**Introduction:-**

The Vested Property Act of Bangladesh is a very controversial law of Bangladesh which involves the Independence War of Bangladesh. This law allowed the ones who were gone during the war of 1971 in Bangladesh’s Independence War, not to gain their property back. This law has been renamed to the “Vested Property Act of Bangladesh” in 1974. We can simply declare someone an enemy of the country (Bangladesh) and make the property to be gone from their hands to the governments.

According to the **Vested Property Act, 1974 (Part I)**-

“Vested property” means any property which has vested in the Government under Section 3(1) (a) of the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974, but does not include any share, stock, scrip, bond, debenture stock or other marketable security in or of a company or body corporate or any share of a partnership firm vested in the Government thereunder.

It seems necessary to examine the scope of The Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 (Act XLV of 1974), as amended by Ordinance No. XClll of 1976, under which the Government of Bangladesh has been taking possession of certain properties, of which some Indian national is alleged to be the owner or a co-owner, by throwing out the persons who are in possession of such properties either as co-sharers or on the basis of some arrangement with the owner. The hardships and harassments caused to a number of persons, who are Bangladesh citizens and are otherwise in lawful possession of such properties prompt us to analyze closely the provisions of the said Act and to find out their real meaning and import so as to appreciate the legality and propriety of the said actions.

On 9th April 2001, the Parliament of Bangladesh passed the Restoration of Vested Properties Act, 2001. In December 1998 the Government has set up a Parliamentary sub-committee under the Ministry of Land to repeal the Vested Property Act and restore vested properties to original owners. The Draft Bill came under severe criticism by civil society.

**Conceptualization of Vested Property (Enemy Property): In the perspective of World War I & II:-**

The Law of Enemy property has got a long interesting historical back-ground behind it, which can be traced from after the world war I of 1914 in The Enemy Mission Act (Act IX of 1921), passed with the object of validating the steps with reference to property formerly belonging to either German Mission or Mission subject to German influence, though during the War Period, the then Government decided to take action against them under the Enemy Trading Act (Act X of 1916). So under provisions of section 7 of Enemy Trading Act (Act X of 1916), the properties of those missions were vested in the various Custodians of Enemy Property.

Those Custodians were directed to transfer the properties in their charge to Board of Trustees and the Enemy Mission Act validated the transfer so made and certain other matters connected therewith. The Trusts were constituted so that the Trustees should carry on the educational, religious and charitable works of the displaced Missions[[1]](#footnote-2).

To control the enemy and the enemy property, Foreigners Act (Act III of 1864), Foreigner Act (Act XXX of 1916) and the Enemy Mission Act (Act IX of 1921} and the Indian Naturalisation Act (Act VII of 1926) were passed.

When the World War II flared up in 1939 as the "Total War", the law of Enemy property like the Defence of India Act (Act XXXV of 1939) and the Defence of India Rules as also the connected other orders were passed, by which all the properties of the Enemy vested in the Custodian who managed the Enemy Properties on the basis of such laws. So Defence of India Act and Rules along with other Laws con-dolled the Enemy and Enemy Property during the British regime.

**Commencement of the war between India & Pakistan: Promulgation of the Defence of Pakistan Ordinance 1965 & the Rules framed thereunder:-**

After the attainment of Pakistan, those laws of enemy ties as well as other laws of the British regime were adapted on 14/8/47 by the Government of Pakistan as the laws of Pakistan and thereafter when India and Pakistan "War of attrition" broke out on 6th September 1665, the President of Pakistan by virtue of article 30 (i) of the Constitution of 1962 issued the Proclamation of Emergency on 6/9/65 and on that very day ushered in the legislation and the Rules called the Defence of Pakistan Ordinance (Xo XXUI of 1965) under clause (4) of Article 30 read with the clause (2) of Article 131 of the Constitution of Islamic Republic of Pakistan 1962, to meet the Emergency and to provide for special safety and the defence of Pakistan and then in exercise of the powers conferred by section 3 of the Defence of Pakistani Ordinance, the Government of Pakistan made on the same day i.e. on 6/9/65, the defence of Pakistan Rules which Part XV is the relevant for the discussion.

It is to be noticed that the Defence of Pakistan Ordinance (XXIII of 1965) and Rules thereunder, made by the Central Government of Pakistan in exercise of powers conferred by section ; of the aforesaid Ordinance, are the reproduction of the Defence of India Act and Rules of 1939 made under the Act[[2]](#footnote-3)

The whole concept underlying the law relating to enemy firm or enemy property was that the control and management of such firm or property should be with the Government of Pakistan so that the benefit arising out of it, whether trade or business, or lands and buildings, should not go, during the continuance of the war, to the enemy, so as to affect the war efforts of Pakistan or impair its defence in any manner.

