that even though they are technically Bangladeshi nationals, they prefer Indian citizenship. Some of the Bangladeshi nationals have been able to procure documents by virtue of which they are Indian citizens.

Diptiman Sengupta, Assistant Secretary of the Cooch Behar-based Bharat Bangladesh Enclave Exchange Coordination Committee, told the Deccan Herald: "The situation can get out of hand if there is any population exchange."<sup>51</sup> Sengupta expects 'Indians' and 'Bangladeshis' living in these enclaves to continue to live in these pockets even after a formal settlement deal between the governments of the two countries is signed.

Throughout the field visit we did not find a single Bangladeshi living within enclave who prefers to migrate to Bangladesh. Wise use of that option is required. The challenge is for both governments, to confirm no one becomes stateless after the exchange of territories. Article 10 of the 1961 Convention on the Reduction of Statelessness<sup>52</sup> is closely relevant in the enclave exchange. It explains

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer.
2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or an acquisition.

It must be clarified that the evidence is overwhelmingly in favor of the view that the population follows the change of sovereignty.<sup>53</sup> There is a general presumption that

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51 Ibid

52 The Convention was adopted and opened for signature by the United Nations Conference on the Elimination or Reduction of Future Statelessness, convened by the Secretary-General of the United Nations pursuant to General Assembly resolution 896(IX) of 4 December 1954.

53 Professor Ian Brownlie of Oxford University, *Principles of International Law*, (4th ed. Oxford University Press, 1990).

persons attached to a territory will ipso facto lose their former nationality and acquire the nationality of the new state. But under this proposed agreement, the enclave residents could continue to reside at their present location or move to the country of their choice. This proposed accord offers the right to option principle to the enclaves' citizens. It seems that this exchange poses a remarkable challenge for both governments, to ensure no one becomes stateless after the exchange.

### Operational Part

"Man's main task in life is to birth to himself: to become what he potentially is. The most important product of his effort is his own personality."- Erich Fromm, Man for himself. Keep that notion in mind most recently the Committee on Social, Economic and Cultural Rights began to identify the core obligations arising from the "minimum essential levels" of **the rights to food, education and health**, and it confirmed that these core obligations are "non-derogable (General Comment No. 14, para. 47). **Those rights represent an essential condition of human survival.** Through our operational part we will try to put some empirical findings which will help you to apprehend the scarcity of basic needs suffered by enclaves people.

### 10. Education

Education is the best resort for achieving rational thought and conscience and those are essential to the development of personality. So International instruments give education the supreme position among diverse kinds of rights unlike the Constitution of Bangladesh.

Article 13 of the ICESCR provides for the right of everyone to education. Both Articles 13 and 14 have been the subject of General comments.<sup>54</sup> In its General Comment 13, the Committee strongly supports the significance of this rights .It dictates:

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children and exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment and controlling population growth. Increasingly education is recognized as one of the best financial investments states can make. But the importance of education is not just practical: a well-educated, enlightened and active mind ,able to wander freely and widely, is one the joys and rewards of human existence."<sup>55</sup>

54 For a detailed consideration see United Nations,The right to Human Rights Education:The United Nations Decade for Human Rights Education(1995-2004) (New York and Geneva:United Nations)1999.

55 ICESCR General Comment 11,Plans of Action for Primary Education (Article 14),General Comment No.11(10/5/99);ICESCR General Comment 13,The Right to Education( Article 13)(8/12/99)(E/C 12/1999/10)para1

Keeping in tune the view Bangladesh has also articulated their commitment to economic, social, ESCR through domestic law and constitution comprehensively. Part II of the Constitution narrates the fundamental principles of state policy where education earns the superlative position. Article 17 of Bangladesh Constitution explicitly dictates that establishment of a uniform mass oriented and universal system of education and extending free and compulsory education to all children to such level as may be determined by law relating education to the needs of society and removal of illiteracy.<sup>56</sup> So Right of education is essential for the protection and maintenance of dignity of individuals and it creates conditions in which every human being can develop his personality to the fullest extent .

