

# Land Rights, Land Disputes and Land Administration in Bangladesh—A Critical Study

**Shahidul Islam, Golam Moula, Mominul Islam**

Department of Law, Northern University Bangladesh, Dhaka, Bangladesh

Email: [shahidnublaw@yahoo.com](mailto:shahidnublaw@yahoo.com), [suhag\\_law@yahoo.com](mailto:suhag_law@yahoo.com), [mominul\\_law@yahoo.com](mailto:mominul_law@yahoo.com)

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## Abstract

The article examines the various ways to ensure land rights and also recommends different mechanism to settle land dispute. It is also intended to highlight the problems of present land administration of Bangladesh and to suggest the reformation of the land administration for proper management of land. Land turns around the life of the people of Bangladesh. The present land laws, land administration and land management in Bangladesh are not only full of intricacy, procedural difficulties and mismanagement but also not accessible and responsive to the interest of the common people of the country. Furthermore, the present mechanism to settle land dispute is not time saving, cost effective, peaceful and sophisticated. If the land laws are made public spirited and land administration is made well-structured in the sense of good governance, e-governance and development, land interest of the common people is upheld and land disputes are settled with public satisfaction and confidence, a revolutionary change may bring about in the socio-economic development of the common people.

## Keywords

Land, Right, Dispute, Management, Administration, Bangladesh

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## 1. Introduction

Land is naturally universal property in the world. No person can deny the necessity of land in human life. In fact, we are originated from earth, we depend and move on it and we physically vanish into it. So, our interest in land is universal and it is one of the human rights. In fact, the protection of right to land implies the protection of the basic necessities, e.g., right to food, shelter and social security (Article 15, The Constitution of the People's Republic of

Bangladesh) the emancipation of the peasants and workers (Article 14), the rural development and agricultural revolution (Article 16). However, where there is an interest, there is a dispute. Consequently, land dispute results from land interest. As land interest is universal, land dispute is also universal. But proper land laws, well structured land administration, dynamic land management in an environment of good governance, and above all amicable mechanism of dispute settlement may reduce land dispute into a tolerable level. Thus, a significant socio-economic development may bring about in the life of the common people.

Land laws have a very significant position in the legal system of Bangladesh. In reality, most of the cases pending the Courts of Bangladesh implicate either directly or indirectly land matter. However, the land system in Bangladesh is largely based on the old laws made during the British and Pakistan period. Historically, [t]he most ancient land laws in Bangladesh can be traced to the practices of aboriginal communities involving payment of a share of the produce of the land to the head of the clan, the right of the family to cultivate the land in its possession, and the power of the head of a *Panchayet* to distribute land of the community to its families, and to settle land disputes (Banglapedia, 2014). Though the clan system cum kingship system of administration of the community in course of time gave rise to the republican and democratic system of administration of the govt., the land administration, land management and land dispute settlement system have not developed in Bangladesh in the spirit of good governance and amicable land dispute settlement. So, in order to ensure the land right of the common people and minimize land disputes, the present administration for land management should be reformed without unnecessary delay.

## 2. Interest in or Right to Land

The interest in or right to land is basically founded upon the title or ownership of land. The primary subject matter of ownership consists of material objects like land...the wealth of man may also consists of other things such as interests in land (Mahajan, 1998: p. 324). In fact, every person depends upon land for shelter or livelihood either directly or indirectly. So, the interest in land is human right and every person has natural ownership on land.

The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (Preamble, UN Charter, 1945). So, right to property is recognized as fundamental human right in national and international instruments of law, e.g., the constitution of Bangladesh has guaranteed, among others, human right, principles of ownership and right to property. Moreover, the UDHR declares that everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property (Article 17, UDHR, 1948). It further declares that everyone has the right to a standard of living adequate for ... well-being of himself and of his family, including food, housing and necessary social services (Article 25, UDHR, 1948). As land is a universal property and right to land is also universal, land laws, land administration and land management should be responsive to the universal human interests.

