

Khas Land: A Study on Existing Law and Practice

Abul Barkat
Shafique uz Zaman
Selim Raihan

Prepared for
**Programme for Research on Poverty Alleviation
GRAMEEN TRUST, GRAMEEN BANK**

Human Development Research Centre

November 2000

EXECUTIVE SUMMARY

Background and Objectives

- Land is scarce and, therefore, establishing ownership right over land was always highly competitive, in which violence, speculation and other deceptive means were common. Land forms the basis of our social, economic and political power structures. That is why the ‘noise’ about **Land Reform** has always been much pronounced in this part of the world. Our contemporary history of land reform is essentially the history of acquisition and distribution of **Khas Land**. This is the most unresolved issue of **Agrarian Reform**. There was no dearth of prescription from the side of states and governments in the past fifty years (since the promulgation of East Bengal State Acquisition and Tenancy Act 1950) that “intermediaries shall be wiped-out, and all land shall belong to the real cultivators as owners”. This has never been materialized. To the contrary, a vested interest group comprising of local influentials, dishonest politicians, government officials and emerging “bourgeoisie” have managed to occupy almost all the *khas* lands (agricultural, non-agricultural, and waterbodies), illegally. From peoples’ point of view, the issue of *khas* land is so much so neglected and non-transparent that no one even knows what is the amount of *khas* land available in Bangladesh. No comprehensive research work has so far been undertaken to assess the actual nature and dimensions of distribution of the *khas* land, and the whole range of problems associated with the distribution of *khas* land among the genuine landless poor including the role of the power matrix in the process of alienating the poor from their inherent rights to own the *khas* land. The present study purports to fill-in our knowledge gaps about the above important issues so far untouched in the literature.

Methodology

- The present study followed an exploratory research design in which both primary and secondary data were obtained using qualitative and quantitative data collection instruments. Secondary sources were explored mainly for two purposes: office records to estimate the amount of *khas* land (by types and geographical locations) available in Bangladesh, and legal documents (from Bengal Regulation XI 1825 to Agricultural *Khas* Land Management and Settlement Policy 1997) to analyze the evolution of relevant laws and enactments during the last about two centuries. Primary data were obtained in compliance with the specific objectives of the study from four sample thanas, namely Debhata, Hatiya, Gaibandha and Shailkupa (with three categories of samples - the landless beneficiaries, the landless non-beneficiaries and the non-landless beneficiaries).

Major Findings

The major findings emerged from our analyses having policy, strategy and programmatic implications are as follows:

Evolution of legal and operational aspects of *khas* land

- The major elements in the evolution of the laws on *khas* land can be traced in the following instruments: Bengal Regulation XI 1825, Bengal Alluvion Act 1868, Government Estates Manual 1919, Bengal Crown Estates Manual 1932, East Bengal Acquisition and Tenancy Act 1950, The Bangladesh State Acquisition and Tenancy (Fourth Amendment) Order 1972 (PO 135), Bangladesh Landholding Limitation Order 1972 (PO 98), President's Order LXI 1975, Land Reform Action Programme 1987, Agriculture *Khas* Land Management and Settlement Policy 1997. In addition, many circulars and memos were issued by competent authorities, many of which are contradictory by nature.
- The evolution of the land related Laws gives an impression that things were made difficult-to-understand, consciously, reasons for which are best known to the colonial and para-colonial law makers.
- So far, agricultural *khas* land is concerned, the East Bengal State Acquisition and Tenancy Act 1950 was the mainframe legal document which was promulgated to abolish the Zemindari System (Permanent Settlement of 1793). This law was the basis for all subsequent laws on *khas* land which declared that "So far as agricultural lands are concerned, they shall be held by one class of people to be known as *maliks* or *raiya*ts which means that there shall be no intermediary between the State at the top and *malik* or *raiya*ts to be regarded as the tillers of the soil at the bottom".
- The ownership ceiling of agricultural land per family was changed many a times: 33.3 acres (100 *bighas*) in 1950, then raised to 125 acres (375 *bighas*) in 1961 by Ayub Khan, then in 1972 it was again brought down to (1950's level) 33.3 acres (100 *bighas*), and then the Land Reform Commission of 1982 suggested a ceiling of 20 acres (60 *bighas*).
- The amount of *khas* land due to the fixation of ceiling was always much below the expected amount. Using the loopholes in the relevant laws the large landowners managed to retain their land ownership.

