

Land Laws in Bangladesh

A Rights-based Analysis and Suggested Changes

Key Learning at a Glance



Human Development Research Centre

humane development through research and action

www.hdrc-bd.com

With support from

মানুষের জন্য

manusher jonno

promoting human rights and good governance

Dhaka: March 2014

Land Laws in Bangladesh

A Rights-based Analysis and Suggested Changes

Key Learning at a Glance

 **Human Development Research Centre**

With support from


manusher jonno
promoting human rights and good governance

March 2014

Land-related legal problems persist in Bangladesh for decades in its worst form. It is now well understood that land laws and policies currently in force in Bangladesh, are mostly scattered and complex in many areas. More frustrating, are the contradiction, ambiguity, non-compliance with pro-poor interest, and problems with law and practice questions mounting in land disputes, litigations and sufferings of the poor, marginalized, and indigenous peoples. Legal side needs to be substantiated with evidence-based study on different social perspective so that 'excluded' are 'included' in truest sense of development. Comprehending the mighty importance of this reality, Manusher Jonno Foundation (MJF) awarded Human Development Research Centre (HDRC) for carrying out a study entitled '*Land Laws in Bangladesh: A Rights-based Analysis and Suggested Changes*'. The underlying objective of this study is to review land laws of Bangladesh in order to do identify their effectiveness, limitations, and prepare draft laws with necessary recommendations.

For convenience of the users of the research work, laws under different broad areas have been analyzed in separate volumes. Each of the volumes is a stand-alone research-based publication including the relevant analysis and recommendation (including suggested laws). This publication is one of the above mentioned 22 volumes of work.

The volumes are as follows--

- Volume 1** Introduction: Background and Methodology
- Volume 2** Abandoned property Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 3** Acquisition and Requisition Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 4** Administration of Land Management Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 5** Agricultural Khas Land Management Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 6** Balu Mohal Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 7** Char-land Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 8** Chingri Mohal Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 9** Debutter Property Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 10** Indigenous Peoples' Land (*including Forest Land*) Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 11** Jalmohal Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 12** Non-agricultural Khas Land Management Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 13** Pathormohal Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 14** Land Reform Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 15** Land Registration Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 16** Land Survey Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 17** Tea Land Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 18** Trust Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 19** Land Use Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 20** Vested Property Related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 21** Waqf related Laws in Bangladesh: A Rights-based Analysis and Suggested Changes
- Volume 22** Key Learning at a Glance

CONTENTS

Sl. No.	Title	Page #
	<i>Abbreviations and Acronyms</i>	
	Background	1
	Methodology	2
	Abandoned Property Related Laws in Bangladesh	6
	Acquisition and Requisition Related Laws in Bangladesh	8
	Administration of Land Management Related Laws in Bangladesh	11
	Agricultural <i>Khas</i> Land Management Related Laws in Bangladesh	14
	Balu Mohal Related Laws in Bangladesh	16
	Char-land Related Laws in Bangladesh	20
	Chingri Mohal Related Laws in Bangladesh.....	27
	Debutter Property Related Laws in Bangladesh	30
	Indigenous Peoples' Land (<i>Including Forest Land</i>) Related Laws in Bangladesh	33
	Jalmohal Related Laws in Bangladesh.....	50
	Non-Agricultural <i>Khas</i> Land Management Related Laws in Bangladesh	53
	Pathormohal Related Laws in Bangladesh.....	57
	Land Reform Related Laws in Bangladesh	59
	Land Registration Related Laws in Bangladesh.....	61
	Land Survey Related Laws in Bangladesh.....	64
	Tea Land Related Laws in Bangladesh	67
	Trust Related Laws in Bangladesh.....	69
	Land Use Related Laws in Bangladesh.....	72
	Vested Property Related Laws in Bangladesh.....	75
	Waqf Related Laws in Bangladesh	78
	Glossary	82
	Bibliography	88

Abbreviations & Acronyms

AD	Appellate Division
ADC	Additional Deputy Commissioner
ADR	Alternative Dispute Resolution
Art.	Article
BTRI	Bangladesh Tea Research Institute
CBFM	Community Based Fisheries Management
CBO	Community Based Organization
CHT	Chittagong Hill Tracts
CLAC	Central Land Allocation Committee
CPW	Common Property Water bodies
DC	Deputy Commissioner
DDA	Deputy Director of Agriculture
DLR	Dhaka Law Reports
DLRS	Directorate of Land Records and Survey
DLAC	District Land Allocation Committee
DOLA	Department of Land Administration
DS	Density of Saline
HDRC	Human Development Research Centre
HIES	Household Income and Expenditure Survey
HQ	Headquarters
LA	Land Acquisition
LAO	Land Acquisition Officer
LGED	Local Government and Engineering Division
MJF	Manusher Jonno Foundation
MoA	Ministry of Agriculture
MoL	Ministry of Land
MoDM	Ministry of Disaster Management
MoFL	Ministry of Fisheries and Livestock
NFMP	New Fisheries Management Policy
NGO	Non-Government Organization
RAJUK	Rajdhani Unnayan Karttripakkha
RBA	Rights-Based Approach
RDC	Revenue Deputy Collector
RoR	Record-of-Rights
SAT	State Acquisition and Tenancy
SC	Supreme Court
RS	Revisional Settlement
Tk	Taka
UDHR	Universal Declaration of Human Rights
UP	Union Parishad
UNO	Upazila Nirbahi Officer

Background

Historically, in an agricultural and populous country like Bangladesh, land is the scarcest of all resources and a significant causative agent of production. For millions of people, it is the main source of shelter, food security and livelihood, invariably determining the development pattern and opportunities.

Development revolution embodies the necessity of unfettered accessibility and rights of the poor, marginal and landless people to land. It is quite startling that more than 70 percent population of this country is directly related with agricultural production, and more than half of the population is landless poor. At the same time, it is also true that 80 percent of the land is owned by only 10 percent of the total population.

In Bangladesh the poor are land-poor and access to land is inequitable. There exists a strong negative correlation between land ownership and incidence of poverty. In the Report of The Household Income and Expenditure Survey (HIES) 2010, the estimates of head count ratio of incidence of poverty by ownership of land using the upper poverty line are found to be 35.4 percent for landless households compared to 19.8 percent using the lower poverty line.

Over the decades, the poverty situation has remained unaddressed to a great extent under existing laws and policies of the country, although there appear multifarious tenancy reforms, enforcement of a ceiling on landholdings, and provisions for the distribution of public land among the landless. Moreover, poor land governance, an inefficient, expensive, and corruption-prone system of land titling and registration, erroneous acquisition and requisition process, non-existence of a scientific survey and land zoning method etc.--they all have let land rights of the poor get exposed to a tremendous amount of insecurity.

It is a proven fact that the rights to land and the laws relevant to it are quite inextricably bound-up with each other. Land rights and land laws are legal matters, directly linked with the poverty-encumbered situations across the country. The existing formal and informal arrangements of greater significance that mediate access to land are deeply connected with the structural features of poverty, social exclusion, social networks and marginalized communities, and the weak and pro-rich functioning of state institutions.

The traditional land laws and amendments of the country, made at several times, are not always characterized by careful thought. In a true sense, they are not, in most cases, well-thought-out. And with the march of time, they have remained bare of their relevance and appeal. Even the most recent land laws and policies, in most cases, do not prove efficacious in ensuring the pro-poor interest. And they, at one extreme, lead to the pre-emptive tenants' dispossession. What is striking about the land laws and policies is that they are operative in defiance of the poor people's right in the midst of discriminatory legal and administrative system. Undoubtedly, these laws and policies are identical with certain loopholes and dysfunctional elements that result in the escalation of sufferings and poverty among the poor.

In recent times, a new wave of interest and greater openness has arisen among policy-makers and other development agents for an innovative approach to land issue. They have innovatively dealt with the issues, namely, land accessibility and the role of land assets in poverty-reduction strategies. Given the land-oriented complicity, Manusher Jonno Foundation (MJF) undertook a study, that can facilitate a comprehensive review of the land laws and policies under operation in Bangladesh several different times at different levels of the Government and the society, identify the limitations, dig out the possible areas of amendments, and suggest recommendations. This strenuous and in-depth task is based on the premise that there is an impelling need to formulate a ‘pro-poor, pro-marginal’ land laws and land policies in Bangladesh. It is assumed that a critical review of land laws/ Acts, ordinances, rules and orders in force in Bangladesh by fingering on the limitations and suggesting necessary amendments in those blemished areas can immensely highlight and aptly serve that purpose.

In response to this crucial need, MJF has awarded Human Development Research Center(HDRC)for the icebreaking ground the Center has played by letting the gigantic research work on land issue get started under it.

Broad Objectives

- To take stock of all the land laws/acts, ordinances, rules and orders of Bangladesh and land-related relevant documents;
- To identify and understand several procedural legal aspects of mismanagement, miss-governance, exploitative and deprivative mechanisms in the land laws/acts, ordinances, rules and orders through the lens of poor, marginal, landless and women; and
- To prepare draft laws on the basis of recommendations from the review of different laws/acts, ordinances, rules and orders.

Methodology

The study basically concentrates on a careful, intensive review and up-to-date analysis of land laws and policies in Bangladesh, and accordingly, extracts relevant information from different sources. The issues are highly sensitive, inquisitive, and arguable by nature and contain major socio-economic, political, cultural and ethical dimensions. And so, the research is designed with adequate innovativeness applying precise methodology.

The research is qualitative. The study team developed a stock of all the land laws of Bangladesh. They also examined all the relevant documents- literatures, journals, occasional papers etc. As a necessary concomitant, land-related credible documents of other countries have also been scanned. The researchers not only gave an inquisitive look into the general land laws but also critically pried into all the particular land laws (e.g., laws for *khas* land, laws for Char-land, laws for the land of religious minorities, plain land laws for indigenous, land laws for indigenous peoples in CHT) in Bangladesh. Laws, procedures and documents on administration of land management, land survey and registration, acquisition and requisition, land reform and land use, and laws on waqf, trust and debutter property have been thoroughly examined. Perceptibly, all these laws and policies have a history of their origin, evolution, and amendments; individual as well as distinct characteristics; and implementation outcomes.

Additionally, as part of the initiatives, motivated towards mapping out a broad canvas for a vigorous understanding of these long-drawn, thought-provoking, and hidden areas of land laws of the country, a cognizable interaction has been made with a number of parliamentarians, prominent legal professionals, persons having expertise on socio-economic, political and cultural aspects of land and land laws, and also some common people for their valuable inputs and suggestions on land issues. Extensive and meticulous desk reviews and discussions with various stakeholders, finally, contributed to synchronizing the ideas, and produced a comprehensive and stand-alone document of draft land laws in Bangladesh.

The layout of the study was developed with a focus on the pro-poor and marginal population. It pondered the appropriateness of land laws and land policies promulgated at different times, their compatibility with the Constitution of Bangladesh, inherent contradiction, ambiguity, and problems in practice and non-compliance with pro-poor interest. These issues have been dealt with carefully, while reviewing the legal and other relevant documents. Based on these premises, the suggested laws have been drafted with necessary amendments, after a thorough consideration of comments and suggestions from the stakeholders, validated by experts and worst sufferers as well.

Moreover, in order to properly evaluate the merit of the land laws under discussion, the study team has applied a scoring method. The main objective of scoring is to identify the problems in the relevant laws and policies on the basis of values given to the specific indicators. The rationale is to quantify the magnitude of the underlying problems and status of the law. The scaling of score ranges from 0-5. If the problem is grave, then it is scored 0. If no problem is found in the concerned law and policy, then score is 5. In this evaluation, four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered. The Act/Ordinance/Policy takes values between 0-100 where 100 denotes the best situation and 0 the worst one.

The right to land and the laws and policies relevant to the issue, reveal the labyrinthine complicity of life. Within this purview, the laws mentioned here have been precisely dealt with. In view of the study objectives, an attempt is made to identify and comprehend the major aspects of mismanagement, miss-governance, exploitative and deprivative mechanisms inherent in the land laws/acts, ordinances, rules and orders through the lens of poor, marginal, landless and women population. Finally, the researchers-while making this review and recommendations- grew quite aware of the fact that only effective targeting of millions of the poor and the marginal and proper implementation of land laws and policies can ensure pro-poor interest and rights to land.

All land laws were divided into 20 (twenty) broad groups for operational purpose in this study. The broad groups are as follows:

- 1) Abandoned Property Related Laws in Bangladesh
- 2) Acquisition and Requisition Related Laws in Bangladesh
- 3) Administration of Land Management Related Laws in Bangladesh
- 4) Agricultural *Khas* Land Management Related Laws in Bangladesh
- 5) Balu Mohal Related Laws in Bangladesh
- 6) Char-land Related Laws in Bangladesh
- 7) Chingri Mohal Related Laws in Bangladesh

- 8) Debutter Property Related Laws in Bangladesh
- 9) Indigenous Peoples' Land (*Including Forest Land*) Related Laws in Bangladesh
- 10) Jalmohal Related Laws in Bangladesh
- 11) Non-Agricultural *Khas* Land Management Related Laws in Bangladesh
- 12) Pathormohal Related Laws in Bangladesh
- 13) Land Reform Related Laws in Bangladesh
- 14) Land Registration Related Laws in Bangladesh
- 15) Land Survey Related Laws in Bangladesh
- 16) Tea Land Related Laws in Bangladesh
- 17) Trust Related Laws in Bangladesh
- 18) Land Use Related Laws in Bangladesh
- 19) Vested Property Related Laws in Bangladesh
- 20) Waqf Related Laws in Bangladesh

Key Learning *at a Glance*

Abandoned Property Related Laws in Bangladesh

When Bangladesh had emerged as an independent state, the Pakistani owners of commercial building, residential building, commercial spaces, industrial spaces and other types of land left Bangladesh. These properties were taken over by the Government of Bangladesh through a Presidential Order (The Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972). Section 25 of the Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (Order no.16) has conferred power on the Government to make rule for the purpose of this order.

Laws Reviewed

- The Bangladesh (Taking Over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (Order no. 1 of 1972);
- The Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (order no.16);
- The Bangladesh Abandoned Property (Taking Over Possession Rules), 1972
- The Bangladesh Abandoned Property (Building in Urban Areas) Rules,1972
- The Bangladesh Abandoned Property (Land, Building and any other Property) Rules, 1972
- The Bangladesh Cantonment Abandoned Property (Land and Building) Rules 1973
- The Abandoned Building (Supplementary Provisions) Ordinance, 1985

Core Learning

Most of the abandoned properties are located in several districts, namely, Dhaka, Chittagong, Khulna, Rangpur, Nilphamari, Dinajpur, Bogra, Lalmonirhat, Naugaon and Rajshahi. The actual status of abandoned property is not yet determined. The Gazette on the abandoned property already published, is incomplete. Only plot number is included in the gazette but the amount of land is not specified. Properties, held in the possession of the Government, are mentioned in the Schedule A and properties, not in the possession of the Government, are enlisted in Schedule-B. Schedule A is categorized into restricted and sale list area. Restricted parts of Schedule A are used for Government offices and residential houses.

Abandoned properties of sale list have been sold to the wounded freedom fighters, family of martyr freedom fighters and demand notice holders. Some abandoned properties were leased out and others were rented out, but the rent and lease money, were not collected properly. On 5 September 1984 a decision was taken by the Government to sell out abandoned properties of Dhaka City. For that purpose a list and valuation of these properties were made under the direction of Ministry of Housing and Public Works. RAJUK was entrusted with the task of selling. The sale process was scheduled to be executed through open tender. Due to some limitations, the properties could not be sold properly. The abandoned properties of Schedule-B are in possession of other person although they have no legal rights. By making fake documents, such persons have taken injunction from the Court. Many suits about those properties lie pending in the court. There are certain inconsistencies in dealing with this abandoned property. Not a single ministry is entrusted with the task of dealing with such property, whereas, abandoned house is dealt with by the Ministry of Housing and Public Works (MOHPW), abandoned Industry by the Ministry of Industries, and abandoned agricultural land by the Ministry of Land. This is the reason why the Government cannot acquire such dispossessed properties of Schedule-B.

Case Reference					
An analysis is made on the basis of Judgments given on abandoned property. It is found that many properties were declared as abandoned by the highest court of Bangladesh. Final settlement of these properties is yet to be settled.					
DLR No.	Page no.	Parties	Decision of judge court / court of settlement	Decision of High court division	Decision of appellate division
51 DLR	42	Bangladesh Vs. Anwar Ahmed.....	Property was declared as abandoned property.	Property was not declared as abandoned property	Appeal was allowed Property was declared as abandoned property.
49 DLR	161	Govt. Of Bangladesh Vs. Asraf Ali....	Property was declared as abandoned property.	Property was not declared as abandoned property	Appeal was allowed Property was declared as abandoned property.
59 DLR (Review)	165	Rawshan ara Begum Vs. Govt of Bangladesh...	Property was declared as abandoned property.	Property was not declared as abandoned property	Appeal was allowed Property was declared as abandoned property. Review was dismissed.

Problems in Practice

- The valuation was made arbitrarily without considering the present market price.
- Advertisement and exact schedule for selling were not published properly.
- It was a grave concern that some unholy alliance was made between the officials and the purchaser/purchasers, and among the purchasers.
- After publication of the tender some people went to the court and prayed for stay order which was subsequently granted.
- Even after the completion of tender process, pieces of such property were not transferred to the highest bidder for undetected reasons.

Recommendations

- List of abandoned property should be updated and full list of abandoned properties of the country should be published.
- A committee consisting of representatives from concerned Ministries e.g. Ministry of Housing & Public Works (MOHPW), Ministry of Land, Ministry of Industries, and Ministry of Law, Justice and Parliamentary Affairs should be formed for expediting the sale process as per list.
- Valuation of salable abandoned property is to be recalculated considering the market price.
- Sale process should oblige a definite time limit. The properties are to be sold within 90 days after publication of the final list for sale.
- A Legal cell should be established ensuring the representation of the concerned Ministries e.g. Ministry of Law, Justice and Parliamentary Affairs, Ministry of Housing and Public Works (MOHPW), Ministry of Land, and Ministry of Industries.

Acquisition and Requisition Related Laws in Bangladesh

Every year the Government of Bangladesh acquires a huge amount of land mainly for implementing development projects both in public and private sectors. The acquisition process badly affects a large number of people in the sense that they lose their right to the land they own. People lose their homestead, properties, and other types of non-agricultural land and livelihoods through this process. Thus land acquisition causes serious hardships and vulnerabilities.

The land acquisition in Bangladesh was originally guided by The Land Acquisition Act, 1894. This Act was repealed in 1982, and substituted by Acquisition and Requisition of Immovable Property Ordinance, 1982. This Ordinance constitutes the sole instrument of land acquisition and requisition in Bangladesh (except in the three Hill Districts).

This review deals with the following laws:

- The Acquisition and Requisition of Immovable Property Ordinance, 1982
- The Acquisition of Immovable Property Rules, 1982
- The Requisition of Immovable Property Rules, 1982
- Instructions regarding Acquisition, 1997

Laws on acquisition and requisition in other countries are also examined:

- The Acquisition Act, 1994, India
- The National Rehabilitation Policy (NRP-2006) Indian Rehabilitation and Resettlement Bill 2009
- The Acquisition Act, 1994, Pakistan
- The South Australian Acquisition Act, 1969

Core Learning

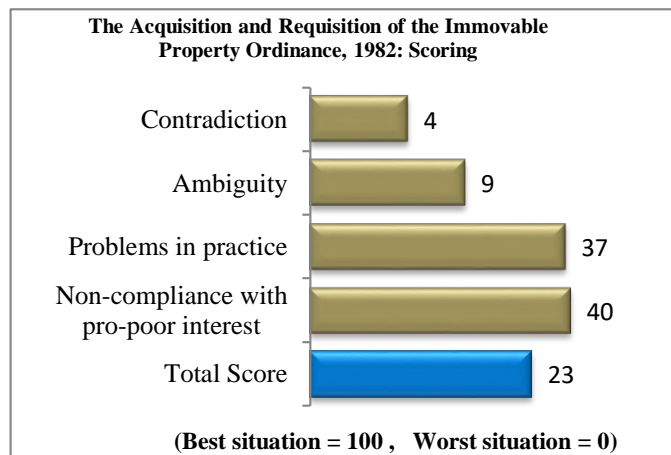
- According to section 3, notice is to be served upon the concerned person, which is not practiced properly. As a result, it affects the right of being informed. There is also a provision for serving the notice in Article 34 of Instruction of 1997 relating to Acquisition. This notice is not widely circulated. Even after a long lapse of time, the affected persons do not grow aware of the notice.
- Section 4 of the Ordinance provides scope for filing objection against such notice within 15 days after the publication. In reality, objections are not properly received and seldom heard.
- Under section 7, Deputy Commissioner is to make the award and he, while making it, must determine the compensation in relation to matters as mentioned in section 8. The requiring body does not visit the spot at the time of assessment of compensation. Property valuation is made on the basis of average value of the deeds, executed during the last one year and available at the office of the local Sub-Registrar. Undervalued deeds are also taken into account.
- Section 8 states matters to be considered in determining compensation; but in this regard the section overlooked the location of homestead and other establishments and no reference for compensation regarding transfer, registration fees and taxes is specified. There is no arrangement for replacement costs for lost assets, resettlement and restoration of income in post-resettlement period. Sometimes, Public Works Department

makes delay in the valuation of assets located on the land. This ultimately prolongs the acquisition process.

- Section 12 of the Ordinance states that if the estimated amount of the award of compensation has not been deposited by the requiring person for acquisition of any property under section 5 within the period specified in section 7(4), all proceedings in respect of such acquisition shall, on the expiry of that period, stand abated and a declaration by the Deputy Commissioner to that effect shall be published in the official gazette. Usually, in case of revoking all proceedings under section 12 (2), a gazette notification is made. Affected persons remain ignorant of this notification or become aware of the notification after a considerable lapse of time. This creates a lot of complexities. In the whole process officials lack accountability.
- It is observed that in some cases land is acquired at the request of private organizations, but reasons are not sufficiently justified. Scope for giving favor to individual private organizations/persons is open.
- In case of payment of compensation to the affected persons, sometimes over payments are made. In such a situation there is a provision for filing cases by the officials for realization of money wrongly paid. In reality Anti-Corruption Commission personnel interfere into the affairs and lodges complaints against the concerned officials. As a result, officials hesitate to make payments timely and they become afraid of being implicated in Anti-Corruption cases. Consequently, the entire payment process becomes delayed.
- Public purpose or public interest and emergency requirement are not defined (Section 18). Specific reasons for requisition are not mentioned clearly. Such factors affect a person's right to property.
- Section 40 implies that any person who contravenes or attempts to contravene or abets or attempts to abet a contravention of any order made under this Ordinance or who willfully obstructs any person in doing any of the acts authorized or permitted under this Ordinance or any Rule made there under shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Taka, or with both. But the amount of fine to the tune of Tk. one thousand only is a small amount compared to the financial gravity of the offence.

Scoring

The total number of sections of the Acquisition and Requisition of the Immovable Property Ordinance, 1982 are '51', and here four indicators namely, 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered to evaluate the efficacy of the pertinent sections of the Ordinance. The concerned sections of the Ordinance take values from 0-100 where, 100 denotes the best situation, and 0 the worst one. In the present analysis the score of 51 sections is $51 \times 5 = 255$. As regards each key indicator the scoring is: contradiction 11, ambiguity 23, problems in practice 94, and non-compliance with pro-poor interest 103. The figures give a total score 231 out of 1020 ($255 + 255 + 255 + 255$). Following the conversion of the total score into 100, it becomes $(231/1020) \times 100 = 23$. If individual score is converted into 100 then for each key indicator, the score becomes 4, 9, 37 and 40 respectively. Based on this analysis, it can be said that the relevant sections of the Ordinance, 1982 is seriously impaired with contradictions and ambiguities. The situation in respect of non-compliance with pro-poor interest and problems in practice is slightly better.



Recommendations

- To make the valuation of different categories of land easier, transparent and market price based a district level committee can be formed consisting of officials (ADC (Revenue/LA), Executive Engineer, Upazila Chairman, Public Works Department, District Agriculture officer and Land Acquisition Officer).
- The concepts 'public purpose' or 'public interest', 'emergency requirement' 'compensation', 'resettlement', 'rehabilitation' and 'vulnerable person', 'socio-economic cost' 'environmental cost' and 'cultural shocks' need to be clearly defined in the proposed law. In case of requisition, specific grounds in a written form are to be communicated to the person/persons concerned. "Museum" may be added to other institution which shall not be requisitioned under this law.
- Publication of notice in the national dailies including one local can be made so that people at large can know the entire acquisition process. Miking, distribution of leaflets or announcements in the electronic media can be also made to let the process grow transparent.
- In case of abatement of acquisition process it is suggested that a notice is to be published at convenient places on or near the property in the prescribed form and manner, stating that acquisition process stands abated.
- In section 40 of the proposed law, a fine of Tk. 3,000 is suggested.

Administration of Land Management Related Laws in Bangladesh

Land administration is the process of determining, recording, and disseminating information about ownership, value and use of land. A pragmatic land administration system provides the mechanism to implement land management policies. Modernization of land administration system is one of the cardinal conditions for ensuring the land right of the people. This review examines the following major laws relating to administration land management in Bangladesh. It also identifies the limitations and suggests recommendations for the smooth running of the administration of land management system.

Major laws reviewed are:

- The State Acquisition and Tenancy Act, 1950
- The Tenancy Rules, 1954
- The Land Appeal Board Act, 1989
- The Land Reforms Board Act, 1989
- Land Administration Manuals (Volumes 1&2), 2003
- Notifications issued occasionally by the Ministry of Land and other concerned Ministries

Core Learning

The Constitution of Bangladesh declares justice as the first commitment of the Republic. But it is practically impossible to achieve justice without properly addressing the land rights issues. This is significant because life and livelihood of a vast majority of poor and marginal people are directly linked with it. In the light of pro-poor and pro-marginal interest, legal reforms with major changes on land ownership should be the right process in upholding human rights and social justice.

Bangladesh is a land scarce country. A proper evaluation of land administration policy from a wider political and economic perspective can lead to a conclusion that the current land administration of the country is firmly rooted in practices, established during the colonial era. Only little changes on this issue have been made in the post-independence era. The inability to confront the challenges at its root is likely to intensify the issues of land disputes in the long run.

Experience shows that land laws and policies in Bangladesh are not pro-people. Laws are not strictly implemented, along with scrutiny and supervision over the activities by the land officials going meager, whereas grievances of sufferers remain unaddressed, and the land officials, on their behalf, do not ensure the transparency and accountability initiative. Moreover, people have to pay informal charges, and the court is overburdened with the land litigations. The study identifies some pertinent issues, on which special attention should be bestowed given the interest of the people, and suggests measures for making administration of land management more efficient.

Problems in Practice

- **Too many registers of records:** There are many registers in connection with maintenance of record at the union land office. These registers are maintained manually. Over the years, substantial changes have been made in the land-management system. But no initiative has been taken for updating or reducing the number of registers.
- **Delayed and costly mutation:** The State Acquisition and Tenancy Act, 1950 under section 143 envisages that each case of transfer of land or each case of succession on death of the predecessor- in- interest should invariably be met with a case of mutation. These processes sometimes take several months, though at present there is a time frame for disposal of mutation cases filed with the office of the AC (Land) (60 days for metropolitan areas, 45 days for other areas). The time frame is rarely complied with.
- **Non-payment of land development tax:** Many departments of the government are not regularly paying the land development tax. As a result, the records are also not being updated.

Tk. 2.28 crore Land Development Tax Remains Unrealized in one Upazila

Land development taxes to the tune of Tk. 2.28 crore have been lying outstanding for 24 years with different government departments under Sarsha Upazila in the district of Jessore. Non-realization of taxes has been attributed to the negligence of the officials of concerned departments, said an official source. Land Development Taxes to the tune of Tk. 18.52 lac have been lying unrealized with 11 unions in the current fiscal year. Only 47 per cent of the development taxes have been collected till now. A total of 17 government organizations could not pay 34 years' development taxes. According to sources of upazila land office, land development taxes to the tune of Tk.73.91 lac have been lying outstanding with Roads and Highways Department, Tk. 1,34,21,154 with Railway Department, Tk. 3,405 with Forest Department, Tk. one lac with Water Development Board, Tk.6.13 lac with Primary Education Department, Tk. 9.06 lac with Rural Development and Cooperatives Department, Tk.7,156 with upazila parishad, Tk.1.56 lac with union parishad, Tk.12,760 with Local Government Engineering Department, Tk.23,495 with Public Health Engineering Department, Tk. 1,700 with Civil Aviation Ministry, Tk. 2,563 with Animal Life Resources Department, Tk.7,336 with Fisheries Department, Tk.16,925 with Health and Family Welfare Department, Tk. 5,623 with Bangladesh Police Department, Tk. 8,584 with Bangladesh Border Guard (BGB), Tk. 600 with Fire service and Civil Defence, Tk. 3, 155 with Bangladesh T &T Board, Tk. 434 with Bangladesh Post Office, Tk.3,872 with Agriculture Extension Department, Tk. 1.45 lac with Relief Department, Tk.2,090 with Food Department, Tk. 330 with Banking Department, Tk. 11,794 with National Board of Revenue, Tk.8,173 with Social Service Department, Tk.516 with Women Affairs Department and Tk.250 with Muktijhodda Kollyan Department. When contacted, acting land officer of Sarsha Upazila, Kamrul Arif said that the authority had issued letters to the defaulters several times to pay their outstanding amount.