### 2.1. Land Laws in Bangladesh

Land can be owned by the individual, the cooperative, and the state under various legislations prevailing in Bangladesh. Land is a fundamental factor for agricultural production and is thus directly linked to food security. So, security of land interest is an important foundation for social and economic development. Besides, securing land rights is particularly relevant to the security of the vulnerable group, e.g., the poor, the women and the indigenous people. This way, through ensuring land rights, social and economic development may be made. Although land laws of Bangladesh have a long history, basically, the following Acts and Ordinances, among others, are applicable in Bangladesh in this regard:

- 1) The Land Survey Act 1875
- 2) The Bengal Tenancy Act 1885
- 3) The Transfer of Property Act 1882
- 4) The PDR Act 1913
- 5) The Survey and Settlement Manual 1935
- 6) The Non agricultural Tenancy Act 1949
- 7) The State Acquisition and Tenancy Act 1950
- 8) The Land Development Tax Ordinance 1976
- 9) The Land Reforms Ordinance 1984

- 10) The Immovable Property (Acquisition and Requisition) Ordinance 1982
- 11) The Land Reform Board Ordinance 1989
- 12) The Land Appeal Board Ordinance 1989
- 13) The Land Management Manual 1990

## 2.2. Statutory Recognition of Right to Land in Bangladesh

The State Acquisition and Tenancy Act 1950 is a law relating to tenancies to be held under the state and other matters connected therewith. Prior to its enactment, agrarian law of Bengal mainly consisted of The BENGAL PERMANENT SETTLEMENT REGULATIONS of 1793 and the BENGAL TENANCY ACT 1885. The Permanent Settlement regulations made ZAMINDARS owners of their land subject to payment of a fixed amount of their land revenue to the government and they were entitled to collect rent from their subordinate tenants, who were again entitled to create subordinate interests. Permanent Settlement regulations 1793 created a landed aristocracy which was supposed to be loyal to the British regime. Bengal Tenancy Act of 1885 defined the rights and liabilities of the tenants in relation to their superior landlords (Banglapedia, 2014). However, at present, the tenancy and the rights and liabilities of the owner of such land are regulated by the SAT Act, 1950 in case of Agricultural Land and the NAT Act, 1949 in case of nonagricultural land. Now there is only one class of holders of agricultural land, namely, *maliks* [owner], and the rights and liabilities of every such land-holder is regulated by the provisions of the SAT Act (Section 81 (1), The State Acquisition and Tenancy Act). But no such *maliks* are entitled to any right to any interests in the sub-soil including rights to minerals in his holdings.

## 3. Land Disputes

The concept of ownership is one of the fundamental juristic concepts common to all systems of law (Mahajan, 1998: p. 324). So long the people were wandering from place to place and settled place of residence, they had no sense of ownership. The idea began to grow when they started planting trees, cultivating lands and building their homes. The transition from pastoral to an agricultural economy helped the development of the idea of ownership. People began to think the terms of “mine and thine” (Mahajan, 1998: p. 332). Historically and logically speaking, the incident of land disputes might have taken place in the human society from the sense of ownership of land, i.e., the clash of interest in land. However, land dispute may be arise out of land, e.g., dispute from land itself, land instrument and any interest arising out of land. In a study, it is shown that about 80% cases including civil and criminal have arisen from land disputes (Hoque, 2000: p. 255). The diversity of ways by which land records is updated and the problems associated with each, give rise to numerous disputes in which the rich and powerful inevitably enjoy the upper hand. At present the responsible ministries and agencies involved for land management and administration work independently with little coordination among them. The whole process is manual, laborious and time intensive. Conventional methods of land survey, preparation and up gradation of land records, maintenance of all related data for each parcel of land makes land administration and management inadequate and inefficient. Moreover, distortion of land records at various stages (i.e. plot-to-plot survey, preparation of records and drawing of maps through conventional methods, objections, junk/checking works, printing, etc.) hinder land development control and property tax collection (Dr. Monzur Hossain, Senior Research Fellow, BIDS).

## 4. Land Administration, Land Management and Mechanism of Settling Land Disputes in Bangladesh

### 4.1. Land Administration in Bangladesh

Land administration deals with the creation, transfer, extinguishment of land rights (Islam, 2013). However, land administration in Bangladesh includes the revenue administration, survey administration and certificate administration. The land administration system in Bangladesh is still conventional and characterized by inefficiencies and corruption; such conventional land administration system cannot keep pace with the growing demand and changing situation of the land market. Inadequate and improper land records increase difficulties in securing land tenure and land transfer. Thus, an inappropriate land administration and management system is the root cause for unplanned growth, and this eventually generates problems in development of the country. For this, it becomes an important agenda in the Seventh Five Year Plan document to establish a sustainable land administration and

management system.