- The laws and procedures pertaining to the identification of *khas* land did not change much since 1950.
- There has been changes in the definitions of beneficiary families and "landless", as well as families who will get priority in receiving the agricultural *khas* land.
- The settlement of disputes in most cases go in favour of the powerful – the illegal occupants. The legal flaw, among others, lies in the fact that the provision for settlement at the local level does not work; and the provision for settlement at the higher levels is non-affordable by the landless poor.
- Although there is a provision in the law to form cooperatives on large compact blocks of *khas* land, this did not work in the past, for varied reasons. The main reason being illegal occupation of large blocks by influentials.

Amount of *khas* land: Official record-based analysis

- The estimated amount of total **identified** *khas* land in Bangladesh is **3.3 million acres** with 0.8 million acres of agricultural *khas* land, 1.7 million acres of non-agricultural *khas* land, and 0.8 million acres of *khas* waterbodies.
- The above amount of *khas* suffers from underestimation. The actual amount of *khas* land should be higher than 3.3 million acres. This is attributable to the fact that a part of the land (agricultural, non-agricultural) and waterbodies which should be *khas* is still **not identified** in the official record (extent of which is unknown). The reasons are attributable to the problems in official land record system, and dispute between government and "so called" owner.
- Serious mismatch is evident in the official statistics of open water bodies: a total of about 2.3 million acres of water bodies is "missing".

Survey Respondents: Landownership and Landlessness

- A large proportion of beneficiaries of *khas* land comprises of those who are not entitled to receive the same.
- Among the landless (both beneficiaries and non-beneficiaries) the proportion of people having no land prior to the distribution of *khas* land is considerably high indicating the high degree of *pauperization* of landless people in the rural Bangladesh.

- A sizeable proportion of *khas* land receivers have become landless in the process. About 39 percent of the landless become landless during the Pakistan period, whereas 61 percent become landless during (29 years) the Bangladesh period. Thus the relative intensity of landlessness was higher during the Bangladesh period compared to Pakistan period. A sizeable proportion (about 20%) have become landless due to the effect of War of Independence and subsequent immediate hardship (especially the famine of 1974).
- The autocratic regimes under Pakistani rule and the same during the Bangladesh period have contributed to the predominant share (62%) of the landlessness.
- Landless by inheritance is the major factor behind landlessness which imply landlessness had been continuing through generations, which is difficult to break.
- Though the cause – landlessness due to economic hardship – appears to be insignificant in the survey findings, it is very much possible and plausible that this factor is concealed in the ‘inheritance’ factor and thus understated.

Reasons why the genuine landless are excluded from the list: Survey-based analysis

- Although “wide publicity” has been the stated policy, the government officials were among the least active agents to disseminate the information about the availability and distribution of *khas* land. Oral publicity through words-of-mouth is the major source where from most landless got the information about distribution of *khas* land. The local government – Upazila Council plays important role in disseminating the information about *khas* land distribution.
- For the non-landless people the local political leaders and influentials acted as major source(s) to disseminate information about *khas* land.
- The whole listing work was not transparent in the sense that many people were not at all aware of the process. The listing work indicates adhocism. The landless themselves were not involved in the process. The local influentials influenced much in the process. The possibility of a landless to be incorporated in the list depends much on his/her belonging to the *Samaj* of the local influentials, belonging to the same political party, relationships of dependence for immediate short term gains (relief) from the lister, relationship with government officials, etc. The non-landless people get listed by utilizing vested interest relations with the listers which included

belonging to the same political party, belonging to the same social group, relationship with government officials.

- The official list of landless for *khas* land distribution is imperfect and biased in favour of the non-eligible people, to a large extent. Inappropriate listing process permits many of the landless households to be excluded from the list whereas a considerable number of non-landless households to be incorporated in the list.
- To serve the interests of the vested interest group and to keep real landless unaware, the information regarding distribution of *khas* land is not disseminated properly.
- With the help of this unfair listing process a significant number of non-landless households got listed and finally received *khas* land.
- If this vested interest group could be eliminated from *khas* land distribution mechanism all the genuine landless could be incorporated in the list and the proportion of *khas* land receivers among landless people would rise to a large extent.