Source: *The Daily Independent*; <http://www.theindependentbd.com>, 11 November, 2012

- **Technological limitation:** Prevalence of manual file management is a major barrier in the smooth functioning of land administration system. Inadequacy of technological assistance leaves scope for preparing fake documents and dodging land development tax.
- **Lack of inter-ministerial coordination:** Lack of inter-ministerial coordination implies that concerned ministries i.e., Ministry of Land, Ministry of Law and Parliamentary Affairs, Ministry of Housing and Public Works and Ministry of Public Administration do not work in coordination with each other.
- **Dual authorities:** Land mutation and all other land related functions are conducted under the Ministry of Land, but the registration process is carried out under the Ministry of Law, Justice and Parliamentary Affairs. This makes the transfer of property ownership more complex.

- **Inequitable Land Development Tax:** The Land Development Tax is inequitable and insufficient in terms of land resource mobilization. To determine tax, land has been classified into two categories: a) land used for industrial and commercial purpose, and b) land used for residential purpose. The grouping of industrial and commercial land together is not logical, since they have different values.
- **Backlog of land litigations:** Land related disputes form the major part of all civil litigations. This type of litigation is itself complex by nature. This is one of the major obstacles to efficient administration of land management. After the disposal of land litigation in different land departments and even after the appeal in Land Appeal Board, land litigation may be instituted in the civil courts from the beginning and thus remains unsettled for years together.
- **Corruption:** There are allegations of corruption against the officials involved with land administration. The field level officials can easily make delay, harassment and manipulation. As a result, the land owners have to face the problem of hidden expenses in case of securing and updating RoR.

Recommendations

- **A single parcel based land registration system:** A single parcel based system of land registration must be established. It is necessary to create a system for an efficient survey, documentation, recording and taxation system as a precondition of transparent land administration. Redesigning existing register books, indexes and khatians and creating a stand-alone "Land Register" showing existing land ownership and new transaction is needed.
- **Simplification of mutation process:** Steps should be taken to simplify and ensure mutation procedure, and to maintain the time frame. In this regard, land mutation and registration should be brought under one ministry. A single official should be entrusted with the functions of registration and mutation.
- **Modernization of land record system:** Land management needs immediate reforms. The entire land record system should be brought under computerization process.
- **Action against corrupt officials:** Exemplary punishment should be ensured for those who make forged documents and deeds of land ownership to grab land, depriving the real land owners.
- **Land valuation system:** Land tax should be properly collected from the land owners. In this regard, present land valuation system needs to be revised and rationalized considering the nature, location and utilization of the land. This will help determine and recover land development tax in a sound manner.
- **ADR to reduce the number of land litigation:** Arrangements for Alternative Dispute Resolution (ADR) at the local level may expedite dispute resolution and discourage people to approach the courts frequently. A provision should be made that the courts with local jurisdiction may entertain cases only on the findings of ADR. The ADR may be resolved through a body called Local Community Justice (LCJ). This may be headed by the local Union Parishad Chairman as chief mediator. One representative from each party may represent the parties in the ADR proceedings. In addition, the body may comprise one woman member of the union parishad as well as one teacher of a local high school. The LCJ may hear the parties, and in necessity they can visit the land under dispute and also take evidences from any person. After that the LCJ will deliver decision which will be a binding upon the parties. If the parties/ party become/s aggrieved with the decision, they may further institute suit in the civil court.

Agricultural *Khas* Land Management Related Laws in Bangladesh

Agricultural *khas* land deserves special attention in the land administration system of Bangladesh. Since 1972, the allotment of agricultural *khas* land to the landless peasants began under the auspices of the Government in pursuance of its policy. The Policy for Distribution of *Khas* Land, 1987 was promulgated to facilitate allotment of agricultural *khas* land to the landless peasantry. According to that Policy, all agricultural *khas* lands were supposed to be distributed only among the landless peasants. In course of time, the quantity of agricultural *khas* land available for settlement has decreased. The available amount of *khas* land was inadequate, and there arose pervasive irregularities in allotment of *khas* land all over the country. Against the backdrop of *khas* land, the Policy on Management and Settlement of Agricultural *Khas* Land, 1997, was promulgated in order to ensure efficient distribution of *khas* land. The Policy has been declared to be enforceable in all the districts of Bangladesh except for *Rangamati*, *Khagrachari* and *Bandarban*. All the previous orders, notifications, memorandums, directives and have ceased to grow operative since the operation of the Policy, 1997. The present Policy has validated all the previous settlements of agricultural *khas* land, made in accordance with the earlier laws.

Laws Reviewed

- The State Acquisition and Tenancy Act, 1950
- The Constitution of the People’s Republic of Bangladesh
- The Policy on Management and Settlement of Agricultural *Khas* Land, 1997
- The Non-agricultural *khas* land Management and Settlement Policy, 1995

Core Learning

- The provisions of the Policy fall short of standard that could ensure efficient distribution of *khas* land.
- The Policy lacks a pro-poor and pro-gender approach.

Problems in Practice

- **Definition of agricultural *khas* land is faulty**

According to the Agricultural *Khas* Land Management and Settlement Policy, 1997

“Municipal areas under four metropolitan areas and all thana headquarters shall be treated as urban areas, lands of these areas shall be treated as non-agricultural and all lands located beyond these areas shall be treated as agricultural *khas* land. Agricultural *khas* lands of those areas shall be treated as non- agricultural *khas* lands”

So, the definition recognizes the agricultural land of metropolitan areas as non-agricultural and ultimately favors the transformation of these lands into non-agricultural land.

- **Definition of agricultural *khas* land lacks certain important issues**

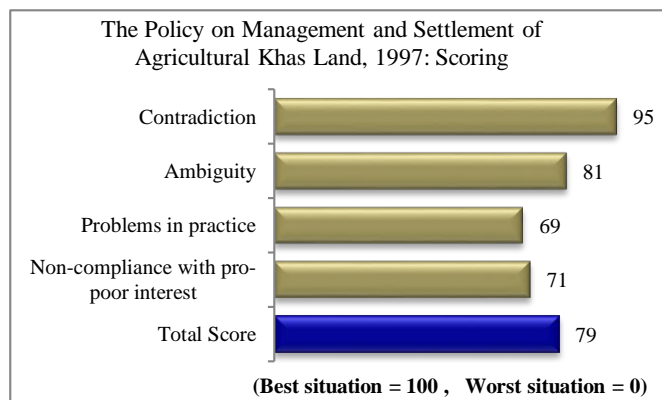
The definition provided in the existing policy does not include land used for shrimp cultivation, salt production. But, in practice these lands are also prominent source of agricultural *khas* land. Consequentially, these lands remain unidentified and poor people are deprived of their rights.

• **Lack of women participation**

There is no provision for effective participation of women. Two aspects of discrimination against women are conspicuous in the Policy. The first one is article-11(c) which provides that widows or deserted wives with sons would be eligible for allotment of *khas* land. This provision renders selection of a woman as a recipient of agricultural *khas* land conditional upon her association with certain male members of her family. This eligibility criterion actually serves as disqualification for many females who would be otherwise eligible. In fact the Policy postulates an undertone that the males are the eligible candidates for agricultural *khas* land. Second, there is no provision for women representation at the decision making level i.e. the committees. Article 19(3) of the Constitution obliges the state to take effective steps to ensure participation of women in all spheres of national life.

Scoring

The number of articles of the Policy, 1997 is ‘34’ in total. Four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been taken into account to assess the status of the articles. The concerned articles of the Policy take values from 0-100 where, 100 denote best and 0 denotes worst situation. In the current analysis the score of the Articles is 34*5=170. In respect of each key indicator the scoring is: contradiction 162, ambiguity 137, problem in practice 117, and non-compliance with pro-poor interest 121. These make a total score 537 out of 680 (170+170+170+170). After converting into 100 the total score become (537/680) * 100 = 79. If individual score is converted into 100 then for each key indicator the score becomes 95, 81, 69 and 71 respectively. The analysis reflects that the articles of the Policy, 1997 are not totally free from contradiction and moderately ambiguous. The situation is also frustrating as regards to compliance with pro-poor interest, and contains some problems in practice.



Recommendations

- **Amendment of the policy:** Reviewing the present policy, an amendment is proposed. This amended policy contains 34 articles with an aim to make this law pro-poor and more effective.
- **Revision in the definition of agricultural *khas* land:** New article has been inserted to revise the definition of agricultural *khas* land. Under article 3 of the proposed policy, agricultural *khas* land means all *khas* lands which are not non-agricultural. It is not location, but the nature of land, which shall be taken into consideration in respect of the matter. Another significant change in the proposed policy is the revision of source of agricultural *khas* land. According to article 9 of the proposed policy, agricultural *khas* land includes land, used for shrimp cultivation and salt production.
- **Participation of women:** To ensure women’s participation the following recommendations are made.

- A woman Member of Parliament nominated by the Hon'ble Speaker of the Parliament is to be included as a member of the National Agricultural *Khas* Land Management Executive Committee.
- A representative from Jatiya Mohila Parishad is to be included in the National Agricultural *Khas* Land Management Executive Committee.
- A representative from Jatiya Mohila Parishad (District Level) needs to be included in the District Agricultural *Khas* Land Management Executive Committee.
- A suggestion is made to include widows or divorced women capable of cultivating the lands and neutral genders (i.e. persons incapable of forming families by way of marriage) in the priority list of landless families.

Balu Mohal Related Laws in Bangladesh

Balu Mohal is a term usually denoting sand-deposits, located in different areas across the country. Nearly three thousand Balu Mohals of large and small size have sprung up in the country. However, large sand-deposits can be found along the banks of the major rivers. Sand-deposits are resources generally used for various types of construction. Balu Mohal is a Government-owned land, managed by the Ministry of Land mostly by means of the leasing out process. The Collectors make arrangements for leasing out Balu Mohal. Although sand-deposits provide useful resources, policies on the Balu Mohal management went unimplemented, and were not oriented towards the people's interests; rather the sand Mafia has grown up rapidly by means of money, muscle power and political influence they hold in their possession. They ravage the sand resources beyond restoration and let the rivers die gradually

The Balu Mohal management law takes its origin from State Acquisition and Tenancy Act (SAT Act), 1950. Subsequent changes regarding its management are incorporated into the Government Estates Manual, 1958. The policy on Balu Mohal management is updated by the Land Management Manual, 1990. Finally, an Act has been enacted in 2010.

This review involves examining the existing laws and rules on the Balu Mohal management, identifying the limitations and forwarding recommendations. The following laws appearing relevant to Balu Mohal management are examined:

- The State Acquisition and Tenancy Act, 1950
- Government Estate Manual, 1958
- The Constitution of the People's Republic of Bangladesh, 1972
- Land Management Manual, 1990
- The Soil and sand management Act, 2010
- The Balu Mohal and Mati Management Rules, 2011

Problems in Practice

- **Absence of a technical committee**

There are provisions for national and district-level committees in the present Rule, 2011. But there is no such provision for a technical committee. Sand and soil management involve technicalities. Unplanned excavation of sand may cause adverse impact on environment, river banks, river bed etc. The technical committee, once formed at the district level, will be able to provide a technical report on measuring and identifying sand resources and its planned excavation. The district committee can make necessary recommendations or take decisions on the basis of the report of the technical committee. Country like Kenya manages their sand harvesting with the recommendations of technical committee.

- **No representation of woman**

The present rule does not provide scope for inclusion of woman as member in the national or district committee. The Constitution of Bangladesh emphasizes representation of women. The Constitution, in Article 28(4) states that “Nothing in this article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward section of citizens”. The present Rule is inconsistent with the Constitution.

- **No time schedule for extraction of sand and soil**

In the present Rule, no definite time schedule has been mentioned for sand excavation. As consequence, the grabbers and unauthorized persons can excavate sand-deposits from the river bed indiscriminately and at any time.

In country like Kenya, for extraction of sand, time has been specified in National Sand Harvesting Guidelines, 2007. Time schedule in Kenya is as follows:

Article (10): Hours for harvesting and transportation of sand

- i. No person will harvest, extract or scoop sand between the hours of 6pm to 6am.
- ii. No person will transport sand between the hours of 8pm to 6am.

- **Soil and sand management impact on environment**

The unplanned and unauthorized excavation of sand leads to serious and inevitable degradation of environment. As an immediate impact river banks and river bed obviously become subject to erosion and loss. Article 18A of the Constitution of Bangladesh contains special provision for preservation of environment.

“The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.”

But the present Act and Rule in connection with sand and soil management do not provide adequate provision regarding environmental conservation.

Illegal Sand Excavation Threatens Rivers

Unscrupulous people continued illegal excavation and sand lifting from the Kirtonkhola and adjoining Sugandha river for over a month, threatening newly opened Shaheed Abdur Rob Serniabat Bridge over the Kirtankhola river. The callous act is also affecting navigability near Barisal river port and weakening river protection embankments in the area, in addition to causing harm to environment and ecology.

Source: The Daily Star; <http://www.thedailystar.net/newDesign/news-details.php?nid=247397>

Sand Excavation Without Consideration of Environment

Some environmentalists yesterday demanded annulment of Narayanganj district administration's move to lease Nurertek area under Sonargaon upazila, encircled by river Meghna, for sand excavation. Some miscreants have been forcibly excavating sand from the area for days together. If the administration leased the area, the miscreants would begin sand excavation in larger volumes, posing the threat of erosion to adjacent villages, they said. They placed the demand while addressing a rally and human chain organized by Poribesh Bachao Andolon (POBA) at Mayadip village in Sonargoan, says a press release. The district administration issued an advertisement in newspaper on April 20 to lease Nurertak Balu mohal (an area where sand is excavated). POBA Chairman Abu Naser Khan, Boddier Bazar Union Parishad Chairman Mahbub Sarkar and Sonargaon Press Club Convener AKM Mahfuzur Rahman also spoke on the occasion. Meanwhile, POBA along with Subornogram, a social organization, began filing a writ petition with the High Court against the lease.

Source: The Daily Star; <http://www.thedailystar.net/newDesign/news-details.php?nid=183239>

- **Silence of administration on illegal excavation of Balu Mohal by influential**

An illegal sand-excavation along the banks of big rivers like the Buriganga, the Turag, the Shitolokha and the like, is something done by a group of people year after year. Such an illegal business gets done without permission from the concerned authority and even violates the court's order. The local administration remains silent on the issue.

Recommendations

- **Inclusion of women members in national and district committees**

No woman is included in the committees. To make gender equal, women representatives should be included both in the national and district committees. A woman Member of Parliament nominated by the Honorable Speaker of the Parliament is to be included in national committee as representative as per proposed rule 8 of sub rule 1(q). The district committee shall consist of 10 members. It is suggested that woman Ward Counselor of the Paurashava and the Headmistress of a government high school are to be included in the district committee as per rule 4 of sub-rule 1(m-n).

• **Technical committee and its functions**

A new technical committee is to be formed to supervise the technical matters. Its formation and functions, suggested in the proposed law in rule 6 and 7, are as follows:

- Additional Deputy Commissioner, Revenue.....Convener
- Executive Engineer, WDB.....Member
- Executive Engineer, PWD.....Member
- Executive Engineer, LGED.....Member
- Representative, BIWTA.....Member
- Representative, DOE.....Member
- RDC.....Member-secretary

Functions of the technical committee

- The committee shall make technical study and recommendations regarding sand and soil management of the district.
- It shall report the feasibility of sand excavation from the river within the district.
- It shall provide necessary technical support to the district sand and soil management committee.

Fixation of time

There is no fixed time for excavation and transportation of sand. As a result, sand grabbers excavate and transport sand, even in the evening and night, a matter which leaves an opportunity for unplanned sand excavation causing a major threat to environment. So, a definite time schedule is suggested in proposed rule 15 for sand excavation and transportation. A lessee shall excavate or scoop sand on the schedule:

- In summer no person shall excavate or scoop, and transport sand between the hours of 6pm to 6am.
- In winter no person shall excavate or scoop, and transport sand between the hours of 5pm to 6am.

Environmental issue

As said earlier, an unplanned excavation of sand-deposits, poses a threat to the environment. The process in practice ignores the destructive impact of illegal excavation upon the river course, bank and bed. Hence, proposed Rule14 is suggested for the protection of environment. In this context the followings are the major considerations:

- Trucks, Lorries and other carriers shall use only the designated access roads.
- The area of sand excavation and the depth at which the excavation shall be done needs to be specified. Technologically appropriate/rational distance should be maintained to keep the river bank environmentally sound.
- A clearance certificate is required from the Department of Environment.

Char-land Related Laws in Bangladesh

Char-land, in all likelihood, falls into a major category of *Khas* land. The term is attributable to a large, sandy, unconsolidated and amorphous piece of land, emerging from a river, owing to the increase of land by the action of natural forces or, in other words, accretion. The flat, alluvial, sandy expanses of Char-land grow identical with the features of an outlandish landscape as they are formed by a huge accretion of silt and sediments as a consequence of prolonged river erosion.

The dynamics, underlying the rising Char-land across Bangladesh, is unique and amazing. Except for certain hilly-areas, Bangladesh is the world's largest delta, formed by three great river systems Ganges/Padma, Brahmaputra/Jamuna and Meghna. These mighty rivers, originating from the Himalaya, carry millions of tons of mud and sand every year as they meander through the country and merge into the Bay of Bengal. Letting a huge bulk of sediments get deposited in the channel of rivers and tributaries-stretching across the country-, those three big rivers lead to a river-network and are responsible for raising river-beds and forming chars.

Char, across the country, lays claim to a 'by-product' of the natural hydro-morphological dynamics of rivers, and of human intervention. The truth about the Char, located in the high-lying land--unaffected by frequent flooding by sea-water--, is that they are fit for the habitation of settlers. Char-land comprises approximately 1,723 square kilometers, a particular area of the emerging land, which constitutes 1.2 percent of the country's land area in total. Nearly 5 percent of the country's population inhabits the Char-area. And 80 percent of the Char-dwellers exist in poverty-stricken situations. It is tentatively measured that around six million people, belonging to the country, and claiming kindred with different places, classes, groups, religions and the like, come and get settled in the areas of land, surfacing within the close vicinity of, or upon the rivers. The unheard and unuttered voice of the poor, in most instances, reveals a blazing, noticeable human-dimension of a life at char. Critically speaking, the Char-inhabitants get exposed to all sorts of oppressive human-reality, encompassing powerlessness of the poor, the deterioration of the law and order situation, pervasive violence by the influential, vulnerability of the Char-multitude to the power elite (*Matbar*), helplessness and isolation of the marginalized, poverty-encumbered aspects of life proceeding from inadequacy of job, illiteracy, malnutrition, epidemic diseases and so on.

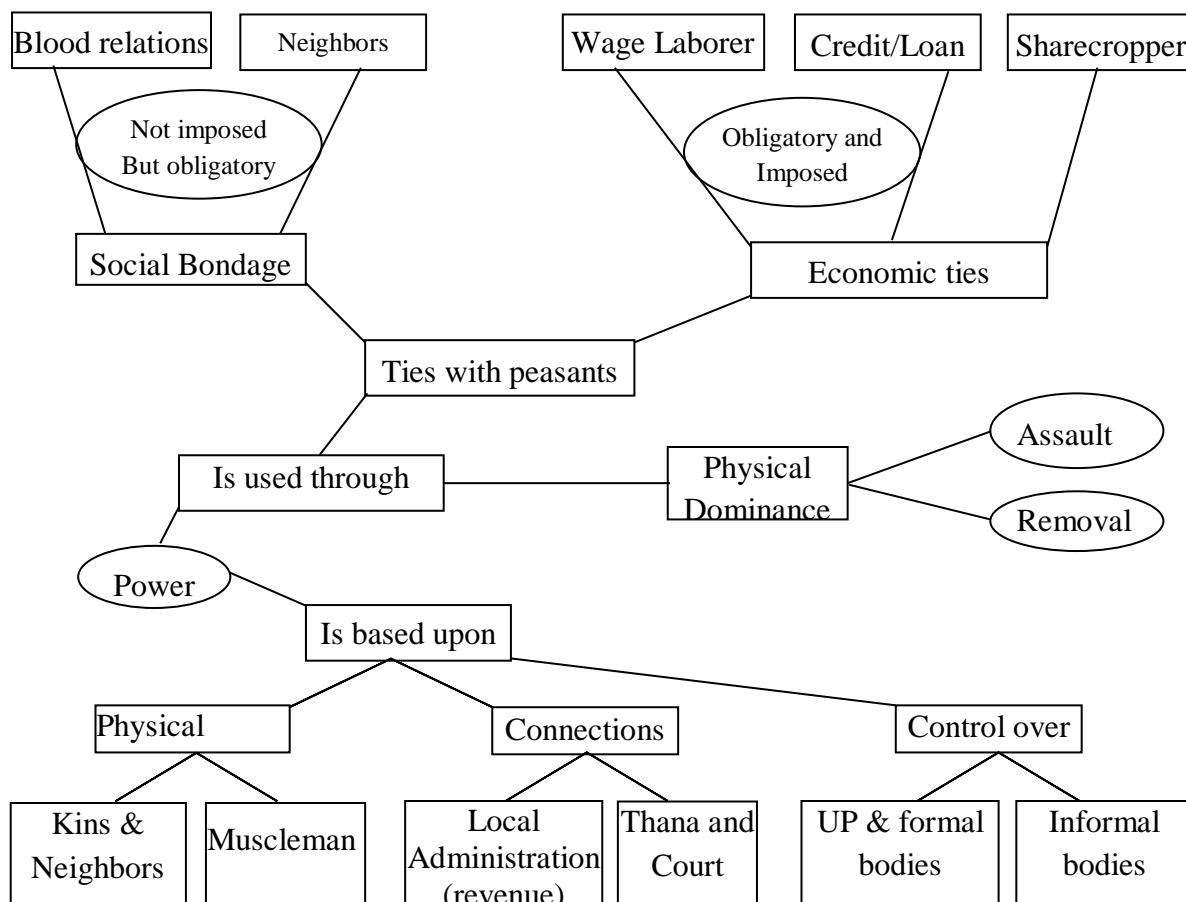
Apart from holding the economic status of resources, Char-land, symbolically, grows symptomatic and suggestive of power and influence. In the mist of the rural set-up of Char-land, the local elite, by and large, are predisposed to exercise uttermost control over land. The operation of power relations, by the most successful or powerful group of people in the Char-areas, can be traced back to certain mechanisms, such as, connection with the local-administration, the ability to have a financial gain by means of a threat of violence or physical destruction, the imposition of an embargo upon the local market, and so on. The Char-multitude is left with no other options, except for maintaining contacts with the power elite and seeking favor from them. The local term for the power elite is *Matbars*. Ironically speaking, they provide the poor with land, financial support and other means for homesteading and survival.

Incompatible with the flow of the mainstream national-development, little attention comes to be bestowed upon the Char-regions and the people, living there-in over the bygone decades. Equipped with a few development initiatives, the marginal role of the Government fails to prove efficacious in ensuring the better prospects of Char-areas and, in turn, leads to an

impairment of healthy survival among the Char-population. Accurately speaking, the State machinery goes bare of any comprehensive and individual Char-development strategy. The grave concern of the Char-dwellers involves the inadequacy of transparency in the land system, and minimal accountability of the authorities concerned.

What needs to be mentioned notably and unshunnably is that the absence of a sound and comprehensive land-use policy, the corruptible nature of land-administration and its country-wide destructive impact, the operation of outdated land laws and policies, economic and political criminalization in every sphere of society, and the like, are held responsible for incessantly engineering the maleficent process of emergence and growth of the Char-Mafia. Since time immemorial, they have been grabbing Char-areas year after year, century after century, thereby possessing land and assets, and rendering millions of Char-people landless and homeless. Despite the fact that the Char-people are entitled to *Khas* land, they, still, have not been brought under any rehabilitation program. And it outrageously decimates and smothers the human development process.

Dynamics of power base in the Char-lands



Source: Baqee (1998, P. 46)

Laws on Char-land

The Char-land management and settlement issue, from legal perspective, is no simple matter in Bangladesh, and weighed down with the highest degree of labyrinthine complicity. It leads to a tangled web of many contentious and perplexing issues with socio-economic, political, cultural and legal dimension. The laws on alluvion-diluvion have a strong implication on the overall distribution and management of Char-land.

The relevant land literature corroborates a number of laws on Char-land, promulgated at several times. All these laws have merged with the State Acquisition and Tenancy Act, 1950. The laws are:

- The Bengal Regulation XI of 1825
- The Bengal Alluvion and Diluvion Act, 1847
- The Bengal Alluvial Land Settlement Act, 1848
- The Bengal Alluvion (Amendment) Act, 1868
- The Bengal Tenancy Act, 1885
- The Alluvial Lands Act, 1920
- The State Acquisition and Tenancy Act, 1950
- The Presidential Order 135 of 1972

The past history of land laws testifies to the fact that the loss of landmass (diluvion) and formation of Char (alluvion), since time immemorial, led to the appearance of a body of usage and custom, regulating the rights of ownership to such pieces of Char-land. The promulgation of the Bengal Alluvion and Diluvion Regulation, 1825, for the first time, gave a statutory shape to the rules of usage. The regulation of 1825 covers broadly two categories of land re-formation: in situ and new accretions.

Subsequently, the Bengal Alluvion and Diluvion Act, was enacted in 1847 for the purpose of Char-land management. Another Act for the settlement of the alluvial land was enacted in 1848.

The “alluvium land” was defined under section 2 of the Alluvial Lands Act, 1920:

(a) “Alluvial land means land which is gained from a river or the sea in any of the ways referred to in the Bengal Alluvion and Diluvion Regulation, 1825, The Bengal Alluvion and Diluvion Act, 1847 or the Bengal Alluvion (Amendment) Act, 1868, and includes reformations in situ”.

A snapshot of the Acts and Regulations on Char-land is presented below:

Laws on Char-land with Salient Features	
Laws	Salient features
The Bengal Regulation XI of 1825	<ul style="list-style-type: none"> • Right and title to accreted land are ascertained • Claims should be decided by local usage or customs • Separate rules should be adopted where local usage is not established.
The Bengal Alluvion and Diluvion Act, 1847	<ul style="list-style-type: none"> • Provision of survey of the chars and islands • Provision of assessment of newly formed accreted land • Local revenue officers are empowered to take control and settle newly accreted chars • Revenue officers are protected by indemnity clause against exercising of their power
The Bengal Alluvial Land Settlement Act, 1848	<ul style="list-style-type: none"> • Revenue is ascertained on the accreted land • Provision for settlement of the under raiyats
The Bengal Alluvion (Amendment) Act, 1868	<ul style="list-style-type: none"> • Provision of settlement of newly thrown up char • Provision of suit by any aggrieved party against the settlement made by the collector
The Bengal Tenancy Act, 1885	<ul style="list-style-type: none"> • Provision of rights on diluvion land subject to reappearance within 20 years • Abatement of rent on diluvium and re-entry of alluvium land
The Alluvial Lands Act, 1920	<ul style="list-style-type: none"> • Definition of alluvial land • Preparation of map and survey of the attached land are vested in the collector • Collectors are protected by indemnity clause against legal actions
The State Acquisition and Tenancy Act, 1950	<ul style="list-style-type: none"> • Abatement of rent on diluvion and re entry into land that reappears • Retaining of ownership on diluvion land up to 20 years • Acquisition by the state of lands reappearing after 20 years
Presidential Order 135 of 1972	<ul style="list-style-type: none"> • Acquisition by the state at the time of diluvion • Government is empowered to settle these lands after reformation • Previous owners get priority in getting settlement subject to the provision of section 20 and 90. • Definition of family.
The State Acquisition and Tenancy (Amendment) Act, 1994	<ul style="list-style-type: none"> • Re-imposition of the provision regarding ownership and extension of tenure of such ownership up to 30 years over the diluvium land.

Source: Barkat et al. (2007)

Afterwards, further explanation on Char-land was given in sections 86 and 87 of the State Acquisition and Tenancy Act, 1950. Section 86 states that if the lands of holding or a portion of such lands are lost by diluvion, the rent or the land development tax of holding shall, on application or intimation made by the tenant in the prescribed form to the revenue officer, be abated by such amount as may be considered by the revenue officer to be fair and equitable in accordance with such rules, made in this behalf by the government, and the act of such loss by diluvion shall be recorded in accordance with such rules, which shall be treated as proof of title to the lands when the same reappear in situ. Section 87 states that when any land has been gained by accession, whether from the recess of a river or of the sea, it shall not be considered as an increment to the holding or tenancy to which it thus may be annexed, but vested absolutely in the Government and shall be at its disposal.

The present law on Char-land i.e. State Acquisition and Tenancy Act, 1950, has been amended at different periods. But, surprisingly only two sections deal with the issue of Char-land. The provisions of this law are not pro-poor; rather it deprives the poor and vulnerable of their rights. The majority of people do not have any idea or understanding about the terms, namely, alluvion and diluvion, laid down in the SAT Act. Since the implied meanings of alluvion and diluvion are no longer a matter of serious concern to the poor and marginalized, they are often deprived of their rights to alluvial land under the influence of the cagey land grabbers, who exploit the existing provisions of the Act to their benefit in connivance with the corrupt officials involved with the land administration.