So the concept of "Enemy" and "Enemy Property" were the product of the Defence of Pakistan Ordinance XXIII of 1965 and Rules made thereunder. In exercise of the power conferred by rule 182 of the Defence of Pakistan Rules which is contained in Part XVI of the aforesaid Rules, empowers the Government to promulgate order and prescribe thereby the doing certain things by the Custodian as mentioned in clause (a) to (f). So it is Rule 182 which deals with the Enemy pro­perties and this rule provides for the appointment of Custodian, Deputy Custodian and Assistant Custodian of Enemy property by the Government.[[3]](#footnote-4)By Notification No Sec. 3/65/1478 Dt.11/10/65, all the Deputy Commissioners in East Pakistan were appointed Assistant Custodian of Enemy property.[[4]](#footnote-5)

The Enemy property (Custody and Registration) Order 196; which was made by the Central Government of Pakistan 9/9/65 in exercise of powers conferred by sub-rule (i) of rule 182 of Defence of Pakistan Rules for preventing the payment of any money to enemy firm and to preserve the enemy properties during the war[[5]](#footnote-6).

These were essentially temporary measures for the period of the war for the purpose of control and management of the trade or business of enemy firms and protection and administration of enemy properties. During this period, the trade or business of some enemy firms would remain under the control of the Controller of Enemy Firms or under the management of some person, appointed by the Government of Pakistan, in its discretion, or some enemy property would remain vested in the Custodian of Enemy Property for the purpose of management and such firms and properties would be returned to the rightful owners after the termination of the war on conclusion of peace.

Again under Rule 182 of D.P.R., two General Notifications bearing Nos. 1198 and 1199 dated 3/12/65 were issued by the Govern­ment of East Pakistan, by which all progenies of all the enemies have been brought under the clutches. So the Government of the then East Pakistan was empowered to make order as per above two notifications that all lands and buildings which ate enemy properties within the meaning of Rule 164 of D.P.R., shall vest in the Deputy Custodian of Enemy with effect from the date of notifications i.e. on 3/12/65 and no person shall with effect from the date of those notifications, transfer any land or building so vested in the Deputy Custodian, by Sale, Gift, Will, Mortgage, Lease, Sub-lease or any other manner and any transfer of land and building made in contravention of this order shall be null and void.

Hence in exercise of the Power conferred by clause (b) of sub-rule (I) of Rule 182 of D.P.R., the then Government of East Pakistan on the direction of the Central Government of Pakistan, under Rule 182 of DP.R. was pleased to issue above those two Notifications on 3/12/65; that all lands and buildings which are the enemy properties within the meaning of sub Rule (4) of Rule 169 of D.P.R. vest in the Deputy Custodian of Enemy Property.

Further on 8/1/66, in exercise of the power conferred by sub-rule (i) of Rule 182 of D.P.R,, the then Governor of East Pakistan promulga­ted The East Pakistan Enemy Property (Land and Buildings) Administra­tion and Disposal order, 1966 which contained the provisions relating to powers and duties of a Custodian whom any enemy property had vested. So this order was promulgated for administration and management of enemy property lies in the then East Pakistan (now Bangladesh).

**Whether the State of war has come to an end or not: A controversial discussion:-**

Although Indo-Pakistan war came to an end after 17 days and it was followed by the Tashkent Declaration, a controversy was raised as to whether there had been an end of the state of war between the two countries in the absence of a format Peace Treaty. The question came up before the Supreme Court of Pakistan in 1968 for its decision in the Case of M.M. Mansur Ali Vs. Arobinda Shekhar Chatterjee and others and the said court expressed the view in its decision reported in 21 DLR (SC) 20 that it was purely a political question of which the answer must be supplied by the Government concerned and directed issue of a notice upon the Government calling upon it to intimate its view on the question to the court. Similar question having been raised in some other cases, the said cases were adjourned, following the above mentioned decision of the Supreme Court and reference was made to the Government of Pakistan for informing the court concerned of its viewpoint on the question. The Government of Pakistan does not, however, appears to have formulated its view on the question and intimated the same to the courts till the termination of its rule in East Pakistan in 1971. in February, 1969, however, the Emergency, which was declared on the commencement of the war was revoked and the Defence of Pakistan Ordinance being add the Defence of Pakistan Rules framed thereunder were repealed, but a new Ordinance, the Enemy Property (Continuance of Emergency Provisions) Ordinance 1969 (Ordinance No. 1 of 1969) was promulgated purporting to continue, despite the repeal of Defence of Pakistan Ordinance and Rules, some of the Provisions of the said Rules relating to enemy property in force. A view was expressed by a Division Bench of the High Court Division of the Supreme Court of Bangladesh in the case of Md. Abdul Majid Vs. The East Pakistan Enemy Property Management Board and others[[6]](#footnote-7), that having regard to the repeal of the Defence of Pakistan Ordinance and the rules framed thereunder and the terms of the said Ordinance the Government was not competent to make any fresh order of vesting of any property in the Custodian of Enemy Property and that the Ordinance No. 1 of 1969 merely authorized the management and administration of the properties which had already vested before the repeal of the Defence of Pakistan Ordinance and Rules framed thereunder. This view of the High Court Division was not accepted by the Appellate Division of the Supreme Court in the appeal against the said decision in the case of the Bangladesh Enemy Property Management Board Vs. Md. Abdul Majid[[7]](#footnote-8), which held that in the absence of any announcement by the Government of Pakistan, declaring the end of the war the state of war between India and Pakistan had not ended and that Government of Pakistan could therefore exercise the power to vest an Indian properly in the Custodian of Enemy Property during the continuance of such state of war. Although a comment may be made with respect that the full import of the revocation of Emergency which was declared on the commencement of the War and the repeal of the Defence of Pakistan Ordinance and most of the Rules framed under the Ordinance, which were enacted for the sole purpose of ensuring the successful prosecution of the war against India, had not been duly appreciated in the said decision of the Appellate Division, it cannot be disputed that the decision has the effect of clearly laying down the law that the state of war between India and Pakistan must be deemed to have been in existence in the territories now Bangladesh, so long as Pakistan legally exercised control over the said territories.

