

Drawbacks of land administration system in Bangladesh and some feasible solutions

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The land administration system in Bangladesh is not well-developed. It is beset with multiple defects and problems. It is corrupt, inefficient, and unreliable and inherently contains systematic weaknesses. Corruption has become a grave issue in this sector. A World Bank survey reveals that most crimes and corruptions in Bangladesh take place in land-related services. It has estimated that **more than 3.2 million** land-related cases are pending before the judiciary. A large number of the aggrieved persons is not empowered enough to approach the courts for litigation. Land disputes often lead to violence and criminal offenses.

It is said that **80 percent** of criminal offenses today stem from land disputes. A majority of them concern the landless or rural people, who are deprived of the right to justice because of their financial incapability.

In a developing country like ours land distribution system is often alleged to foster inequality which goes against fundamental rights and fundamental principles of state policies stated in the Constitution promising to establish economic and social justice.[1]

Due to age-old land management system, corruption has managed to achieve institutional acceptance. In this age of globalization, we need to get rid of this worrying cycle.

Drawbacks of land administration system

- **Age-old System of Land Administration :** The land management system in Bangladesh is based on age-old or traditional regulations. Most of the regulations were enacted during the British period. The outdated regulations rely mostly on land officers, revenue collectors and surveyors which paved the way for corruptions. Some of the regulations produce doctored records, thus forcing the land owners to bribe them to keep proper records of their lands. Other than this, a few sub-registrars, revenue officers and surveyors secretly tempt squatters to take over the land of innocent owners. The quality of land management is regarded as a benchmark in civilized societies. Proper processing of land ownership, registration, relocation, mapping, tax payment, will or testament and other legal documents will be possible only with modification of the central infrastructure of land administration.
- **Corruption:** The land administration in Bangladesh is highly corrupt. A survey led by **TIB (Transparency International Bangladesh)** in 2012 shows that **54.8%** of the households that received services from the land administration paid bribe and unregulated money. The survey also shows that the households in Bangladesh paid **TK 2,261.2 Crore** during the period between May 2011 and April 2012 as bribe or illegal money in land administration sector! It was found in the **survey** that 16.6% of the households received services from land administration sector and among them 59% were victims of corruption and harassment. Households became victims of corruption or harassment in receiving services on the following issues:

From that survey, it has become clear that among the service sectors of the country,

the land administration stood second in terms of corruption-rate (59%).

- **Flawed 'Khas Land' management and distribution system :** *Khas* land includes any land let out together with any building standing thereon and any necessary adjuncts thereto, otherwise than in perpetuity.[2] The SAT Act provides grounds for ejectment, in which case the interest of a raiyat in a holding is extinguished.[3] When any property is imposed on the government, that property is completely disposed by the government.
- The following circumstances are examples of types of land that are *khas* land:
 1. If any holding or part of it is sublet, the interest of the raiyat shall be extinguished;
 2. If any person voluntarily abandons his residence or does not cultivate his land for a period of three years without payment of rent, his interest shall be extinguished;
 3. If a char emerges from river or sea, government will possess the land if there was no owner of the land ever before;
 4. If the diluvian land becomes alluvian again after 30 years, the government can claim the ownership of that land. These types of land are called *khas*;
 5. When a person dies intestate leaving no heir entitled to inherit under the law of inheritance; and
 6. When any person purchases land exceeding **60 bighas** violating Presidential Order of 1984.

Although the government has a *khas* land distribution policy, the poor people who received land under it are hardly able to retain the land. The influential and powerful land grabbers inevitably force them to leave the land. When they go to the police, they are arrested as dacoits—this is a serious form of corruption. The influential and the police are on the same side. Additionally, the renounced political leaders are also the bug land grabbers, exacerbating the situation.