On 4 August 1972, Presidential Order No. 135 was promulgated to rehabilitate the landless. It clearly indicated that newly emerged land, previously lost by diluvion, should be restored to the government and not to the original owner. Thus, all pieces of newly formed land are considered to be *khas* land i.e., government land. This order means recovering Char-land

from the power elite at the local level in order to redistribute land property among the landless farmers. The local term for the power elite is *Matbar*.

Although the Act prioritizes the ownership of land-losers, especially those falling victim to river erosion, it goes, in practice, unimplemented. The framing of laws by the Government is motivated towards preventing the power elite and the influential from illegally occupying all such land, but, a few persons have benefitted from it in the real-life situations. Implementation of the laws, likely to work in favor of the poor, involves a host of challenges and difficulties, encompassing delay in surveys by the Land Records Department, slow accretion of viable agricultural-land, prevalence of land-related violence and so on. Consequently, the poor peasants, in most instances, are forced into the rights-exploited and deprived situations since they could not come to acquire their rightful share of emerging Char-land. The matter of fact is that the muscle power by the influential, the poor people's dispossession by the powerful, murder, rape, crop robbery and the like are visited upon the Char-dwellers on a habitual basis.

The situation took a new turn in 1994. Pieces of diluvion land, reappearing from June 28, 1972 to July 13, 1994, were absolutely vested in the Government. The Act stated that if the settlement of any piece of alluvial land is made by the Government or Collector, the person in whose favor the settlement is made would be the land-owner. But the amendments of 1994 in Section 86, state that if any piece of land, gainable by alluvion, reappears within 30 years of its diluvion, it will be returned to the original owner, subject to the terms and conditions of ceilings. The provision is operative on the Char-land issue. Besides, the newly emerging alluvial land will be vested in the Government.

Core Learning

Char-land management is one of the most complicated issues in Bangladesh. For the lack of proper management of Char-land, and of the distribution system of other *Khas* land, the number of landless people is increasing. Every year many people lose their land due to several factors, river erosion being one of them. So, the laws on alluvion and diluvion have strong implications for the overall land management. The Char-related problems could have been minimized, if existing Char-land of the country had been properly managed and distributed among the landless.

The laws relating to Char-land are not pro-poor; rather it deprives the poor of their rights. Char-land is regulated under sections 86 and 87 of the SAT Act, 1950. At present, the amendment enshrined in the Act 1994 is operative. The majority of people do not have any idea or understanding about the terms, namely, alluvion and diluvion, laid down in the Act. Since the implied meanings of alluvion and diluvion are no longer a matter of serious concern to them, they are unable to deal with issues of river erosion and accretion of land from legal perspective. As a result, the poor and marginalized are very often deprived of their right to alluvium land under the influence of the cagey land-grabbers who exploit the existing provisions of the Act to their benefit in connivance with the corrupt officials involved with the land administration.

That the Act does not play any effective role in this regard is crystal-clear from the fact that the river erosion renders a hundred thousand people landless and homeless, whereas, not a single hundred out of the deprived, do not get back the ownership of the accreted Char with the help of the Act. This law does not seem to be pro-poor, and this turns out to be a fiasco in

protecting the rights of the affected people. Equipped with the existing arrangements and applications, the Act provides little scope for the poverty-alleviation program through the settlement of Char-land. In the settlement procedure, the participation of the victims is not ensured. There is no sufficient provision for the observance of accountability of land officials and no penal provisions to combat against their malpractices. In the absence of an individual body of law on the management and settlement of Char-land, proper identification and distribution of Char suffered a big set-back. Considering these limitations, it is felt necessary to frame a separate policy for proper management and settlement of Char-land. Consequently, a policy titled the “Char-land Management and Settlement Policy” is proposed.

Problems in Practice

- **Thirty-year time limit for claiming ownership of alluvium land without rehabilitation is not rational**

The provision of section 86 of the SAT Act, 1950 contains that if diluvium lands reappear in situ within thirty years of loss, the right, title and interest of the original tenant or his successor in interest shall subsist in the holding or portion thereof during the period of loss. But, thirty year-time limit regarding the alluvium land is superfluous and complex one. Because, it is quite impractical to think that the owners of diluvium lands would remain on the river bank or nearby for long thirty years without any rehabilitation.

- **Negligence of land officials in notifying the people about accretion of Char-land**

This law states that the Collector or the Revenue Officer on taking possession of such land shall give public notice on taking possession of the alluvial land. But such notices are not served and no time limit is specified in the law for such notice.

- **Survey is not made and proper account of Char-land is not maintained**

Although the law requires that field level inspection and survey are to be made by the land officials, it fails to adapt to the pragmatic situations. Proper account of diluvium land is not maintained. As a result, a squabble develops over the maintenance of the record of rights to the diluvium lands.

The Illegal Occupation of Char in Narshingdi

Bacchu Miah aged about 40 years, is the resident of a char of Chardigholdi union of Narsingdi district. There had a dispute regarding the possession of char between two parties of Chardigholdi. The leaders of the two parties were Abu Mansur Sarker and Moslem Miah. Bacchu Miah was the supporter of Moslem Miah. For taking possession of the char a conflict took place between the supporters of Moslem Miah and Mansur Sarker. This caused the death of Bacchu Miah, the unfortunate chaura. A murder case was instituted in Narsingdi Model Thana. The inhabitants of the char stated that there are about one thousand and five hundred acres of lands in the char area. Local influential are trying to grab these lands and conflict regarding the possession of char frequently takes place.

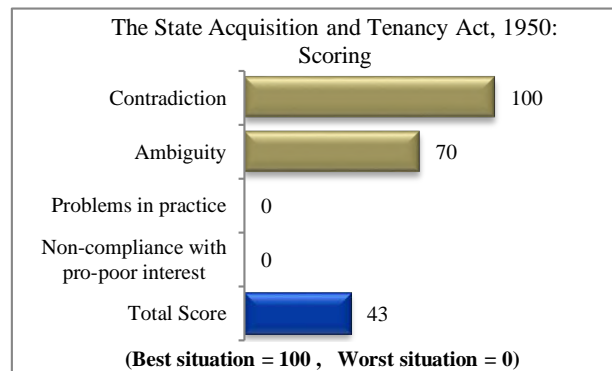
Source: “One killed in Narshingdi in a conflict regarding the possession of char (in Bangla: Narshingdite char dokhol niye shongghorshe nihato ek)” The Daily Prothom Alo, 8 March, 2010

- **There is no concentration on temporary Char**

In recent years most of the rivers are dried up in the early winter. Rivers are silted. Thus, huge areas emerge as temporary Char. There is no definition of temporary Char under the present arrangement. Moreover, due attention is not paid on this type of char.

Scoring

The total number of sections of the Act relevant to Char-land is '2', and four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered here to evaluate the merit of the pertinent sections of the Act that take values from 0-100 where, 100 denotes the best situation, and 0 the worst one. In the present analysis, the score of two sections is $2 \times 5 = 10$. Thus, in respect of each key indicator the scoring is: contradiction 10, ambiguity 7, problems in practice 0, and non-compliance with pro-poor interest 0. The indicators attain a total score 17 out of 40 ($10+10+10+10$). With the conversion of the total score into 100, it becomes $(17/40) \times 100 = 43$. On the other, if individual score is converted into 100, then for each key indicator the score becomes 100, 70, 0 and 0 respectively. From the foregoing analysis, it can be deduced that the sections of the Act, 1950 relevant to Char-land is totally free from contradiction and least ambiguous. But, these sections do not comply with pro-poor interest and contain substantial problems in practice.



Recommendations

- **Policy on the management and settlement of Char-land:** A new policy is proposed for the management and settlement of Char-land. This policy contains 9 articles and a number of sub-articles regarding identification, survey, recovery, distribution, management and other pertinent issues of Char-land.
- **Completion of diara settlement and special concentration on temporary char:** Article 4 of the proposed law provides that Directorate of Land Records and Survey with the help of District Administration and other revenue officials shall complete the diara settlement of accreted land in the river and sea within shortest possible time. At the time of completion of diara survey, identification of temporary char shall be considered.
- **Formation of committees:** Article 5 of the proposed law states that there shall be committees for the management and settlement of Char-land at different levels i.e., a) National Committee, b) District Committee, c) Upazila Committee, and d) Union Committee on Char-land management and settlement. Detail composition and functions of the committees have been outlined in the original draft law.
- **Application procedure:** Article 6 provides that landless persons shall apply in a prescribed form to the Assistant Commissioner (Land) who is also the Member-Secretary of the Upazila Committee. He will scrutinize the union-wise applications, and publish the list of valid applicants along with invalid applications (if any) explaining reasonable ground for rejection.
- **Selection of deserving applicants:** It is also suggested in article 6 that the local committees will select the deserving persons for the settlement of Char-land. With the completion of preliminary selection, the committee, if think fit, can visit the area and finalize the selection.

- **Land less, erosion affected family will get priority:** Article 6 further states that in this selection procedure, family affected by diluvion/erosion, landless family, widow and divorced woman will get priority.
- **Restrictions in allotment:** It is also proposed that a family can be allotted a maximum of 1.0 acre of land. But it can increase up to 1.50 acres of land considering the availability of the land and size of the family. The land given in settlement cannot be transferred to anybody in any form within 15 years of settlement except by way of inheritance.
- **Grievance of aggrieved person:** Another proposal is that objections against any land included in the list may be made in writing within next 30 days of publication of list. The Upazila Committee shall decide the objections against the local committee (union committee) upon hearing within 20 days and publish the final list thereafter.
- **Appeal procedure:** Article 7 describes the appeal procedure against the selection process. Appeal may be preferred to the District Committee against the decision of Upazila Committee and it shall be decided within the next 20 days. Any appeal against the decision of the District Committee may be preferred to the National Committee within 30 days and it shall be disposed of within 60 days thereof after hearing on merit. The decision of the National Executive Committee shall be final.
- **Reducing thirty-year time limit:** The A proposal is forwarded to reduce the thirty-year time limit, enshrined in the provision in connection with the subsistence of ownership of the alluvial land in situ. The Article 9 puts forward a suggestion to reduce the time limit to twenty years, and during this period, the owners of diluvium land should be rehabilitated. For this purpose, the affected families may be rehabilitated in the cluster village/adarsha gram or in other sheltered homes.

Chingri Mohal Related Laws in Bangladesh

The Chingri Mohal Management Policy was first made in 1992. It contains 6 articles and discusses leasing of agricultural *khas* land for ‘chingri’ cultivation. Substantial changes such as utilization of more areas under shrimp cultivation, over exploitation of natural resources and a tendency to give up crop-production etc. have cropped up over the years. It is unfortunate that such changes remained unaddressed under the existing policy. Moreover, the policy has not been able to ensure the rights of the poor and marginal farmers in chingri cultivation.

That, the decade 1970s was marked by an upward demand and high prices for chingri product in the international market, greatly encouraged farmers to resume shrimp culture in polders within the embankment areas. Equally important was the fact that rice cultivation was no longer financially viable because the polders became water logged due to poor drainage. These two factors together worked as a catalyst in the process of accelerated shrimp culture in Bangladesh.

Core Learning

The growth of unplanned and uncontrolled shrimp culture and unhealthy competition among the shrimp cultivators led to reduction of coastal resources and thus has resulted in conflict, disputes, and litigation over land. Small land owners are compelled to surrender their land to the big land owners for chingri cultivation by means of contract money which is locally known as ‘hari’ (contract money for leasing out land). The rate of ‘hari’ varies from Tk. 4

thousand to Tk. 6 thousand per acre. On the other, the owner of the chingri gher earns about Tk. 2 lacs utilizing one acre of land. This shows the nature and extent of exploitation of the small and marginal farmers. At times, the owners of chingri gher try to forcibly occupy the land of these poor and marginal farmers. Even they are reluctant to pay the hari money. As a result, conflict and dispute arise ultimately, leading to litigation. It is difficult on the part of the poor farmers to bear the expenses in connection with litigation. The shrimp cultivators are placed under a compulsion to take loans from the local influential at a higher interest rate. This leads to marginalization of the poor shrimp farmers.

Some dishonest local land officials become involved in the above malign process. An unholy alliance between the chingri gher owners and corrupt land officials make the overall situation worse.

Chokoria Sundarban Becoming Tree Less

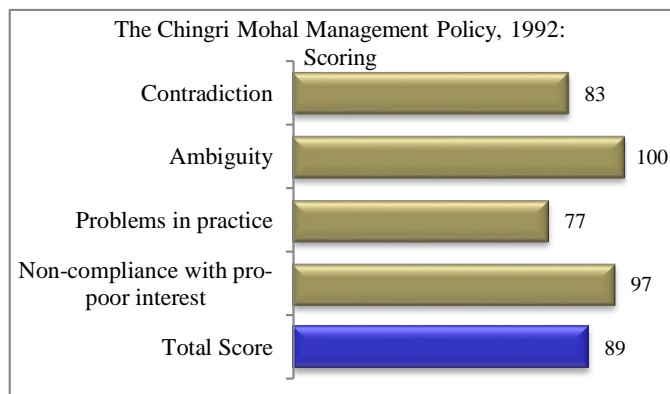
Chokoria Sundarban is located in Cox’s Bazar district. About 21,000 acres land of this Sundarban has become tree less over the years. Today this area is used for chingri cultivation. To encourage the chingri cultivation this area was made tree less and leased out. With the help of financial assistance provided by the World Bank and ADB, physical infrastructure was developed for making the area suitable for chingri cultivation. Destruction of Chokoria Sundarban is the glaring example of environmental degradation.

Source: Gain, (2008.)

Presently, shrimp culture is growing faster. As a result, more coastal wetlands, crop fields and mangrove forest are transformed into shrimp ‘ghers’. This unregulated shrimp culture has impacted bio-diversity, mangrove forest, soil and marine species. It proves that in the current policy the ecological aspect is not considered. The lack of modern technical knowledge among the farmers about shrimp culture is likely to produce negative impact on the productivity of shrimp.

Scoring

The total articles of Chingri Mohal Management Policy, 1992 are ‘6’ in number. Four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered to evaluate the merit of the pertinent articles that take values from 0-100 where, 100 denotes the best situation, and 0 the worst one. In this analysis the score of 6 articles is 6*5=30. In respect



of each key indicator the scoring is: contradiction 25, ambiguity 30, problems in practice 23, and pro-poor interest 29. The figures attain a total score 107 out of 120(30+30+30+30). Following the conversion of the total score into 100, it becomes $(107/120) * 100 = 89$. If individual score is converted into 100, then for each key indicator the score becomes 83, 100, 77 and 97 respectively. The analysis indicates that the articles of the Policy are free from ambiguity and almost free from contradiction. On the other, compliance with pro-poor interest is very near to the best situation, but the Policy contains substantial problems in practice.

Recommendations

- Participation of woman in chingri ‘gher’ is almost absent. The land once owned by them or their husband is now given for shrimp cultivation. And the access of women to economic activities has become minimal. This observation is not consistent with Article 19(3) of the Constitution of Bangladesh. It states as follows:

“19 (3) The State shall endeavor to ensure equality of opportunity and participation of women in all sphere of national life”.

Article 28 (4) of the Constitution has delegated power to any organization/person to make special provision for children and woman and for the advancement of backward section.

“28 (4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens”.

In the proposed policy woman’s participation is suggested to ensure woman empowerment and maintain harmonious interpretation of the Constitution. Regarding this, necessarily three Members of Parliament are to be included in the National Chingri Mohal Committee. Among them one should be woman Member of Parliament, and to be nominated by the Government as suggested in article 2 (1) of the proposed policy. As laid down in article 2 (2) of the proposed policy, there shall be one woman member in the district committee to be nominated by the Chairman/Administrator, Zilla Parishad. In article 4(e) of the proposed policy, one fourth of chingri mohal is suggested to be given lease to women.

- Representation of relevant Ministries like Local Government (LG), Ministry of Agriculture (MoA), and Ministry of Disaster Management (MoDM), is also found conspicuously absent. As part of the initiatives, needed to form the broad-based committee, inclusion of the representatives from the above ministries, is required. Since involvement of certain important ministries is missing, in article 2 (a) of the proposed policy, it has been suggested to include Secretary, Local Government Division, Secretary, Ministry of Agriculture, Secretary, Ministry of Disaster Management and Commissioner of Chittagong/ Khulna/Barisal Division, as members of the national committee. For district chingri mohal committee, the Chairman/Administrator of district council and Deputy Commissioner are suggested to be included as Chairman and Vice Chairman respectively.
- Article 4(d) of Chingri Mohal Management Policy, 1992 abolishes the rights of the poor. It includes provision of solvency for giving settlements of chingri mohal. This contradicts Article (19) clause 1 and 2 of the Constitution which states as follows:

Clause 1 “The state shall endeavour to ensure equality of opportunity to all citizens.”
 Clause 2 “The state shall adopt effective measure to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens and of opportunities in order to attain a uniform level of economic development throughout the Republic.”

It is suggested to omit article 4(d) of the present policy and include a new provision such as formation of co-operatives by local marginal and poor farmers to protect their rights, and also to build up healthy cooperation among local poor farmers. They will be given priority in the process of settlement of *khas* land under chingri mohal.

Debutter Property Related Laws in Bangladesh

Debutter property in Hindu religion assumes special significance. There is no authenticated source to know the specific time period during which the ritual of Debutter in Hindu religion started before but it seems that Debutter ritual is an old one, performed by Hindus as a form of religious endowment, since it is made the basis of the law. In Bangladesh, a large number of properties are declared by land lords as Debutter estate for various social and religious institutions. People from different walks of life endow their property for spiritual wellbeing. A Hindu who possesses a sacred heart and does not hold the status of a minor may dispose of his property by gift or by will for religious or charitable purpose such as the establishment and worship of an idol, feeding Brahmans and poor, perform religious ceremonies like Shradha, Durga Puja and Lakshmi puja and the endowments of a university or hospital. So, dedication of property by a Hindu is of two kinds: religious and charitable. Hindus all over the world accepted Debutter as a process of philanthropy also. In Bangladesh no comprehensive survey has yet been made on total amount of Debutter property. The major problem of approaching the matter of dealing with Debutter property is that, still no complete law has been enacted in connection with Debutter property. This review examines the laws as mentioned below:

- The State Acquisition and Tenancy Act, 1950
- The Official Trustees Act, 1913
- The Religious Endowments Act, 1863 (S.14)
- The Charitable and Religious Trusts Act, 1920

Core Learning

Compared with the dealings of other national asset of Bangladesh, Debutter sector holds an underdeveloped, underutilized position. This needs a proper and better utilization. The problems, which the Debutter institutions face in the country, are numerous and of enormous magnitude.

Some of the major problems that the Debutter sector is currently facing in Bangladesh are as follows: Absence of an Act regarding Debutter property, inadequate Manpower, absence of any authenticated survey of Debutter Properties, illegal occupation and misappropriation of Debutter properties, uncollected arrears, operational inefficiency and problem of Debutter disputes, integrity of the shebait/committee and their qualification, unauthorized alienation, personal use of Debutter's compensation money, lack of progressive and innovative Ideas, and abuse of power by the unskilled administrators.

Debutter Properties are Increasingly Dispossessed

Taking advantages of the mismanagement of debutter properties, land grabbers become more aggressive. As a result, the number of dispossessed debutter properties is being increased.

In Bhola it was found that, Yunus Mia, a land grabber tried to take illegal possession of a Durga Mandir by hanging sign board. A tree of that land was cut down by him. Proper steps could not be taken for limitation of laws.

In Biharpur village of Jaipurhat district some Hindu women tried to recover debutter property from land grabbers. It was a property at Biharpur mouza, plot no. 446; total amount of land was 53 decimal. Some inconsistencies were found among the departments of the Government. Officer- in -Charge of Akkelpur Police Station said that specific allegation was not filed about grabbing of that properties. UNO of that upazila said that investigation is continuing. Investigation officer said that investigation report is incomplete due to non-cooperation of the victims.

Source: Recovering debutter property from land grabbers [In Bangla debutter shompotti punoruddhar]: A report published in Dhaka News24.com on May 12, 2012 retrieved from dhakanews24.com on May 12, 2012

Problems in Practice

- **Absence of an Act**

The main problem in the matter of dealing with Debutter property is that, still no complete law has been enacted for Debutter property. Even there is no provision under any other law about the dealing of Debutter property yet, although the State Acquisition and Tenancy Act 1950 [Sections: 6, 6A, 10A, 59(4)] places some provisions by stating Debutter property and shebait along with the word wakf and muttawalii. Apparently it seems that Debutter property has granted one of the phenomena under section 58(4) as a religious trust but section 58(4) of State Acquisition and Tenancy Act 1950 has not encompasses Debutter property expressly. But In the memorandum no-10291 August 22 in the year of 1956 government has placed a notification which declares that ex-officio Collector shall be the trustee of every religious endowment.¹ So in accordance with this government notification Debutter property as a religious trust comes under the above mentioned sections of State Acquisition and Tenancy Act 1950. But these sections are not enough to mitigate the huge problems related to Debutter property. This is a stagnant situation due to which many of the Debutter properties are not utilized fully or remain idle. Those estates that are in use are under-utilized, i.e. they are not developed to their optimum level. The absence of a complete Act serious lacking which is an impediment to the development of Debutter properties.

- **Absence of any statistics or survey**

The contribution of Debutter property in GDP cannot be measured because there is no authenticated or even an unauthenticated statistics or survey regarding Debutter property. No initiative has been taken as well to gather the exact statistics of Debutter property. That’s why proper management of Debutter property becomes impossible. There is no Act regarding Debutter property, hence there is no provision of registration of Debutter property and there is no legal liability to register a Debutter property. Therefore the absence of any survey, enrolment and registration of Debutter property becomes impossible and makes the management of Debutter property weak. Thus, the aim of Debutter gets exposed to a great deal of obstruction, deviating from a particular mission for whom it is created.

¹ Chandra,(2000).

- **Manpower**

Manpower of Debutter administration is very inadequate. In absence of Debutter Act and due to lack of manpower and Debutter office, not a single institution located in a particular district, is linked with the management of Debutter properties of all 64 districts. And as such, the Debutter Administration has a little control over these estates because of inadequate manpower. This is a very frustrating situation of affairs which must be addressed seriously. For the proper management of Debutter property Hindu Welfare Trust² claimed the authority of the management of Debutter property but cabinet refused and after that Hindu Welfare Trust proposed to establish a Debutter Board but this proposal was not accepted by the Ministry of Religious Affairs. Apparently there is a Debutter cell in the ministry of religious affairs but in the inspection period of the study it has found that there is no Debutter cell actually and there is no manpower in the Debutter cell as well.

- **Cases of dishonesty**

Cases of dishonesty on the part of some shebait are common. Dishonesty may be in the form of incorrect accounts of income, fabrication of bogus vouchers for amounts not spent, subscription not accounted for, illegal alienation of Debutter properties, rents at high rates realized from the tenants but receipts for lower amounts issued and the balance pocketed as black money and so on.

- **Problems regarding transfer, sale and exchange**

Under the present arrangement shebait with the permission of district judge³ can transfer the Debutter for fulfilling the debt or for acquiring other property. In reality, no specific guideline is followed by the shebait. He undertakes these activities at his own discretion, sometimes by ignoring the overall interest of Debutter. In the light of these realities, it has now become necessary to stop these types of activities.

Recommendations

- **Enactment of a comprehensive law**

Actually Debutter property needs a comprehensive Act which shall state the every necessary provision regarding proper management of Debutter property, management authorities, functions and powers of those authorities, financial matters and accounts, enrolment and registration of Debutter property, judicial proceedings and other relevant provisions and accordingly a new law is proposed.

- **Arrangement for registration**

Sections 30 and 31 of the proposed Debutter Act speak about the enrolment and registration of Debutter property.

² Established by 'Hindu Welfare Trust Ordinance, 1983' (Ordinance no 68 of 1983)

³ Khan, (2007).

- **Adequate manpower**

In the proposed Debutter Act chapter II and chapter IV has dealt with the provision of Board and administrator to mitigate the inadequate manpower problem of Debutter property.

- **Integrity of Shebait and their qualification**

Chapter V of the proposed Debutter Act stands to solve the problems of the cases of dishonesty by Shebait. This chapter deals with the appointment, removal, duty, responsibility and power of shebait/committee.

- **Alienation of Debutter property**

In the proposed Act specific provision regarding alienation of Debutter property has been incorporated. The proposed law says that the Debutter Board may permit transfer of a part of the Debutter property by way of sale, mortgage, exchange or lease for the purpose of improvement of other part of the Debutter property. This permission is to be granted by a resolution adopted by two third majority of the members of the Board and with the approval of the government.

Indigenous Peoples' Land (Including Forest Land) Related Laws in Bangladesh

Indigenous peoples around the world often have very different sets of customs and traditions, but a special bond with the land is a common factor. In Bangladesh, three hill districts and some districts in the plain area are inhabited by different groups of indigenous peoples. Some separate laws are in force in Bangladesh to deal with the land issues of these indigenous peoples. The laws that govern land issues of the indigenous peoples in this country are reviewed here.

A. Land laws relating to the rights of the Plain Land Indigenous Communities of Bangladesh

- The State Acquisition and Tenancy Act, 1950 (S. 97)

B. Land laws relating to the rights of the Hilly Indigenous Communities of Bangladesh

- The Rules for the Administration of Justice in the Chittagong Hill Tracts, 1900
- The CHT (Land Acquisition) Regulation, 1958
- The Land Record Ordinance, 1984
- The Rangamati Hill District Council Act, 1989
- The Khagrachari Hill District Council Act, 1989
- The Bandarban Hill District Council Act, 1989
- The CHT Land Dispute Resolution Commission Act, 2001

C. The Forest Laws

- The Forest Act, 1927
- The Attia Forest (Protection) Ordinance, 1982
- The Social Forestry Rules, 2004

The State Acquisition & Tenancy Act, 1950 (S. 97)

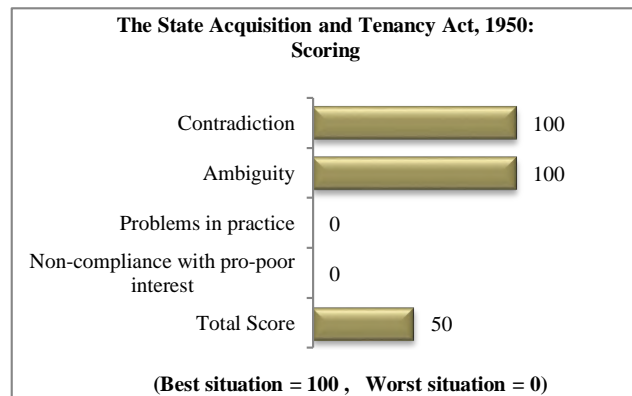
In this discussion Section 97 of The SAT Act, 1950 is reviewed to find out its limitations and examine whether this provision is pro-indigenous, pro-poor and pro-marginal or not.

Problems in Practice

- Section 97 of the State Acquisition and Tenancy Act, 1950 was enacted to halt the alienation of indigenous population from their land by the non-indigenous. But in practice this section failed to achieve its goal. It is found that indigenous peoples ultimately lose their land. The illegal practices perpetrated in the process of illegal land alienation are:
 - Creation of forged documents to evict the indigenous ethnicities from their land.
 - Cheating or personating *i.e.*, a non-indigenous is represented as indigenous before the concerned officer at the time of preparation of transfer documents.
 - Eviction of indigenous peoples from their ancestral land by coercion.
- Access to justice is difficult for the indigenous peoples. Grabbers are politically indulged.
- Absence of special forum like commission, court or tribunal to deal with land issues of these indigenous peoples.

Scoring

Only section 97 of the Act, 1950 shows relevance to the land transfer of indigenous peoples on plain land. Four indicators *i.e.* ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered here to evaluate the merit of the section. The concerned section of the Act takes values from 0-100 where 100 denotes the best situation and 0 the worst one. In this analysis the score for the relevant section is $1 \times 5 = 5$. For each key indicator the scoring is: contradiction 5, ambiguity 5, problem in practice 0 and non-compliance with pro-poor interest 0. These stands at a total score 10 out of 20 ($5+5+5+5$). With the conversion of the total score into 100, it becomes $(10/20) \times 100 = 50$. If the total score is converted into 100, the score for individual indicator becomes 100, 100, 0 and 0 respectively. It can be said that the concerned section 97 is totally free from contradiction and ambiguity whereas it is full of problems in practice, apart from complying with the pro-poor interest.



Recommendations

- It is proposed to form, by notification in the official Gazette, one or more special tribunals known as indigenous tribunal on land.
- An indigenous tribunal shall consist of one member to be appointed by the Government from among who are or had been District and Sessions Judges or Additional District Judges.
- An indigenous tribunal shall have exclusive jurisdiction to hear and determine any matter relating to land of indigenous peoples.
- Powers and functions of the tribunal are proposed as:
 - Summoning and enforcing the attendance of any person and examining him on oath
 - Requiring the discovery and production of any document
 - Requiring evidence on affidavit
 - Requisitioning any public record or a copy thereof from any office
 - Issuing commissions for the examination of witnesses or documents
 - Dealing with such other matters as may be prescribed
- Provision to review the decision and appeal against the decision of the tribunal is also proposed.