**Lifting of Emergency & Declaration of Martial law in 1969:-**

Thus the laws introduced on 6/9/65 during the period of Emer­gency governed the country upto the said Emergency was lift on 16/2/69. So with the lifting of emergency, the Defence of Pakistan Ordi­nance and Rules automatically lost their validity. Consequently the ene­my property orders referred to above lost their force. Then to provide for the continuance of certain provisions of Defence of Pakistan Rules relating to the control of Trading with enemy and control of enemy firm and administration of the property belonging to the enemies. The Enemy Property (Continuance of Emergency Provisions) Ordinance I of 1969 was promulgated on 16/2/69, to come into force on the day in which the Defence of Pakistan Ordinance XXIII of 1965 ceases to have effect under clause (7) of Article 30 of the Constitution of Pakistan 1962.[[8]](#footnote-9)

But the said constitution of 1962 had been abrogated on 25/3/69 on the declaration of Martial Law on the same day. Then on 4/4/69 by Proclamation of the Provisional Constitution Order--the enemy pro­perty (continuance of Emergency Provisions) ordinance 1 of 1969 has retained its legal force and validity. So the Provisional Constitution order dated 4/4/69 which came into force with retrospective effect from 25/3/67. In view of the above it follows that the provisions of law made for the control of Enemy Property has been continuing. So from 17/2/69, the said Ordinance gave fresh lease of life to the law of Enemy property and continuing till the emergence of Bangladesh. i.e. to say that by the promulgation of Ordinance I of 1969 the law of Enemy Property still is in force.[[9]](#footnote-10)

Thus all these again lead one to take extensive and comprehensive view of the position of the Law of Enemy property after the Emer­gence of Bangladesh.

**Vesting of all Enemy Properties in the Government of independent Bangladesh:-**

On the emergence of the new state of Bangladesh, which is taken to have come into being on 26-3-71 according to the Proclamation of Independence issued from Mujibnagar on 10-4-71, an Order being the Laws Continuance Enforcement Order, 1971 was promulgated on the same day as was the Proclamation of Independence, purporting to continue in force in Bangladesh all the Pakistani laws, which were in force in East Pakistan on 25-3-71, subject to the Proclamation of Independence with such consequential change as may be necessary on account of the creation of the sovereign independent State of Bangladesh. The effect of this Order was that all those Pakistani laws, which were consistent with the sovereign status of Bangladesh as a new international personality would continue to be in force in Bangladesh. Tested from that stand point, Ordinance No. 1 of 1969 which was enacted on the basis of a state of war between India and Pakistan did not obviously continue in operation in Bangladesh by virtue of the said Order and such was also the natural consequence flowing from the fact that Bangladesh, which established itself by waging a war against Pakistan, was not a successor state of Pakistan and did not automatically succeed to any right and obligations of Pakistan, as has been accepted on all hands. Nevertheless, the new state of Bangladesh, we may venture to suggest, quite mistakenly, took certain actions and made certain laws, as if the said Ordinance No. 1 of 1969 had continued to be in force in Bangladesh.

However, a President's Order being the Bangladesh (Vesting of Property and Assets) Order (No. 29 of 1972), whereunder all properties and assets, which had been vested in the Government of Pakistan or any officer appointed by such Government or were vested in or managed by any Board, constituted by or under any law or in the former Government of East Pakistan, were deemed to have vested in the Government of Bangladesh on and from the 26th day of March, 1971, was enacted on 26.3.72. By virtue of this Presidential Order, all the enemy properties which were taken over and were being managed by the Government of Pakistan were purported to have vested in the Government of Bangladesh. This "vesting" does not imply anything more than the limited rights of custody and management of the properties belonging to some Indian nationals, which the Government of Pakistan or the Pakistan Custodian of Enemy Property had been exercising under the relevant provisions of the Defence of Pakistan Rules and Orders made thereunder till such properties were returned to the rightful Indian owners.