Series of extensive legislations has been promulgated by Bangladesh government for promoting and making education and educational institutions physically and economically accessible to everyone. Bangladesh is a ratifying country of Child Rights Convention. Bangladesh is obliged to formulate a plan of action for children covering all the requisite action necessary which leads comprehensive realization of this right . Providing Compulsory Primary education is the prime concern of Bangladesh Government. According to ICESCR General Comment 11<sup>57</sup> the term “compulsory” is meant

“To highlight the fact that neither parents, nor guardians, nor the state are entitled to treat as optional the decision as to whether the child should have access to primary education. It also goes on to note that “free of charge” is meant to ensure that education is free, without any costs falling on the child ,the parents or the guardians.<sup>58</sup>

1. In the light of that then we find the absurd picture existing in enclaves situated in Koch Behar ,India:

The people of these enclaves are de jure citizen of Bangladesh, but never get any kind of facilities from Bangladeshi government for their primary, secondary or any kind of education program. So the lack of effective state presence is heinously evident in the realm of education. We find that almost all of the enclaves go without the most basic of educational opportunities. Madha Masaldanga, an Bangladeshi enclave in India ,has no school. Children choose to walk for almost half an hour to reach a primary school Nazirhut in mainland India. Usually they use fake addresses to be admitted to schools in India as it is extremely difficult to travel to the mainland for school. Without Identity Card they suffer hardship for stepping to the compound of mainland. Shekhor Chandra residence of Madha Masaldanga said that “I became the subject of torture when I got admitted to an

56 Constitution Of Bangladesh Article 17.

57 ICESCR General Comment 11,Plans of Action for Primary Education (Article 14),General Comment No 11(10/05/99) (E/C 12/1999/4) para6

58 ibid para7

Indian School". So minimum viable education is not available for the children in this territory. Shekhor Chandra said that Thinking about higher education is just like building castle in the air for us. You did not find a single one who received higher education living inside the enclave. There is also no incentive to send children to school as the inhabitants of the enclave have little job opportunity in India or Bangladesh.

**Following case study will help to figure out the acute crisis which prevails in enclave zone:**

#### **Struggle for being enlightened**

Previously he had lived in Kachua, a Bangladeshi enclave situated in India. Education was not available at his place. But this energetic boy refused to give up and decided to continue the struggle for education. He believes that education serves knowledge and knowledgeable people are in a better position to respond to diverse incentives and opportunities. He sought admission into Indian school by using a fake address. After revealing the truth he became the subject of degrading treatment. Again he did not give up. Bearing all the devastation he finally completed his study from that particular school. He strictly said that ignorance is the greatest curse among all. This vatia boy is now the chairman of Dahagram and Angorporta Union.

In the light of that story anyone can understand that the unfortunate child of those enclaves do not get the minimum light of education. Add to this the term quality education is completely anonymous for them. Though Bangladesh is a ratifying country of CRC but the de jure citizens of those enclaves are not entitled to enjoy the privileges confirmed by the state. CRC calls for the registration of a child immediately after birth.<sup>59</sup> Birth Registration is the entrance for achieving the varieties of child benefits provided by government .keeping in mind the notion in 2004 the parliament passed the Birth and Death Registration Act 2004.<sup>60</sup> This law for the first time recognizes birth certificates as a legal proof of age. But those impressive strides are not effective in enclaves. They are deprived of their right to birth registration facilities.

**2.After the operation of Tin Bigha Corridor people of Dahagram and Angorporta has felt the fragrance of state presence.** Tin Bigha Corridor connects Dahagram and Angorporta with Bangladesh directly.

**Following analysis is the living proof of that tremendous improvement**

Balance Sheet of educational development-Dahagram and Angorporta

59 Article 7(2).

60 Act No 29 of 2004

### After the annexation of Tin Bigha Corridor

- Through the mass literacy program introduced by government in 1998 the literacy rate of Dohogram and Angorpota touched the highest pick. After this project the literacy rate of Dohogram and Angorpota are almost 100% declared by the Government. We scrutiny that one of our interviewers named Fatema Begum did not take part in this program. Besides that we have got 10 respondents who achieved primary education, 5 have learned up to class 10, 4 of the respondents have passed S.S.C and 2 had passes H.S.C. we met 1 graduate and no post graduate among the interviewers. Finally we have got 2 respondents who can only sign. (See table)

Those statistics provide a positive picture that supremacy of state presence has undisputedly spread its smell in Dohogram and Angorpota concerning the area of education.