As a part of the civil administration, the land administration in Bangladesh comprises from bottom to top the office of the Union Land Officer (*Tahsildar*) at the union level, the office of the Assistant Commissioner (Land) at the thana level, the office of the Deputy Commissioner (The Collectorate) at the district level, the office of the Divisional Commissioner at the division level, Land Reform Board and Land Appeal Board. The current administrative structure of land management in Bangladesh is built around three core functions: 1) record keeping, 2) registration, and 3) settlement. The core functions of land administration are maintained by various departments of two Ministries, The Ministry of Land (MoL) and the Ministry of Law, Justice and Parliamentary Affairs (MLJP). While the MoL discharges most of the land-related activities including survey, collection of land development tax, arbitration process, the MLJP mainly records land mutation and transfers (Dr. [Monzur Hossain](#), Senior Research Fellow, BIDS).

## 4.2. Land Management in Bangladesh

Land management is defined as “the actual practice of the use(s) of the land by the local human population, which should be sustainable” (FAO/Netherlands, 1991). Land resources management has many components, including land-use planning, as agreed between stakeholders; legal, administrative and institutional oversight; clearly defining the land areas in question; inspection and control of compliance with the decisions; resolving land tenure issues; settling of water rights; issuing of concessions for plant and animal extraction; promoting the role of women and other[disadvantaged groups in agriculture and rural development; and safeguarding the traditional rights of indigenous peoples (FAO, 1995).

Before 1950, the concept and practice of land management in the erstwhile Pakistan was comparatively limited. In fact, land was managed both by the landlords (*Zaninders*) and the govt. Under the Permanent Settlement Act 1793, the government collected land revenue from landlords and from temporary settlements holders. The government had also in its possession vast areas of *khas* land. These *khas* lands were managed directly by the government through government appointed-managers or trustees (in case of trust properties) and/or by managers/*shebaitis/mutwallis* (in case of religious trusts, *debottars* or WAQF estates). Basically, the landlords (*Zaminders*) were responsible for land management through collecting revenues from the *Raiyats*.

After 1950, as an immediate consequence of wholesale state acquisition of rent receiving interests, the tenants came directly under government control. At this stage, land management includes two fold works, e.g., settlement of government *khas* land and collection of rents from the tenants. At present, the government *khas* land is managed by a special *KhasMahal* department of the collectorate and rents are collected by the govt. agents like *Tahsildar*.

Land management does not envisage the collection of land dues (land revenue or rent, now called the land development tax) only. The scope of land management covers maintenance of record-of-right, quick and equitable settlement of *khas* land and alluvial accretions, rent adjustment in *diluvion* affected holdings, institutional financial assistance to landless and marginal farmers, speedy disposal of recovery proceedings and, above all, provision of trained revenue officials and adequate supervision of such officials at all levels. Proper maintenance of record-of- rights requires preparation/revision of Land Records including maps on periodical basis and continuous updating of these records. The updating of land records is required because of continuous changes in land ownership by way of transfer, purchase, sale, gift, mortgage, and inheritance and partition deeds. This is a responsibility of the Directorate of Land Records and Surveys.

However, land management system in Bangladesh is old, slow and not cost effective. So, computerization of land records and development of an organized land information system (LIS), however, have become essential, especially because of the increasing number of tenant in Bangladesh. For government institutions, there two related words “government” and “governance”. Government means the authority and control over the state and governance means the system by which the exercises its control. In the contemporary world, the need of good governance in the land administration is felt very seriously, especially in the USA and Australia. The World Bank and ILC are cautiously responsive to the issue. Because, good governance in the land administration may bear many benefits for example pro-poor support, public confidence, economic growth, strong land administration, prevention of corruption, peaceful resolution and so on. If good governance is ensured in the land administration of Bangladesh, we may be benefited a lot.