Land grabbing by the Bangalee settlers

Nripen Chakma (60) (pseudo name), an inhabitant of Ranjit para, is a victim of illegal land grabbing by the Bangalee settlers and Bangladesh Army. The incident of eviction took place in Mahajan para in 1979-80. According to Nripen, during this incident, local indigenous people of this para were evicted by Bangalee settlers and Bangladesh military. Bangladesh Army and Bangalee settlers adopted extensive violence and force in this eviction process. Later on, Bangalee settlers with the help of military occupied some other paras named Sadhutila, and Petanya Lamar Chhara Para by using coercion. At present, Bangalee settlers are controlling the land of Mahajan para while indigenous people of those grabbed land are now living in Rangji para and Ranjit para. According to the adibashi people of this para, the proper solution of this problem lies within the recovering of dispossessed land of indigenous peoples.

Source: Barkat, et. al (2010)

The Rules for the Administration of Justice in the Chittagong Hill Tracts, 1900

Bangladesh is a unitary, independent, sovereign Republic which is administered by parliamentary form of the Government. Among the 64 districts of Bangladesh Rangamati, Khagrachari and Bandarban districts are different from other districts because of their landscape and population. These districts are popularly known as the Chittagong Hill Tracts which is home for at least 12 different indigenous groups. As citizens of Bangladesh these indigenous peoples are also subject to the legal system of Bangladesh. But the special criteria of this area invoked some separate laws. The Chittagong Hill Tracts Regulation, 1900 is undoubtedly one of the fundamental laws applicable in CHT areas. The Rules for the Administration of Justice in the Chittagong Hill Tracts, 1900 is a by-product of this Regulation.

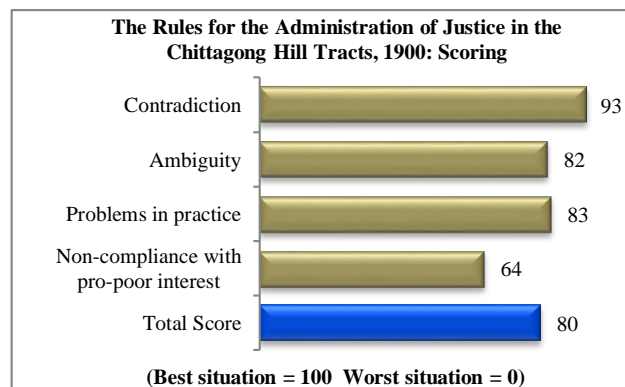
Problems in Practice

Selected provisions of the Rules for the Administration of Justice in the Chittagong Hill Tracts, 1900 have been reviewed to make it pro-poor and pro-marginal in the light of rights-based approach. The major limitations of this law can be cited as follows:

- Amount of court fees, process fees, registration fees, amount of fine and other fees relating to land incorporated at the time of the enactment of the Act have not been updated.
- List of deeds for registration included in the law is incomplete.(for example, instruments of gift of immoveable property)
- Deed registration procedure still reveals a stereotypical nature, an issue which needs to be modified in tune with the modern information technology.
- Accountability of the concerned registrations officials is not ensured. For example, registration officer may refuse registration without showing any justified cause.
- Settlement of land in Chittagong Hill District areas has been made conditional, subject to the approval of the Hill District Council concerned by the HDC Act(s), 1989. This condition has not been specifically addressed in this law.
- This law and the schedules of the Hill District Council Act(s), in certain cases are contradictory. For example, according to the Rule 41 Control and regulation of *Jhuming* is under the jurisdiction of Deputy Commissioner whereas Article 33 of the Schedule provides that *Jhum* cultivation shall be under the jurisdiction of the Hill District Council.

Scoring

In total 44 rules have been examined here to ascertain the status of administration of justice in CHT. Four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have also been considered to evaluate the worth of the rules. The concerned rules obtain values from 0-100 where 100 denotes the best situation, and 0 the worst one. In the present analysis of the articles the total score is $44 \times 5 = 220$. The individual score of the indicators runs as: contradiction 204, ambiguity 181, problem in practice 182 and non-compliance with pro-poor interest 140. The figures provide a total score 707 out of 880 ($220 + 220 + 220 + 220$). With the conversion of the total score into 100, it becomes $(707/880) \times 100 = 80$ whereas, the score for each indicator is: 93, 82, 83 and 64. The rules have few contradictions, less ambiguity, and problems in practice, and visible non-compliance with the pro-poor interest.



Recommendations

- A court-fee of Tk. 5.00 only is proposed for all petitions relating to miscellaneous matters including petitions praying for time presented whether by Hillmen or by Non-Hillmen in the Chittagong Hill District areas;
- Proposed list of deeds for registration i.e.
 - a) Instruments of gift of immovable property
 - b) Declaration of Heba under the Muslim Personal Law (Shariah)
 - c) Other non-testamentary instruments
- It is proposed that the Government shall provide to the office of every registration officer the books, information processing and storing devices like computer and scanners along with the necessary software for the purposes of this Act.
- In the endorsement form name of mother and father of the stakeholder must be included.
- It is proposed that decision on any settlement of land in the Chittagong Hill District areas shall be dealt with by the Deputy Commissioner subject to prior consultation with the concerned District Council in accordance with the section 64 of the District Council Act(s), 1989.

Illiteracy caused land dispossession

Roti Tanchangya (age 84) (pseudo name) is an inhabitant of Balaghata Bazar area for 48 years. Roti Tanchangya had 1.50 acres of cultivable land in this area. However, a former ward commissioner of Bandarban municipality named Jainul Ahmed grabbed this land of Roti Tanchangya by force. The incident commenced around 1988-89 at bazar area of Balaghata mouza. A finger print was taken from Roti Tanchangya for relief payment purpose and following that this document became the matter of ruin for Roti Tanchangya. By using this document Jainul Ahmed registered the land under his name. He showed that he had bought this land from Roti Tanchangya, and thus evicted Roti Tanchangya from that land by means of coercion. Taking the advantages of illiteracy and helplessness of Roti Tanchangya, Jainul Ahmed grabbed the land and made Roti Tanchangya deserted. As Jainul Ahmed was an influential person, Roti Tanchangya got afraid to charge any litigation against Jainul Ahmed for reclaiming his/her lawful property. That decisively grabbed land is now using for dam construction and pisciculture. Roti Tanchangya stated that a number of other people (e.g., Haru Karbari) were also deceived by Jainul Ahmed and lost their land. Adopting this sort of deception, Jainul Ahmed has become the owner of vast land and other property. Roti Tanchangya along with other local inhabitant are urging for exemplary punishment of land grabber like Jainul Ahmed.

Source: Barkat, et. al (2010).

The CHT (Land Acquisition) Regulation, 1958

The CHT (Land Acquisition) Regulation, 1958 was promulgated by the Martial Law Administrator. This Regulation constitutes the sole instrument of land acquisition in the three Hill Districts. This law provides scope for acquisition of immovable properties for a public purpose or in the public interest. But in this law there is no clear definition of ‘public purpose’ or ‘public interest’. The law is often used in abused and draconian manner. Detail procedures have been prescribed for Deputy Commissioner (DC) to follow at the time of land acquisition under a time frame.

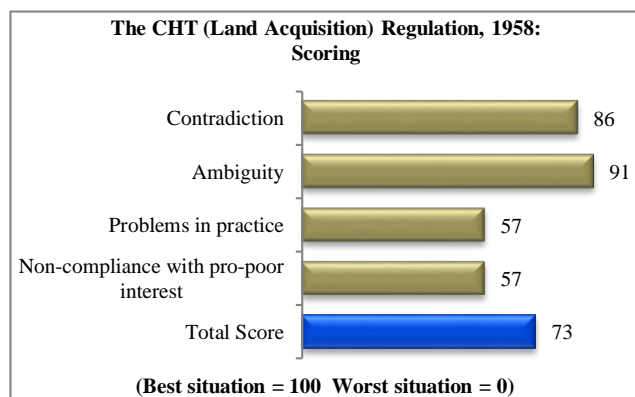
Problems in Practice

- Instead of making locally at the site of acquisition, inventory is generally made sitting in the office in connivance with unscrupulous officials. As a result of acquisition, some people are evicted from their only homestead or small piece of agricultural land.
- The Regulation contains no provision for rehabilitation of the affected persons.
- Existing systems of land records, registration of transfer deeds and mutation are complex. Sometimes people do not know the importance of the mutation and they are not serious to mutate their land after transfer.
- Mutation after land transfer takes a long duration and the names of the transferor remains in the Record of Rights even after transfer. In the acquisition process notices are served on the persons whose names are available in the last Record of Rights. Therefore, as the records are not updated, people who have already transferred their land they ignore notices, and deprive the real owners of the lands.
- Sometimes valuation of compensation is made arbitrarily. Dishonest persons get compensation through wrong identification or false personification.
- At the time of acquisition, in the project areas, types of land are not considered by productive value, income from the land and taxes paid for the land.
- There is no provision for replacement costs for lost assets, relocation assistance, resettlement and restoration of income in post-resettlement period.
- Moreover, there is no provision for -
 - i) the persons below nationally defined poverty line;
 - ii) indigenous peoples;
 - iii) landless and marginal farmers;
 - iv) people with disability; and
 - v) elderly.
- Sometimes concerned valuation department delays the procedure of valuation of property located on the land. This ultimately prolongs the acquisition process.

Scoring

In total ‘7’ provisions of this regulation are reviewed here. Four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been well thought to evaluate the merit of the regulation. The concerned provisions of the regulation take values from 0-100 where 100 denotes the best situation and 0 the worst one. In this analysis the sections scores 7*5= 35. In respect of each key indicator the scoring is: contradiction 30, ambiguity 32,

problems in practice 20 and non-compliance with pro-poor interest 20. The figures furnish a total score 102 out of 140 (35+35+35+35). With the conversion of the total score into 100, it becomes $(102/140) * 100 = 73$. On the other, if converted into 100, the individual score for the indicators becomes 86, 91, 57 and 57 respectively. It shows that there are least contradictions



and ambiguities in the provisions. Problems in practice and non-compliance with pro-poor interest are still significant.

Recommendations

- The concept of public purpose is proposed to be specified. ‘Public purpose’ includes a purpose for which an immovable property can be acquisitioned or requisitioned by anybody established under any law for the use of the Government or for the planned development of any city, town, rural, commercial, industrial or residential area or for rehabilitation of persons displaced by acquisitioned or requisitioned of immovable property or by any natural calamity or poverty or for the establishment of any educational, health or public utility project fully or partly financed by the government.
- The vulnerable groups may include i) persons living below the poverty line defined by the Ministry of Planning; ii) indigenous peoples; iii) landless and marginal farmers; v) people with disability, and vi) elderly (above 55 years of age).
- Compensation means any payment in cash or kind (for example, land-for -land).
- A ‘Public Information Cell’ shall be set up by the Project Executing Agency in the office of the Deputy Commissioner, to ensure easy access to all affected persons. This may be established at the early stages and for the purpose of dissemination of project related information.
- For each district there shall be a committee to be headed by ADC (Revenue), and two members, one being District Registrar and the other one a representative from the District Council for fixing market-based actual valuation according to Mouza. In fixing the price they will take into consideration the existing market price.

Documented land, but dispossessed

Milon Kumar Tanchangya (pseudo name), a resident of Balaghata mouza, was one of the victims of forced land dispossession. Milon Kumar Tanchangya is a poor and illiterate person who fled to Myanmar during the liberation war in 1971. Ten to twelve years back after Returning home from Myanmar, he discovered that his land had been occupied by Bangalees. By Analyzing *Matt Khosra* it is found that in Balaghata mouza 2.06 acres and 0.95 acres of land of (total 3.01 acres) belongs to holding no. 1233 and 7 respectively, and this land is recorded under the name of Milon Kumar Tanchangya. The land is occupied by land grabber like Gazi miah, Rohima Khatun, and Abdur Rahman. Milon Kumar Tanchangya was threatened by those land grabbers when he tried to protest against this injustice. According to Milon Kumar Tanchangya, land grabbers occupied the land of Milon Kumar Tanchangya by making various fake documents. They have constructed homesteads and shops on those 3.01 acres of land. Milon Kumar Tanchangya passed away but during his life time he could not attain the legal solution of the problem. At present, his son Anil Chandra Tanchangya has charged litigation as plaintiff at Bandarban Land Commission Office to get back their land.

Source: Barkat, et. al (2010)

The Land Record Ordinance, 1984

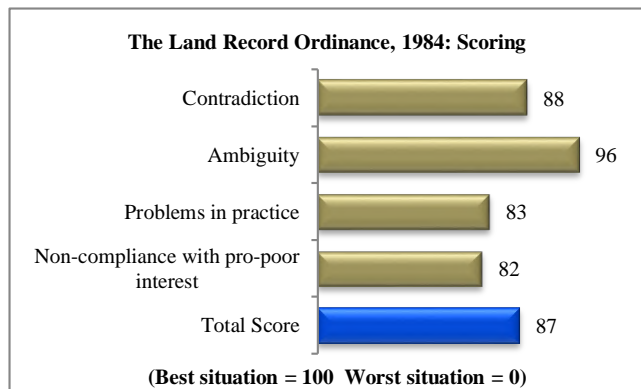
Record of rights or Khatian is a proof of ownership in land. It has a specific number for its identification. Each record-of-rights of a Mouza is kept according to serial number in bound volumes, preserved in the Collectorate Record Room. The holder of each plot has a right to get a certified copy of the khatian. Keeping the significance of record of rights in view the Land Record Ordinance, 1984 was passed in 1984 for CHT areas. But this Land Record Ordinance is not a self-contained law in preparing record of rights. Survey is one of major steps in the preparation of record of rights which is conducted under the guideline of the Survey Act, 1875. The Land record Ordinance, 1984 depends on this Survey Act. In the following discussions, the Land Record Ordinance, 1984 is reviewed.

Problems in Practice

- The preamble contains reference about Proclamation of CMLA which is a Martial law and contradicts with the Constitution.
- Definition of land is not exhaustive.
- There is no provision for consultation with the indigenous peoples.
- There is no provision for publication of *Bhumi Khatian* in the official websites.

Scoring

In total ‘19’ provisions of the Ordinance, 1984 and four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered here to evaluate the merit of the Ordinance. The concerned provisions of the Ordinance take values from 0-100 where 100 denotes the best situation, and 0 the worst one. The score for all the provisions is $19 \times 5 = 95$. In respect of each



key indicator the scoring is: contradiction 84, ambiguity 91, problems in practice 79 and non-compliance with pro-poor interest 78. With the conversion of the total score into 100, it becomes $(332/380) \times 100 = 87$. Again, if converted into 100, the score for individual indicator becomes 88, 96, 83 and 82 respectively. The scores shows that the Ordinance has too little ambiguities and minimum contradictions, whereas, in respect of problems in practice and non-compliance with pro-poor interest, the Ordinance still lags behind.

Recommendations

- It is proposed that the preamble of the law shall be made in accordance with the principle of the supreme law of the land.
- New definition of land is proposed as “Land means— land which is cultivated, uncultivated or covered with water at any time of the year, and includes benefits to the rise of land, houses or buildings and also things attached to the earth, or permanently fastened to anything attached to the earth.”

- Regarding the appointment of Revenue Officer a suggestion is made to arrive at any decision in consultation with the Chittagong Hill Districts Regional Council.
- It is proposed that the Revenue Officer shall, after preparing or amending a draft of a *Bhumi-Khatian*, upload the draft, in the website and also make it available in the office of the Revenue Officer and in the Office of the Deputy Commissioner.
- It is suggested that the paper to be used for publication of Bhumi-Khatiann shall be of best quality to ensure its perpetuity.

The Rangamati Hill District Council Act, 1989; The Khagrachari Hill District Council Act, 1989; The Bandarban Hill District Council Act, 1989

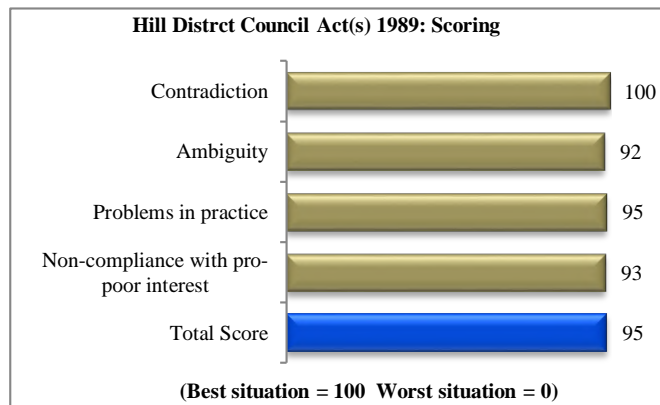
Three Hill Districts, namely, Rangamati, Khagrachari and Bandarban have separate Hill District Councils (HDCs), operating as local government institution in their respective areas. Enacted in 1989, the three Hill District Act(s) underwent amendments in 1998 in accordance with the CHT Accord, 1997 to materialize the demands of the indigenous peoples. One of the major demands was resolution of land disputes. This review delves into certain provisions of these Acts, dealing with land issues. It also tries to identify the limitations and make recommendations thereof accordingly.

Justification of Review

- The preambles of three Hill District Act(s) namely The Rangamati Hill District Council Act, 1989; The Khagrachari Hill District Council Act, 1989 and The Bandarban Hill District Council Act, 1989, read that these three districts are inhabited by backward tribes. It does not refer to Bangalees living there. The word “tribe” is no longer appropriate.
- Land including the *khas* land suitable for settlement within the jurisdiction of three Hill Districts, has been made subject to the prior approval of the concerned District Council.
- Transfer or acquisition of land, hills and forests under the control and jurisdiction of the concerned Council has been made conditional on the consultation and consent of the respective Hill District Council.
- Supervision and control of the functions of Headmen, Chainmen, Amins, Surveyors, Kanungos and Assistant Commissioners (land) are under the jurisdiction of concerned Hill District Council. Settlement of Fringe land to the original owner is also under the jurisdiction of the concerned council.

Scoring

Each of the District Council Act of the three hill districts of the CHT contains same provisions in the sections of the laws except the title. Each of the laws has 24 land related sections. Thus the analysis is same for the Hill District Council Act(s) 1989. Against this backdrop, a single scoring is shown for the three individual Acts.



Four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered here to evaluate the merit of the Act. The concerned sections of the law take values from 0-100 where 100 denotes the best situation, and 0 the worst one. In this analysis the score for the sections is $24 \times 5 = 120$. Thus in respect of each key indicator the scoring is: contradiction 120, ambiguity 110, problem in practice 114 and non-compliance with pro-poor interest 112. The figures give a total score 456 out of 480 ($120 + 120 + 120 + 120$). With the conversion of the total score into 100, it becomes $(456/480) \times 100 = 95$. If converted into 100, the score for individual indicator becomes 100, 92, 95 and 93 respectively. It can be said that this Act is totally free from contradiction and less ambiguous. With regard to problems in practice and non-compliance with pro-poor interest the problems the situation is much satisfactory.

Recommendations

Under section 66 of above Acts, the Council has the jurisdiction to hear social, cultural and indigenous disputes among the indigenous peoples. In the same way, the Council may have jurisdiction to settle land issues of indigenous peoples outside the judicial framework through Alternative Dispute Resolution (ADR) method.

- It is proposed to constitute Land Dispute Resolution Committee for the purpose of ADR under these Acts.
- A particular form for application to the Land Dispute Resolution Committee is prescribed to be known as “Prescribed form”.
- A detailed procedure is proposed to be followed by Land Dispute Resolution Committee.
- Proposed Land Dispute Resolution Committee shall be constituted from amongst the members of the concerned Hill District Council for the purpose of proposed section 64A. Such committee shall consist of five members. Two members shall be nominated by a party, and other two members by the opposite party. The Chairman of the District Council shall be the chairman of the aforesaid committee. In case of objection, raised by any party to the chairman of the District Council, the Divisional Commissioner may appoint any person as he thinks fit to be the Chairman of the Land Dispute Resolution Committee.
- The application shall be in a prescribed form.
- The Committee shall follow alternative dispute resolution mechanism e.g., mediation, conciliation to settle disputes filed before it.

- The committee shall be constituted within fifteen days from the date of filing the application and the dispute shall be resolved within next sixty days.
- If the committee is not constituted within the period fixed or if the dispute resolution process fails within fixed period, as the case may be, the parties concerned shall have right to submit the dispute to the Chittagong Hill District Land Dispute Settlement Commission annexed with a certificate from the concerned Hill District Council, within thirty days from the expiry of the period mentioned in proposed section 64A (6).

The CHT Land Dispute Resolution Commission Act, 2001

Three Hill Districts Rangamati, Khagrachari and Bandarban popularly known as Chittagong Hill Tracts (CHT) are situated in the south-east region of Bangladesh. The area is about 13,184 sq km, which is approximately one-tenth of the total area of Bangladesh, inhabited by 12 communities of indigenous peoples and Bangalees. After more than twenty years of unrest, the Government of Bangladesh and Parbatya Chottogram Jana Samhati Samiti signed an Accord on December 2, 1997. One of the significant developments with regard to land is the formation of a Commission on land under the Land Dispute Resolution Commission Act, 2001. It was expected that the Commission would provide quick remedies for cases of land dispossession taking into account local customs and usage with regard to land rights and claims.

Problems in Practice

- The Chittagong Hilly area is termed Chittagong Hill Tracts (CHT) which is not tenable so far as the present administrative unit of the government is concerned. On February 25, in the year 1985, the then government renamed Chittagong Hilly areas as Rangamati Hill District, Khagrachari Hill District, and Bandarban Hill District, and also fixed their boundaries.
- Definition of repatriated refugee is not exhaustive.
- Land Dispute Resolution Commission has no branch office. This is a major obstacle to ensuring justice to the people.
- The term consultation in this Act is ambiguous.
- Meeting, Quorum and working procedure of the Commission is defective.
- Decision making process is not definite.
- The Act does not provide any scope for amendment of application once made in case of subsequent change of the situation.

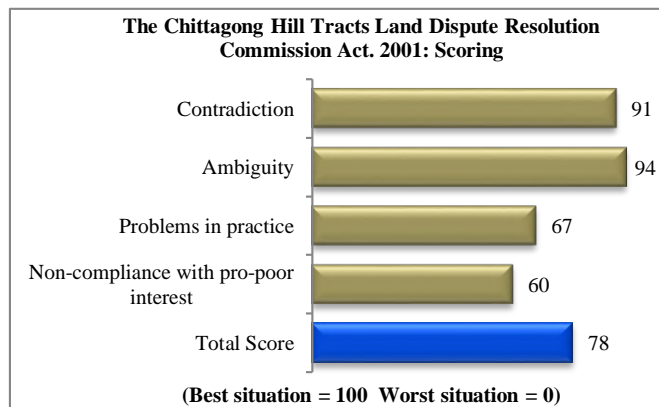
Persecution by Bangalees

Some Bangalees patronized by the Government, as reported by local adibashi people, attacked and massacred in Brenda Kesor para of Gumati mouza. In a preplanned way those intruder suddenly entered in the mouza and burnt houses of indigenous people. A significant number of Tripura and Chakma people (approximately 130) were killed during that incident. During that massacre, an honorable rich person name Nobin Kumar (Tripura) and a well known headman of that time of this mouza named Ashutosh Roaja were killed by those intruders. Those assaulters stopped not only by killing or burning houses of this para but also taking away local peoples’ farm animals like cow, buffalo and goat. By losing everything lots of people took shelter in Tripura State of India. Some people took shelter elsewhere within the country. After some days when the situation calm down, an honorable person of Khagrachari district named Sapuram Roaja along with administrator of the district subdivision of that time visited the place of occurrence and mass grave (mass grave situated adjacent to the road of Shantipur para). In that mass grave 54 human skulls were found. Sapuram Roaja collected some of the skulls and filled a case at Khagrachhari police station. However, because of this mass escape the whole area became desolate. Following that incident at least three hundred Bangalee households took that opportunity and settled in that para. As after the land occupancy no resistance or protest were exhibited and situation became normal, Bangalees consolidated their hold on those land. It is noteworthy that prior to that incident, especially before the independence of Bangladesh, only ten to twelve Bangalee households dwelt in that para. These Bangalees are known to indigenous people as Bangalee indigenous. After several months indigenous people returned from India and other places and found that their land had been occupied and cultivated by Bangalee settlers. Those Bangalee settlers asked indigenous people to legally transfer that land to Bangalee settlers by having some money and making land deeds on white paper. Indigenous people were threatened that non-compliance would cause them get nothing.

Source: Barkat, et. al (2010)

Scoring

In total ‘21’ provisions of the Act and four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered here to evaluate the merit of the Act. The concerned sections of the Act take values from 0-100 where 100 denotes best situation, and 0 the worst one. In this analysis the score for the sections is 21*5= 105. Thus in respect of each key indicator the scoring is: contradiction 96, ambiguity 99, problems in practice 70 and non-compliance with pro-poor interest 63. The figures give a total score 328 out of 420 (105+105+105+105). With the conversion of the total score into 100, it becomes $(328/420) * 100 = 78$. If converted into 100, the score for individual indicator becomes 91, 94, 67 and 60 respectively. It can be said that the relevant sections of the Act have least ambiguity and minimum contradiction. With regard to pro-poor interest and problems in practice the situation is quite frustrating.



Recommendations

- The term “Chittagong Hill Tracts” is proposed to be substituted for the term “Chittagong Hill Districts”.
- Repatriated refugee should be defined in section 2 of the Act, 2001 as indigenous refugees listed under the treaty (signed on 9th March 1997 between the Government and indigenous refugee leaders in Agartola of India) and indigenous refugees to be included in the list after periodical review.
- To form the quorum for meeting of the Commission, the presence of the Chairman and other two members of whom one must be from the area where the land disputes arise.
- It is proposed that the consultation must be of a nature so that stakeholders can realize easily.
- It is proposed that if the decision is not unanimous, in that case the decision of the majority members present including the Chairman shall be final.
- It is suggested that the Commission, at any stage before final settlement of dispute, may allow either party to alter or amend his application in such a manner, and on such terms as may be just; all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.
- In case of appointment of secretary and other officials of the Commission, proposal is made for giving priority to the indigenous peoples.
- It is suggested that the commission shall submit its report annually to the Ministry of Land showing the list of the disputes settled by it.

The Forest Act, 1927

The Forest Act, 1927 is one of the major laws to consolidate the forest laws that include provision to create reserve forest, protected forest, social forest, the transit of forest-produce and impose the duty to be levied on timber and other forest-produce. But this law has certain limitations which this review attempts to search out and address properly and make some feasible recommendations.

Problems in Practice

- The preamble does not contain any reference to the concept of conservation and sustainable use of forest.
- A good number of indigenous communities more or less depend on forest for their livelihood; but in the preamble there is no reference to them.
- The Forest Act, 1927 is all about the forest but the interpretation clause of this Act does not contain any definition of forest.
- The indigenous peoples of Bangladesh have been living in the Madhupur and Chittagong Hill Districts Forest areas. But laws regulating these areas were made without consulting those communities which is *prima facie* violation of international human rights jurisprudence.
- Usually notification regarding declaration of constituting reserve forest does not reach out to all stakeholders. The process of notification is not appropriate.

- The Forest Settlement officer is the sole authority to satisfy the term “sufficient cause”.
- The traditional rights of the forest dwellers are not recognized.

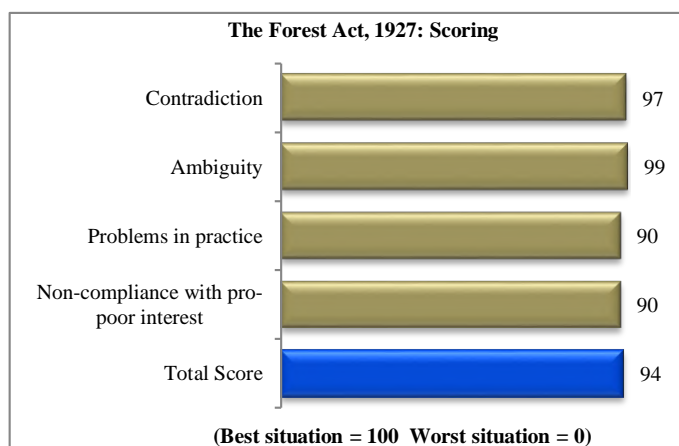
Eviction of a para by the Forest Department

In Dhanu Chhara mouza, there was a para named Chaie Prue Para which had been wiped out by the Forest Department in 1980. Chaie Prue was a very old para where around forty Indigenous households dwelt before that time. Forest Department acquired that land illegally and evicted those forty households from their houses and land. Those households were forced to migrate in Rajshali, Bandarban Sadar, Ruma, and Thanchi permanently. Being evicted the son of local karbaries now lives in Dubacharri Khaing Para of Bandarban Sadar Upazila. In the whole process of this eviction, the main gainer is the Forest Department while sufferers are the evicted indigenous people.