- Effective state present is very much visible in the enclaves' zone. Student rate of primary education is immensely satisfactory in Dohogram and Angorpota. Our empirical evidence on the education level of the people living in the enclaves shows that one or two family members of the 22 interviewers have completed their S.S.C examination. Our field visit portrays that almost all of the students have access to education.

| <b>The Education Scenario of Angorporta-Dahagram, 2011</b> |                  |
|--|------------------|
| Total children in the area                                 | 5000             |
| Total children get admission                               | 4000             |
| Number of students in community school                     | 700              |
| Number of students not in touch of education               | 1000             |
| Number of students pass out class 5                        | 1500             |
| Number of students get admission into High school          | 500(APPROXIMATE) |
| The female and male students ratio                         | 2:1              |
| Number of students appear in S.S.C                         | 250(APPROXIMATE) |

### Core features of educational institutions

| <b>Number of Schools in Dohogram-Angorpota</b> |    |
|--|----|
| Govt. primary School                           | 04 |
| Non government primary school                  | 04 |
| Community Primary School                       | 01 |
| High School                                    | 01 |

Quality education is not ensured yet in the area. The issue of minimum education and signature only shows an optimistic scenario of education in Dahagram and Angorporta. But the area has failed to reach the threshold of quality education. According to the General Comment no11, the education offered must be adequate in quality, relevant to the child and must promote the realization of child's other rights.<sup>61</sup> So we need a long walk in this regard.

### Some key features in respect of quality education

- It is to be mentioned that due to the lack of practice the literacy rate is now gradually declining as the people who attended mass literacy program are forgetting what they learned before. **Certainly quality education is a process which leaves a long term effects in peoples mind.** It is a evident from the data analysis that quality education does not come in to play in this regard
- Minimum numbers of teachers is one of the acute problems in enclaves' zone.
- The teachers who are appointed by the government from outside the enclave they often do not come to the school. Lack of the accommodation facilities plays a key role here.
- Only one high school has situated in the area of enclave (Dohogram-Angorpota). Total numbers of students of the school are 422 and surprisingly students are handled by only nine teachers. Commerce and science group is completely absent in the school and students has left only one option that is humanities for building up their career.
- Ironically teachers refuse to follow class routine which creates an enormous dilemma for students. According to Mosammat Rebeka (student of class nine) that we met our English teacher Mr. Mir Zumla once in a month. Mr. Mir Zumla is remarked as a blue moon in the school. It is reviewed through our entire field visit that homework and class work papers has never been checked. Shockingly students appeared before the examination without knowing their mistakes.

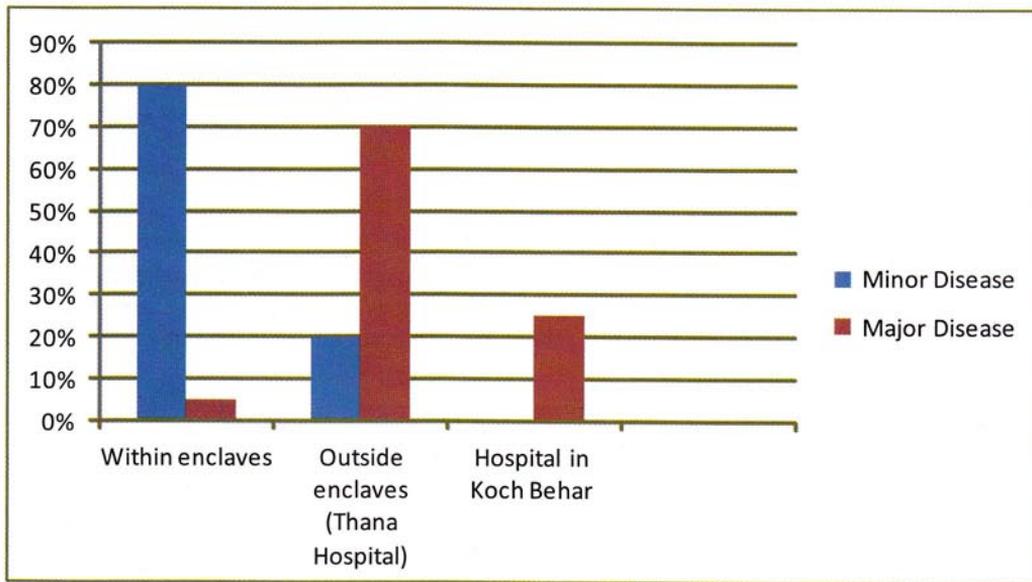
### Before the annexation of Tin Bigha Corridor

- Previously the people of Dahagram and Angorporta were deprived of the right to education. They were geographically cut off from their motherland so that it is extremely difficult to travel to the mainland for school. It was hardly to get a person who completed up to S.S.C level before 1988.
- Before 1988 they often used false identity card and sought admission into the Indian school. They faced humiliation and discrimination however if true identity was revealed.
- There was no educational infrastructure before 1988 so nobody could be able to think about quality education.