It may be mentioned that in spite of the promulgation of President's Order No. 29 of 1972 under which all enemy properties, vested in the Custodian of Enemy Property or an Officer or Board appointed by the Government of Pakistan had vested in the Government of Bangladesh with effect from 26-3-71, the Government of Bangladesh did not appear to have taken any notice of this President's Order in its dealing with the said properties and acted, as if the Pakistan Ordinance No. I was still in operation in Bangladesh in supercession of the provision of the said President's Order.

**Mistaken Enactment of Act XLV of 1974 and Act XLVI of 1974:-**

In 1974 Bangladesh enacted two laws being the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act (Act XLV of 1974) and the Vested and Non-resident Property (Administration) Act (Act XLVI of 1974), The first one provided for the repeal of Ordinance No. 1 of 1969 with effect from 23-3-74 on which date the new Act was deemed to have come into force, (as if the said Ordinance were in operation till then) and also for vesting in the Government of Bangladesh all enemy properties vested in Custodian of Enemy Property, and all enemy firms, the trade or business of which was being carried on by any person or Board, appointed or authorised “under the provisions of the Defence of Pakistan Rules, continued in force by the said Ordinance" No. 1 of 1969. The other Act provided for the constitution of Management Committee for the properties which were purported to be vested under the first Act, viz. Act XLV of 1974 as well as the properties belonging to "a person who is not or has ceased to be a permanent resident of Bangladesh" or "has acquired foreign nationality" and also for management of such properties. As regards the second category of the properties, as referred to above which were distinguished .from the "Vested Properties" and referred to in the Act as "Non-resident Properties", the appropriate Management Committee could take charge of such properties of its own motion or on the application of non-resident or upon the direction of the Government of Bangladesh and administer the same in accordance with the provisions of the said Act.

Unfortunately, these two Acts appear to have been patently the result of a confusion of thought and a misconception on the part of the legislative organ of the new state of Bangladesh as to the state of the laws in force in Bangladesh and the legal character of the properties of the Indian nationals in Bangladesh.

As it has already been stated, we think that Ordinance No. 1 of 1969 was not the kind of Pakistani legislation which did continue to be in force, after emergence of the new state, under the Laws Continuance Enforcement Order, 1971, the scope and extent of which have been considered in a decision of the High Court Division of the Supreme Court of Bangladesh. [[10]](#footnote-11). It seems to have been a mistake on the part of the law-making authority of Bangladesh to conceive that the Ordinance which was enacted by Pakistan on the basis that there was a war between India and Pakistan and that India and Indians were the enemies of Pakistan, could continue as a law of Bangladesh under the said Enforcement Order of 1971, as the effect of continuing the provisions of the Ordinance in Bangladesh was to continue the war between India and Pakistan as a war between India and Bangladesh and to make India and the Indians the enemies of Bangladesh. The provisions of Defence of Pakistan Rules, continued by Ordinance No. 1 of 1969, could continue in Bangladesh with the consequential changes, as contemplated in the Order of 1971, as those of Defence of Bangladesh Rules. The second mistake on the part of the said law-making authority of Bangladesh was to ignore completely the provision of President's Order No. 29 of 1972 under which the properties and assets vested in the Custodian of Enemy Property or an Officer or Board appointed by the Government of Pakistan had already vested in the Government of Bangladesh [See Bangladesh Enemy Property Management Board Vs. Md. Abdul Majid, 27 DLR (AD) 52]. Apart from the fact that Ordinance No. 1 of 1969 could not be a valid law in operation in the territories, now Bangladesh, since its emergence, under the Laws Continuance Enforcement Order, 1971, the said Ordinance, even if it is imagined to have continued to be in force in Bangladesh, lost all of its force and became ineffectual since 26-3-71 after the promulgation of President's Order No. 29 of 1972, as, by virtue of the provisions of the said President's Order, all the properties and assets of the Indian nationals which were vested in the Custodian of Enemy Property became vested in the Govt. of Bangladesh, which could administer the said properties and assets by making appropriate rules for the same. Strangely enough, the Government of Bangladesh and its officers have been dealing with the properties of the Indian nationals, as if there had been no emergence of any such State as Bangladesh and no such Laws as President's Order No. 29 of 1972 and that the Government of Bangladesh was nothing but an agent of Pakistan to carry out the law made by Pakistan.' Act No. XLVI of 1974, which was never given effect to, has since been repealed, and the other one, viz. Act XLV of 1974 has been amended by Ordinance No. XCIII of 1976 providing that those properties which had vested under the said Act "shall be administered, controlled, managed and disposed of by transfer or otherwise by the Government or such officer or authority as the Government may direct". The sole purpose of enacting, at a time when there was no war between India and Bangladesh, such legislations as President's Order No. 29 of 1972 or Act XLV of 1974, which provide for vesting, in the Government of Bangladesh, the Indian properties, which had vested in the Custodian of Enemy Property for their protection and management, and the Indian firms, the trade and business of which was being carried on by any person or Board appointed by the Government of Pakistan, during the period of the war between India and Pakistan, appears merely to provide a legal basis for the continuance of the administration and management of those properties and firms, which were already taken over and being managed by the Officer or Board appointed by the Government of Pakistan until such properties and firms may be handed over to the rightful owners.