Source: Barkat, et. al (2010)

Scoring

In total ‘92’ provision of this Act and four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered here to evaluate how much the provisions are efficacious. The provisions of the Act take values from 0-100 where 100 denotes the best situation, and 0 the worst one. In the analysis for the sections is $92 \times 5 = 460$. Thus in respect of each key indicator the scoring is: contradiction 446, ambiguity 454, problem in practice 415 and non-compliance with pro-poor interest 416. The figures give a total score 1731 out of 1840 ($460+460+460+460$). With the conversion of the total score into 100, it becomes $(1731/1840) \times 100 = 94$. On the other, if converted into 100, the score in respect of each indicator becomes 97, 99, 90 and 90 respectively. It can be said that the relevant provisions have least contradiction and least ambiguity. There is problem with regard to compliance with pro-poor interest and problems in practice.



Recommendations

- A definition of forest is introduced such that “Forest means any land fully or partly covered by trees, which is the property of the Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce to which the Government is entitled and which is declared as forest under this Act and also includes reserved forests, protected forests and other forests.”
- New concept of “Traditional Forest Dwellers” is clarified and defined as “Traditional Forest Dwellers means members of any community either indigenous or any ethnic groups who primarily reside in and who depend on the forests or forest lands for *bonafide* livelihood needs.”
- It is proposed that consultation must be made with the concerned people likely to be affected by declaration of reserve forest.
- Announcements should be made by miking or distribution of leaflets or through electronic media as the suggestion claims, or adopting any other suitable means, as

part of effective notification in connection with reserve forest, so that it may reach out to the concerned people.

- Any person aggrieved by the decision of the forest settlement officer, may make an application to the Divisional Commissioner within a period of thirty days from the date of grievance for revision of the decision.
- Special mechanism such as submission of statement to the government relating to shifting cultivation is proposed mandatory for settlement of claims. Moreover, in the proposed law it is suggested that any person aggrieved by the order of the Forest Settlement Officer passed under section 10, may appeal within thirty days from the date of the order, to the Divisional Commissioner. The Divisional Commissioner may reverse or alter such order.

The Attia Forest (Protection) Ordinance, 1982

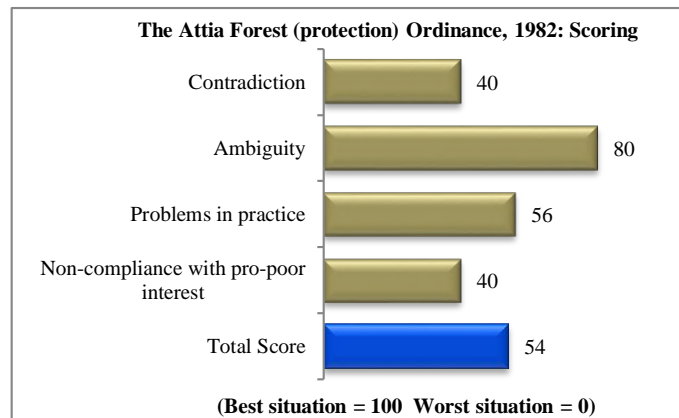
The Attia Forest (Protection) Ordinance, 1982 is applicable only for Dhaka and Tangail. This Ordinance was proclaimed by the Chief Martial Law Administrator, who seized power through a *coup d'état* on 24 March, 1982. The basic tenet behind this law was that there were substantive and procedural ambiguities and conflicts in the acquisition process. This Ordinance constituted reserve forest in Attia ignoring the alleged claims of the local people. It has been reviewed here to point out the inconsistent provisions and make it pro-poor and pro-marginal.

Problems in Practice

- This Ordinance contains reference of Martial Law Proclamation which is contradictory with the Constitution of Bangladesh.
- The Attia Forest (Protection) Ordinance (Section 3) does not consider the interest of people, and from this particular perspective, it operates against the run of a people-oriented law. The process to constitute reserve forest as mentioned in section 3, ignores the property right of the concerned people.
- There is no scope for compensation.

Scoring

All the ‘5’ provisions of this Ordinance, and four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered here to evaluate the merit of the Ordinance. The provisions of this Ordinance take values from 0-100 where 100 denotes the best situation, and 0 the worst one. In the present analysis the score for the sections is $5 \times 5 = 25$. Thus in respect of each key indicator the scoring is: contradiction 10, ambiguity 20, problems in practice 14 and non-compliance with pro-poor interest 10. The figures stand at a total score 54 out of 100 ($25+25+25+25$). With the conversion of the total score into 100, it becomes $(54/100) \times 100 = 54$. If the figures are converted into 100, the score in respect of each indicator becomes 40, 80, 56 and 40 respectively. It can be said that the Ordinance is highly contradictory and non-compliant with pro-poor interest; problems in practice are also severe. Only in respect of ambiguity, the Ordinance is comparatively in a better position.



Recommendations

- Preamble is proposed as “An Act to make provisions for the conservation and sustainable use of the Attia Forest in the districts of Dhaka and Tangail”.
- A suggestion regarding compensation for the affected persons by the Government is made.
- It is proposed that the Government shall, for the purposes of this Act, by notification in the official Gazette, appoint a Judicial Officer, not below the rank of Joint District Judge, to be Arbitrator for such area as may be specified.
- In determining the amount of compensation to be awarded under the Attia Forest (Conservation and Sustainable Use) Act, 1982 the Arbitrator shall take into consideration
 - (a) The fair market value of the property is to be calculated in the prescribed manner, by taking into account the average value of the properties of similar description;
 - (b) The effect of constituting reserve forest on
 - (i) The enjoyment of customary rights of traditional forest dwellers
 - (ii) The life style, culture and traditions of affected parties; and
 - (iii) The development of social, cultural and economic condition of affected parties; and in addition to the market value of the property as provided in sub-section (1), the Arbitrator shall, in every case award a sum of one hundred per centum on such market value.

The Social Forestry Rules, 2004

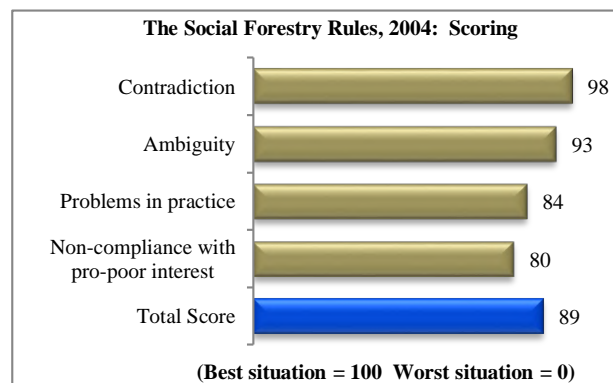
Social Forestry was introduced in Bangladesh in early 1980s. Social Forestry means a forestry which aims at ensuring economic, ecological, and social benefits to the people, particularly to the rural masses and those living below poverty line, The target of the social forestry is the 'rural poor' and not the 'tree' alone. Social forestry has a great potential to increase coverage of forest in Bangladesh. Considering its importance, the Government of Bangladesh introduced the provision of social forestry in the Forest Act, 1927 by section 6 of the Forest Amendment Act, 2000.

Problems in Practice

- People’s participation is absent in the process of determining Social Forestry Area.
- List of beneficiaries is not exhaustive.
- There is no mechanism to address the situation in case of arbitrary exclusion of beneficiary.
- In case of duty and responsibility of contractual land owner or possessory owner or organization, subsequent consequences are not properly addressed.
- In certain cases beneficiaries illegally transfer their right to forest produce. The Rule has no specific provision to deal with such illegal transfer.
- The Rule provides no arrangement for the party to the social forestry agreement interested to sell the land or otherwise transfer before the expiry of the agreement period.
- In the list of beneficiaries in the Rule, the term “indigenous” has been inserted. So, use of the term “ethnic minorities” in other provisions of the Rule is contradictory.

Scoring

In total ‘27’ rules and four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered to evaluate the merit of the provisions. The concerned rules of the law take values from 0-100 where 100 denotes the best situation, and 0 the worst one. In the present analysis the score for the rules is $27 \times 5 = 135$. In respect of each key indicator the scoring is: contradiction 132, ambiguity 126, problem in practice 113 and non-compliance with pro-poor interest 108. These stands at a total score 479 out of 540 ($135+135+135+135$). With the conversion of the total score into 100, it becomes $(479/540) \times 100 = 89$. The individual score for the indicators, after conversion into 100, becomes 98, 93, 84 and 80 respectively. It can be said that this law is nearly free from contradictions and have minimum ambiguities. However, there are some gaps regarding problems in practice and non-compliance with pro-poor interest.



Recommendations

- It is suggested that the Forest Department shall, in consultation with the elected local representative (Mayor of Pourashava or Commissioner, UP Chairman or Member as the case may be) from time to time, determine one or more area as social forestry area by general order.
- It is also proposed to consult with plain land indigenous organizations or the Headmen of the area as the case may be.
- List of beneficiaries is to be reviewed by the Divisional Forest Officer once in every two years.
- It is also suggested to include physically disabled persons and poor widows in the list of beneficiaries.
- If any person, interested in social forestry, is arbitrarily refused by authorities, such person may make an application to the Divisional Forest Officer stating the facts of such refusal and the Divisional Forest Officer on being satisfied may make an order to the responsible authorities to include him/her in the list as beneficiary and may also take departmental action against those liable officers.
- No person shall sell, mortgage, gift, donate, exchange or otherwise alienate the right or facility that he has obtained over the Social Forests to any other, except with the permission of the concerned Forest Department.

Jalmohal Related Laws in Bangladesh

Water resources can play a significant role in the national economy of Bangladesh. The Government-owned ponds, closed *beels* (natural depressions) open *beels* and flood plains, considered to be Common Property Water Bodies (CPW), are important resources. Historically, the fishers, and the poor had free access to the CPW. However, due to the subsequent Government policy of revenue collection through leasing system, the access of poor to Jalmohal has now been restricted. In this context, the Ministry of Land from time to time framed policies for the management of Jalmohals.

According to the Jalmohal Management Policy, 2009, the management of Jalmohals by the Ministry of Lands (MoL) includes leasing out the Jalmohals for fish cultivation and collection of government revenue. Recently, the Government has declared Jalmohal (Public Water Body) Management Policy, 2009 superseding all previous policy/orders. Apart from other laws, the present study seeks to review Jalmohal Management Policies taken so far, identify the ingrained problems, and suggest recommendations in order to ensure a healthy fishing environment. The following laws on Jalmohal management were examined:

- The Permanent Settlement , 1793
- The State Acquisition and Tenancy Act, 1950
- The East Bengal Act, 1951
- The Constitution of the People’s Republic of Bangladesh, 1972
- New Fisheries Management Policy, 1986
- Land Management Manual, 1990
- The Jalmohal Management Policy, 2005
- The Jalmohal Management Policy, 2009

Core Learning

- Lease value of Jalmohal is too high for real fishermen. The poor fishermen have no ability to pay the lease price value, and hence they have to depend on the rich man/ mohajan for paying it. The rich man/mohajon pays the lease money on behalf of fishers’ society and they exercise uttermost control over the Jalmohals.

Non-real Fishermen Organization Controls Jalmohal
Jalmohals are mainly controlled by the non-real fishermen and the influential persons of the local area. Real fishermen become helpless due to powerful person. Following the proverb “Water belongs to that person who has the net”, the policy was made; but this proverb was not put into action. Though the management of this policy was vested with the Ministry of Land, in reality it is managed by the Ministry of Fisheries and Livestock and the Local Government Division. Due to lack of understanding among these three Ministries, the real fishermen’s interests are ignored.
<i>Source: http://desherkhabar24.net/?p=3290.</i>

- Under Article 5, Sub-Article 4(c) states that an advertisement shall be duly published by the Deputy Commissioner in a daily news paper, in the website of Deputy commissioner’s office, and in the notice board asking for applications to give lease to the real fishermen’s registered organization. This is not in conformity with real life situation. Fishermen live in remote areas and they do not have any access to latest information. Their knowledge and ability of understanding is also poor.

- There is a strict restriction on the use of net (current jal/bera) but it is not followed by the real fishermen.

Illegal Nets Seized
Naogaon Fisheries Department on Friday seized 74 pieces of current and big size 'bera' nets from Gandibeeel Mansur Jalmohal in Sadar upazila. Being tipped off that some dishonest fishermen were catching fish with the illegal net, a team of local Fisheries Department conducted a drive in the water body.
<i>Source: http://www.thedailystar.net/newDesign/newsded=108249 October 4, 2009</i>

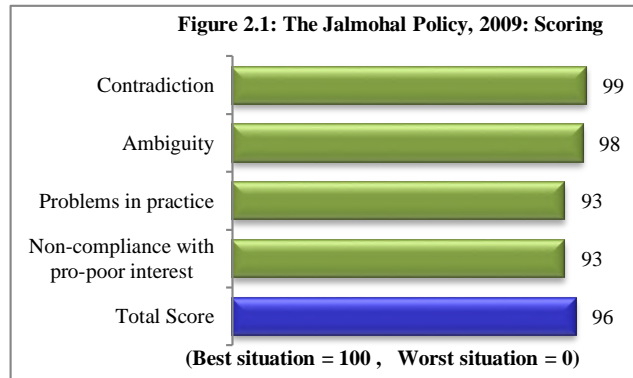
- For access to Common Property Water Bodies (CPW), community-based approach and sustainable management policy are not followed. In fact, establishment of Community-Based Organization (CBO) is no easy undertaking. This is due to lack of capital, education and integrity of the real fishermen. Influential members of the Community-Based Organization (CBO) often exploit them. Sometimes Community-Based Organization (CBO) leaders work for the interest of influential non-fishers. In this regard close supervision and monitoring by the District Jalmohal Management Committee needs to be ensured. This should be incorporated into the Terms of Reference.

- In the Jalmohal Management Policy, 2009 fishers are clearly defined. The person who earns his livelihood mainly by catching and selling fish from natural sources is considered to be real fisherman. Against the run of the aforementioned policy, certain people involved in aquaculture, very often claim to hold the status of fisherman with a view to exercising complete control over the Common Property Water Bodies (CPW).

- In certain Jalmohals water is not available round the year and some get dried up. As a result, it goes difficult to properly cultivate and manage the leased Jalmohal.

Scoring

The total number of articles of the policy on Jalmohal is ‘35’. Four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered here to evaluate the merit of the pertinent articles that take values from 0-100 where, 100 denotes the best situation and 0 the worst one. In the present analysis the score of thirty five articles is $35 \times 5 = 175$.



In respect of each key indicator the scoring is: contradiction 173, ambiguity 172, problems in practice 163, and pro-poor interest 163. The figures give a score 671 out of total 700 ($175 + 175 + 175 + 175$). With the conversion of the total score into 100, it becomes $(671/700) \times 100 = 96$. If individual score is converted into 100, then for each key indicator the score becomes 99, 98, 93 and 93 respectively. From the foregoing analysis, it can be said that the articles of the Policy are almost free from contradiction and ambiguity. There are least problems in practice; compliance with pro-poor interest is also much satisfactory.

Recommendations

- There is no scope of training for the fishermen. To cultivate fish in a sustainable manner, arrangement of need-based training program and its timely implementation are suggested in article 3(b) of the proposed policy.
- Lease value of Jalmohal is exorbitant. This should be fixed up, considering the financial ability of poor fishermen and thus protecting the real fishermen from the exploitation by the influential. In article 7(11) of the proposed policy, lease value is suggested to be fixed at Tk 4000 to 5000 compared to present lease value Tk. 10,000 fixed in the National Jalmohal Policy, 2009.
- Financial ability of fishers needs to enhance through the creation of institutional support and community credit facilities. In article 7(7), part payment and installment of lease fees are suggested.
- Instead of the present 3-year lease system, a provision for long-term lease ranging from 10 to 15 years, is suggested in article 5(d) to restrict overfishing.
- As highlighted in article 7(a), and (b) of the proposed policy, Chairman/Administrator of Zilla Parishad should work as head of District Jalmohal Management Committee, and Deputy Commissioner as Vice Chairman thereof. Likewise, the Chairman of Upazila Parishid should act as head of Upazila Jalmahal Management Committee, and Upazila Nirbahi Officer as Vice Chairman thereof as per article 6 (1).
- Provision of public-private partnership is incorporated into the present policy. But it runs contrary to the provision “Water belongs to that person who has the net” as per article 5 of present policy. This is likely to create an opportunity for non-fishermen to invest in Jalmohal lease. Hence, the provision of public-private partnership shall be discarded.

Non-Agricultural *Khas* Land Management Related Laws in Bangladesh

The *Khas* land management in Bangladesh deserves special attention in the context of overall land management policy. At present the total amount of *khas* land in this country is about 50 lac acres. The amount of agricultural *khas* land is about 12 lac acres, non-agricultural *khas* land almost 26 lac acres, and the water bodies nearly 12 lac acres. So, non-agricultural *khas* land constitutes a significant portion of total *khas* land in Bangladesh.

The concept of non-agricultural *khas* land took its origin from the legal framework of the State Acquisition and Tenancy Act, 1950. The management of this land category has been changed from time to time through enactment of laws. Since 1995, the non-agricultural *khas* land is managed by Non-agricultural *Khas* Land Management and Settlement Policy, 1995.

The present policy is reviewed to suggest a pro-poor, pro-marginal, and rights-based approach to land, and simplify the administrative structures and procedures, so that the rights of the deserving applicants for non-agricultural *khas* land can be ensured.

Core Learning

The management of non-agricultural *khas* land deserves special attention. Its identification and equitable distribution are aggravated by non-compliance of land officials, unlawful interference of the influential, weak and inconsistent provisions and non-implementation of law etc. In the absence of proper concentration, a vested interest group emerged to grab the non-agricultural *khas* land of the country. Even some of them claimed ownership of these lands by preparing forged deeds. Moreover, the government lost interest in the yearly settlement of these types of *khas* land. Later, this yearly settlement has been abandoned by the government through a circular of 1998, but in reality this has not been complied with.

Some provisions of the policy are inconsistent with the actions of the government. Articles of the policy are not always found to be judicious and effective; some of them are flawed and need to be amended. The provision of article 2, for example, can be referred. Article 2 provides the definition of non-agricultural *khas* land, Thana Head quarter and Market price. The definition of non-agricultural *khas* land is faulty, because it recognizes all types of *khas* land of the urban area as non-agricultural *khas* land.

Apart from such matters, the present definition also works in violation of the National Land Use Policy, 2001 which recommends (1) halting the conversion of agricultural land at high rate for non-agricultural purposes; (2) adopting measures to discourage the conversion of agricultural land for urban or development purposes; and (3) improving the environmental sustainability of land-use practices. This definition should be amended, and the amended definition should include only the non-agricultural *khas* land, not on the basis of location but on the nature of the land.

Article 2 also defines the market price which is also subject to disparagement. For the settlement of non-agricultural *khas* land, the price of the distributable *khas* land is determined as per market price. This leaves scope for the vested interest group to deceive the Government by hiding the real market price through fraudulent valuation. To prevent this evasive valuation, committee can play active role in determining the value of land fairly. Formation of committee for the settlement and management of non-agricultural *khas* land is now the demand of time and it is suggested in the proposed policy.

Article 3 of the present policy provides the procedure for the settlement of non-agricultural *khas* land, but the provision of article 3 needs to be amended. For example, this article provides a list of persons and institutions for the settlement of non-agricultural *khas* land, but the list is strangely silent on the priority of the applicants. In the absence of such priority the eligible applicant/s may be deprived of their rights.

In article 5 the policy also provides that the settlement of non-agricultural *khas* land shall be cancelled on the ground of violation of certain conditions e.g. if the land is used otherwise trampling on the purpose for which the settlement has been made. But this is unwise to take any step without giving an opportunity to defend the allegation made against him/her.

Problems in Practice

- **Definition of non-agricultural *khas* land is faulty**

Definition of non-agricultural *khas* land favors the land grabbers to convert the agricultural *khas* land for non-agricultural purposes. The definition reads out that:

“All municipal areas under four metropolitan areas and all thana headquarters shall be treated as urban areas. Agricultural *khas* lands of those areas shall be treated as non- agricultural *khas* lands. All other *khas* lands located outside these areas except the agricultural *khas* land shall be treated as non- agricultural *khas* land”. The present definition recognizes the agricultural *khas* land of municipal areas of the metropolitan cities as non-agricultural *khas* land.

- **Absence of priority list in selection procedure:** There is no priority list in selecting more deserving applicants for the settlement of non-agricultural *khas* land.
- **Lack of certain necessary definitions:** Eminent educationists, poets, and renowned persons recognized for their contributions to the creative field of their own, may be allotted land as per market price with the approval of the Head of the government. But, there is no standard by which to identify the eminent educationist, poet, and person recognized nationally for his/her contribution.
- **Negligence in identification of non-agricultural *khas* land:** Identification of non-agricultural *khas* lands is a serious problem. It is observed that there exists a huge gap between the officially recorded and the actual amount of *khas* land. The underlying reason is that *khas* land is not properly identified and the concerned officers fail to perform their duties properly.
- **Status of distribution of non-agricultural *khas* land is not maintained:** *Khas* land distribution is a continuous process. It is disappointing that there is no official record regarding the distribution status of non-agricultural *khas* land. The official records provide the status of only agricultural *khas* land.
- **Unlawful occupation of non-agricultural *khas* land:** The statutory provision is that the *khas* lands are the rights of the poor, but in reality the non-agricultural *khas* land comes under the illegal occupation by land grabbers.

Grabbing of Non-agricultural *Khas* Land

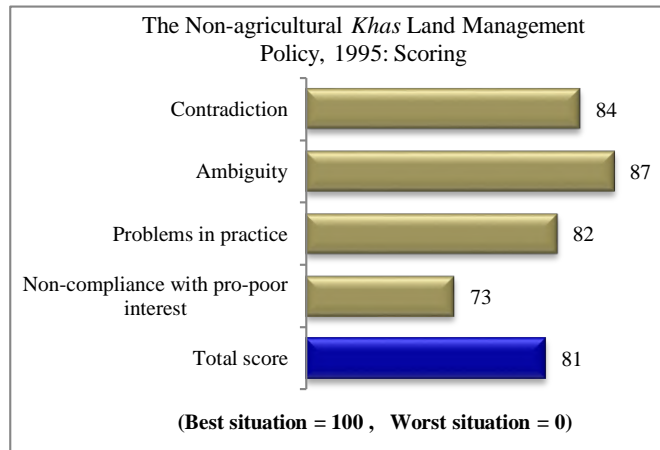
Non-agricultural *khas* land is being grabbed by the land developers at the most of the time. Some influential of the local area have grabbed a vast swathe of *khas* land and a canal in Keraniganj near the recently built Shahid Buddhijeebi Bridge on the Buriganga. The bridge, which was opened to the public in June last year, had acted as a trigger for the rampant encroachment by causing the land price there to rise over fivefold in a span of nearly two years. The grabbing of wetlands and the canal--a branch of Aati Khal--is hard to escape one's notice. Then there are hoardings advertising plots on the encroached lands. Locals fear inundation of a large area during the monsoon, as most of the wetlands and the canal have already been filled up to make way for a sprawl of buildings. The grabbers are so desperate that they are not only filling up the canal and lowlands near Chhoto Monohoriya Bridge but also trying to erase the canal off the map. They are also launching a housing project Modhu City on the grabbed part of a branch of Aati Canal. The price of land has significantly shot up since then. One decimal of land was around Tk. 1 lakh last year which now sells at Tk. 7-8 lakh.

Within days of encroachment, the developers have put up signboards there that read, "Book your plot today under attractive packages." Local people say that this grabber is very influential in the area and they do not dare to say anything against him. Even the administration remains silent about the matter, they alleged. According to the Environment Preservation Act (amendment), 2010 and Wetland Protection Act, 2000, filling up of any river or water body without permission is prohibited and considered as a punishable offence.

Source: *The Daily Star*, 24, February 2011

Scoring

The main objective of scoring is to identify the problems in the law on the basis of values given to the specific indicators. The rationale is to quantify the magnitude of the underlying problems. The scaling of score ranges from 0-5. If the problem is seriously grave, then it is scored 0. If no problem is found, then score is 5. The total number of articles of the policy is '11' and four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered here to evaluate the merit of the articles.



Moreover, the articles of the policy take values from 0-100 where 100 denotes best and 0 denotes worst situation. In the present analysis for the articles the score is 11*5= 55. Thus in respect of each key indicator the scoring is: contradiction 46, ambiguity 48, problem in practice 45 and non-compliance with pro-poor interest 40. The figures give a total score 179 out of 220 (55+55+55+55). If individual score is converted into 100 then for each key indicator the score becomes 84, 87, 82 and 73 respectively. Again converting into 100 it becomes (179/220) * 100 = 81. The current analysis leads to deduce that there are less contradictions, ambiguities, and problems in practice. But compliance with pro-poor interest is not satisfactory.

Recommendations

- **New definition of non-agricultural khas land:** Following the scrutinization of the issues, a proposal is made for amendments to the policy on the management and settlement of non-agricultural *khas* land, 1995. The proposed policy contains 8 articles. This provides a definition clause in article 2. Article 2(a) defines non-agricultural *khas* land in a more rational way. According to this provision, non-agricultural *khas* land means *khas* lands which are not agricultural *khas* land irrespective of their location.
- **Preparation of a priority list:** For equitable distribution of non-agricultural *khas* land, a priority list has been prepared in article 3 of the policy. In this regard, a proposal to form committees, at national, district and upazila level, is made in article 5 .
- **Recovery of grabbed land:** As per article 5 a (i) National committee will be responsible for policy decisions regarding the settlement of non-agricultural *khas* land, as well as providing necessary guidelines for recovery of non-agricultural *khas* land from the illegal occupants.
- **Identification and allotment of non- agricultural *khas* land:** The local level committee i.e., upazila committee will be accountable for identification and recovery of non-agricultural *khas* land for settlement and classification of the recovered non-agricultural *khas* land. It will invite applications from the concerned persons, scrutinize the applications received, and prepare short/priority list, recommend allotment of plots to the selected applicants and ensure delivery of possession. These have been made obligatory for the upazila committee under article 5c (i).
- **Information regarding land distribution:** The district committee will publish the information on distribution of non-agricultural *khas* lands and approve the proposal of the upazila committee to distribute the non-agricultural *khas* land to the deserving applicants. The committee will also examine and supervise the activities of upazila committee. It will investigate and take necessary actions as per the laws on account of any irregularities committed by the upazila committee, and hear the appeal from an aggrieved person against decisions of upazila committee as well.
- **Appeal against committee's decision:** According to article 7 (i), (j) objections can be made to the district committee within 15 days against any irregularity committed by the upazila committee. The district committee shall probe into the allegation, and take necessary actions that may extend up to the cancellation of settlement case. Objections against the district committee can be made to the National Committee within 30 days and the National Committee shall determine the allegation within 60 days and this decision shall be final.
- **Cancellation of allotment after hearing the parties:** After settlement, if any objection is raised against the allottee on the ground of violation of settlement condition or of any Act/Ordinance or Order relating to land, the allottee shall be given an opportunity to show cause as to why his allotment should not be cancelled. In the absence of satisfactory cause within 30 days of the notice, allotment shall be cancelled as stated by the provision of article 7 (h).

Pathormohal Related Laws in Bangladesh

Pathormohal management refers to the process of administering, identifying, extracting and leasing out pathor (stone) quarries located in different parts of the country. Stone deposits are found in certain districts of Bangladesh, namely, Sylhet, Sunamgonj, Bandarban, Lalmonirhat, Dinajpur, Sherpur and Panchagar. Stones are valuable resources, used for various purposes including construction of roads, bridges, buildings, mills, factories and the like.

Initially, pathormohal was owned and managed by the Ministry of Land (MoL). The Collectors of the concerned districts used to lease out the pathormohals and collect revenue. Subsequently, in 2004 the management of pathormohal was transferred from the Ministry of Land to the Bureau of Mineral Development under the Energy and Mineral Resources Division. In 2012, a new law entitled the Mine and Minerals Rules, 2012, is passed, and it provides the detailed guidelines for the pathormohal management. The pathormohal management laws that are examined are as follows:

- The Mining Settlement Act, 1912 (Act of 1912)
- The Mines Act, 1923 (Act iv of 1923)
- The State Acquisition and Tenancy Act, 1950
- The Government Estates Manual, 1958
- The Mines and Minerals (Regulation and Development) Act, 1967 (Act, No.II of 1967)
- The Mines and Minerals Rules, 1968 (amended up to 2008)
- Land Management Manual, 1990
- The Mines and Minerals Resources (Control and Development) Act, 1992
- An order regarding formation and structure of a committee on pathormohal management framed in 2011
- The Mines and Minerals Rules, 2012

A review of the existing laws and rules on pathormohal management helps identify the major limitations as below.