### 4.3. Mechanism of Settling Land Disputes

At present, there is no uniform system of settling land disputes in Bangladesh. In fact, the Revenue Officer, the Civil Court, the Magistrate Court, the Village Court or Municipal Board may settle land disputes. In the context of its limited number of judges, inadequate judge-population ratio, insufficient budget allocation for the judiciary and lack of infrastructure in the legal system, the reliance on ADR becomes just a demand of the time. Given that many developed and developing countries have gained tremendous success in reducing pending cases by adopting ADR, Bangladesh should find and try ways and means to develop ADR modes in the same fashion. In case of any disputes arising during land survey and recording, it can be resolved with the help of NGO, CSO and local government bodies such as Union Parishad (UP) representatives (Dr. [Monzur Hossain](#), Senior Research Fellow, BIDS). So, for uniform and peaceful land dispute settlement, land laws may be moulded into the shape up to the satisfaction and confidence of the people. Although various forms of land disputes are available such as criminal land disputes and civil land disputes etc.

### 5. Recommendations

Bangladesh is a developing country in the world and there has been severe resentment for ownership, control, management and use of the inadequate land resources. There have been many efforts in the recent few years to ensure conventional development of land rights, but they are dilapidated far behind and there have been disagreement and inconsistency between male and female in the family and society as well in many respects. The existing systems, laws, administration etc. regarding land are not suitable for us to enjoy exclusive rights over immoveable property. It is one of the most important factors that the established Muslim and Hindu family laws regarding inheritance are discriminatory to women. The Sharia law is inequitable among male and female for land rights. The loss right of the land of common is also a cultural phenomenon.

To ensure land right and to eliminate land dispute, it is recommended that govt. should do these:

- 1) Land Right Act and Land Dispute Settlement Act can be framed to protect the people's land rights;
- 2) Universal family laws as well as unified inheritance laws to be incorporated and enacted amending the existing inheritance laws;
- 3) The effectiveness and jurisdiction of Land Tribunal should be increased and implemented with high hand to reduce land disputes;
- 4) A suitable alternative dispute resolution (ADR) method can be introduced to minimize land-related disputes and court cases as well;
- 5) To digitize (automate & computerize) land records and finally modernization of the land record system, this can help to minimize the land disputes;
- 6) The process of mutation should be easy and the land office at the upazilla and union level should be manned by appointing skill persons and proper training should be introduced so that the officers relating to land can play effective role;
- 7) Providing the legal aid and advice to the poor people who wish to contest their claims and introducing effective legal literacy program so that poor people could have better ability to realize and deal with land related issues easily.

### 6. Conclusion

In developing countries, such as in Bangladesh, land continues to constitute the key resource of livelihood, security, and status. Therefore, Land remains important in a variety of ways in the economic and social life of Bangladesh. To understand the issues arising from the land rights situation in Bangladesh, it is necessary to understand the grounds why land plays a significant role in the questions of development and human rights in Bangladesh.

Bangladesh is mainly contingent relative on agriculture, and thereby, land for its production purposes. Land holds the key to the movement towards eradicating poverty. More than 50% of the total population is functioning landless; access to land and other natural resources remains one of the important concerns. The constitution of Bangladesh provides for promotion of equal opportunity and rights to its all citizen with especial programs to be undertaken for the disadvantaged peoples. The laws and existing policies of Bangladesh also provide for a fair distribution of *khas* land among the landless. In reality the laws supporting this provision are either not implemented or themselves contradict the constitution.

The distribution of *khas* land among the landless is not realized as the more influential people have repeatedly procured ownership of these lands, either by force or by tampering legal documents.

In our country, the process of ownership, registration and documentation of acquiring land is complex, disorganized and leaves a lot of room for incorrect documentation and fraudulence. It is found that majority of the cases which are taken to court originates arising out of land conflicts. It is also found that in the magistrate courts the influential land grabbers have the power to shift the verdict in their favor. In the High Court, the justice process is less vacillating but it may take an indefinite time. The verdict is in practice often ineffectual to the landless. The land grabber first prepares counterfeit deeds in involvement with a group of dishonest land administration employees, and then captures newly emerged lands of poor and marginal farmers with the help of muscle power. It is difficult to take back the grabbed lands from the influential because land law is so obscure, vague and incomprehensible in Bangladesh.

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