Procedural complications and administrative barriers in getting allotment of *Khas* Land: Survey-based analysis

- Over 75 percent of the landless respondents mentioned the following pertaining to the application format, and relevant assistance received in filling-in the format:
 - (a) the application form is complicated and asking for many documents which is difficult to procure
 - (b) why asking for so many things from us when everybody know that we are landless or extreme poor
 - (c) we had to contact many people to help us in filling-in the application form.
- Some of the factors that influenced the selection process of the landless are clearly discriminatory, such as lack of office correspondence in terms of giving bribe; lack of correspondence with the local influentials played some significant part in not being selected to get *khas* land. Without bribing the land officials it is difficult to get enlisted as landless to get *khas* land. Incomplete and inappropriate' application was termed as major factor in being rejected to get enlisted. Ignorance and inaccess and non-availability of appropriate information regarding submission of 'appropriate and complete' application have played critical roles. This again registers a blow to the 'fairness' of the distribution programme. Some of the respondents – especially the

non-landless beneficiaries – responded by saying that there was less availability of *khas* land.

- On average, each landless beneficiary has spend about 24 working days (assuming 8 hrs a day) which is 8 times more than the officially required liberal estimate. Most importantly, the estimated 24 working days, is in reality, can be equivalent to 48 to 72 working days or even more. This is due to the reason that loss of 2 or 3 hours a day for a landless might entail a loss of a full day on account of wage loss. Thus, compared to the officially required time to be devoted by a beneficiary to receive a piece of *khas* land, the beneficiary is bound to spend 16-24 times more time for the purpose. And there is none to see the misery and deprivation of the poor-beneficiaries, and there is no system to compensate for the wage loss.
- On the other hand, the landless non-beneficiaries, some of whom were selected to get *khas* land but could not finally receive *khas* land, also had to incur loss of significant amount of time when they found themselves rejected and consequently tried to locate the reasons by communicating with the relevant authorities believing that there might be some positive outcome of such attempts. On average, each landless non-beneficiary had to spend 18 working days. It may seem to be very illogical spending such huge amount of time by those landless people as many of them reported that such attempts were ultimately futile, but, given the socio-economic structure in rural Bangladesh, where land is a scarce resource and there is the existence of hunger for land among the indigent landless people such findings are not hyperbolic.
- The major cluster of reasons attributable to “not getting of *khas* land although selected” are as follows:
 - i. Potential beneficiaries’ lack of contact with government office
 - ii. Non-congenial relationship with local influentials
 - iii. Illegal occupancy of *khas* land by others (of course, by the non-poor), and at the same time “less availability of *khas* land” (availability for the poor will be less to the extent the amount is illegally occupied by the rich)
 - iv. “Incomplete and inappropriate application”.
- In general majority of the respondents (both landless beneficiary and non-landless beneficiary) reported that the distribution was not equal. In general, the two most important reasons reported by the beneficiaries which explain the situation include less availability of *khas* land and corruption in the land office.
- Both the government officials and public representatives were the principal actors in the delivery mechanism. The local influentials are also important actors in the delivery mechanism.

- Within the landless categories (beneficiaries and non-beneficiaries) belonging to the same political party and belonging to the same social group or 'samaj' as the distributors do, appear to be very much decisive in getting/not getting *khas* land. On the other hand, the non-landless beneficiaries reported that they had at best official relationships with the distributors, which, in fact, not a reflection of the truth. The non-landless beneficiaries must have had some vested interest relations with those distributors, which permitted them getting *khas* land.