So from the above the enemy property will no longer be known as the enemy property according to Act XLV and XLVT of 1974 and also Ordinance XCIII of 1976 and practically Act XLV as amended by Ordi­nance XCIII of 1976 is the substitution for the Ordinance I of 1969.

**Taking Over Possession of the Vested Properties by the Government of Bangladesh:-**

The Government of Bangladesh, however, has not only been managing and administering the Indian properties and firms, which were being managed by the Pakistani Custodian of Enemy Property or some Pakistani Officer or Board, but has also been taking over possession of such Indian properties as were never taken possession of by the Government of Pakistan or the Custodian of Enemy Property appointed by it, apparently on the view that it was entitled to take over possession of and administer the Indian properties in the same way as the Government of Pakistan was authorised under the Defence of Pakistan Ordinance and the Rules framed thereunder during the war against India. Certain Rules appear to have been framed by the Government of Bangladesh in the form of ‘Instructions’ for ‘administration, management and disposal’ of the 'Vested Properties', in which a direction has also been given for the detection and taking possession of what has been termed as 'Concealed Vested Properties', Special provisions have been made in these 'Instructions' for rewarding the Tahsildar and the staff of State Acquisition Tahsil Officers for the detection or furnishing information leading to detection of any such 'Concealed Vested Property'. In consequence, the State Acquisition Tahsil Offices have recently become busy in discovering 'Concealed' Indian Properties of which some Indian national is alleged to be the owner or a part-owner and in taking possession of the same by throwing out the persons in possession, who may have been possessing such properties on the basis of some arrangement with the Indian owner.

**The Government of Bangladesh did not Acquire Full Title to the Vested Properties:-**

The Government of Bangladesh appears to be acting under an incorrect view that since the properties of the Indians have vested in the Government of Bangladesh either under President's Order No. 29 of 1972 or Act XLV of 1974, the Government has acquired full title to such properties and is therefore free to deal with them in any manner it thinks fit, particularly when the power of disposal has been conferred upon it. In doing so, the Government appears to overlook the fact that under the said Presidential Order or Act, the Indian Properties have vested in it in the same right and to the same extent to which they had vested in the Custodian of Enemy Property appointed by the Government of Pakistan under the Defence of Pakistan Rules and Orders made thereunder and the Custodian of Enemy Property, as his designation itself implies was not obviously the full owner of the said property. The right of the Custodian was the limited right of protection and management of the said properties during the period of the war without transgressing the title of the owner of the said properties and the said two pieces of legislation of Bangladesh did not confer upon the Government of Bangladesh any higher right than that. The Parliament of Bangladesh also appears to have recognised this position in enacting Act XLVI of 1974, section 7 of which provided that the Committee of Management constituted under this Act after taking charge of a vested property "shall take such measures as may be necessary for the good management and protection of such property", "shall not be entitled to transfer, except by monthly or annual lease, any vested property" and "may with the written consent of the owner and in the prescribed manner transfer any vested property." The power of disposal of a vested property which has been given to the Government of Bangladesh under the amending Ordinance XCIII of 1976 is similar to what the Custodian of Enemy Property had under the Defence of Pakistan Rules, and the Orders made thereunder. It is ancillary to its powers of administration and management of the property for the purpose of protecting it.

**The view of the then Supreme Court of Bangladesh as to the Law Relating to Enemy Property as expressed in the Case of Benoy Bhushan Bardhan:-**

The Supreme Court of Bangladesh in a recent decision, viz., Benoy Bhusan Bardhan Vs. Sub-Divisional Officer, Brahmanbaria and others[[11]](#footnote-12), has explained the law relating to enemy property in course of the said decision in the following words:

"From all these provisions it is manifest that it was never the intention of the law-making authority to divest an individual enemy owner of his title in respect of his property lying in the territory of a hostile belligerent State. Its primary concern appears to have been that such property might not be used in a way which would be prejudicial to the prosecution of the war affecting the defence of Pakistan or which might render some benefit to the enemy state in any manner. Such concern was, however, accompanied by an anxiety that the ultimate interest of the individual owner might not be affected in any way. Elaborate provisions were therefore made in the Enemy Properly (Custody of Registration) Order, 1965 issued by the Central Government of Pakistan and in the East Pakistan Enemy Property (Lands and Buildings) Administration and Disposal Order, 1966, as made by the Government of East Pakistan, for the protection and management of such property. The whole idea behind these provisions seems to be that during the Emergency which was declared on the commencement of the war, the individual enemy owner was not considered suitable or safe for the management of his property or it might be that because of restriction on his movement or detention in prison an enemy subject was incapable of managing his property properly and as such it was necessary to make adequate provisions for the protection and management of such properties. To carry out this purpose, the property was caused to be vested in an Officer of Govt. of Pakistan, who was charged with the responsibility of protecting and managing the properties, realising the money or compensation which was due to the enemy owner and keeping proper accounts of the same, so that the interest of the enemy owner might not be substantially affected. The right, title and interest of the enemy owner was not sought to be extinguished in any way, but was purported to be placed in a state of hibernation, so to say, during the continuance of the Emergency. These were essentially temporary measures for "the management and protection of property", as stated in clause (III) of paragraph 3 of the Enemy Property (Lands and Building) Administration and Disposal Order and the right which accrued to the Deputy Custodian or Assistant Custodian by virtue of the vesting in consequence of the order under Rule 182 (1) (b) of the Defence of Pakistan Rule was no larger right than that of protection and management of the property, the benefit of which will ultimately redound to the credit of the enemy owner. It was a binding obligation of the managing Custodian to maintain a separate account of all receipts and payments respecting each enemy property vested-in him in accordance with the provision of clause (V) of paragraph 3, which was subject to periodical audit. The subsisting interest of the enemy-owner is highlighted by the provision of clause (IV) of paragraph 3, which authorised the custodian concerned to incur expenditure for the maintenance of the individual enemy owner or his family.

The predominant idea behind the taking over management of the enemy property under these Emergency legislations seems to have been the prevention of certain acts which might be prejudicial to the war efforts of the Government of Pakistan and the protection of the said properties during the continuance of the war. It seems to have been never in the contemplation of the Government of the country to acquire for itself any beneficial interest in the properties of any individual enemy owner under the said provisions, but to protect and manage the properties, so that the rightful owners could get back the properties on the conclusion of peace."

**A recent past history of Vested Property in Bangladesh:-**

1977-1990: Military dictator Gen. Zia-ur Rahman and later Gen. H.M. Ershad made the situation worse. Although Gen. Ershad declared that no new property would be declared as vested property and that properties already enlisted as vested would no longer be disposed off, the opposite happened. During these two Generals’ tenure, the abuse of this law made hundreds of thousands of Hindus homeless; they were forced to migrate to India, causing a major decline of minority population in Bangladesh.[[12]](#footnote-13)  
   
 1991: Bangladesh Nationalist Party won the election of 1991 and throughout its tenure until mid-1996 did not touch the Vested Property Act, which remained on the statute book till the Ershad regime.[[13]](#footnote-14)  
   
 2001: The Government led by the Awami League took five years to place and pass a bill in parliament on April 11, 2001, the “Restoration of Vested Property Act, 2001” (Act No. 16 of 2001) near the end of its tenure. But the Act did not much help provide solutions to affected Hindus, and made some issues more complicated because of inherent defects.[[14]](#footnote-15)  
   
 2002: In the October 2001 election, the Bangladesh Nationalist Party (BNP) led 4-party coalition formed the government, including Islamist elements. This government passed an amendment bill in parliament to the “Restoration of Vested Property Act 2001” on Nov. 26, 2002, which virtually shelved the return of confiscated properties to Hindus. This amendment allows Government unlimited time to return vested properties which are to remain under the control of Deputy Commissioners until a tribunal settles ownership. The amendment gives Deputy Commissioners the right to lease such properties until they are returned to their owners.[[15]](#footnote-16)  
   
 2009: The present democratic government is trying to reform the law, but the victim religious minorities want the law repealed.[[16]](#footnote-17)

‘No reform, Repeal Enemy Property’. The newspaper questioned the rationale of the Enemy Property Act being reformed, argued, ‘we are doubtful about promises made by the government’ and wrote, ‘we expect that government should completely repeal the unconstitutional Vested Property Law instead of revision. This will free the affected people from harassment and deprival.’[[17]](#footnote-18)

**A recent research & survey on Vested Property:-**

Nearly 200,000 Hindu families of Bangladesh have lost about 40,000 acres of land and houses in the last six years, 'grabbed' by politically powerful people, says a just concluded study. The study has found that the new occupants of land and property belong to all the mainstream parties - Sheikh Hasina's Awami League, Khaleda Zia's Bangladesh Nationalist Party, Jamaat-e-Islami and Jatiya Party.

