



## **The preparation of record of rights (Ror) under the state acquisition and tenancy act 1950: An overview**

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### **Abstract**

Land is one of the most valued assets possessed by the human beings. Because of its monetary and social value disputes regarding the acquisition of land are increasing day by day. The majority land disputes existing in Bangladesh are about the correction of RoR. The ROR is the primary record of land that proves the rights on land belongs to a particular landowner of that property. The right to record holds the information of property transactions. In order to reduce chaos from the society proper land administration is necessary. That is why land record system has been introduced in the world as well as in Bangladesh. Our study shall make an effort to find out the procedures regarding the land record system of Bangladesh as well as identify the loopholes in the existing system and suggest effective measures in order to dissolve the problems.

**Keywords:** record of rights, preparation, state acquisition and tenancy act, overview

### **Introduction**

#### **Background of RoR**

The history of Khatian (Records of Rights) of Bangladesh can be divided in following periods. Such as- (1) *Ancient Hindu Period [Before 1357]*, (2) *Muslim Period [Saltan's regime - 1587]* & (3) *English Period [1763-1950]*.

**Ancient Hindu Period [Before 1357]:** In Ancient Hindu period, people could be owner of land just possessing it. Agricultural lands were owned by farmers permanently. There was no Land Lord or Middle man <sup>[1]</sup>.

**Muslim Period [Saltan's regime -1587]:** In Muslim Period (Sultan's regime) revenue was collected by Land Lord. In 1357-1389 for the first time survey was done by Sekandar Shausing "GOJ". Then Sher-Sha again in 1540-1545 surveyed the land and he had ruled that 1/4 of produced crops shall be returned as revenue. In 1582-1587 again Finance Minister of Emperor Akbar, Todormol decided that 1/3 of produced crops should be returned as revenue <sup>[2]</sup>.

**English Period [1763-1950]:** After the battle of "Plassy" in 1757 the East India Company gained control over the administration of Bengal province. Then the English Period started. During the English Period from 1763-1782 Major Jhon Renel completed a survey in an organized way and prepared a "Nocksha" or Map. East India Company in 1765 got the authority of collection of land revenue from the Delhi Emperor Sha Alam in exchange of 26 lac taka per year. In 1769-1770 (1176 in Bangla) an acute famine took place. Then in 1772 Warren Hastings introduced "Passshala Bondobostho" of land. Lord Corn Walisin 1790 started "Dossala Bondobostho" of land. On the other hand, Lord Corn Walisin 1793 established Permanent Settlement of land. In 1857 "Sipahi Bidroho" and public unrest was

demonstrated against East India Company. Later in 1859 Rent Act was enacted to develop the relation between Land Lord & tenant <sup>[3]</sup>.

Survey Act, 1875 was enumerated for the purpose of settlement of Border conflict of land and to prepare the map (Nocksha) of land. In 1879 Rent Commission was constituted and later on in accordance with the report of the Commission Bengal Tenancy Act, 1885 was enacted. By this enactment tenant's rights in land was established and a right based Record of Rights (CS Khatian) was prepared. In 1938 Flawood Commission was constituted and Land Lord Custom was abolished. After the partition of the Indian subcontinent the State Acquisition and Tenancy Act, 1950 was incorporated. Based on the State Acquisition and Tenancy Act, 1950 SA Khatian was prepared determining the ceiling of land. After 50 years of SA Khatian RS Khatian was prepared <sup>[4]</sup>