Some forms of *Khas* land related problems are depicted via an exclusive chart below-

Steps	Problems
Identification	<ul style="list-style-type: none"> · Much <i>khas</i> land is not properly surveyed or not surveyed until occupation is well underway. · It is often unclear whether land is <i>khas</i> or not. · IPs may occupy the land illegally, by bribing the police and/or <i>tehsildar</i>, AC (Land) and UP Chairman by paying them a share of the produce and bribing the surveyor/<i>tehsildar</i> to falsely record it as their own.
Notification	<ul style="list-style-type: none"> · Those responsible for notification only pass word to contacts, friends and relations with some eligible and potentially interested parties not finding out at all, or until it is too late.
Application	<ul style="list-style-type: none"> · Uneducated people cannot fill in the form themselves and are either deterred from applying or incur obligations to people who help them. · Elite signatories demand bribe or a share of land produce for supporting application. · <i>Teshildar</i> demands a fee for providing and completing or accepting the form. · False applications from larger land owners accepted because they are powerful and/or pay a bribe.
Listing Name	<ul style="list-style-type: none"> · <i>Tehsildar</i> or UP chair may require a bribe. · Applications are (often falsely) screened out for being filled out incorrectly.

Pattern of land distribution: Since the number of landless, poor families is around 10 million, Bangladesh has 10 million bighas^[4] of distributable *khas* land that is potentially available for cultivation by those with no land.^[5] According to the gazette of the Bangladesh government published on May 8, 1997, the husband and wife of a landless family are to jointly receive 1.5 acres of *khas* land.^[6] Overall rehabilitation of 430 families, or 2,322 persons, is possible within 1 square mile.^[7] The average number of members per family in Bangladesh is 1,722.89 square kilometers or approximately 672 square miles.^[8] It is possible to permanently rehabilitate 28,960 families, or 1,560,384 landless poor on 627 square miles.^[9] Char land is very fertile for agricultural production. If these lands can be distributed among the landless poor, each and every piece of land will be properly utilized. It has the potential to be the best means for reducing poverty in Bangladesh and creating national development.^[10] It will also help to reduce disorder and disputes which have existed in the char areas for centuries. As such, it will establish law and order in the char areas, while ensuring good governing practices and democracy. Enormous opportunities for employment will emerge if char lands are distributed among the true landless poor.

According to the book, ***Political Economy of Khas Land in Bangladesh***, written by Dr. Abul Barakat: *"Identification and management of khas land (state owned land) and water bodies, distribution of the same to the landless and poor people, retention of such land water-bodies by the landless and pertinent rules and practices within the prevailing social-political context of Bangladesh constitute prime issues of agrarian reform."*^[11]

Such reform will enable middle-sized peasant families to manage their food year-round from the allotted land. Moreover, it can solve the housing problem. When landless poor possess a piece of land, the family's status increases in society. The family's personal status will be recognized as well. They can actively participate in different social programs, including shalish,^[12] which can help reduce rural to urban migration. Char based people would be able to establish their voting rights and exchange their opinions in different forum.

Multiplicity of documents or records of rights : The present structure of land administration is based on **three** core functions:

Each of these functions is handled by different offices. At the lowest tier, the function of record keeping is the jurisdiction of the *Tahsil* office while that of registration is of the office of the sub-registrar and there is a different office that handles the function of settlement. The major problem here is that ownership rights are being recorded in two different offices each of which follows completely different executive jurisdiction process. *Tahsil* office has a chain of command distending from the Ministry of Law. Similar is the cases with settlement. The problem arises when there is a conflict over land claims and thereby a dispute looms dangerously. Now, to have a satisfactory resolution of the dispute, the most important requirement is the proof of ownership. Now, if one party brings a proof from *Tahsil* office, another from Registrar's office and yet another from the Settlement office, and if there happens to be a difference, which is obvious, then how a

judge is to adjudicate the dispute? Because, these offices are legally constituted and hence the documents authorized by these offices are legally admissible. This multiplicity of documents or records of rights is the central flaw in the system of land administration.

No appropriate process to identify an inheritor: In our current land management system, there is no suitable process to identify an inheritor of land. At present, in this case the court has to depend on village marriage register (*Kazī*). As such, adjudication of the case is based on his opinion. Allegations are rampant that receiving large amounts of bribe the staffs of Land Record Directorate tamper with the documents in different ways in order to create false ownership.

Faulty Mutation work and dual Ownership: The **National Land Revenue Board** has not been doing the proper mutation work in due time. As a result, dual ownership is often created. Besides, the Board never properly identified *khas* land, *khas* water bodies, *khas* ponds, enemy property, abandoned property as well as unused land under different government offices. Consequently, land grabbers have occupied these lands. The existing land ceiling has not been properly enforced.