Problems in Practice

- Before the formulation of existing rule, a number of cases were filed in the High Court Division (HCD) by the vested interest group. Ever and anon, they were successful to have stay order so that they could continue as present lessee for a longer period of time. Cases have not yet been disposed of. In the mean time, the lessees have stopped paying the lease money. The Government is being deprived of revenue earning.
- The present Rule has made provision for open tendering to lease out the stone quarries. However, this provision could not have been implemented, since a number of writ petitions keep lying pending before the Honorable High Court Division for disposal.
- The Bureau of Mineral Development (BMD) does not have any permanent legal expert. As a result, they have to take permission from the relevant Ministry to engage some lawyers as legal experts. It sounds ironic that these lawyers work tepidly. So, Bureau of Mineral Development (BMD) has to go to the Solicitor Wing of the Ministry of Law, Justice and Parliamentary Affairs to seek advice.
- Till now, no research has been carried out to evolve any scientific method of extracting stones and minerals. The present process of extraction is operating without any specific guidelines, and the soil condition and environmental effect remains awfully uncared.

- In the absence of an effective law and dynamic management system, a vast area of Pathormohal remains unprotected. Inefficiency, corruption, lack of commitment and accountability of concerned authorities, entrusted with the pathormahol management, have indulged the local vested interest quarter to grab Pathormohal irresistibly.

Recommendations

- To make the lease process participatory and transparent, a widespread publicity campaign in this respect shall have to be made by the Bureau of Mineral Development (BMD) and Deputy Commissioner as well. Advertisements need to be published in the national and local dailies. Ensuring the availability of relevant information on the issue in the website of local district administration should remain an unavoidable part of the leasing process.
- Following the transfer of the pathormohal management from the Ministry of Land to Energy and Mineral Resources Division, the role of Deputy Commissioner (DCs) concerning management of Pathormohal has grown meaningless. This made DCs incurious about the matter. Hence, a committee is to be formed, comprising ADC (Revenue) as Chairman, and RDC and AC (Land), as supervisor of the functional aspects of Pathormohal at local level. This will ensure proper identification of Pathormohal and its supervision at the field level.
- The present rule does not contain the detailed provision to protect environment from degradation. Provisions regarding impact of pathor extraction, building the level of awareness of the stakeholders, and protection of environment are to be included in the rule.
- Some officials of Bureau of Mineral Development (BMD) are more interested in granting the lease of Pathormohal. They show little interest in proper identification, demarcation and valuation of Pathormohal. This results in a huge loss of revenue, and leads to the grabbing of Pathormohal by the influential. To overcome this situation frequent field visits need to be arranged under the auspices of Bureau of Mineral Development (BMD) officials. A committee can be formed from among the BMD officials. During the field visit, they should work in close cooperation with local land officials.
- A joint responsibility of Bureau of Mineral Development (BMD) and Collector is to be ensured in lease granting and revenue collection.
- Under the existing Rule, the district-level committee should be reconstituted. The district committee, on granting lease of Pathormohal, at the district level, may be headed by the Chairman/Administrator of District Council as Chairman instead of DC. Upazila Parishad Chairman may be included as a member.
- The Government should duly acknowledge the existence of a vested interest group that has amassed their fortune by grabbing the Pathormohal. This vested interest group spoils the basis of a relatively fair and regular lease of Pathormohal. Moreover, an open confession, on behalf of the Government, should be made that many an illegal grabber of Pathormohal lies under the umbrella of certain corrupt politicians. These malpractices should be rooted out.

Land Reform Related Laws in Bangladesh

Land reform in Bangladesh has a long historical background. Once, the Mughal Emperors introduced a separate rent-collection system. The East India Company and the British Rulers made different trials only to increase land revenue. The Flood Commission wanted abolishment of all interests, existing between the government and the farmers. In 1950, the East Bengal State Acquisition and Tenancy Act, was passed. Through this Act, the intermediary system was wiped out, direct relationship between the cultivators and government established and land ceiling fixed (re-fixed in 1962). In 1972 the ceiling of land was lowered down and other reforms took place. At long last, government promulgated The Land Reforms Ordinance, 1984 and the Land Reforms Rules, 1984. The following laws on land reforms are examined:

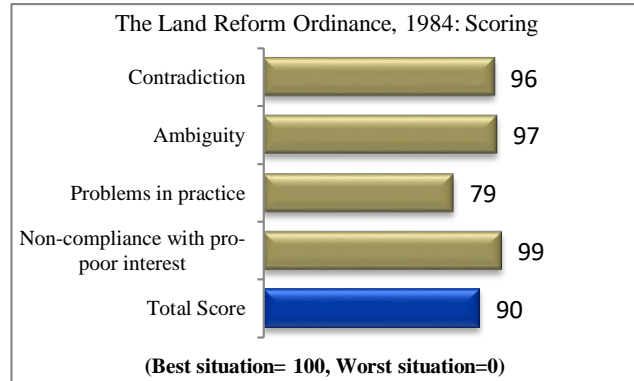
- The Permanent Settlement, 1793
- The Bengal Tenancy Act, 1885
- The State Acquisition and Tenancy Act, 1950
- The State Acquisition and Tenancy (Third Amendment) Order, 1972
- The Land Reforms Ordinance, 1984
- The Land Reforms Rules, 1984
- West Bengal Land and Land Reforms Manual, 1991

Core Learning

- Land reforms Ordinance, 1984 proclaimed by Martial Law Administrator is contradictory with the Constitution that demands a new Act.
- There is a discrepancy between agricultural and non-agricultural land ceiling. Moreover, the ceiling limit is inappropriate. Considering the land-man ratio, optimal use of land, productive efficiency and redistributive justice, the present land ceiling should be reduced.
- Sharecropping (barga) system is recognized in the cultivation and contract provision is included in the ordinance. But, it is not in practice and government arrangement in this regard is very negligible.
- There is no provision of recording the name of the bargadar in Record-of-Rights (RoR).
- Due to benami transaction it becomes difficult to identify the actual ceiling of land. At present there is no such definite mechanism to identify benami transaction.
- The land reform implementing departments are inefficient and not functioning properly.
- Provisions in the ordinance are ambiguous and contradictory.
- Pro-poor interest and pro-poor land reforms are consciously neglected in the land reform Acts, orders, ordinances and rules.
- Absence of an appropriate land reform authority makes the policies futile.

Scoring

The total number of sections of the Land Reform Ordinance, 1984 are '23', and four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been selected to evaluate the merit of the pertinent sections. The concerned sections of the Ordinance take values from 0-100, where, 100 denotes the best situation, and 0 the worst one. The score for relevant sections is $23 \times 5 = 115$. Thus, in respect of each key indicator the scoring is: contradiction 110, ambiguity 112, problems in practice 91, and non-compliance with pro-poor interest 99. These give a total score 412 out of 460 ($115 + 115 + 115 + 115$). With the conversion of the total score into 100, it becomes $(412 / (460)) \times 100 = 90$. If the individual score is converted into 100, then for each key indicator the score becomes 96, 97, 79 and 86 respectively. It implies that in terms of all indicators the status of the Ordinance is not fully satisfactory.



Recommendations

- An Act incorporating necessary revisions, modifications and other changes is proposed.
- The ceiling of all types of agricultural land is proposed to be fixed at forty standard bighas.
- The ceiling of all types of non-agricultural land is proposed to be fixed at twenty standard bighas.
- Benami transaction (property in other's name) should be strictly prohibited and penalty is to be given for violation of the provision. In new section 30 it is suggested that "Any person who violates any provision of this Act or the rules or any order of any authority made under this Act or the rules made there under shall be punishable with fine which may extend to five thousands Taka."
- Provision for the posts of Upazila Land Reforms Officer (ULRO) and Land Reforms Inspector (LRI) under Upazila Land Office is proposed to implement and supervise the land reform programs.
- It is proposed that every land owner shall submit at an interval of five years a statement of all his/her immovable properties to the ULRO of the local area. If ULRO finds any land in excess of the ceiling limit or in benami shall vest with the government as *khas* land from the date of recording such discovery.
- For borga cultivation a contract shall have to be signed between the land owner and the borgader. A copy of the contract shall have to be sent to LRI.
- Definition of land use policy, acquisition, land ceiling, land settlement etc. should be included in the law.

Land Registration Related Laws in Bangladesh

The process of land registration, in every country, is normally guided by statutory laws. In Bangladesh, land registration is an inextricable part of the present land management system. To deal with this area, Registration Act, 1908 was enacted. Later on, it has undergone various amendments, and ultimately it is considered as the guiding law in the field of land registration. But, the realities are different. The Act, 1908 has been causing mismanagement in land administration, social enmity, corruption and disorder in family life. The present land registration system of the country is terribly complicated. Land dispute is the prime reason for the occurrence of no less than 70 to 80 percent of civil and criminal cases. At present about 3.2 million lands dispute cases remain pending in courts. This huge figure does not include millions of the aggrieved, who are either terrorized by the touts to grow silent on the issue, or not strong enough to approach the court for litigation. Shoddy and hackneyed management of land registration system is one of the main reasons for fraud and manipulation in land ownership, and has given birth to avid land-grabbers and their retinue.

Core Learning

The registration of deeds in Bangladesh has come into force with the inception of Registration Act, 1908. The land records kept in the tahsil office are not checked to ensure whether the seller is the owner of the land, or someone else has any interest in the land. False registration is done both in urban and rural areas, but the incidence of false registration is much higher in urban areas. A plot of land may be sold to different people leading to decades-long litigation. The deed prepared by the writers contains many unnecessary words and sentences, thus creating further room for improvement.

The Registration Act, 1908 is not properly implemented in Bangladesh. It is evident that the Registration Act has failed to produce the desired outcome because of many problems. Some problems are inherent in the law itself and some are found in practice. The interpretation clause of Registration Act, 1908 defines the term addition. It includes the place of residence, and the profession, trade, rank and title (if any) of a person described, and his father's name, or where he is usually described as the son of his mother, then his mother's name. But it ignores some important information. So, this is an ambiguous provision, giving birth to problematic situations in practice. Non-discrimination, one of the basic elements of rights-based approach is missing in the enumerated section.

The above law reveals the absence of registrar or vacancy in his office. It states that the Inspector-General may appoint any person in this behalf, or, in default of such appointment, the Judge of the District Court. Condition of appointment is absent here. In the absence of a proper guideline, this section is sorted out as an ambiguous one which creates problems in practice also. This provision is not also in line with the concept of pro-poor interest due to the absence of participation, accountability and transparency.

Apart from these, it is also provided in the law that no non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same. There is no guideline as to what constitutes sufficient description. So, this has become an ambiguous provision, leading to the creation of problems in identification of the scheduled land in practice. This section does not comply with the requirement of pro-poor approach due to non-transparency, arbitrariness and non-accountability.

Moreover, registration procedure in Bangladesh is backdated. The modernization of the registration system needs speedy return of the original deed on the same day immediately after registration. In order to ensure it, a true copy of the deed is to be accompanied with the original deed at the time of registration. On the day of presentation of the deed for registration, the registration officer is to return the original deed after registration and to keep the true copy. Every hundred true copies should be kept as a book after they are assembled and piled by means of a bookbinding process. However, in the absence of modern procedure dishonest people in this country avail themselves of the scope to prepare fake deed.

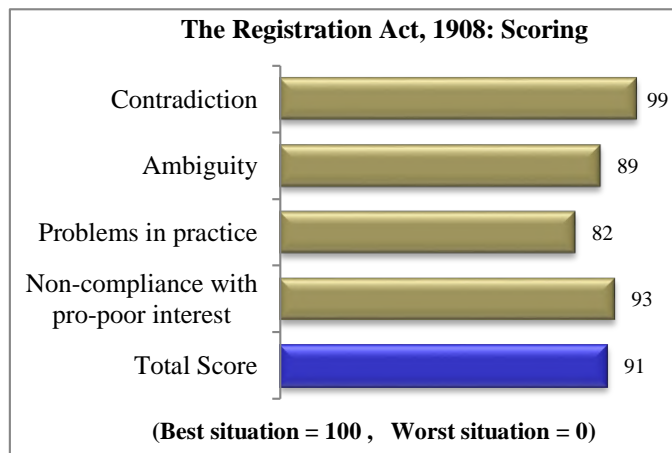
Problems in Practice

- **Faulty time about operation of registered document:** According to section 47 of the Registration Act, 1908 a registered document shall operate since the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. It indulges fraudulent practices.
- **Ancient balam system:** The age-old balam system, corruption, undue influence of deed-writers, fake deeds etc are the major obstacles in the way of further development of registration system in Bangladesh.
- **Manual operation:** The registration process is operated manually. At present, "Sub-Register's Office" follows the age-old system of writing down in illegible and archaic manners everything about land-who owns what, where, how much, and what is grown in which land. These land records and registration offices are filled with tattered and handwritten paper documents and registers. Many of them are 100 years old, marked with damage and have grown brittle due to humidity or half-eaten by book lice, wood worms, termites, mice and cockroaches.
- **Corruption of sub-registrars and deed writers:** The corrupt sub-registrars take bribe from the people connected with land dealings. But generally, they take it through a media called Deed Writer. There are many cases where people are harassed on account of the fake deeds. According to a study fake ownership of lands spawns criminal activities in Bangladesh. More than 80 percent of the criminal activities stem from land disputes. Fake deeds are made with the assistance of sub-registrars. But the officials shift the burden on the identifier by saying that when the identifier wrongly identifies, they have nothing to do.

Land Grabbing by Fake Deed
<p>Hasan Ali, a citizen of Bangladesh residing in London, narrates his experience of land-grabbing. Three hundred and eighteen decimal lands of Md. Hasan Ali have been grabbed by one Iwaz Ali of Shostipur under Nobigonj Upazila.</p> <p>Ashraf Ali, uncle of Hasan Ali filed a complaint to the judicial magistrate's court on 25 May, 2011. The court directed the police to take appropriate action after making due inquiry.</p> <p>It has been known that one Ator Ali, citizen of Bangladesh and resided in London, owns 318 decimal lands in Shostipur. The current value of the land is about Taka 5 million. Ator Ali died in London in 1994. After his death, his five sons and six daughters became the land owner by succession. They all are residing in London. By taking this chance, a gang under the leadership of Iwaz Ali, has grabbed the land by executing five fake deeds in their name. He sold some land to others in the mean time.</p> <p>In the fake deed, it has been written down that Iwaz Chowdhury bought the said land from the deceased Ator Ali, and his only son Hasan Ali.</p> <p>Hasan Ali informed that Iwaz Chowdhury, executed the fake deed by using false photo. He said that his father died in 1994. But in one deed it is stated that in 1997 the land has been registered by his father.</p>
<p><i>Source: The Daily Prothom Alo, 22 June, 2011</i></p>

Scoring

The total number of sections of the Act is '110' and four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered here to evaluate the merit of the sections. The sections of the Act take values from 0-100 where 100 denotes best and 0 denotes worst situation. In the present analysis for the articles the score is $110 \times 5 = 550$. Thus in respect of each key indicator the scoring is: contradiction 545, ambiguity 487, problem in practice 453 and non-compliance with pro-poor interest 513. These figures give a total score 1998 out of 2200 ($110 \times 4 \times 5$). If individual score is converted into 100 then for each key indicator the score becomes 99, 89, 82 and 93 respectively. Again, converting into 100 it becomes = 91. From the foregoing analysis it can be deduced that the Act is free from contradiction. Non-compliance with pro-poor interest is highly satisfactory. Problems in practice and ambiguity are also minimal.



Recommendations

- Amendment of existing Act:** In the present study, the Registration Act, 1908 has been amended and this amended Act includes the provision to prevent fake deed preparation. A few necessary conditions have been included in the Act. For example, character certificate of the identifier by the UP chairman should be submitted. For wrong identification, provision of penalty has been proposed.
- Documents shall operate from the time of registration:** The existing law of registration e.g. Registration Act, 1908 has been amended and the amended provision states that a registered document shall operate since the period of its registration.
- Penalty for corrupt officials:** There should be a tight rein on corruption and anomalies in the sub-registrar's office by making the new laws. Provision should be there for strong penalty e.g., dismissal from the job with fine or imprisonment. According to section 82 of amended law "Whoever- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or (b) intentionally delivers to a registering officer, in any proceeding a false copy or translation of a document or a false copy of a map or plan; or (c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or (d) abets anything made punishable by this Act; shall be punishable with imprisonment for a term which may extend to seven years, or with fine or with both".
- Digitalization of registration system:** The old balam system should be abolished to make it comfortable and digital. The recommendations in this respect are given below:

- Original and true copies of a document shall be submitted to the registering authority.
- Registration authority shall sign both the documents.
- Then one copy will be given back to the presenter and the other one will be deposited in the office.
- The file, along with the document, kept in the office will serve the purpose of *Balam*. It makes the process easier and less time consuming. People will get back the document in time.

Campaign to make the people aware

The change initiation in the new registration system would be foreign to most people in Bangladesh. This would require an extensive promotional campaign in all forms of media to inform the general public about their rights and the protection, provided by the new system. To make the project cost effective, an internet-based computing whereby shared resources, software, and information are provided to computers on demand, like the cheaper way of subscribing to cable TV or electricity, may be adopted.

Insertion of Registration Rules

To make the Act more effective, Registration Rules have been proposed which state the method of maintaining registration book, procedure of recopying the register Books which are in danger of being destroyed or becoming illegible, procedure on failure of the executants to appear after payment of a fine under section 25 within eight months from execution etc.

Land Survey Related Laws in Bangladesh

In Bangladesh, the survey is carried out to provide the record of the land parcels in a defined administrative area, or in other words, Mouza. Survey operations are generally undertaken all over the country in a rolling twenty-five-year time period. During the bygone period, different survey operations were conducted in the country. These are as follows:

- Thakbast Survey (1845-77)
- Revenue Survey (1846-78)
- Khosra Survey (1811- 1854)
- Diara Survey (1862-83)
- Cadastral Survey (1888-1940)
- State Acquisition (1956-1963)
- Revisional Settlement (1965- still continuing)
- Bangladesh Survey, Dhaka City Survey (1995) etc.

The above surveys were conducted under the following Acts and rules or instruments.

- The Survey Act, 1875
- The Tenancy Act, 1950
- The Tenancy Rules, 1955
- Bengal Survey and Settlement Manual, 1935
- Technical Rules and Instructions of the Settlement Department, 1957

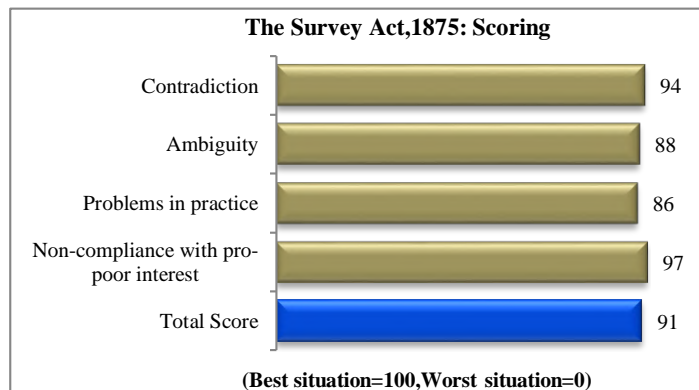
- Short Description of the Activities of Different levels of Land Records and Survey, 1990
- Land Management Manual, 1990
- The Sylhet Tenancy Act, 1936
- The CHT Regulation, 1900

Problems in Practice

- The central survey system depends on different Laws or Acts and rules. Nine or more stages in the survey process take a huge amount of time to complete the survey of an area. In the mean time, substantial changes have taken place in the ownership of land and topographical situation. In conducting settlement operation, organizational, human resource-related, technological and also managerial or planning problems arise. The long-drawn processes, opportunities for malpractices, non-technical or non-trained personnel, and scarcity of long-time serving printing equipments are the everyday problems, befalling survey department.
- The final production of survey is records-of-rights and mouza maps which are made on an ordinary paper and the preservation system of these valuable documents of the concerned offices is not at all satisfactory. Digital system of survey and preparation of record by means of latest modern technology and digital land record keeping system are absent in the land management.
- The survey system totally depends on temporary technical personnel and deputed officials. There is no permanent set up outside Dhaka. The survey operations always take place on temporary basis and the liabilities of error or malpractice cannot be fixed easily.
- Attestation is an important part of survey conducted by a non-gazetted, empowered revenue officer i.e. Kanungo. The title of a land is primarily declared through this process. If this declaration cannot be changed at the appeal stages, then this attestation becomes final.

Scoring: The Survey Act, 1875

In this analysis in total ‘69’ sections of the Act have been examined. Four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered here to evaluate the effectiveness of the sections. The Act takes values from 0-100 where 100 denotes the best situation, and 0 the worst one. In the

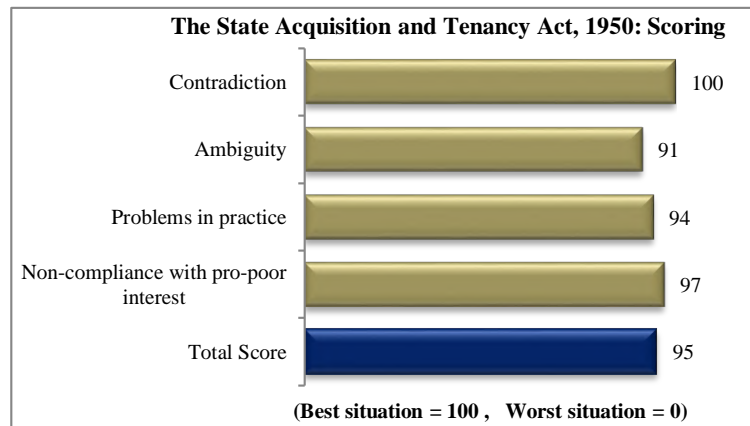


present analysis of the sections, the score is 69*5=345. Thus in respect of each key indicator the scoring is: contradiction 326, ambiguity 302, problem in practice 296 and non-compliance with pro-poor interest 335. These gives a total score 1259 out of 1380(345+345+345+345). With the conversion of the total score into 100, it becomes =91(1259/ 1380*100) If individual score is converted into 100, then for each key indicator the score becomes 94, 88, 86 and 97 respectively. From the foregoing analysis it can be safely deduced that the articles

of the Policy are almost free from contradiction and ambiguity. There are least problems in practice, and compliance with pro-poor interest is also satisfactory.

Scoring: The State Acquisition and Tenancy Act, 1950

The main objective of scoring is to identify the problems in the law on the basis of values given to the specific indicators. The rationale is to quantify the magnitude of the underlying problems. The scaling of score ranges from 0-5. If the problem is grave, then it is scored 0. If no problem is found, then score is 5. The total number of sections of the Act is '25' and four



indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered here to evaluate the merit of the sections. Moreover, the Act takes values from 0-100 where 100 denotes best and 0 denotes worst situation. In the present analysis for the sections the score is $25 \times 5 = 125$. Thus in respect of each key indicator the scoring is: contradiction 125, ambiguity 114, problems in practice 117 and non-compliance with pro-poor interest 121. These figures give a total score 477 out of 500 ($125 + 125 + 125 + 125$). If individual score is converted into 100 then for each key indicator the score becomes 100, 91, 94, and 97 respectively. Again, converting into 100 it becomes $= 95$ ($477 / 500 \times 100$). From the foregoing analysis it can be safely deduced that the articles of the Policy is almost free from contradiction and ambiguity. There are least problems in practice, and compliance with pro-poor interest is also much satisfactory.

Recommendations

- It is proposed that for survey, a permanent and efficient set-up of staff would be recruited under the Deputy Commissioner of every district. Staff would be engaged in survey round the year and sometimes could be worked for private land litigation regarding demarcation of area with fee, fixed by the Deputy Commissioner. Because, in case of any conflict, private land owners do not get help from the Government offices to fix the area of their land. To oversee the survey functions and other relevant issues, a post of Additional Deputy Commissioner (Survey) can be created. The criteria for the post may be fixed according to the proposed survey rules. It will help reduce the survey processing time, increase government revenue, and reduce civil litigation.
- Attestation is one of the important parts of survey done by Kanungo. By primary attestation the title of land is fixed. A cadre officer specially trained in survey is proposed to be assigned for conducting attestation in the village area with the help of public representatives and police, if necessary. After attestation the next stage is appeal. Different stages are there and most of the delays occur in this stage of survey. The Deputy Commissioner will engage more than one officer for hearing appeal, and decision of the appeal forum will be final. The Deputy Commissioner will take step in consultation with the Director General of Directorate of Land Records and Survey. No officer will be posted or deputed without required technical knowledge, mentioned in the proposed survey rules.

- RoR should be printed on durable quality paper and digital preservation system needs to be introduced. Information regarding land will be uploaded in a website so that anyone can see the ownership position of a parcel of land.
- Survey process is associated with different limitations. Digital survey method is one of the effective ways to overcome these constraints. All Acts and rules regarding survey need to be compiled in a single survey Act and single rules. A proposal is made for a permanent set-up to be established at the district level under the Deputy Commissioner. It is also proposed to reduce the numbers of stages to make the time shorter for survey.

Tea Land Related Laws in Bangladesh

The art of tea cultivation in Bangladesh began over one century and a half ago in 1840. The first tea garden was Malnichera in Sylhet in 1854. At present, the country claims to have possessed about 163 tea gardens. Tea plantation is concentrated mainly in hilly zones of four districts, namely: Sylhet, Maulovibazar, Habigonj and Chittagong. In addition to such areas, small holding tea cultivation has grown popular and beneficial in the Panchagar district, with nearly 20 tea gardens springing up there.

Tea is a major agro-based, labor intensive and export-oriented industry. Bangladesh is blessed with this evergreen crop in large contiguous areas. It occupies an important place in the national economy of the country. It accounts for 0.81 percent of GDP. This sector provides employment for millions of people. Recently, this sector is exposed to greater challenges and competition of the international market. It is surprising that there has not appeared a separate body of law on the management of tea land, except for only a few provisions of the State Acquisition and Tenancy Act, 1950. The present study makes an attempt to find out the realities, befalling the management of tea land, and suggests recommendations to improve the situation. In this regard, the following pertinent laws have been critically examined.

- The State Acquisition and Tenancy Act, 1950
- The Tea Ordinance, 1977
- The Bangladesh Cha Sramik Kallyan Fund Ordinance, 1986
- The Bangladesh Labor Act, 2006
- Land administration manuals, 2003 (vol 1 & 2)
- Different circulars published from time to time by Ministry of Law and Ministry of Commerce etc.

Core Learning

Land for tea cultivation is leased out by the Ministry of Land through different circulars. A lease on such land is held under the State Acquisition and Tenancy Act (SAT), 1950. Under sections 20 (2) and 90 of the SAT Act, 1950 no person can own the land beyond 375 bighas. Afterwards the ceiling limit is reduced through article (4) of the Presidential Order no 98 of 1972. Provision of this Order states that for cultivation of tea, coffee, rubber or horticulture the land ceiling may be relaxed by the government. The limit of land for tea cultivation depends on whether the government approved the cultivation of land exceeding 100 bighas. The provisions (Part i-iv) of SAT Act under which tea lands are leased out remains inoperative since long ago.

Moreover, the lease-oriented complicacy along with the intricate nature of its renewal is a matter of concern to tea cultivation since the War of Liberation-71 of the country, but no step has yet been taken on this issue. Holding a sub-lease on tea land is a common practice among the gardeners. Interestingly, the gardeners themselves sub-lease the low-lying land of tea garden to tea-workers for cultivation of tea. The low-lying land that is given to someone under a sublease is commonly known as ‘khet land’. Besides, the use of tea-land for other purposes is also found. There is no policy regarding the lease and management of tea-land. As a result, the influential extract unlawful benefit.

Generally, it is presumed that the land leased out for tea cultivation is non-agricultural *khas* land. But, in reality, all such lands, used for tea cultivation, are not non-agricultural. At present, tea is an export-oriented product, and tea cultivation is one of the promising industries of the country. In this sense, land used for tea cultivation is non-agricultural. On the other hand, if tea is considered to be an agricultural product, then the land of the tea garden is viewed as being agricultural land. But, whether the tea land will be treated as agricultural or non-agricultural depends on the land survey.

Problems in Practice

- **There is no tea land policy:** There is no policy regarding the management and settlement of tea land. Different irregularities e.g. lease of tea land, renewal of lease contract are not handled in appropriate manner.
- **Minimum lease fee:** At present, the fee for the lease of tea land is Tk.500 per acre. Tea is one of the important industries and occupies a significant place in the economy. Considering this importance, the lease fee should be increased.
- **Use of land for different purpose:** One of the major problems with the tea-land management is that the land, held under a lease for tea cultivation, is not actually used for the purpose. From time to time, pieces of such land are used for other purpose such as amusement park, tree plantation etc. Besides, the productivity of tea land is destroyed by the influential. One of the worst practices is excavation of sand from the tea land by the grabbers.

Destruction of Tea Land

Tea lands are being destroyed in different ways. One such example is excavation of sand from the tea land. This is usual practices at Kamalganj Upazila in Moulavibazar district. Politically influential persons are also excavating sand for selling. Even application of the gardeners to the local administration seeking remedy of these problems did not work. Excavation of the sand from the tea land is not only hampering the tea land, it is also alarming for the degradation of environment. Local inspection reveals that for the excavation of sand 500 trees have been smashed up. Crack has also been found in the tea land. Another impact is that the government is also losing a huge amount of revenue as thousand cubic feet sands are being illegally sold out by the influential secretly. Manager of Madhabpur Tea Estate admitted the truth and expressed that oral and written submission of the fact to the Upazila Nirbahi Officer (UNO) did not make any good. Chairman of Madhabpur Union Parishad, Mr. Pushpa Kumar Kanu Said that an influential group is illegally excavating the sand from the tea estate. Upazila Nirbahi Officer (UNO) of Kamalganj Upazila, Mr. Prokash Kanti Chowdhury said that the proper steps will be taken after field level inspection.