Dahagram and Angorporta now become the part of Bangladesh by the landmark annexation of Tin Bigha Corridor. So the state cannot avoid obligations on the grounds of geographical inconvenience.

61 ICESCR General Comment 11, Plans of Action for Primary Education (Article 14), General Comment No.11(10/5/99); ICESCR General Comment 13, The Right to Education (Article 13)(8/12/99)(E/C 12/1999/10)para1

## 11. Health Situation



A long life may not guarantee that people increase their talents and achieve their goals but it develops the chance that they win Key elements for survival called health incentives are completely absent in the enclaves' zone. However we know the verse of Buddha "without health life is not life". National and International instruments advocate in favor of the notion called "health incentive" firmly. Article 12 signifies for the right to the highest attainable standard of physical and mental health. The steps required for the realization of these rights include formulating adequate provisions for making available the required medical care to everyone. The right to health has been the object of General Comment by the Committee on the International Covenant on Economic, Social and Cultural Rights.<sup>62</sup>

The Committees visions are symbolized when it notes:

"Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies or the implementation of health programs developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover the right to health includes certain components which are legally enforceable."<sup>63</sup>

62 ICESCR General Comment 14, The Right to Highest Attainable Standard of Health (Article 12) General Comment No.14 (11/08/00)(E/C,12/200/4)

63 Ibid .para.1

Keeping tune with the view of ICESCR, Part II of the Constitution signifies that the state is committed to raise the level of nutrition and improvement of public health and morality.<sup>64</sup> In this regard the Bangladesh health policy was published in 2011 and health is defined there as "A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."<sup>65</sup> Diverse kinds of missions and visions have been introduced by the National Health Policy (NHP). NHP has promised to make necessary basic medical utilities reach people of all strata as per Section 15(A) of the Bangladesh Constitution, and develop the health and nutrition status of the people as per Section 18(A) of the Bangladesh Constitution.<sup>66</sup> One of the strategies of NHP is to prevent diseases and promote "Health for All". The Health Policy focuses on provision of the best possible health facilities to as many people as possible using cost-effective methods, and will thus ensure effective application of the available curative and rehabilitative services. NHP is obliged to ensure equal distribution and optimum usage of available resources to solve urgent health-related problems with focus on the disadvantaged, the poor and unemployed persons. But those constructive initiatives seem to be of no use in the zone of enclaves.<sup>67</sup> It is the breeding place for spreading Cholera, Malaria, chicken pox and many diseases. The approximate statistics are unknown as there are no official numbers or any attempt to collect numbers by the respective governments.

Bangladesh Labor Code 2006 (sec51-sec96)<sup>68</sup> has also given much accent to maintain the physical fitness and welfare of the workers by requiring certain minimum standards of occupiers to keep establishments clean and free from effluvia arising from drain, privy or refuse in and around the establishment premises.

In the light of those safeguard measures we would like to share our experience in relation with enclaves situated in Kuch Behar:

Those precious words which are accorded in International and national instruments become only "beau-words" when we portray the real feature existing in Bangladeshi

64 Article 18.

65 "Frequently asked questions" (Web page). <http://www.who.int/>. World Health Organization. 2012. <http://www.who.int/suggestions/faq/en/index.html>. Retrieved 21 March 2012.

66 Staff (2011). "Health Policy 2011" (in Bengali) (PDF). *Ministry of Health & Family Welfare, Government of the People's Republic of Bangladesh*. Ministry of Health & Family Welfare, Government of the People's Republic of Bangladesh. [http://www.mohfw.gov.bd/index.php?option=com\\_content&view=article&id=74%3Ahealth-policy-of-bangladesh&catid=54%3Abasic-link-page&Itemid=92&lang=en](http://www.mohfw.gov.bd/index.php?option=com_content&view=article&id=74%3Ahealth-policy-of-bangladesh&catid=54%3Abasic-link-page&Itemid=92&lang=en). Retrieved 7 June 2012

67 Staff (2007-2008). "Home" (in Bengali and English). *Ministry of Health & Family Welfare, Government of the People's Republic of Bangladesh*. Ministry of Health & Family Welfare, Government of the People's Republic of Bangladesh. [http://www.mohfw.gov.bd/index.php?option=com\\_content&view=frontpage&Itemid=1&lang=en](http://www.mohfw.gov.bd/index.php?option=com_content&view=frontpage&Itemid=1&lang=en). Retrieved 7 June 2012