#### **What is RoR?**

A Record of Rights or RoR or jamabandi is a type of land record which states the specifics of landholdings. Most RoRs also have a 'remarks' column, recording details that the other columns do not have, such as transactions of built-up property <sup>[5]</sup>. Record of Right is a document where all sorts of right and liabilities in respect of every piece of land are registered. Ownership and use of a particular piece of land can be ascertained and guaranteed, if the land records are kept and the laws governing land relationships are published. Usually, the land records are used to determine the state of ownership and property rights. In land deals investigation of the land records is essential to settle the actual ownership of the land <sup>[6]</sup>. The term 'record-of-rights' popularly known as 'khatian' has not categorically been defined anywhere in the Act, but has a huge amount of significance. Conceptually 'record-of-rights' is such a document which contains all the particulars of the concerned holding or holdings and the person

or persons whose prima facie entitlement of right, title and interest over those holding or holdings are accrued <sup>[7]</sup>. Primarily it determines the right over the land in respect of the concerned holding. From the very nature of the discussion, it appears that the record-of-rights is a very important legal document applicable to all the land-owners in order to establish right, title and interest over their lands until it is proved otherwise <sup>[8]</sup>. This is prepared from time to time as per its necessity. Above all, a record-of-rights containing all the details as required and published finally after being prepared properly as provided by law, is a piece of legal document in case of establishing title <sup>[9]</sup>. The entries in the record-of-rights are presumed to be correct prima facie so long it is not rebutted <sup>[10]</sup>. The record of right is maintained by the state for every piece of land. It gives various information about the particulars of any land. The assessment of payable land revenue as well as disputes regarding land are determined in accordance with record of rights. It is maintained in every village and contains information about revenue matters, rent payable, cesses, names of landowners and tenants, their obligations and rights, etc <sup>[11]</sup>.

### Classification of RoR

During several surveys various Record-of-Rights have been prepared and named. These are discussed below:

1. **C.S. Record-of-Rights:** The C.S. Record-of-Rights (Khatian) are prepared after the Cadastral Survey conducted in accordance with the provisions mentioned in section 101 of the Bengal Tenancy Act, 1885 and section 117 of the Sylhet Tenancy Act, 1936. This Record-of-Rights is based on Cadastral Survey, also known as District Survey under the Bengal Tenancy Act, 1885. This survey started in 1888 in Chittagong and ended in 1943 in Dinajpur. Record-of-Rights under the Sylhet Tenancy Act 1936 commenced in 1950 in Sylhet and ended in 1963.
2. **R.S. Record-of-Rights (of C.S. Record-of-Rights):** R.S. Record-of-Rights (Khatian) is prepared according to the provisions of section 101 of the Bengal Tenancy Act, 1885 in some parts of Bengal. R.S. Record-of-Rights is based on Revisional Survey conducted under the Bengal Tenancy Act, 1885. It was conducted to revise C.S. Record-of-Rights. It was initiated in 1923 in Chittagong and ended in 1952 in Bakerganj. In areas of Sylhet, the C.S. Record-of-Rights was not revised.
3. **S.A. Record-of-Rights:** The S.A. Record-of-Rights (Khatian) is prepared after the State Acquisition Survey conducted in accordance with the provisions of section 17 of the State Acquisition and Tenancy Act, 1950. This Record-of-Rights is based on State Acquisition Survey made under the State Acquisition and Tenancy Act, 1950. It was initiated in 1954 in Patuakhali and ended in 1965 in Faridpur.
4. **R.S. Record-of-Rights:** In different parts of Bangladesh, S.A. Record-of-Rights have been revised according to the Revisional Survey. This survey has been conducted under section 144 of the State Acquisition and Tenancy Act, 1950. This Record-of-Rights is also known as R.S. Record-of-Rights. It started from the day when the S.A. khatian was concluded.

5. **B.S. Record-of-Rights:** At present the Bangladesh Survey has been in operation throughout Bangladesh under section 144 of the State Acquisition and Tenancy Act, 1950 and the S.A. Record-of-Rights will be revised in the name of BS. Record-of-Rights (Khatian). It is not sure whether this khatian will be a revised khatian or a new khatian since section 144 deals with both preparation and revision of khatians.
6. **Provisional Record-of-Rights:** There are some provisional khatians including D.P. Khatian, Bujharat Khatian, Tashdik Khatian, Mutation Khatian etc. These khatians are named after the names of different stages of preparation or revisions of the khatian.