Source: Unlawful trafficking of sand from the tea land at Komolganj: Collapsing of small hill, risk of environmental pollution (in Bengali Komolgonje oboidhobhabe cha bagan kete cholse balu pachar: Dhoshe porchhe pahar, poribesh biporjoyer ashongka); <http://sylheteralap.com/news/category/sylhetnews/detail/6754>

- **Non-renewal of lease:** Renewal of lease on tea-land is made in most of the cases. No step is taken by the authority against such non-compliance. Consequently, the owners of tea gardens are enjoying the unlawful gain and treating these lands as their own.

- **Absence of a committee:** An absence of a committee for the allotment of land for tea cultivation creates scope for the land grabbers to retain the possession of the land beyond the limit.
- **Sub-leasing of tea land:** Subleasing the tea gardens, by the owners, becomes expressive of a common scenario. It is unexpectedly true that 43 tea garden has no lease deed. Apart from this, to meet government dues, they are illegally sub-leasing the tea land to the cultivators of pine-apple, lemon and betel-leaf. This runs contrary to the purpose of tea cultivation.

Recommendations

- **Unique policy on tea cultivation:** There should be a unique policy on Tea land management and settlement. This study frames a policy, containing 14 articles regarding tea land management.
- **Formation of committee:** Article 4 of the policy provides that there shall be two committees for the management of tea land. These are: a) National Executive Committee on Tea Garden Management, and b) District Committee on Tea Land Management and Settlement. These committees will initiate policy-making decision, select the eligible applicants, raise fund/loan for tea cultivation, inspect irregularities and take necessary steps and the like.
- **Strict observation to ensure the renewal of lease deed:** Article 13 (ii), (iii), (iv) of the proposed policy states that strict observation system shall be maintained for the renewal of lease of tea land. In case of violation, lease should be cancelled. Before cancellation, a notice should be served to the concerned lessee to explain why his lease should not be cancelled on the ground of non-renewal of lease. If the explanation submitted by the lessee is unsatisfactory or if he/she fails to show cause within 30 days of service of the notice, the district committee shall cancel the lease.
- **Lease fee should be increased:** Article 13(ix) states that lease fee for tea land may be increased to Tk. 2,000 per acre.
- **Small holding tea cultivation shall be encouraged:** Article 13(x) signifies that smallholding tea cultivation should be encouraged. At present there are a few newly established smallholding tea gardens operating in the north-eastern part of Bangladesh. Due to extreme scarcity of land, large tea garden is not feasible in Bangladesh. In such a situation small holding tea garden should be allowed to expand. Statistics of Bangladesh Tea Board shows that there are 85000 hectares of land in different areas of the country suitable for the smallholding tea cultivation. Proper steps such as arrangement of necessary capital/ funding of loan by the government should be taken for the development of small holding tea garden.

Trust Related Laws in Bangladesh

Trust is a relationship in which one person holds title to property, subject to an obligation to keep or use the property for the benefit of another. In Bangladesh the task of forming a Trust is very difficult and tiresome. People, while going for trust-building, get exposed to a lot of hazards. This review is intended to find out those complexities and inappropriateness of the present laws on trust and suggest some policy recommendations to make its more effective and people-oriented. This study critically reviews the following laws:

- The Trusts Act, 1882
- The Charitable and Religious Trust Act, 1920

Core Learning

Laws on trust are voluminous and complicated. Generally, these laws are concerned with the formation of a trust, its legal validity, nature (public or private) and lawful management of trust property.

The trust administration has not been proved a barrier to the growth of trusts but it is not as efficient, user-friendly and facilitative as it ought to be. Because it has many flaws, such as cumbersome procedures, delays, corruption, inadequate legal framework and unaccountability of the agencies responsible for its administration. The income tax provisions made for trusts are encouraging as in most progressive countries, and better than in others. But this is not to say that there is reason to be satisfied. One major problem is that the sector is not regulated effectively to ensure fiscal and management discipline of trusts. Trusts are seldom visited by the concerned authority, and their work is rarely well-understood. Other problems like mounting indiscipline, lack of professionalization and unethical behavior in the sector are very common. People have already lost confidence in the integrity of trust, and particularly in their contributions for the intended beneficiaries. Some desperadoes related with this sector have cynically manipulated the provisions of the trust laws to their personal ends.

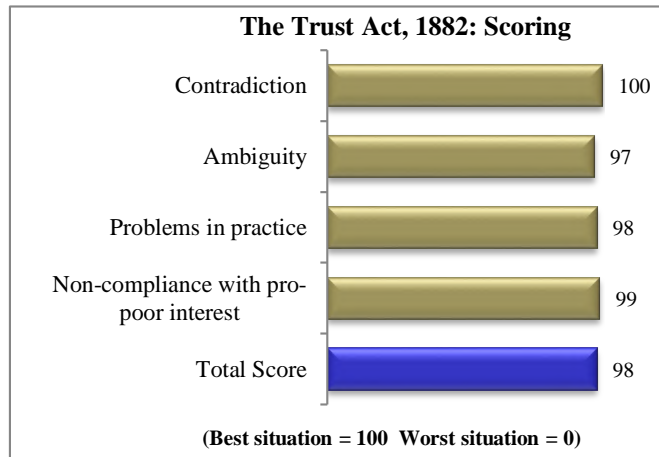
Finally, another despairing situation is the lack of political will. Trusts suffer from poor budget allocations, and overall negligence. Charity is often used for political reasons, because of the huge pool of funds owned by some big trusts. All these signals for intervening effective legal measures and pragmatic reform of the existing trust laws to improve the present environment of trusts.

Problems in Practice

- **Absence of regular audit:** Section 19 of the Trusts Act, 1882 describes the accounts and information of the trust. But it does not mention the necessity of regular audit of the trust property. This is an ambiguous provision.
- **Certain important grounds to discharge trustee not mentioned:** Section 71 narrates provisions of discharge of trustees. But the following important grounds of discharge have not been mentioned. The trustee may be discharged under the following circumstances also:
 - i. by the disqualification or removal of a trustee
 - ii. by the death of a trustee
- **Lack of public information:** Lack of information about the trust registration process and repeated visits to the concerned offices to secure information, and follow-up add a complicated dimension to the system.
- **Inadequate staff:** Over the decades due to the growth of the Trust, the workload on trust offices has increased manifold but the staff strength has remained either the same or reduced.
- **Poor facilities:** A very few Trust offices are equipped with modern facilities like computers, photocopiers, e-mail and fax.
- **No central database/register:** No central database exists for all registered trusts. Access to data on different aspects is difficult.
- **Regulation but no facilitation:** The laws are basically regulatory by nature. No effort is made to understand the purpose of the trusts. The authorities do not play any facilitating role to promote trust. There is no scope to promote good governance of trust.

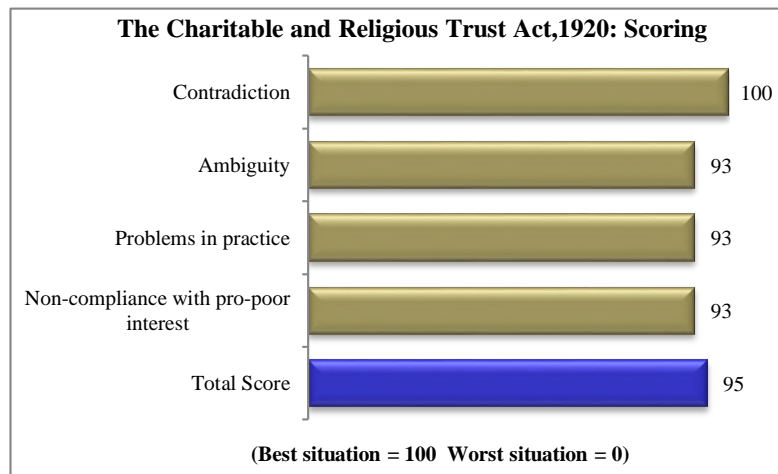
Scoring: The Trust Act, 1882

The total number of sections of the Act is '98', and four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered here to evaluate the merit of the pertinent sections of the Act that take values from 0-100 where, 100 denotes best and 0 denotes worst situation. In the present analysis the score of the Act is $98 \times 5 = 490$. Thus, in respect of each key indicator the scoring is: contradiction 490, ambiguity 476, problems in practice 479, and non-compliance with pro-poor interest 485. The indicators attain a total score 1930 out of 1960 ($490+490+490+490$). After converting into 100, the total score becomes $(1930/1960) \times 100 = 98$. On the other, if individual score is converted into 100 then for each key indicator the score becomes 100, 97, 98 and 99 respectively. After analyzing the score, it becomes transparent that there are little contradiction, ambiguity, and problem in practice in the present Act.



Scoring: The Charitable and Religious Trust Act, 1920

The total number of sections of the Act is '14', and four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered here to evaluate the merit of the pertinent sections of the Act that take values from 0-100 where, 100 denotes the best and 0 the worst situation. In the present analysis the score of the Act is $14 \times 5 = 70$. Thus, in respect of each key indicator the scoring is: contradiction 70, ambiguity 65, problems in practice 65, and non-compliance with pro-poor interest 65. The indicators attain a total score 265 out of 280 ($70+70+70+70$). With the conversion of such figures into 100, the total score becomes $(265/280) \times 100 = 95$. On the other, if individual score is converted into 100, then for each key indicator the score becomes 100, 93, 93 and 93 respectively. After analyzing the score, it becomes transparent that there appear little contradictions, ambiguities, and problems in the practice of the present Act.



Recommendations

- **Regular audit:** Section 19 of the proposed Trust Act now states “a trustee is bound (a) to keep clear and accurate accounts of the trust property, and (b) at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust property. In every year, accounts of the trust is to be audited by the government recognized audit firm”
- **Adequate ground for removal of trustee:** It is proposed that section 71 should take into consideration some other points in discharging the trustee, such as: (g) by the disqualification or removal of a trustee, (h) by the death of a trustee (i) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee whenever the court considers the appointment necessary for the administration of the trust.
- **Public access to information:** Data regarding trusts should be available to the public on written request. Simple booklets about the laws and procedures relating to trust should be published. Such information booklets should also be disseminated through the internet, by post to NGO associations, Chartered accountants, legal aid societies, and other forums.
- **Monitoring mechanisms:** A monitoring and evaluation system should be developed. The objective is improved performance, not mere inspection. Trusts should be regularly visited, and their activities are to be scrutinized properly.
- **Public Portal:** Apart from a physical public register the government should maintain the data in computerized form also.

Land Use Related Laws in Bangladesh

Agricultural land and its rational use assume special significance in a land scarce country like Bangladesh. Article 15 of the Constitution of the People’s Republic of Bangladesh, states that, it shall be a fundamental responsibility of the State to achieve, and through planned economic development, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people. Article 16 of the Constitution further states that the State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas. All these make it evident that a pragmatic and pro-poor Land Use Act is highly needed to protect and conserve the land from being misused.

The present review is undertaken to examine the following policies on land use and land zoning, identify the limitations therein and put forward recommendations.

- The Building Construction Act, 1952
- The Town Improvement Act, 1953
- The Constitution of the People’s Republic of Bangladesh, 1972
- The Acquisition and Requisition of Immovable Property Ordinance, 1982
- The Land Use Act, 1990
- The Environmental Protection Act, 1995

- The Natural water Reservoir Act, 2000
- The National Land Use Policy, 2001
- The Land Development Rules for Private Housing, 2004
- The Proposed Bill on Land Use Policy, 2011

Core Learning

- Agricultural land is decreasing every year which ultimately affects agricultural production.
- Land use policy is actually an executive enactment. Provision for compulsory implementation is absent in the policy.
- According to the use, purpose and classification, land zoning map is required and it will prove effective in planned use of land.
- A percentage of acquired land has remained unutilized frustrating the purpose of acquisition. This valuable land should be put into proper use.

Problems in Practice

With an objective to provide a rational guideline for the best utilization of scarce land resource, the Government of Bangladesh formulated the National Land Use Policy, 2001. Subsequently, a bill was drafted in 2011 for the conservation of agricultural land and proper use of land.

National Land Use Policy, 2001 of Bangladesh deals with land zoning, based on the use of land, area of land use, misuse of land, creation of land data bank, Certificate of Land Ownership (CLO), National Land Use Committee and National Land Use Implementation Committee.

The National Land Use Policy, 2001 in article 16 states the Land Zoning Law in an abridged form. It elucidates formulation of a Village Improvement Act like Town Improvement Act, 1953. It further reveals that a Zoning Law should be formulated but the Policy, 2001 did not give any guideline regarding formulation of such a Zoning Law. National Land Use Policy, 2001 does not contain any definition clause nor define any terms used in the Policy.

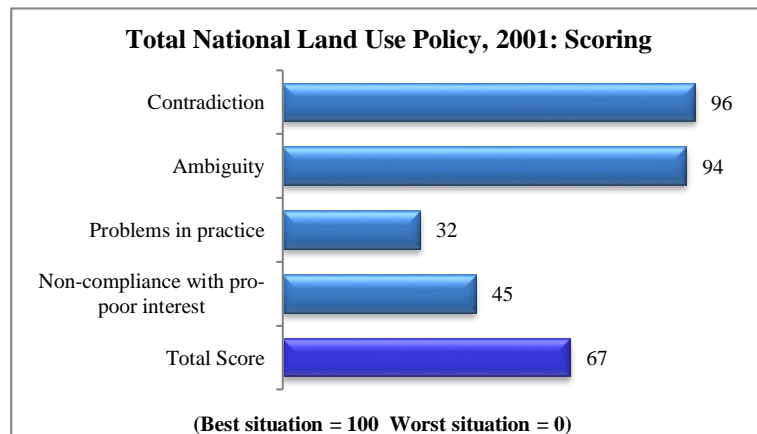
It is proposed in article 4(1) of clause (ii) of proposed bill of Conservation of Agricultural Land and Land Use, 2013 that no dwelling-house, industry, brick field, highways, hat-bazaars, educational institutions or any other nonagricultural establishments shall be constructed by means of the degradation of any piece of agricultural land.

In article 4(1) of clause (iii) of proposed bill it is again suggested that in case of construction of any industry, government or non-government office building, habitat, hat bazars, educational institutions and other establishment the vertical expansion of existing land shall be emphasized and necessary Rules shall be framed under this Act for such use.

In article 4(1) of clause (v) of proposed bill it is suggested that the development project, homestead, industry or establishment have to be constructed in accordance with the land zoning map approved by the Government or by the Authority as authorized by the Government and in accordance with the latest land record and map prepared by the Land Record and Survey Department, and in this case comparatively unfertile agricultural land may be used.

Scoring

The main objective of scoring is to identify the problems in the law on the basis of values given to the specific indicators. The rationale is to quantify the magnitude of the underlying problems. The scaling of score ranges from 0-5. If the problem is seriously grave, then it is scored 0. If no problem is found, then score is 5. The total number of articles of the policy is '19' and four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'non-compliance with pro-poor interest' have been considered here to evaluate the merit of the articles. Moreover, the concerned articles of the policy take values from 0-100 where 100 denotes best and 0 denotes worst situation. In the present analysis for the articles the score is $19 \times 5 = 95$. Thus in respect of each key indicator the scoring is: contradiction 91, ambiguity 89, problem in practice 30 and non-compliance with pro-poor interest 43. These figures give a total score 272 (out of 380) ($19 \times 4 \times 5$). If individual score is converted into 100 then for each key indicator the score becomes 96, 94, 32 and 45 respectively. Again, converting into 100 it becomes =67 ($253/400 \times 100$). It indicates that there are negligible contradictions, ambiguities. However, a problem in practice and compliance with pro-poor interest still lags far behind.



Recommendations

- Under this proposed Act of section 12 five committees have been suggested. Among those, National Land Use Committee is to be headed by Honorable Prime Minister; Land Use Implementation and Monitoring Committee is to be headed by Honorable Minister, Ministry of Land; District Land Zoning and Land Use Committee is to be headed by Chairman/Administrator, District Council. Moreover, Upazila Land Zoning and Land Use Committee is to be headed by Chairman, Upazila Parishad and Union Land Zoning and Land Use Committee is to be headed by Chairman, union parishad.
- A base line survey is to be conducted throughout the country to identify the category of land under the proposed Act.
- Under section 4 of the proposed Act a provision is suggested in this regard that no change in any of the category of land can be made without prior permission of the proper authority.
- Agricultural land is to be demarcated specially for conservation of agriculture only.
- The digital land zoning map of all City Corporations, municipalities, upazilas, unions and mouzas can be made by identifying the areas on the basis of their actual use, suitability and availability of land. Land zoning map shall have to be prepared for all the villages on the basis of mouzas, unions and for the municipal areas on the basis of the ward.
- A penal provision needs to be introduced against violation of the provisions of proposed law.

Vested Property Related Laws in Bangladesh

The vested property was called “enemy property” during 1965-71. On 6 September 1965, Pakistan Government proclaimed a state of emergency by the Defense of Pakistan Ordinance at the outbreak of war with India. During the period, the Governor of East Pakistan passed an order on 3 December 1965 on enemy property. It included all lands or buildings and all moveable properties, defined as per the Defense of Pakistan Rules, exclusive of those managed by the Court of Wards, and those in respect of which transaction for exchange as contemplated in the Transfer of Property Act 1882 was made before 3 December 1965. Properties not connected with any 'enemy firm' as defined in that rule, were to be vested in the deputy custodian of Enemy Property (Lands and Buildings) with effect from the date of this order. In 2001 Government of Bangladesh, passed the Vested Property Repeal Act 2001, through which the government started the process of restoring the properties to the real owner. But the process did not continue as the successive Governments passed an amendment of the Act in 2002.

In November, 2011 the Government of Bangladesh passed a new law that will enable the return of property to the owners of land. The Vested Properties Restoration (Amendment) Bill, 2011 now enables someone to reclaim their property taken over by the Government and individuals. There are certain positive provisions, but they do not come into force to fulfill the demands- that is to say- all the properties seized or taken over until recently should be returned to their rightful owners. The purpose of this review is to suggest a practical, justifiable and implementable solution to the issue of Vested Property Restoration Act, 2001.

The main objective of the review is to study the Vested Property Restoration Act, 2001 and its amendments in 2011, 2012, and 2013. Another objective is to identify the reasons as to why the Act failed to produce desired results in restoring the property to the real owner/owners. In other words, this review attempts to highlight the aspects of mismanagement, mis-governance, exploitation and deprivation in the area of vested property restoration. The Vested Property Restoration Act, 2001 enacted for disposal of vested properties has certain limitations which need to be overcome. Keeping this view in mind, necessary amendments to the Act are proposed here.

In this regard, following laws have been reviewed:

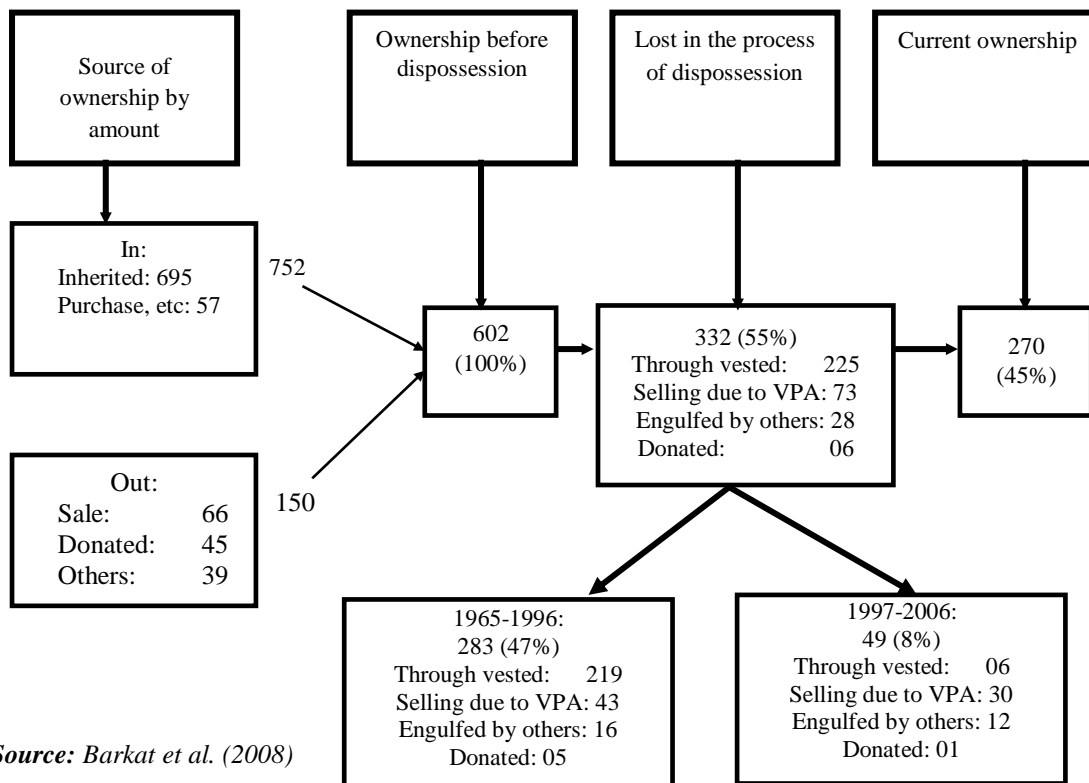
- The Defense of Pakistan Ordinance, 1965
- The Defense of Pakistan Rules, 1965
- The Enemy property Custody and Registration Order, 1965
- Rule 119 framed under the defense of Pakistan Ordinance, 1965 Requisition of Property
- The East Pakistan Enemy Property Order, 1966
- The Enemy Property (Continuance of Emergency Provision) Ordinance, 1969
- The Bangladesh (Vesting of Property and Assets) Order 1972
- The Enemy Property (Continuance of Emergency Provision) Ordinance (Repeal) Act-1974
- The Vested and Non-Resident Property (Administration Act-1974)
- The Enemy Property (Continuance of Emergency Provision) (Repeal) (Amendment) Ordinance 1976
- Memo No.667 (18)-VP-115/76, Dt.23-4-1976 of Ministry of Land Administration and Land Reforms
- The Vested Property Restoration Act, 2001 (Act XVI of 2001)
- The Vested Property Restoration Act, 2001 (Amendment, 2002)
- The Vested Property Restoration Act, 2001 (Amendment, 2011)

- The Vested Property Restoration Act, 2001 (Amendment, 2012)
- The Vested Property Restoration Act, 2001 (Amendment, 2013)
- The State Acquisition and Tenancy Act, 1950
- The Constitution of the People’s Republic of Bangladesh

Core Learning

Subsequent to the promulgation of the Enemy Property Act, 1965 a great change took place in the ownership of the property. The quantitative values of such property can be measured but it is not possible to measure the psychological pressures, pains and sorrows, forced breaking-up of family ties, national loss in human capital formation, etc. As a consequence, the Hindu minority was deprived of the right to possess the property given by Article 42 of the Constitution of People’s Republic of Bangladesh. In a survey study conducted by Barkat et al. (2008) it was found that of 450 affected cases from 1965-2006 victims lost 55 percent property as a consequence of this Act. The efforts made by the government through enactment of the Vested Property Restoration Act, 2001 are admirable, but for better implementation some of its limitations should be removed. The committee formed for the restoration of this vested property could not make any headway because in that committee proper representation was absent and the Member of Parliament (person of a political party) exerts undue influence.

Scenario of Hindu households affected by the Enemy/Vested Property Act, 1965-2006 (in decimals)



Source: Barkat et al. (2008)

Problems in Practice

- In section 2(m) of Vested Property Restoration Act, 2001 “Owner” means the original owner whose property has been enlisted as vested property or his heirs, or the successor-in-interest of the owner or his heirs; or in absence of them co-sharer by heir who is in possession by any other way. In the definition the word “possession by any other way” is

ambiguous. The word “possession by any other way” cannot be accepted as criteria of acquiring ownership.

- The formation of the district committee has been explained in section 9(b) of The Vested Property Restoration Act, 2001. In this committee there is a provision to keep two local honorable persons. These two persons may be politically biased as they are selected / nominated by a political person (Minister, Ministry of Land). A local Member of the Parliament has been included as an adviser in this committee. Some concerned persons, and particularly the victims doubt that the district committee cannot play an effective role on account of undue influence of the Member of the Parliament.
- According to section 31 of The Vested Property Restoration Act, 2001 the activities of the district committee and the tribunal are treated as judicial proceeding. There is no provision for keeping an adviser in a judicial proceeding. It contradicts the formation of other courts established by other laws (e.g. Civil Courts Act -1887, Code of Criminal Procedure- 1898) in Bangladesh.
- The procedural activities connected with the restoration of vested property generate many problems. The accuracy of the gazette on vested property is questionable. It is alleged that the Tahsildar and Amin were not sincere about making the list of Vested Property. The name of the land-owner, mouza, khatian and plot number are not mentioned properly. These mistakes cause a lot of harassments to the victim. Certain corrupt officials earn a huge amount of money by deceiving the poor, women and, marginal population.

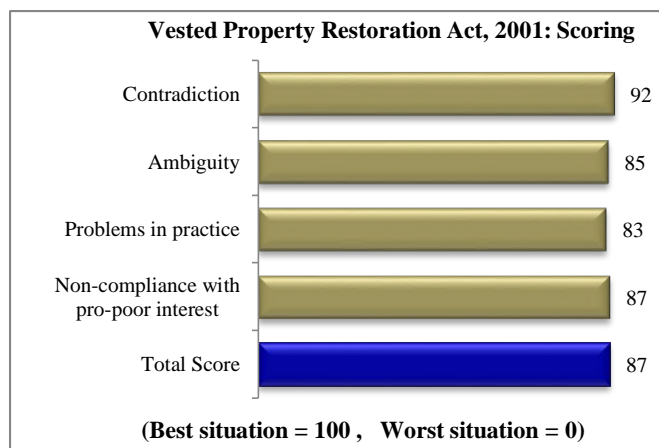
Vested Property not Enlisted Properly

The list of ‘A’ schedule of Lalmonirhat district was published on 17 May, 2012. A lot of anomalies have been found in that list. Sometimes land of one plot is listed as land of another plot. The name of the owner of that land is not mentioned properly. Some vested property under government control is not yet enlisted. Abu Taher, ADC (Revenue) has sent a list to the Ministry of Land for correction. It has been informed by the concerned authority that the land (Sadar Upazila, khatian no. 383, S.A Plot no. 940 and total 0.53 acres) has not been enlisted due to mysterious reason. In addition some plot number is not written properly, such as plot number 636 is to be replaced by plot number 638, 543 by 593 and 576 by 526. Further, the name of Kusum Kumari is written as Kastari Kumari. These mistakes whether intentional or unintentional causes a lot of sufferings to the people.

Source: The Daily Kaler Kantha, 15 August, 2012.

Scoring

The number of sections (including preamble) of the Act, 2001 is ‘39’ in total and four indicators i.e. ‘contradiction’, ‘ambiguity’, ‘problems in practice’ and ‘non-compliance with pro-poor interest’ have been considered to evaluate the appropriateness of the pertinent sections of the Act that take values from 0-100 where, 100 denotes best and 0 denotes worst situation. In the present analysis the score stands at $39 \times 5 = 195$. Thus, in respect of each key indicator the scoring is: contradiction



180, ambiguity 166, problems in practice 161, and non-compliance with pro-poor interest 169. These gives a total score 676 out of 780 (195+195+195+195). After conversion into 100 the total score becomes $(676/780) \times 100 = 87$. When the individual score is converted into 100

the score for each key indicator becomes 92, 85, 83 and 87 respectively. The analysis reveals that the Act is least contradictory and ambiguous; whereas in practice the Act is beset with a lot of problems, and also scarcely complies with pro-poor interest.

Recommendations

- In section 9(b) of the Vested Property Restoration Act, 2001 it is proposed to include two persons having legal and practical knowledge in the district committee instead of two local honorable persons. The post of adviser in the district committee can also be abolished because an adviser cannot be included in a judicial proceeding.
- Definition of “Owner” given in section 2(m) of the Vested Property Restoration Act, 2001 should be replaced by the proposed definition of “Owner”. According to new proposal the definition of “Owner” shall be as follows:

“Owner” means the original owner whose property has been enlisted as vested property or his heirs, or the successor-in-interest of the owner or his heirs; or in absence of them co-sharer by heir who is in possession by lease or any other legal form.

Waqf Related Laws in Bangladesh

Properties are declared by land lords as waqf estate for various social and religious institutions. People of different walks of life endow their property for spiritual wellbeing. Waqfs are of two categories, private and public. Surprisingly speaking, no conclusive survey has yet been conducted about the total area of waqf property in Bangladesh. According to Bangladesh Waqf Administration, there are 13,827 enrolled waqf estates in Bangladesh which consists of a total land area of 606,107.232 acres.