68 Bangladesh Labor Code 2006

enclaves enclosed by the territory of India. The fragrance of state presence has not been felt in enclave zone. People of enclave are struggling against their limited livelihood and inadequate health facilities. Deprivation side of the health issue requires the sustained attention of the state. Unfortunately Bangladesh government has never provided any kind of medical care in those enclaves of her in India. There is no Government hospital or medical complexes present in those enclaves for the treatment of the patients. Private Hospital, community or NGO based hospitals, village doctors are completely absent in the enclave zone. So in most of the primary source of treatment for minor illness are indigenous methods. The nearest hospital is located outside the enclave and in a foreign country So most of the cases Bangladeshi enclave residents prefer to seek medical assistance from Indian hospitals because of the geographical convenience. In this regard we would like to refer a case, where a Bangladeshi woman gave birth in a Kuch Behar hospital .Despite being an illegal entrant the woman was admitted on humanitarian grounds. In this case the woman declared herself as an illegal entrant before giving birth . In most cases Bangladeshi enclave residents use false names. Sometimes Indian citizens pose as their husbands.<sup>69</sup> So it is proved that the residents rely on other surrounding villages for assistance.<sup>70</sup>

Enclaves are the breeding place for cholera, malaria small pox and other disease. The rate of infant and maternal mortality are also alarmingly high.<sup>71</sup> It is very tough to figure out the appropriate statistics as there are no attempts to collect numbers by the respective governments.

National Health Policy spells out the strategies which will distribute budget from district to community level within reasonable flexibility to provide increased benefits to the poor and disadvantaged communities, optimize expenses and ease accessibility to services. No vaccination Program has been taken by the state for those impoverished peoples Undisputedly enclaves people are the critically disadvantaged people and they require affirmative action of the state because of their social and geographical vulnerability. The concept of affirmative action requires some positive intervention of the state to keep balance and equilibrium in the society by removing administrative and legal barrier that inhibits equal participation and equal opportunity of disadvantaged sections of the society.<sup>72</sup> Practically existing affirmative action does not cover the area of enclaves. Even those people have never got the minimum favorable treatment. But they would deserve deserved to get extraordinary care from state due to their unfortunate circumstances.'

69 Uddi Chisti, "Legal Posers on birth "The Telegraph ,March 30,2011. Accessed March 30,2011.

70 Ibid

71 Arindam Sen "The Chitmahals "Problem:Need for Urgent Solution"HumanScape VolIX,Issue XI (November 2002). Accessed March 30,2011

72 Doctoral Researcher ,Vrije Universiteit Brussel.

### Case study

Gani Burman resident of Madha Masaldanga expressed his sadness about the medical care prevailing in enclave. Suddenly his brother was attacked by *epidemic* disease called Cholera. Vaccination Program as well as treatment facilities were not available in enclave. Bangladesh has never arranged a vaccination program there or adequate public health measures. His brother managed to reach nearby Indian Hospital with the assistance of his Indian friend. His brother became the subject of gross negligence. At last he died of cholera because of negligence.

After the annexation of Tin Bigha Corridor the living condition of Dahagram and Angorporta has improved tremendously and it opens the door for residents seeking uninterrupted medical care and assistance anywhere in Bangladesh which helps people to ensure sound health without any harassment made by BSF. Bangladesh Health Policy 2011 introduces some indicators which help to understand the actual health feature of the particular zone. Maternal mortality rate, sanitation, drinking water, family planning cover the area of health indicators. Under the light of those indicators we try to sketch the health circumstances existing in Dahagram and Angorporta.

### Drinking Water

In these enclaves the primary source of the drinking water is tube –well. 45(90%) Of the respondents recognized the tube-well as their primary source of drinking water 5(10%) respondents informed that they used to take water from wells. One positive finding is that the area is arsenic free. There are three hundred and ninety tube-wells in the area.

| Primary Source of Drinking Water (among 50 respondents) |                         |
|---|-------------------------|
| Use Tube-well   | 45 (90% of respondents) |
| Use Well  | 05 (10% of respondents) |

### Sanitation

All the families use sanitary latrines. 100% sanitation has been achieved due to the contribution of Swanirvar, government and local people. Swanirvar has given 817 sets of latrines to the people. Though there is no official statistics but it is estimated that people of Dahagram and Angorporta has achieved 100% sanitation.<sup>13</sup>

| Sanitation (Contribution of Swanirvar, Government and Local people) |      |
|---|------|
| Sets of Latrines distributed by Swanirvar                           | 817  |
| People use sanitayr latrines  | 100% |