A research conducted on the subject, says some 1.2 million or 44 percent of the 270,000 Hindu households in the country were affected by the Enemy Property Act 1965, enacted during the Pakistan era, and its post-independence version - the Vested Property Act 1974.[[18]](#footnote-19)

In 2001, the then government led by Awami League enacted the "Vested Property Return Act" to repeal the Vested Property Act with a view to restoring ownership of the lost land to many Hindu families. But no records have been prepared to enforce this law, according to the study.  
 The move was then criticised as a 'political tokenism' aimed to appease minority voters prior to the general elections.[[19]](#footnote-20)

At the current market price, the value of the 2.2 million acres of land that the Hindu families were displaced from is nearly $4.22 billion, which is more than half of the country's gross domestic product (GDP), says the study.  
  
 "This is a man-made problem contrary to the spirit of humanity. We have to get rid of this uncivilised state of affairs to establish a civilised society. Otherwise, we have to face a bigger historic catastrophe," it was stated that in the abridged version of the research paper, "Deprivation of Affected Million Families: Living with Vested Property in Bangladesh", to be published in its entirety later.  
  
 While trying to review the impact of the law on the land ownership of the Hindu community, it was found that no list of the people evicted or the quantum of lands grabbed has been prepared till date.  
  
 During the reign of the BNP-led alliance government (2001-06), 45 percent of the land grabbers were affiliated with BNP, 31 percent with Awami League, eight percent with Jamaat-e-Islami and six percent with Jatiya Party and other groups.  
  
 The affected Hindu families met with more incidents of violence and repression in the five years of the BNP-led government than in the previous five years of the Awami League government.  
  
 The 'Hindu versus Muslim' polarisation in the problem and claims that it is an issue created by communal elements and vested interests groups.  
  
 Criminals do not bother whether a piece of land is owned by a Hindu or Muslim. They resort to easy means to loot property.

**Below we present the key findings from the study:**  
  
 1. 43% of all Hindu households (1.2 million) have been affected by EPA/VPA. 57% of households that lost land lost an average of 100 decimals. Survey data shows 33% of affluent Hindu families lost land due to EPA/VPA. 50% of affluent households had at least one close relative who lost land  
  
 2. Total area of land lost is 2.01 million acres, which is 5.5% of Bangladesh's total land mass but 45% of land owned by the Hindu community. The survey data shows 22% more land loss than is shown in the official records. According to survey data, the total land lost is 2.6 million.  
  
 3. The type of land lost is typically agricultural (80% of total lost land), followed by homestead (11%), pond area (1.2%), orchard (1.7%), and fallow land (0.7%).  
  
 4. Assuming average market price of land as seen in the year 2007, total value of land lost is BDT 2,416,273 million.  
  
 5. 53% of incidents of dispossession and 74% of total lost land occurred between 1965-1971. After lower rates from 1972-1975, dispossession rates accelerated again from 1975. Even after the "Repeal Act" was passed in 2001, 8% of dispossession incidents occurred between 2001-2006.  
  
 6. The most typical methods of land grabbing are influential parties grabbing land in connivance with Tahsil and Thana Revenue Office, death and/or out-migration of members of the Hindu family used as excuse to enlist the whole property, grabbing the land by force, occupying land using forged documents, etc.

**Concept of Enemy Property or Vested Property: Stands in controversy with Human Rights:-**

Bangladesh’s Enemy Property or Vested Property Act is a black law, instrumental only in the persecution of the minority community. The law was enacted originally by the Pakistani military regime in 1965, but has been amended by successive post-independent governments of Bangladesh. Its evil effects are oppressive to religious minorities, especially the Hindu population whose human rights are violated by this law.[[20]](#footnote-21)  
   
The law also violates the following Articles of **Bangladesh Constitution**:  
-        Article 11: Democracy and human rights  
-        Article 13: Principles of ownership  
-        Article 27: Equality before law; and  
-        Article 28: Discrimination on grounds of religion, creed and caste   
   
 Abusing this law, the government has seized almost three million acres of Hindu land (US States Department statistics) and leased them to Muslims. Indeed, the very application of the term ‘enemy’ to a ‘collective minority’ is a violation of democratic principles. In April 2001, the then government passed an Act ending the tenure of the repressive law. But in October 2002, the newly elected government passed an amendment to that bill, which virtually shelved the return of the confiscated properties to the real owners. There is hardly any Hindu family that has not been affected either directly or indirectly by the Enemy Property turned Vested Property Act. The number of effected members is increasing daily due the non-stop abuse of this law. Moreover, the whole process of handling the vested lands has created huge corruption in the country.  
   
 This law is worse than apartheid! It should have been be repealed long ago. 25 million minority citizens of Bangladesh have been waiting anxiously for the last 44 years to see the end of this law, but it remains on the statute book because the huge vested properties have created an entrenched vested interest! The government and society must give a big push to repeal it, else Bangladesh cannot claim to be a civilized nation. The law is a curse for the country and our motherland should be free of this curse.