Customary agriculture system: The current agriculture system is too fixed, absolute and more importantly traditional. Government has never identified skilled agricultural workers. There is no fixed working hours and appropriate wage for agricultural labour in Bangladesh. The sharecropping law has never been enforced. The present land distribution committee is dependent on bureaucrats. Thus, land reform has never been a success due to lack of political willingness and vested interest groups within and outside the government.

Land-grabbing: Land-grabbing of both rural and urban land by domestic actors is a problem in Bangladesh. Wealthy and influential people have encroached on public lands with false documents and obtained court decrees to confirm their ownership, often with help of officials in land administration and management departments.[13] Among other examples, hundreds of housing companies in urban areas have started to demarcate their project area using pillars and signboard before receiving titles. They use local musclemen with guns and occupy local administrations, including the police. Most of the time, land owners feel obliged to sell their productive resources to the companies at a price inferior to market value. Civil servants within the government support these companies and receive some plot of land in exchange. The Land grabbing culture has been increasing because of non-transparent administratin.

Successive governments have failed either to redistribute government land, known as *khas* land or to cap the amount of land owned by individuals. Those rich enough to bribe officials have illegally bought up government-owned land. In the process, small and marginal farmers became landless village poor, many of them migrating to urban areas to live in slum conditions.[14] According to reports by a Dhaka-based NGO, the Association for Land Reform and Development, forged ownership records are the chief cause of land disputes and land disputes make up around 80% of the country's criminal cases. The number is even higher in the civil courts.

Defective restoration process of vested properties: On 9th April 2001 the Parliament of Bangladesh passed the Bill regarding the restoration of vested properties to the rightful owners. On 11th April the President assented to the Bill and thereupon the Restoration of Vested Properties Act, 2001 came into force. The Act mainly aimed at restoring the properties of Hindu minorities and Indian nationals that was vested in the government by virtue of Bangladesh (Vesting of Property Assets) Order, 1972. However, in the sphere of time, the restoration process resorted to many defects and problems. Every day we find reports in various newspapers about many technical problems in the process of restoration of vested properties. Questionable enlistment of vested property, corruption of govt. officials, undue interference of politicians, sufferings of mass-people and harassment of many legitimate owners have made the whole process of restoration of vested properties defective and contradictory.

Feasible solutions

Employing trained persons in survey works: It is of key importance to engage properly trained, experienced and educated persons in survey and mapping works. A **magistrate** should be appointed who would be present in the field during the survey and mapping period. A **temporary magistrate's court** must be established in the field during the survey works. The contract basis works of survey and mapping must be discontinued. A **committee** with members of civil society should be formed which would act as a **watchdog** during the survey works. The **presence of Land Revenue Officer** in the field must be ensured during the survey works.

Efficient surveying, documentation, recording and taxation system: A single parcel basis system of land registration must be established which needs modification of existing laws and introduction of new legislation. It is necessary to create an efficient surveying, documentation, recording and taxation system, which would provide transparent land administration of the government for the public. Redesigning existing register books, indexes and *khatiyans* and creating a stand-alone "Land Register" showing existing land ownership and new transaction is needed.

Combining the functions of record keeping and registration: The functions of record keeping and registration have to be brought within a single executive process at the field level i.e. *Tahsil* office and Sub-Registrar's office both should come within the jurisdiction of a single executive officer, say the Assistant Commissioner (Land).

Proper identification of total amount of khas land: Total amount of *khas* land of different types should be identified and published by the government in the media.

Releasing illegally occupied khas lands: Illegally occupied khas land should be released and brought under government control.

Khas land management committee at the national & district level: *Khas* Land Management Committee at the national level, and a *Khas* land Management and Distribution Committee at the district level with strong presence of peasants and landless representatives should be established.

Removing complexity of khas land distribution ‘application form’: The *khas* land distribution “**application form**” is a complicated one, which is difficult to fill-up even by an educated person. Such **complexity** gives advantage to the land officials to take undue advantage from the landless peasants. The form should be made easy and written in simple language. **Harassment** by the land official, *tesilder* in particular, during submission of application should be stopped and the process should be made more transparent.

Wide publication of all information relating to enlistment and distribution of khas land: All information relating to enlistment and distribution of *khas* land should be widely published. In order to minimize the scopes for bribes and maximize transparency, the information to be widely disseminated shall include, among others the following: how much land (by types) is available where for distribution, the procedural steps to be followed by a landless, who is eligible to apply – when and to whom, how much money a landless needs to pay – for what and to whom, what is the expected time for allocation, how to get possession over the land, what needs to be done in case of various problems. 10. Land recording and administration system should be reformed to stop the forging of deeds and other land-related documents.