Estimates of 'additional payment' associated with *khas* land distribution: Survey-based analysis

- As far as the rules and regulations regarding *khas* land distribution program is concerned the landless who are selected to get *khas* land is liable to pay only Tk. 1 per acre as 'salami' (government fees). No other extra payment is required and any extra payment in this regard indicate the existence of unfair practices in the distribution mechanism. In all the sample spots we found existence of such unfair activities, but the nature and extent of unfairness activities varied across sample spots.
- Almost all the agents involved in the distribution mechanism took bribe. Tehsilder appears to be very much active in taking bribes followed by Chairman of Union Parishad and a group of people consisting of local touts and officials at the land offices. It has been inferred that about Taka 7,000 to 10,000 is required to pay as bribes in order to get 1 acre of *khas* land.
- Not only bribes in terms of money were involved in the distribution mechanism but also a wide range of political and social patronage were active in the whole distribution chain. It may be difficult to convert the political and social 'bribes' into monetary terms, but in the context of rural Bangladesh such 'bribes' are really expensive. Given this backup it logically appears that the genuine landless (who happens to be very poor) are mostly incapable in meeting the unfair demands of those corrupt agents involved in the distribution mechanism. Those who can meet the demands become beneficiaries of *khas* land.
- The existence of such unfair activities definitely helps the other category of beneficiaries the non-landless people. Therefore, it is not surprising as to why a significant number of non-landless household get enlisted as 'landless' to get *khas* land and finally many of them receive *khas* land. These are the inevitable results of the corrupt practices mentioned earlier.

Opinion of the government officials, local elected representatives and knowledgeable persons about the problem regarding *khas* land: Analysis based on Interviews

- The local elected representative such as UP Member, Chairman have always been regarded as chief actor or abettor in increasing land resources. In doing so, they maintained good contact with the government's land officials. The crucial power during identification and distribution of *Khas* land lies in the hands of A.C. land, TNO and Tehsilder. Besides, the local elected representatives and other actors like Jotder, head of the village, political leader exercise profound influences on the land officials in the process of identification, selection and distribution of *Khas* land.
- The actual recipient has to come across a series of impediments before establishing his ownership on *khas* land. In many cases, the poor recipient becomes helpless in the face of non-cooperation from the part of land officials, and/or police while releasing document, or taking possession from illegal occupants. They then seek help from the local peasants leader, political leader, NGO activists, UP Chairman, or school teacher, or local influential sympathizer to the landless peasants.
- The govt. officials reported that due to inadequate amount of *khas* land many poor landless household could not receive *khas* land. In addition, a significant part of *khas* land cannot be allocated for distribution as cases have been filed against the govt. The occupants claimed that the govt. has by mistake enlisted their lands as *khas*. But according to the land officials, they filed cases by forging documents. The cases in the civil courts are lengthy process and no action can be taken unless the court declares the verdict. The authority also blamed the faulty selection, which keep away the real landless out of the list. The AC land or TNO are often threatened by the local influentials for giving decision against them. The influentials often produce false documents, which is very difficult to prove that these are false. Therefore, lack of enough security force, the government officials often fail to implement the *khas*land distribution
- Like the land officials, the elected representatives such as UP Member and Chairman have also claimed that due to the lack of adequate *khas* land, many landless remained out of the reach of *khas* land. But the elected representative blamed the govt. officials for non-retention. They allow the illegal occupants to hold control in exchange of bribe. Much could be done for the landless if the government. official were remained neutral. The UP Member and Chairman confirmed that, the poor peasants became helpless if case is filed against his land. The government. administration is reluctant to take action.

- The local social worker, NGO worker, school teacher, freedom fighter who were interviewed blamed both of the aforesaid govt. officials and elected representatives, for creating obstacles in the way of establishing legitimate right of the landless on *khas* land. This group of people opined that it would be wrong to ensure appropriate distribution by depending on the land officials or local elected representatives only. They are the real beneficiary of *khas* land and hence the problem-maker. The peasants are not organized and they have till the date failed to pressurize the government for a fair distribution.

Suggestions and Recommendations

Based on the analysis of the whole situation and discussions with many relevant persons, the following suggestions are presented for considerations:

1. Total amount of *khas* land of different types should be identified and published by the government in the media.
2. Manipulation during identification of *khas* land should be stopped and representatives of peasants community should be included.
3. Illegally occupied *khas* land should be released and brought under government control.
4. The task of enlisting the names of landless peasants should be given to the leaders of peasants organizations, NGO, and political parties.
5. Influences of the UP members, Chairman and other trouble makers should be minimized.
6. *Khas* Land Management Committee at the national level, and a *Khas* land Management and Distribution Committee at the district level with strong presence of peasants and landless representatives are needed. The District Committee should be empowered to investigate the disputes over *khas* land and give decision about ownership. In addition, this committee will report to the Land Ministry of any misdeeds committed by any government officials regarding *khas* land.
7. The *khas* land distribution “application form” is a complicated one, which is difficult to fill-up even by an educated person. Such complexity gives advantage to the land officials to take undue advantage from the landless peasants. The form should be made easy and written in simple language.