## Family Planning

Bangladesh Health Policy 2011 promises to explore ways to make the family planning programme more acceptable, easily available and effective among the extremely poor and low-income communities. In this regard we find optimistic feature in Dahagram and Angorporta where family planning measures are highly encouraged. Out of around 1700 able couples 1400 couples adopt birth control incentives.

| Success rate of Family Planning        |      |
|--|------|
| Total Couple                           | 1700 |
| Couples adopt birth control incentives | 1400 |

Ready and affordable access to health services is vital for human development. But unfortunately lack of smooth and proper communication system discourages doctors to settle there and continue their services for preserving the well-being of those residents lived in Dahagram and Angorporta. It is to be mentioned that in 1995 under the Development sector, Government established a 10-seated hospital. Now this hospital does not contain a single doctor and it is firmly functioned by a medical assistant called Zillur Rahman. Due to this reason, the people of the enclaves have to go to Patgram Upazila Sadar in case of major ailments.<sup>14</sup> However in case of minor ailments the people get medicine from local hospital directed by Zillur Rahman. In the midnight if people become sick they are not able to get health facilities. So this is the major area where the government should take the immediate step.

But in comparison with enclaves situated in Kuchbehari, the conditions of Dahagram and Angorporta has improved significantly through confirming the effective state presence. It must be mentioned that the right to health includes both freedoms and entitlements. The entitlements contain the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.<sup>15</sup> As citizens of Bangladesh the people of enclaves deserve to get the equal opportunity to enjoy the highest attainable level of health.

## 12. Right to work

Satyajit Barman and Madhob Barman, residents of Mashaldanga, a Bangladeshi enclave in Cooch Behar district of West Bengal, migrated to New Delhi to work as a daily labourer. Madhob Barman managed a job as he has a fake Indian ID card but Satyajit Barman returned after being sacked for not possessing an identity card that would prove his Indian nationality.

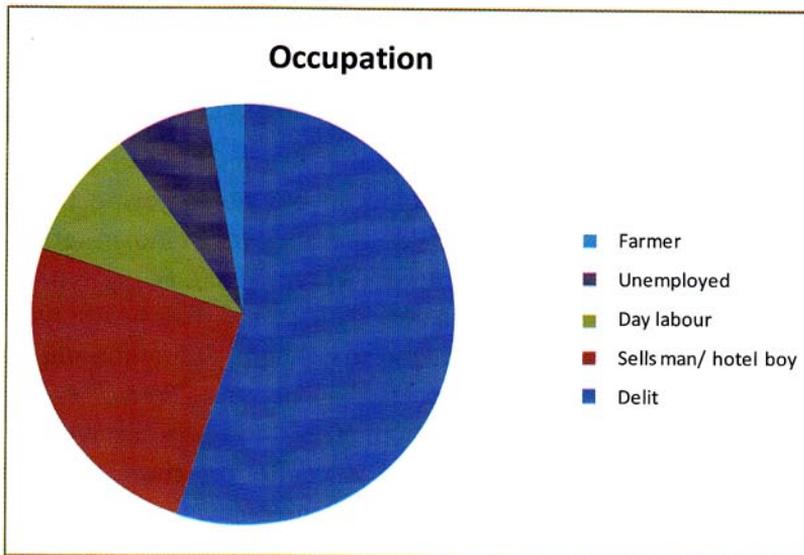
However, Madhob managed a fake ID card but both of them are not entitled to have any Indian ID card as officially they are not Indian citizens. But the surprising part of the story is that Satyajit and Madhob are not Bangladeshi either as they don't have any physical connection with the state they belong. They are just enclave dwellers whose are deprived of the most basic thing of life - nationality.

Mashaldanga is the large Bangladeshi enclave in Cooch Behar. It is spread over 400 acres with 10 unusual residents (official figure: around 2,000)<sup>73</sup> lead a life of poverty and constant fear. Fear of being arrested and sent off to prison as soon as they step out of the enclave, as they have to in order to survive. Fear of the harassment that's common at the hands of BSF, police and even Indian citizens who ridicule, cheat and extort money from them.<sup>74</sup> They are the Bangladeshi citizen with no visible bonding with state, with no rights and privileges, would naturally get from a country of nationality.