### Pre-requisitions of Preparations of RoR

The particulars to be recorded in the record-of-rights shall include, either without or in addition to other particulars are-

1. The name, father's name and address of each tenant or occupant <sup>[12]</sup>
2. The class to which each tenant or occupant belongs <sup>[13]</sup>
3. The rent payable at the time the record-of-rights is revised <sup>[14]</sup>
4. The amount payable in respect of any rights of pasturage, forest rights, rights over fisheries and the like at the time the record-of-rights is being revised, the conditions and incidents appertaining to such rights, and if the amount is a gradually increasing one, the time at which and the amount by which, it increases <sup>[14]</sup>
5. The mode in which the rent has been fixed whether by contract, by order of a Court, or otherwise <sup>[15]</sup>
6. The rent is a gradually increasing one, the time at which and the steps by which it increases
7. The use by tenants, of water for agricultural purposes, whether obtained from a river, hill, tank or well, or any other source of supply <sup>[16]</sup>
8. The repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant or for prevention of the onrush of flood water, whether or not such appliances be suited within the boundaries of the land <sup>[17]</sup>
9. Any right of way or other easement attaching to the land <sup>[18]</sup>.

### Procedures of Preparation of RoR

Different stages and procedures can be found for the preparation and revision of the Record-of-Rights. Procedures for the preparation or revision of the record-of-rights have been laid down in- The Tenancy Rules of 1955, the Survey and Settlement Manual of 1935, the Survey Act of 1875 and some other technical rules framed for this purpose. Under section 144 the Government has discretion to revise the record-of-rights prepared and revised under sections 17-19. In 1967, by the East Pakistan Ordinance No VIII of 1967 the words 'prepared and revised' were substituted for the word 'revised' <sup>[19]</sup>. Now the Government, if it thinks fit, may exercise its power by making an order to revise the record-of-rights prepared or revised previously or prepare it afresh under Section 144(1) to be read with the Tenancy Rules, 1954 or 1955. When the Government makes an order for the preparation and revision of the Record-of-Rights, the Revenue Officer executes all the proceedings and orders under the control and supervision

of the superior Revenue Authority meaning the Director of Land Records and Surveys under Rule 44 of the Tenancy Rules of 1955. For the purposes of preparation and revision of the Record-of-Rights, the Revenue Officer is appointed with the additional designation of the Settlement Officer or Assistant Settlement Officer under Rule 36 of the Tenancy Rules of 1955. The Revenue Officer exercises all the powers vested in the Settlement Officer or the Superintendent of Survey or Civil Court as laid down in Rules 37-44 of the Tenancy Rules of 1955. Besides the Government's own initiative, there are certain other grounds for which the Government can order to revise or prepare the record-of-rights under section 144(2), namely where not less than half of the total number of tenants applies for such an order, where the preparation or revision of such a record is calculated to settle or avert a serious dispute existing or likely to arise amongst the tenants<sup>[20]</sup> Where a settlement or rent is being or about to be made in respect of a district, part of a district or local area. Now, if the preparation or revision of record-of-rights has been directed under sub-section 2(a) and (b), the cost of preparation or revision of record-of-rights is recovered from raiyats under section 145 of the State Acquisition and Tenancy Act of 1950. A notification in the official Gazette of an order under sub-section (1) shall be conclusive evidence that the order has been duly made. Under section 144(4) when an order is made under sub-section (1), the Revenue-officer shall record in the record-of-rights to be prepared or revised such particulars as may be prescribe<sup>[21]</sup> However the different steps and stages of preparing the RoR are described below:

1. **Traverse Survey:** The cadastral survey shall be based upon a traverse survey, and such traverse survey shall ordinarily be carried out by theodolite observations. If possible, the traverse survey shall be connected with one or more points which have been fixed by previous surveys<sup>[22]</sup>
2. **Cadastral Survey:** In the course of proceedings under Section 144, a large-scale map showing therein roads, rivers, railways, homestead, fields, and other physical features of the country shall be prepared for each village, as a unit of survey and record. Procedure up to Attestation is under Rule 28 of the Tenancy Rules, 1955<sup>[23]</sup>.
3. **Erection of Boundary Marks:** Boundary marks of a permanent nature shall ordinarily be erected at every point where the boundaries of three villages meet, and may also be erected at any other points where this is necessary, in the opinion of the Revenue Officer, for the definition of the boundary<sup>[24]</sup>.
4. **Preliminary Record Writing or Khanapuri:** The draft record shall consist of statements of rights which are hereinafter styled as the khatiyans. There shall ordinarily be a separate khatiyani for each person interested or each group of persons jointly interested in the land, and each khatiyani shall show the rights and liabilities of each person or group of persons<sup>[25]</sup>
5. **Local Explanation or Bujharat:** when the areas of the fields have been extracted and entered in the preliminary record, a copy of each tenant shall be made over by a Revenue Officer or a Kanungo to the person or group of persons in whose names the khatiyani has been opened, or to their representatives. Each khatiyani shall then be examined on the ground with reference to the village map, by a Revenue Officer or a Kanungo, and shall be explained to the person or persons concerned, or their representatives. The Revenue Officer shall make such corrections as are necessary in the map, in the draft record, and in the copies of the khatiyans which have been distributed<sup>[26]</sup>.
6. **Attestation:** This stage shall be taken up after the tenants have been allowed a sufficient interval to study their copies of the khatiyans. The attestation of each village shall be taken up at a convenient place or near the village. At least one month before tenants will be given due notice to bring with them their copies of khatiyans. As such person appears before him, the Revenue Officer shall examine his khatiyani, read out all the important entries, make corrections as necessary, and see that khatiyani is complete in all particulars<sup>[27]</sup>.
7. **Publication of Draft Record-of-Rights:** Attestation, the Revenue Officer shall publish the draft record-of-rights by placing it for public inspection free-of-charge during a period of not less than one month at such convenient place as he may determine<sup>[28]</sup>.
8. **Objection:** The Revenue Officer shall consider any objection filed before him in specific form and resolve the same after giving the respective parties a chance of hearing<sup>[29]</sup>
9. **Appeal:** Any person aggrieved by an order passed by the Revenue Officer may institute an appeal to a Revenue Officer appointed with the additional designation of Settlement Officer or Assistant Settlement Officer within 30 days from the date of the order appealed against. Every Appeal shall be in writing<sup>[30]</sup>
10. **Preparation and publication of final record:** When all such objections under Rule 30 and all appeals under Rule 31 have been considered and disposed of according to such rules as the Government may make in this behalf, the Revenue Officer shall proceed to frame the record and shall finally publish it and the publication shall be conclusive evidence that the record has been duly prepared or revised. The Revenue Officer shall publish the record-of-rights by placing it for public inspection, free of charge during a period of not less than 30 days at such convenient place as he may determine and it will be open to public inspection<sup>[31]</sup>
11. **Certificate of Final Publication:** Section 144(8) and Rule 34 of the Tenancy Rules, 1955 says that when a record-of-rights has been finally published under sub-section (7), the Revenue Officer shall, within sixty days from the date of final publication (as the Director of Land Records and Surveys may fix in this behalf), make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title<sup>[32]</sup>.

#### Forum for the Correction of Record-of-Rights

After the final publication of the last revised record-of-rights, every suit arising out of such publication shall be laid down to the Land Survey Tribunal, not to the Civil Court. The newly inserted

Chapter XVIIA of the State Acquisition and Tenancy Act, 1950 lays down the provision for Land Survey Tribunal and Land Survey Appellate Tribunal <sup>[33]</sup>.