The present study focuses on identification of the limitations of existing legal provisions in Waqf Ordinance, 1962. The Waqf Ordinance discusses inter alia formation of the committee, powers and functions of the Administrator and the committee, enrollment of waqfs, transfer of waqf property, provisions relating to Mutawalli and judicial proceedings and other relevant issues. The laws relating to waqf enacted so far are as follows:

- The Mussalman Waqf Validating Act, 1913
- The Mussalman Waqf Validating Act, 1930
- The Mussalman Waqfs Act (XLII of 1923)
- The Bengal Waqf Act, 1934
- The Official Trustees Act, 11 of 1913
- The Charitable Endowments Act (VI of 1890) (Sec. 2, 3, 4, 5, 6 and 8)
- The Religious Endowments Act (XX of 1863) (Sec. 14)
- The Charitable and Religious Trusts Act (XIV of 1920)
- The Civil Procedure Code, 1908 (Sec. 92-93)
- The East Bengal Non-agricultural Tenancy Act, 1949 (S. 85)
- The Waqfs Ordinance, 1962.

Core Learning

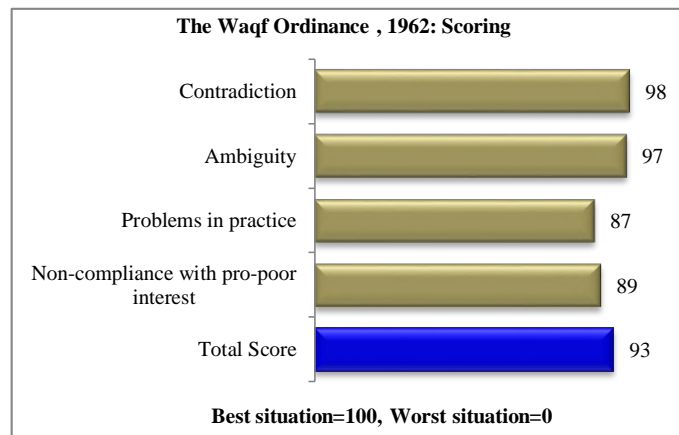
Waqf sector in the country represents an underdeveloped, underutilized segment of the national asset, which is waiting for proper and better utilization. The problems, which the waqf institutions face in the country are numerous and of enormous magnitude. Some of the major problems that the waqf sector is currently facing in Bangladesh are as follows: inadequate manpower, unregistered waqf properties, illegal occupation and misappropriation of waqf properties, uncollected arrears, operational inefficiency and problem of waqf disputes, absence of provisions in the Waqfs Ordinance 1962 relating to the development of waqf, integrity of the *mutawallis* and their qualification, unauthorized alienation, personal use of waqf's compensation money, lack of progressive and innovative ideas, and abuse of power by the unskilled Administrators.

Problems in Practice

- **Establishment of the Waqf Committee:** According to section 19 a national level committee should have been established to deal with waqf. The objective of the committee is to assist and advise the waqf Administrator. But the committee has not been formed for last 2 years. Since the committee does not keep functioning, the Administrator exclusively applies his power.
- **Participation of woman:** It is evident that section 20 of the present Ordinance provides no scope for participation of woman.
- **Power of Administrator to grant sanction to transfer:** Waqf itself is an endowment of a perpetual nature that such property should not be transferred or transformed. In some circumstances transfer becomes inevitable. In such case of transfer section 33 provides discretion to the Administrator. Exclusive power of transfer in a single hand leaves scope for misuse of power.
- **Unregistered Waqf Properties:** Section 47 of the Ordinance states that “all waqfs existing at or created after the commencement of this Ordinance shall be enrolled with the office of the Administrator and an application for enrollment shall be made by the mutawalli”. But for certain reasons, people are not interested in enrollment of waqf properties. First, the existence of the waqf administration is not known to many people particularly in the rural areas. Second, there might be a deliberate attempt to avoid being registered in order to find an escape from the control of the waqf administration. Third, to evade payment of 5 percent levy as this payment is imposed upon all registered waqf estates. Apart from these, section 47(5) does not provide any time limit. As a result, the enrollment process continues unreasonably.
- **Tenure of office of members:** According to section 21 of the Ordinance, the Administrator himself will be the Chairman of the Committee. Administrator is generally appointed by the Government from among the officials of administration of the Republic. The members are appointed at a time for 5 years and their tenure also ends together. It creates a vacuum in the waqf administration especially in terms of knowledge about waqf.
- **Appointment of the auditor:** Procedure of appointment of the auditor is not specified in the existing Ordinance under section 53 of sub-section (1). As a result, the transparency of the appointment of the auditor becomes questionable.

Scoring

The main objective of scoring is to identify the problems in the law on the basis of values given to the specific indicators. The rationale is to quantify the magnitude of the underlying problems. The scaling of score ranges from 0-5. If the problem is grave, then it is scored 0. If no problem is found, then score is 5. The total number of sections of the Ordinance are '97' and four indicators i.e. 'contradiction', 'ambiguity', 'problems in practice' and 'Non-compliance with pro-poor interest' have been considered here to evaluate the merit of the sections.



Moreover, the sections of the Ordinance take values from 0-100 where 100 denotes best and 0 denotes worst situation. In the present analysis of ninety seven sections the score is $97 \times 5 = 485$. Thus in respect of each key indicator the scoring is: contradiction 475, ambiguity 469, problem in practice 421 and non-compliance with pro-poor interest 430. These figures give a total score 1795 out of 1940 ($485 + 485 + 485 + 485$). If individual score is converted into 100, then for each key indicator the score becomes 98, 97, 87 and 89 respectively. Again converting into 100 then total score stands at $(1795/1940) \times 100 = 93$. From the present discussion it follows that the Ordinance is marginally behind the best situation in respect of contradiction and ambiguity; the situation is also much better in case of problems in practice and compliance with pro-poor interest.

Recommendations

- **Establishment of the Waqf Advisory Committee:** It is suggested to establish a Waqf Advisory Committee in section 18 of proposed law to supervise the affairs of waqf administrator and *mutawallis*.
- **Participation of woman:** It is suggested in section 19 of proposed law that “at least one member shall be a woman from among the prominent and distinguished persons of the Muslim community.”
- **Power of Administrator to grant sanction to transfer:** Absolute discretion of the Administrator of section 33 should be balanced. As a result, a new provision is made in section 40 of proposed law that reads as follows: “Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any waqf deed or in any contract, the Administrator may, with the previous sanction of the Government and the committee, transfer any part of a waqf property by sale, mortgage, exchange or lease if he considers it necessary for the improvement and benefit of the waqf.”
- **Unregistered waqf properties:** It has been suggested to amend the sub-section (5) of section 47 of the existing law with section 54 of sub section 5 of the proposed law which reads out “The District Committee shall, on receipt of each application for enrollment, shall ascertain whether such property is the *khas* property of the Government or of any local authority. When the District Committee, within a reasonable time-period, raises objection to the enrollment on the ground that the said

property belongs to the Government or any local authority, the applicant shall be informed accordingly and, unless the applicant produces a decision of the Court to the contrary, the application for enrollment shall be rejected.”

- **Tenure of members:** Tenure of the members should be fixed in such a way that half of the tenure will overlap with that of the succeeding member. It is suggested to amend section 21(1) with section 20(1) of the proposed law which runs as follows: “Tenure of members shall ordinarily be six years except the chairman, member-secretary. The three members appointed from amongst the *mutawallis* shall be appointed for three years term and the rest three for six years term and after the expiry of three years term of those three first appointees these vacancies shall be filled up by appointing three members not for three years term but for six years term.”
- **Appointment of the auditor:** New law is proposed for the appointment of the auditor in section 60(1) that states as: “the accounts of waqfs submitted to the Administrator under section 59 shall be audited annually by an auditor appointed by the Administrator”.

Glossary

Abandoned Property

“Abandoned property” means any property owned by any person who is not present in Bangladesh or whose whereabouts are not known or who has ceased to occupy, supervise or manage in person his property, including-

- (i) any property owned by any person who is a citizen of a State which at any time after the 25th day of March, 1971, was at war with or engaged in military operations against the People's Republic of Bangladesh;
- (ii) any property taken over under the Bangladesh (Taking Over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (Acting President's Order No. 1 of 1972), but does not include-
 - (a) any property the owner of which is residing outside Bangladesh for any purpose which, in the opinion of the Government, is not prejudicial to the interest of Bangladesh;
 - (b) any property which is in the possession or under the control of the Government under any law for the time being in force.

Acquisition

Acquisition in every case, means the transfer of the ownership. Concept of acquisition has an air of permanence and finality in as there happens transfer of the title of the original holder to the acquiring authority or the Government.

Social Forestry

Social forestry is a participatory form of forestry, whereby the stakeholders can participate by an agreement with the Forest Department.

Agricultural *Khas* Land

Khas land has been defined under section 2(15) of the State Acquisition and Tenancy Act, 1950 in the following manner:

“*Khas* land or land in *khas* possession”, in relation to any person, includes any land let-out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity;

All the cultivable *khas* land, except any kind of land situated outside all the Metropolitan, Municipal and Upazila Sadar areas shall be treated as agricultural *khas* land.

Alluvion

Accretion of land on a shore or a river bank by the action of water. In Bangladesh, this is commonly known as Char-land.

Alternative Dispute Resolution (ADR)

It includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement/compromise short of litigation.

Balam

A registrar where the copy of land registration is kept. It is maintained in the office of the Sub-registrar.

Bargadar

A person who under the system generally known as adhi, barga or bhag cultivates the land of another person on condition of delivering a share of produce of such land to that person.

Balu Mohal

Balu Mohal is a government owned land, and managed by the Ministry of Land mostly through lease out process. The Collector of the Districts arrange auction of Balu Mohal.

Benami Transaction

Benami transactions are made under the name of another person, who does not pay the consideration but merely lends his or her name as the owner of the property, while the real title vests in another person who actually paid the consideration and purchased the property.

Beneficiary

“Beneficiary” means participant in social forestry and any beneficiary under the provisions of this law.

Bonafide

Anything made or carried out in good faith.

Ceiling

Ceiling means the limit of land person can possess.

Charitable Trust

Charitable Trust includes those trusts established for charitable purposes.

Chingri

Chingri means shrimp.

Chingri Mohal

Chingri mohal means *khas* land of government which is leased out for the purpose of chingri cultivation.

Chittagong Hill Districts

Chittagong Hill Districts means the districts of Rangamati, Khagrachari and Bandarban.

CHT Accord, 1997

The Accord was signed on 2 December 1997 between the Government of Bangladesh and the Parbatya Chottogram Jana Samhati Samiti (PCJSS) ending more than two-decade old armed struggle for self-determination.

Circle Divisions

The Districts of CHT comprises of reserved forests, the circle of the three chiefs, viz the Chakma Chief, the Bohmong Chief, and Mong Chief and the Maini Valley.

Collector

"Collector" shall mean the chief officer in charge of the revenue administration of a District and shall include a Deputy Commissioner, of such District.

Court of Wards

“Court of Wards” is a court deals with the property of minors, unsound person and incapable by physical defects) who are disqualified to manage their own property.

Cultivator

A person who tills his own land or another person’s land as bargadar or labor under a contract for payment of wages.

Current jal/bera (illegal net)

Net made of monofilament synthetic fiber with small mesh size, presently less than 4.5 cm.

Diara Settlement

Settlement of accreted land near the river or sea area.

Diara Survey

Diara means riverine areas where alluvion and diluvion occur. Diara survey means a survey conducted for settlement operation in char or alluvial area.

Debutter Property

Debutter property means the permanent dedication by a person professing Hindu religion of any movable or immovable property for religious purposes recognized by Hindu Law and includes all such debutter properties created previously by such manner or any other manner by any person or institution orally or through execution of a deed.

Diluvion

The gradual and imperceptible washing away and loss of soil occurred along a watercourse.

DN Holder

Demand Notice Holder means that person who received a letter from the government before 4 September 1983 to pay house rent for the possession of abandoned house.

Estate

“Estate” means a tea estate and includes a tea garden or a part of tea estate or garden.

Family

Family in relation to a person includes such person and his wife, son, unmarried daughter, son’s wife, son’s son and son’s unmarried daughter.

Fisherman

Fisherman means a person who earns his livelihood mainly by catching and selling fish from natural sources is considered as real fisherman.

Fringe Land

Fringe land means any land which becomes cultivable occasionally. During a certain period of the year this land remains under water.

Gher

The Bengali term ‘gher’ is the place where an enclosure is made for prawn cultivation.

Gift

Gift or *Heba* means transfer of property, made immediately and without any exchange, by one person to another, and accepted by or on behalf of the latter.

Grove Land

Groveland means flat land and bumpy land and also includes such foot-hill land as would not require terracing, full or modified, to be utilized solely for plantation of fruit trees and other trees.

Hari

Hari is contract money of leased chingri mohal which is determined by the concerned local administration.

Hill District Council

Hill District Council (Parbatya Zila Parishad) means District Councils of the three Hill Districts namely Rangamati Hill District Council, Khagrachari Hill District Council and Bandarban Hill District Council. These councils comprise of a Chairman and thirty-three members elected by local people. Out of thirty-three members represented by indigenous and non-indigenous peoples three shall be women.

Homestead

Homestead means a dwelling house with the land under it, together with any courtyard, garden, tank, place of worship and private burial or cremation ground attached and appertaining to such dwelling house, and includes any out-buildings used for the purpose of enjoying the dwelling house or for purpose connected with agriculture or horticulture and such lands within well-defined limits, whether vacant or not, as are treated to be appertaining thereto.

Indigenous Peoples

The term “indigenous” has prevailed as a generic term for many years. In some countries, there may be preference for other terms including tribes, first peoples/nations, aboriginals, ethnic groups, *adivasi* (*indigenous*), *janajati*. Occupational and geographical terms like hunter-gatherers, nomads, peasants, hill people, etc., also exist and for all practical purposes can be used interchangeably with “indigenous peoples”.

Jalmohal

Jalmohal means that kind of water body in which water persists for a certain time of a year or all over the year and that which are called Fen, Bahor, Swamp, Jhil, Doba, Lake, Dhighi, Canal, River, Ocean etc. These Jalmohals may be closed or open. Closed Jalmohal should have a specific boundary and open Jalmohal may not have a specific boundary.

Jhum Tauzi

Jhum tauzi means a document which contains the following information: the name of each family head and the number of persons in the family, whether paying Jhum tax, parkulia or exempted, and the reasons for exemption; whether the family is old or proposed, i. e., arrived within previous five years.

Jhum Land

Jhum land is owned by a village community as different from individual ownership. Traditionally, the Headmen distribute the Jhum land among village communities. The size of the plot depends on the size of the family or the community. The holders of Jhum land pay a tax to the Headmen. The Headmen keeps a part of the Jhum tax and the rest goes to the Chief concerned and to the government. Initially, Jhum land was given for a period of 10 years which at present reduced to 2 to 3 years due to reduction of land.

Kanango

A non-gazetted revenue officer who is empowered for attestation which is an important part of survey.

Khatian

Khatian is a record of rights which is good evidence of present possession of the real owner and possessor. Khatian itself is not the document of title. It is the proof of possession. Every record of right shall be presumed correct until it is proved by evidence to be incorrect.

Khas Land

“Khas land or land in *khas* possession”, in relation to any person, includes any land let-out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity.

Land

“Land” means land which is cultivated, uncultivated or covered with water at any time of the year, and includes benefits to arise of land, houses or buildings and also things attached to the earth, or permanently fastened to anything attached to the earth.

Land Development Tax (LDT)

All types of land tax imposed and collected by the government from the land owners. Determination, collection and other matters relating to this tax are dealt with under the Land Development Tax Ordinance, 1976.

Land Zoning

Land zoning means a declared specific land or area based on the present use of land, suitability and characteristics.

Land Registration

It generally describes systems by which matters concerning ownership, possession or other rights in land recorded (usually with a government agency or department) to provide evidence of title, facilitate transactions and to prevent unlawful disposal. The information recorded and the protection provided will vary by jurisdiction.

Lease

A lease of immovable property is a transfer of a right to enjoy certain property, made for a certain time or in perpetuity, in consideration of price or of money, to the transferee by the transferor, who accepts the transfer on such terms.

Market Price

According to the Non- agricultural *khas* land management and settlement policy, 1995 prices fixed as per traditional procedure shall be treated as market price.

Mortgage

A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

Mouja

Last revenue unit for land administration nearly, equivalent to village.

Mutation

Mutation of property is the recording in the revenue records at the time of the transfer of title of a property from one person to another.

Mutawalli

The trustee of a waqf (as a religious building).

Non-Agricultural Khas Land

All municipal areas under four metropolitan areas and all thana headquarters shall be treated as urban areas. Agricultural *khas* lands of those areas shall be treated as non- agricultural *khas* lands. All other lands located outside these areas except the agricultural *khas* land shall be treated as non- agricultural *khas* land.

Non-Testamentary Instrument

Non-testamentary instrument means an instrument by which property rights are transferred from one living person to another living person.

Pathor

Pathor means stone.

Pathormohal

Pathormohal means *khas* land of government which is leased out by the government for the purpose of Pathor (stone) extraction.

Pathormohal Management

Pathormohal management refers to the process of administering, identifying, extracting and leasing out of pathor (stone) quarries which are located in different parts of the country.

Private Trust

Private trust is the trust which is created for the benefit of one or more ascertainable beneficiaries, and not for the promotion of the welfare of the general public or for the advancement of a cause. Charitable Trust. Trust Act, 1882 deals with private trust in Bangladesh.

Protected Forest

Forest declared by government through gazette notification for protection.

Repatriated Refugee

“Repatriated Refugee” means refugees listed under the treaty signed between governments and indigenous refugee leaders in Agortola of India in 9th March 1997.

Requisition

Requisition merely captures the domain or control over property without acquiring the right of ownership. From the very nature of requisitioned things, it is only of a temporary duration.

Reserve Forest

The term “reserved forest” was used for the first time in the Forest Act, 1865. Subsequently, this term was used in the Forest Act, 1927. For constituting any land as RF it was mentioned that—

- a) It must be the property of the Government, or
- b) the government has proprietary rights over it, or
- c) the whole or any part of the forest produce of which the government is entitled.

Declaration of reserve forest must be made through Gazette notification specifying the situation and limits of such land, and appointment of a Forest Settlement Officer (FSO).

Sale

Sale is transfer of ownership in exchange of a price paid or promised or part-paid and part-promised.

Settlement of Khas Land

All settlement of *khas* lands in CHT are concluded in the form of a lease deed prescribed or to be prescribed by the Government and shall be registered under Rule 12 of the Rules for the Administration of Justice in CHT,

1900. The rights and liabilities of the lessees shall be governed by such terms and conditions as may be set forth in the lease deed.

Shebait

Shebait is a person appointed by the debutter administrator and performs the duties in accordance with the direction of debutter creator or debutter deed.

Shrimp

Shrimp are swimming crustaceans, decapods classified in the infra-order caridea, found widely around the world in both fresh and salt water.

Social Forestry

In the year 2000 by the Act X the Forest Act, 1927 has been amended and a new concept of social forestry has been introduced in Bangladesh. Under the new provision of social forestry the following types of lands are eligible for social forestry-

- i. on any land which is the property of the Government, or
- ii. over which the Government has the proprietary rights, or
- iii. on any other land assigned to the Government by voluntary written agreement by the owner for the purpose of afforestation, conservation or management through social forestry.

Tea

Tea is an evergreen shrub or small tree, *Camellia sinensis*, of tropical and subtropical Asia, having toothed leathery leaves and white fragrant flowers, the dried shredded leaves of this shrub, used to make a beverage by infusion in boiling water.

The legal definition of this plant has been provided in the Tea Ordinance, 1977. According to Section 2(i): “tea” means the commodity known as tea made from the leaves of the plant *Camellia Thea* or *Camellia Sinnensis* including adjacent tender stalks or green tea but excluding tea waste.

Tea Board

“Board” means the Bangladesh Tea Board constituted under section 3

Tea Garden

There is no legal definition of the tea garden. But tea garden is commonly known as a plot of grounds where tea plants are cultivated.

Vested Property

“Vested property” means properties, which have been vested to the government under the following Act;

- (i) Defence of Pakistan Ordinance, 1965 (Ord. No. XXIII of 1965) (which had been effective till 16.02.1969);
- (ii) Defence of Pakistan Rules, 1965 made under the said Ordinance No.XXIII of 1965 and the extent to which is vested by virtue of the act mentioned in subsection (v), under order given by the said rules;
- (iii) Enemy Property (Continuance of Emergency Provisions) Ordinance 1969 (Order No 1 of 1969) (which has been repealed by Act XLV of 1974);
- (iv) Bangladesh (Vesting of Property and Assets), Order, 1972 (P.O.No.29 of 1972) - the extent to which is applicable under Ordinance and Rules mentioned in sub-section (i), (ii), and (iii);
- (v) Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 (XLV of 1974); and
- (vi) Vested and Non-resident Property (Administration) Act, 1974 (XLVI of 1974) (which has been repealed by Ordinance No. XCII of 1976) - the extent to which is applicable under Ordinance and Rules, mentioned in sub-section (i), (ii), and (iii);

Waqf

“Waqf” means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by Muslim Law as pious, religious or charitable, and includes any other endowment or grant for the aforesaid purposes.

Waqif

“Waqif” means any person creating a waqf.

Bibliography

Section 1: Book, Journal, Article, Report, Document, etc.

1. Abul Barkat, Prosanta K Roy, and Md. Shahnewaz Khan. (2007). *Char land in Bangladesh: Political Economy of Ignored Resource*. Dhaka: Pathak Samabesh.
2. Acharya, Joyanta (ed.). (2011). *The Lush Green Landscape – The Chittagong Hill Tracts An Overview*. Bangladesh Enterprise for Development and Security Studies (BEDSS), Dhaka.
3. Adnan, Shapan., and Dastidar, Ranjit. (2011). *Alienation of the Lands of Indigenous Peoples in the Chittagong Hill Tracts of Bangladesh*. Chittagong Hill Tracts Commission, Mohammadpur, Dhaka; and International Work Group of Indigenous Affairs, Copenhagen, Denmark.
4. Alam, Mohammed Rafiqul., Alam M. Tahlil (Dr.), and Islam, Eshita. (2010). *Attractiveness of Tea Industry in Bangladesh: a Projection Based on Porter's Five Forces Model*. Institution of Cost and Management Accountant of Bangladesh (ICMAB), Dhaka, Vol: xxxviii.
5. Barkat, Abul., and Roy, Prosanta K. (2004). *Political Economy of Land Litigation in Bangladesh: A Case of Colossal National Wastage*. Association for land Reform and Development and Nijera Kori, Dhaka.
6. Barkat, Abul. (2008). *Agriculture-Land-Water bodies Reform in Bangladesh: No Alternative for Development*. [In Bangla – “Bangladeshe Krishi-Bhumi-Jola Shongoskar: Unnyane jar bikolpo nei”]. Bangladesh Journal of Political Economy, Vol: 24, Numbers 1 and 2.
7. Barkat, Abul., Sadeka Halim., Asmar Osman, Md. Ismail Hossain & Manzuma Ahsan (2010). *Status and Dynamics of Land Rights, Land Use and Population in Chittagong Hill Tracts of Bangladesh*. Danida and HDRC.
8. Barkat, Abul., Zaman, Shafique Uz., Raihan, Selim. (2001). *Political Economy of Khas Land in Bangladesh*. Association for Land Reform and Development (ALRD), Dhaka.
9. Barkat, Abul., Zaman, Shafique uz. , Khan, Shahnewaz Md., Poddar, Avijit., Houque, Saiful. and Uddin, Taher M. (2008) *Diprivation of Hindu Minority In Bangladesh, Living with Vested Property*. Pathak Samabesh, Dhaka.
10. Devnath, Narayan Chandra. (2000). Land Management of Bangladesh [In Bangla – Bangladesher Bhumi Byebosthaponal]. Sahitya Prakash, Dhaka.
11. Dhamija, D.R. (1994). Registration Act (Third edition). The Law Book Company (p) Ltd. Allahabad, India.
12. Gain, Philip. (2008). *Investigation Report: Environment and human Rights [In Bangla – Anushandhani Report: Paribas O Manobadhikar]*. Society for Environment and Human Development (SHED), Dhaka
13. Gain, Philip., Sircar, Lucille., Islam, Shamimul. (2005). *Critiques of Politics and Practices: The Case of Forests, Ethnic Communities and Tea Workers of Bangladesh*. SEHD, Dhaka
14. Ghatak, Maitreesh and Roy, Sanchari. (2007). *Land Reform and Agricultural Productivity in India: A Review of Evidence*. Oxford Review of Economic Policy, Volume 23, Number 2.
15. Hanstad, Tim., and Brown, Jennifer. (2001). *Land Reform Law and Implementation in West Bengal: Lessons and Recommendations*. Seattle, Wash.: Rural Development Institute, United States
16. Kamal, Mesbah., Islam, Zahidul., and Chakma, Sugata. (2007). *Indigenous Communities*. Asiatic Society of Bangladesh, Dhaka.
17. Land Administration Manual (vol1&2) (2003), Ministry of Land, Government of the People's Republic of Bangladesh.
18. Land Management Manual (1991), Ministry of Land, Government of the People's Republic of Bangladesh.
19. Mashud, A. R. (2010). *Land Law (In Bangla – Vumi Ain)*. Kamrul Book House, Banglabazar, Dhaka.
20. Mian, Siddiqur Rahman. (2011). *Land Survey Laws and Rules (In Bangla – Vumi Jorip Ain ebong Bidhi)*. Bangladesh Law Book Company, Banglabazar, Dhaka.
21. Modernization of Land Administration (Phase ii). (1998). Department of Land Administration (DOLA), Government of Western Australia.
22. Roy, Raja Devasish., Mohsin, Amena., Guhathakurata, Meghna., Tripura, Prashanta., and Gain, Philip. (2000). *The Chittagong Hill Tracts Life and Nature at Risk*. Society for Environment and Human Development (SEHD). Dhaka, Bangladesh.
23. Sarker, Bibekananda. (2010). *Laws and Rules regarding Land Survey and Management [In Bangla – Vumi Jorip Ebong Beboosthaponal Bisoyok Ain ebong Bidhimala]*. Bangladesh Law Book Company, Banglabazar, Dhaka.
24. Statistical Yearbook of 2010. Bangladesh Bureau of Statistics; Planning Division; Ministry of Planning; Government of the People's Republic of Bangladesh.

Section 2: Internet Links

1. Debutter Properties are Increasingly Dispossessed [In Bangla: Signboard jhuliye debutter shompotti dokholer cheshta]: A report published in Amader borisal on November 10, 2011 retrieved from www.Amaderborisal.com [Accessed 30 December, 2011].
2. Grabbers arrive with the bridge: A report published in The Daily Star on February 24, 2011 retrieved from www.thedailystar.net [Accessed 15 December, 2011].
3. ‘Illegal occupation of Char in Narshingdi’ [In Bangla: “Narshingdite char dokhol niye shongghorshe nihato ek”]: A report published in The Daily Prothom Alo, March August 8, 2010. Retrieved from www.prothomalo.com [Accessed 11 October, 2011].
4. Illegal occupation of land in CHT [In Bangla: “Major sheje pahare duisho acre jomi dakhal”]: A report published on December 8, 2012. Retrieved from <http://www.prothomalo.com/detail/news/311490> [Accessed 08 May, 2013].
5. Recovering debutter property from land grabbers [In Bangla debutter shompotti punoruddhar]: A report published in Dhaka News24.com on May 12, 2012 retrieved from [dhakanews24.com](http://www.dhakanews24.com) [Accessed 12 May, 2012].
6. Reckoning social forestry in Bangladesh: policy and plan versus implementation : Nur Muhammed, Masao Koike Kim, Sophanarith-Forest Policy Laboratory, Department Of Forest Science, Shinshu University, Japan And Md. Sajjaduzzaman, Bangladesh Forest Department, Ban Bhaban, Mohakhali, Dhaka-1212, Bangladesh: An article, retrieved from: <http://forestry.oxfordjournals.org> [Accessed 27 February, 2013].
7. Tk 2.28 crore Land Development Tax remains unrealized, a report published in The Independent on 11.11.2012, retrieved from [HTTP://WWW.THEINDEPENDENTBD.COM](http://WWW.THEINDEPENDENTBD.COM), [Accessed 17 December, 2012].
8. VAN DER MOLEN, Paul, TULADHAR, Arbind. Corruption and Land Administration, the Netherland: An article accessed from <http://www.fig.net>, [Accessed 20 November, 2012].
9. Vested Property not Enlisted Properly [In Bangla bhule bhora orpito shompottir gazette, desh jure utkontha]: A report published in The Daily *Kaler Kantha* on August 15, 2012, retrieved from www.kalerkantho.com [Accessed 05 February, 2013]
10. Illegal nets seized: A report published in the Daily Star on Sunday, October 4, 2009, retrieved from thedailystar.net [Accessed 28 February, 2012].
11. Illegal sand lifting from rivers threatens bridge: A report published in the Daily Star on Tuesday, August 28, 2012, retrieved from thedailystar.net [Accessed 02 December, 2012].
12. Stop move to lease Nunertek for sand extraction: A report published in the Daily Star on Tuesday, April 26, 2011, retrieved from www. Thedailystar.net [Accessed 03 December, 2012].