There are 51 enclaves of Bangladesh at the Cooch Behar, India and the dwellers have chosen difficult profession for their struggles in life. For the sake of survival many have taken the profession of black marketers.<sup>75</sup> Many others have spent their life with half-starved stomachs.

Rahima Akhter, a resident of Kachua, enclave of Bangladesh in Cooch Behar said that, "I was unable to wed my eligible daughter due to my economic problem. Someday my daughter escaped from my house with a great sorrow and now I don't know is she alive or not". She added that "I tried to get a work as home servant in main town of Cooch Behar but no one helps me as I could not show them Indian Id card and don't have the fake one."

Dwellers of enclaves move to India with a great risk. As some of them have false ID card, they get some work as daily labourer and others has to depend on the agricultural land for minimum survival.



73 [http://articles.timesofindia.indiatimes.com/2012-02-23/kolkata/31090211\\_1\\_enclaves-indian-citizens-stateless-people](http://articles.timesofindia.indiatimes.com/2012-02-23/kolkata/31090211_1_enclaves-indian-citizens-stateless-people)

74 Ibid

75 <http://www.chrdhs.org/enclaves-within-india-and-bangladesh-an-ongoing-human-rights-a-humanitarian-catastrophe>

| Occupation          | Percentage (%) |
|---------------------|----------------|
| Farmer              | 55%            |
| Unemployed          | 25%            |
| Day Labour          | 10%            |
| Sells Man/Hotel boy | 7%             |
| Delit               | 3%             |

Three decades have passed after the liberation of 1971, but no benefits had come in the way of the enclaves. ICESCR Article 6 provides for the right to work which declares "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and also states that the state "will take appropriate steps to safeguard his right."In accordance with that concept, the Constitution of Peoples' Republic of Bangladesh ensured the Right to work. Article 20 of the Constitution clearly mentioned that-

#### Work as a Right and Duty-

(1) Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle "from each according to his abilities to each according to his work".

(2) The State shall endeavor to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour and of the human personality.

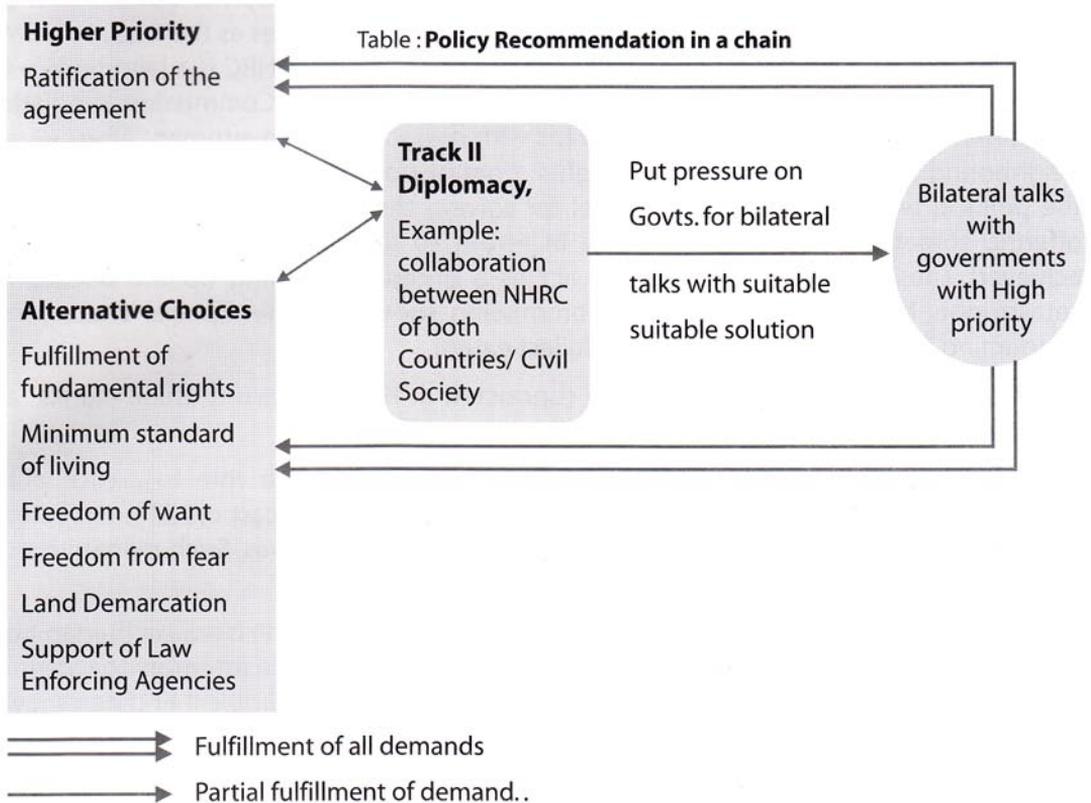
Even though they are the citizens of Bangladesh but not enjoying the right to work nonetheless there is no scope to work outside the enclaves in Indian territory. Their lives are led by the directives of the Indian Border Forces (BSF). For not having particular income, the life of the enclave has become very difficult and their health has given up due to many irregularities. Many diseases are taking shape here. From morning till night only 1 to 1.5 meals are consumed. Eating a full meal is like a dream to them.<sup>76</sup> People of enclaves are insufficient to arrange minimum baskets of goods and services. Without getting the minimum access to food residents of enclaves will suffer the choric deprivation of living standard. The right to work is not only important to the enjoyment of "survival rights" such as food, clothing or housing it affects the level of sophistication of many other human rights such as the right to education and health.