**a. Land Survey Tribunal:** Section 145A states the followings:

1. The Government may, by notification in the official Gazette, establish as many Land Survey Tribunals as may be required to dispose of the suits arising out of the final publication of the last revised record-of-rights prepared under section 144 <sup>[34]</sup>.
2. The Government may, by notification in the official Gazette, fix and alter the territorial limits of the jurisdiction of any Land Survey Tribunal <sup>[34]</sup>.
3. The Government shall, in consultation with the Supreme Court, appoint the judge of the Land Survey Tribunal from among persons who are Joint District Judges <sup>[35]</sup>.
4. No suit other than the suits arising out of the final publication of the last revised record of rights prepared under section 144 shall lie in the Land Survey Tribunal <sup>[36]</sup>.
5. If any suit arising out of the final publication of the last revised record-of-rights prepared under section 144 is instituted in any civil court before the establishment of the Land Survey Tribunal under this section, such suit shall stand transferred to the Tribunal as soon as it is established <sup>[37]</sup>.
6. Subject to the provision of sub-section (7), any person aggrieved by the final publication of the last revised record-of-rights prepared under section 144 may, within one year from the date of such publication or from the date of the establishment of the Land Survey Tribunal, whichever is later, file a suit in such Tribunal <sup>[38]</sup>.
7. A suit may be admitted within next one year after the expiry of the period specified in sub-section (6), if the Land Survey Tribunal is satisfied with the reasons for delay shown by the plaintiff <sup>[39]</sup>.
8. The Tribunal shall be competent to declare the impugned record-of-rights to be incorrect and further direct the concerned office to correct the record-of-rights in accordance with its decision, and may also pass such other order as may be necessary <sup>[40]</sup>.

**b. Land Survey Appellate Tribunal:** Section 145B states the followings:

1. The Government may, by notification in the official Gazette, establish as many Land Survey Appellate Tribunals as may be required to hear the appeals arising out of the judgment, decree or order of the Land Survey Tribunals <sup>[41]</sup>.
2. The Government may, by notification in the official Gazette, fix and alter the territorial limits of the jurisdiction of any Land Survey Appellate Tribunal <sup>[42]</sup>.
3. The Government shall appoint the judge of the Land Survey Appellate Tribunal from among persons who are or have been Judges of the High Court Division of the Supreme Court. (4) No appeal other than the appeals arising out of the judgment, decree or order of the Land Survey Tribunal shall lie in the Land Survey Appellate Tribunal <sup>[43]</sup>.
4. Subject to the provision of sub-section (6), any person aggrieved by any judgment, decree or order of the Land Survey Tribunal may, within three months from the date of

such judgment, decree or order, prefer an appeal to the Land Survey Appellate Tribunal <sup>[44]</sup>

5. An appeal may be admitted within next three months even after the expiry of the period specified in sub-section (5), if the Land Survey Appellate Tribunal is satisfied with the reasons for delay shown by the appellant <sup>[45]</sup>.

**c. Appeal to the Appellate Division**

Section 145C provides that an appeal from a judgment or order of the Land Survey Appellate Tribunal shall lie to the Appellate Division of the Supreme Court only if the Appellate Division grants leave to appeal <sup>[46]</sup>.

**7. Alternative Forum for Correction of Record-of-Rights**

After the final publication of the last revised record-of-rights and before the constitution of the Land Survey Tribunal in any district or part of a district, every dispute arising out of such publication may be resolved by invoking the provision of section 42 of the Specific Relief Act, 1877 <sup>[47]</sup>. This relief is equitable in nature. Section 42 says, Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Thus, under this section anyone may go to the civil court to declare that the impugned record-of-right be declared in his favour and a decree be sought to correct errors therein. This is called a declaratory suit. After getting the decree, the intended party has to go to the settlement office with such decree to have the impugned record-of-right corrected accordingly. This provision can only be availed where the Land Survey Tribunal has not yet been established in any district or part of a district or any local area. This provision can also be availed where the time limit for approaching the Land Survey Tribunal has expired and there is a reason to justify the delay <sup>[48]</sup>.