8. Harassment by the land official, tesilder in particular, during submission of application should be stopped and the process should be made more transparent.
9. All information relating to enlistment and distribution of *khas* land should be widely published. In order to minimize the scopes for bribes and maximize transparency, the information to be widely disseminated shall include, among others the following: how much land (by types) is available where for distribution, the procedural steps to be followed by a landless, who is eligible to apply – when and to whom, how much money a landless needs to pay – for what and to whom, what is the expected time for allocation, how to get possession over the land, what needs to be done in case of various problems.
10. Land recording and administration system should be reformed to stop the forging of deeds and other land-related documents.
11. The participation of the poor and their formal and informal institutions/organizations in the process of identification, selection, distribution, and utilization of *khas* land should be maximized.
12. Provide price-support system, so that poor-landless owner of *khas* land do not fall into the trap of “free market” and forced to go for “distress sale of assets”.
13. Distribute all agricultural *khas* land (identified 803,308 acres) to the poor and landless immediately. This should form as one of the real corner stones of our national poverty eradication agenda.
14. Organize cooperative farming in all possible situations, e.g., if relatively large compact area is available, or even if such compact area is not available - organize cooperative for input, credit, marketing and other productive purposes.
15. Intensive and continuous monitoring system should be developed to ensure transparency and efficiency of the land officials.
16. A watch-dog mechanism comprising peasants representative, NGO, Social workers should be developed to check corruption, e.g.; bribe, harassment while processing documents.
17. Diara survey of the alluvial and accreted land should be completed within shortest possible time.

18. Security of the land officials should be ensured during conduction of the survey and distribution of *khas* land.
19. Along with the government's survey, independent committee comprising the representatives of landless peasants, peasants organization, political parties, NGOs should be set up to identify the landless and *khas* land.
20. Land-related laws should be upgraded to speed up the distribution process which take unusually long time due to bureaucratic procrastination.
21. Training should be imparted to those who are responsible for identification, management and distribution of *khas* land.
22. Orientation training should be organized for the landless people to impart them with the knowledge about the necessary land-related laws.
23. The civil law should be upgraded and made understandable to the commoners.
24. A *Khas* Land Bank should be set-up to preserve all types of records on *khas* land by types, locations, distribution status, status of dispute resolution, and so on.

Pre-conditions for implementation of the suggestions

The problems relating to *khas* land distribution is so deep-rooted that a complete solution favoring the landless people is no doubt a daunting task. This is hardly attainable under the existing power structure. In order to implement the proposed suggestions and recommendations, the following pre-conditions are in order:

1. The government should be committed to distribute the *khas* land to the landless.
2. The government should recognize that vested group in connivance with the government's land officials grabbed a large amount of *khas* land.
3. The government should also recognize that a large number of illegal occupants of *khas* land always belong to "present party-in-power" (PPP).
4. The government should realize that the poverty level in the rural area could be brought down to a minimum level if the landless peasants are distributed with *khas* land.

5. A special session of the Parliament should be devoted to discuss the whole range of issues pertaining to the identification, distribution and retention of *khas* land.
6. A 'watch-dog' committee should be constituted with the representatives of peasants community, political parties, social organizations, NGOs, agriculturist, land officials and concerned citizens to follow-up the post-distribution situation of the beneficiary.
7. The thana level courts should be upgraded to the extent so as to *khas* land related law-suit could be solved at that level.
8. The landless and marginal farmers should be organized against the malpractices and misuse of *khas* land by the power agents.
9. Each and every political party should clearly clarify their positions in their election manifesto about the whole range of issues pertaining to the *khas* land.
10. All the peasants' organizations should be united on the question of poor people's right over *khas* land, and launch movement against government officials' corrupt practices and inefficiencies of the government regarding *khas* land.
11. The local and thana level social organizations, NGOs, student fronts of the political parties should raise their voice for a free and fair distribution of *khas* land.