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76 ibid

### 13. Conclusion and Recommendation

Based on our empirical findings we recommend the following steps:



1. Bangladesh Government must put her concentration on the ratification of 1974 Treaty which should have been performed by India. The government of Bangladesh altered its constitution in a third amendment on November 28, 1974 in order to give effect to the Land Boundary Agreement. The Amendment brought changes to Article 2 of the constitution in respect of exchange of certain enclaves and boundary lines between India and Bangladesh. Unfortunately the Government of India however, till date has not amended its constitution in order to give effect to the Land Boundary Agreement 1974. Good Neighborhood principle desires burden sharing rules where for the best interest of the region states will maintain mutual cooperation and friendship and in this regard it is desired that India would execute her part through amending its constitution. Settlement of enclave issue will be the milestone for building up the human rights culture throughout the region.

2. The joint Border Working Group should be supported by logistic and technical expertise to remove all kinds of technical difficulties. The meeting of this group should be held annually.

3. It is worth mentioning that Human Rights Commission of both the countries can play a leading role for resolving the issue. National human rights institutions lie in a special place in the national infrastructure-established by legislation, funded by the government and appointed through state structures. They can appear before states as the most influential entity for resolving the problem. The 2009 Act establishing the NHRC is a landmark in the human rights movement in the country. National Human Rights Commission Bangladesh is committed to develop active partnerships with civil societies, government agencies and neighboring states. National Human Rights Commission Bangladesh can help to create the political will at the operational level for solving the issue by diplomatic maneuver offering something attractive to India in return so that a win-win outcome can be achieved. These two commissions will act as a bridge for ending up the decade old catastrophe. National Human Rights Commission should use her special character by conducting a worthy negotiation in the fullest extent.

4. Rigorous empirical studies should be conducted at the civil society, think-tanks and governmental level. The Reports Should be made public.

5. Media, both electronic and print, should play an impressive role to create public awareness. In particular documentaries should be made and telecast on different satellite channels highlighting the conditions of the people of the enclaves. Such maneuvers can be a helpful strategy across the borders.

6. Minimum basic necessities must be ensured in the enclave zone because human hood is challenged in that zone. Stakeholders immediately should take attempts to safeguard the minimum basic facilities in relation to enclave people. Our empirical findings showed that people in enclave do not have sufficient money to buy a minimum basket of food and service, the state affirms which phenomenon affect their life adversely. The right to work, education and health represent an essential condition of human survival. Diverse kind of ignorance has made their life primitive which is undoubtedly proved thorough their "shalish" system for instance crimes with high intensity named murder and rape have been dealt by normal shalish procedure prevailing in the enclave zone. Persistent ignorance and reluctance form the part of the Government are demolishing their sense of belonging which severely affect the lifestyle of enclave dwellers. Government should take steps for the betterment of that zone.

The entire scenario projected above, signifies the imperative role of Government political will and national legal frameworks will play in the exchange of the enclaves. Certainly it provides both the Indian and Bangladeshi government with an opportunity to create and solidify a new bond between state and citizen. In our study we have found how both the countries have overlooked the human security for the sake of ensuring national security and claiming their sovereignty over the enclaves. This is the statist discourse and the countries should redefine its security in order to incorporate human dimension in their security paradigm.





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ISBN 978-984-90611-0-6



9 789846 032130

Print Management :  
Chhoyan add., Cell : 01711 363030