Developing Intensive monitoring system: Intensive and continuous monitoring system should be developed to ensure transparency and efficiency of the land officials.

Watch-dog mechanism: A **watch-dog mechanism** comprising peasants’ representative, NGO, Social workers should be developed to check corruption, e.g. bribe, harassment etc. while processing documents.

Completion of diara survey within shortest period: **Diara survey** of the alluvial and accreted land should be completed within shortest possible time.

Ensuring security of the land officials: Security of the land officials should be ensured during conduction of the survey and distribution of *khas* land.

Independent committee to identify khas land: Along with the government’s survey, independent committee comprising the representatives of landless people, peasants’ organization, political parties, NGOs should be set up to identify the landless and *khas* land.

Elimination of vested interest group from khas land distribution mechanism: If this vested interest group could be eliminated from *khas* land distribution mechanism all the genuine landless could be incorporated in the list and the proportion of *khas* land receivers among landless people would rise to a large extent.

Orientation training: Orientation training should be organized for the landless people to impart them with the knowledge about the necessary land-related laws.

Work of mutation, change of classification of land in due time: The work of mutation and change of classification of land must be ensured in due time. Government should identify the khas lands, khas ponds, khas water bodies, enemy property, abandoned property, unused land of different government offices and distribute these among the landless poor as per government laws. Government also should acquire and reclaim swamp areas and wastelands suitable for aquaculture and distribute them on favourable terms to **fishermen** for development of aquatic farming, identify the **accreted land (chars)** from the sea and rivers and distribute these as per land reform related Presidential Ordinance, 1972, increase the participation of civil society in land distribution committee and decrease the number of **bureaucrats** in khas land distribution committee.

Amendment of land laws: The State Acquisition Act; Vested Property Ordinance; Bengal Tenancy Act; East Bengal Non-Agricultural Tenancy Act, 1949; Bengal Permanent Settlement Act, 1793; Bengal Regulation Act, 1793; Transfer of Property Act 1882, SAT Act; Sharecropping Law; Law of Adjournment; Inheritance Law of Land; Survey Act, 1875 and Rule 42 (1) and Part (v) of Registration Act, 1908, must be amended according to need of present changed circumstances. Those laws, which discriminate against women in respect of rights of inheritance, ownership and control of property, must be repealed and ownership rights promoted for women, including joint ownership and co-ownership of the land in its entirety to give women producers with absentee husband effective legal rights to take decision on the land they manage.

Pro-poor administrative reforms: Government should take steps for such pro-poor administrative reforms as would reduce conflicts over land as well as bureaucratic corruption and increase small holder security. Enhancing poor people's right to land is likely to require a range of interventions to strengthen their own voice, advocacy to gain support from government, and create impetus for reform and also institutional reform per se to enable the demand itself to be met, particularly at the local government and administration level.

Combating corruption: For combating corruption in the land sector some specific measure may apply-

- Land information should be available (create sort of 'cadastre')
- Guaranteed open access to all information (general interest priority over private interest)
- Accountable process management (e.g. no change in register or map without a legally valid source document)
- Land Tribunal (to enhance efficiency judiciary)

- Computerization otherwise no efficient data-handling.

Reform in the judicial process: Judicial process must be friendly towards the people. At present around 9.5 lakh of civil suits are pending with different courts of the country, among which around 80 per cent are land related. A land related case requires 9.5 year on an average to settle.[15]

Introducing ADR: Alternative Dispute Resolution (ADR) system should be introduced in land conflict resolution to overcome the logjam in the courts and give poor people justice.

Translating laws into easy Bangla: Land-related laws should be translated into Bangla as most of the people involved in land disputes are poor and do not understand English.