**8. Challenges in Preparation of RoR**

1. **Time-Consuming System:** The main problem of ROR is that it is a time-consuming system. At present there is about 40 million land holdings in the country to be represented in khatians accommodating about 100 million plots. About 80,000 mauza maps are to be maintained, mostly of a scale 16"= 1 mile (larger scale in urban areas). Since the commencement of Revisional Survey (RS) operation in 1965, only 6,121,885 khatians have finally been published upto 30 June 2002, which is only 21% of the ongoing program and 15% of the total work of the country <sup>[49]</sup>. There are at present about 2047 survey teams working in DLRS to prepare maps and update ROR. Each team prepares records of 1.5 mauza maps equivalent to 1875 plots and 750 khatians on an average in a field season. At this rate it would take 22 years to update remaining maps and khatians of the country. But by that time products would become obsolete and useless due to topographical and ownership changes <sup>[50]</sup>.
2. **Inconclusive Ownership of Khatians:** Khatians are not conclusive evidence of ownership, as it does not possess the

legal status to do so. They merely provide basis for possession at the recording time. Under the prevailing legal system khatians along with deeds and mutated documents together are relevant for ownership decision by a civil court. The lengthy and complex process of ownership determination further enhances conflicts adversely affecting social harmony <sup>[51]</sup>.

3. **Nonspecific Individual Rights in Khatians:** The existing family based khatians do not specify individual rights on a plot. A khatian contains particulars of khatian holders, plots, total area of plots. But it is not clear which specific portion of a plot belongs to an individual owner. So, during transfer, he faces problems for handing over possession. Addressing such a problem calls for a plot based instead of a family-based document containing not only spatial description but also a sketch map and appurtenant rights and encumbrances <sup>[52]</sup>.
4. **Absence of Local Government (LG) Participation:** The present system does not provide ample scope for involvement of people's representatives. Common people mostly illiterate and incapable of understanding intricacies of khatians are vulnerable to cheating. Participation of LG representatives' particularly during Khanapuri and Bujharat could bring about a more transparent system <sup>[53]</sup>.
5. **Corruption:** Field level survey staff has earned notoriety for corruption. Temporary nature of their job and insufficient supervision of higher officers often induces them to adopt corrupt practices. A powerful landowner may try to exert undue pressure to get a parcel of land recorded in his favor depriving co sharers. Absence of a group of honest and motivated field workers has worsened the situation to the extent that rich and powerful people can easily twist decisions <sup>[54]</sup>.
6. **Lack of Awareness among Tenant:** Many people are not aware of the legal requirement of mutation as a means for consolidating ownership. They hardly go to the AC (Land) Office to get their right of inheritance on land updated. Without applications from tenants, AC (Land) cannot start suo moto mutation proceeding in favor of heirs of the deceased landowners. Union Parishad (UP) which is supposed to maintain the Death Register is reluctant to record it and even if it records occasionally on insistence of relatives of the deceased is not obligated to send the information to AC (Land) Office. This gap along with ignorance of the people obstructs mutation to be undertaken on account of inheritance <sup>[55]</sup>.

### Recommendation

This study was based on the existing land record system analysis along with interviews of concerned government officials, UP chairman, members of civil society and land owners, and after a thorough understanding of the matter, it can be said that the present land record system suffers from many administrative as well as structural limitations. Keeping all the limitations in mind, possible solutions are suggested so as to make it an effective system capable of providing an authentic, conclusive and

contemporaneous plot-based document for land ownership <sup>[56]</sup>. The following steps are suggested:

1. The existing legal framework should be modified to bestow conclusive validity on CLO. The officials concerned with its preparation and recording have to be legally authorized to conduct proceeding and make ownership vesting orders <sup>[57]</sup>.
2. The Registration Act should be amended so that the examination of the valid ownership is done before its registration.
3. The existing record system should be modified and digital record system should be introduced properly.
4. Government should take proper steps in order to reduce corruption from the officials who either directly or indirectly are involved in recording any land.
5. Security of the land officials should be ensured during conduction of the survey and distribution of khas land <sup>[58]</sup>.

### Conclusion

Although the land record system has been introduced in our country many years ago and is developing day by day people are still suffering due to complex and outdated administration and procedures. It is time the government took proper steps to develop this system and make it easily accessible to the common land owners. Moreover, steps should be taken by the government to make people aware of the land record system to avoid further land related conflicts. If the land record system of Bangladesh becomes modern and precise the sufferings of the common people regarding land will be certainly decreased.

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