Introducing easy tax payment system: Tax payment book can be introduced for five years for the land-owners under which every year owners will be able to pay their taxes in banks with the book, and they won't have to go to land administration at the district level for five years.[16]

Modernizing land survey system: The satellite survey system can be introduced in the place of old-age time consuming and corruption leading cadastral survey.[17]

Computerizing record-of-rights: The Record-of-right can be preserved in computer database namely **LIS (Land Information System)** and the holders of Record-of-Rights can be given land ownership certificate, which can help detecting fabricated documents and preventing multiplicity of suits.[18]

Lessening the burden of civil courts: The Revenue Officer can be given power to dispose of suits relating to partition, possession, demarcation of boundary, authenticity of the deed, pre-emption etc. so that the litigants can save their time and money and can thus help taking the burden of Civil Courts off.[19]

Protecting the interests of the bargadars: The *Land Reform Ordinance, 1984* can be amended inserting provisions alike the “operation barga” in West Bengal for making khatiyani in the name of the bargadar so as to protect the interests of the bargadars.

Enacting legislations: Legislations can be enacted for ensuring proper plan and use of land so that agricultural lands cannot be used for non-agricultural purposes or vice versa.[20]

Concluding Remarks: Most of the Bangladeshis are predominantly dependent on land for their daily living. Proper management of land can protect the interests of the bona fide cultivators and make their lives happier and healthier. To this end in view, the importance of reshuffling and introducing reform in the land management and land administration by making amendment to the existing laws or enacting laws where necessary cannot be exaggerated.[21]

No policies or laws are going to change the life of the landless poor until the government is willing to implement those. If illegally occupied khas lands can be recovered and distributed among the landless poor then the damaging trend of rural-urban migration will be diminished. Poverty and many odds of the society can be reduced. If we can't form and implement proper strategies regarding poor, then poverty will continue to exist in Bangladesh.

Footnotes :

[1] Dr. Mohammad Towhidul Islam, The worksheet on: ***The Development of Land Law and Land Administration in Bangladesh: Ancient Period to Modern Time.***

[2] Section 2 (15) of the State Acquisition and Tenancy Act, 1960

[3] The State Acquisition & Tenancy Act, 1950, ch. XIII, sec. 85 (East Bengal Act No. XVIII of 1951).

[4] "A measure of land in India, varying from a third of an acre to an acre." Webster's Revised Unabridged

Dictionary, bigha,(1913), *available at* <http://www.thefreedictionary.com/bighas>

[5] Dr.Abul Barakat, *Political Economy of Land Litigation in Bangladesh*, BANGLADESH OBSERVER, Jan. 7 2004; HOSSAIN, *supra* note 23, at 397.

[6] Md. Abdul Kader, *Necessity of Changes in Laws Dealing With Land Erosion by Rivers*, THE DAILEY STAR, Oct. 3, 2004 at 8, *available at* <http://www.thedailystar.net/law/2004/10/01/index.htm>.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Md. Shariful Alam Chowdhury, *Land Administration and Agrarian Land Reform for Sustainable Urban Development and Poverty Reduction: The Bangladesh Agenda*, in URBAN DEVELOPMENT DEBATES IN THE NEW MILLENIUM: STUDIES IN REVISITED THEORIES AND REDEFINED PRAXES 28 (2005).

[12] Shalish is a "social system for informal adjudication of petty disputes both civil and criminal, by local notables, such as *matbars* (leaders) or *shalishkars* (adjudicators)." Fazlul Huq, *Shalish*, Banglapedia: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/S_0281.HTM

[13] Feldman S. and Geisler C. 2011. Land Grabbing in Bangladesh: In-Situ Displacement of Peasant Holdings. Paper presented at the International Conference on Global Land Grabbing 6-8 April 2011

[14] Moslem Uddin Ahmed, 2009. *Bangladesh to digitize land records*,

<http://southasia.oneworld.net/archive/ictsfordevelopment/bangladesh-to-digitise-land-records>

[15] General Secretary of the Bangladesh Economic Association (BEA) Professor Abul Barkat revealed this at a

working session on '*State, Society and Governance*'

[16] Existing laws create land disputes: land laws are anti-poor and anti-women,

Source: www.weeklyholiday.net

[17] KAZI EBADUL HOQUE, *GRADUAL DEVELOPMENT OF LAND LAW AND LAND ADMINISTRATION*, (2000),

p 253

[18] Ibid. pp 253-254.

[19] Ibid. pp 255-257.

[20] Ibid. pp 268-269

[21] Dr. Mohammad Towhidul Islam, The worksheet on: ***The Development of Land Law and Land Administration in Bangladesh: Ancient Period to Modern Time.***

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