The amount of property that can be declared to “enemy” state is 702,335 acres (2,842 km²) and 22,835 homes are listed in these lands. Much of this land is from Dhirendranath Dutta, a Hindu politician in Bangladesh after the war period. His body was never found after the Pakistanis took him and it is said that he had not left the country by his own thinking. Nobel Prize winner Amartya Sen’s properties were confiscated by the Pakistani government. In 1999, the Bangladeshi government started investigating in this case but there is not much information about their progress.

***Nature and character of enemy and vested properties:***

It seems necessary to ex amine the scope of The Enemy Property (continuance of Emergency Provisions) (Repeal) Act, 1974 (Act XLV of 1974), as amended by ordinance No. XCIII of 1976, under which the Govt. of Bangladesh ahs been taking possession of such properties either as co-sharers or on the basis of some arrangement with the owner. The hardships and harassments caused to a number of persons, who are Bangladesh citizens and are otherwise in lawful possession of such properties prompt us to analyze closely the provisions of the said act and to find out their real meaning and import so as to appreciate the legality and propriety of the said actions.

**The position of Property of an Alien under the International Law**:-

There is another aspect of the matter, namely to interpret the provisions of a Municipal Law in the light of the Law of Nations. It is a well established principle that a state cannot invoke its municipal legislation to avoid its international obligations and therefore, in construing a Municipal Law, one is to start with the presumption that the low-making authority, by enacting the particular law, did not intend to make any provision which may lead to the violation of any obligations enjoyed by the Law of Nations. The Government of Bangladesh has no right to take over any Indian Property under International Law or any existing Municipal Law:-

There had never been a war between India and Bangladesh and on the contrary there is a Friendship Treaty between the two countries, there appears to be absolutely no legal or practical basis for assuming the existence of any emergency or war conditions justifying taking over possession of any property belonging to an Indian, which had never been in the custody or possession of the custodian of Enemy Property during the days of Pakistan, for management of such property.

Apart from being violative of its obligation under the Law of the Nations, any such action of the Government of Bangladesh thus appears to be inconsistent with the law of the country.

Bangladesh has friendly relations with India, so relation under its own possession of any property belonging to an Indian national, which had been under possession of the Govt. of Pakistan because of the war between India and Pakistan or which has been mistakenly taken possession of by the Govt. of Bangladesh purportedly under the Pakistan ordinance No. 1 of 1069 or the Bangladesh Act XLV of 1974 does not similarly appear to be in keeping with law and equity and restoration of such property to the lawful owner seems to be just and proper under the law of the land and the principle of the Law of Nations, if the said owner so desires.

Comparative study of several judgments of the Appellate Division and High Court Division of the Supreme Court:-

For proper appreciation of the true import of the enemy property laws as judicially interpreted, it is necessary to make a comparative study of several decision of the Appellate Division of the Supreme Court dealing with such laws.

# The Appellate Division of the Supreme Court appears to have consided certain questions relating to the application of the enemy property laws in the case of Mr. Dulichand Omrao Lal Vs. Bangladesh, 1981, 33 DLR (AD) 30 in which the said court has expressed a dissenting view against a decision given in a Earlier judgment of the said court in the case of Bangladesh Enemy Property Management Board Vs. Md. Abdul Majid (1975) 27 DLR (AD) 52 to which reference has already been make and has also given expression to certain other views which, it is respectfully stated, have given rise to certain anomalies and as such require reconsideration.

The Govt. of Bangladesh alone is the party interested in a proceeding relating to vested property since the emergence of Bangladesh and such a proceeding is in fructuous and of on legal consequence in its absence has been clearly laid down by the Appellate Division in the case of Bangladesh Enemy Property Management Board Vs. Md. Abdul Majid, 27 DLR (AD) 52.

True character of a vested Property and the Extent of the Authority of the Government of Bangladesh to take over or dispose of such property:-

In case of the enemy property laws relating to vested property so far as the lands and buildings not connected with an enemy firm were concerned the true character of such a property and the extent of the authority of the govt. of Bangladesh to take over such property and retain it in its possession for administration and disposal by way of transfer or otherwise appear to be well established and may be briefly stated as following:-

**Firstly,** a particular property could be a vested property only if its owner was an enemy within the meaning of Rule 161 of the Defence or Pakistan Rules of 1965 on 3rd December, 1965.

**Secondly,** the property of a person living in East Pakistan who had gone to India after the 3rd December, 1965 and settled there would not be and cannot be taken over by the custodian of Enemy Property or Govt. of Bangladesh, as there having never been an order of vesting in respect of such property under the Defence of Pakistan Rule 182 (1) (b), such property did never vest in the custodian of Enemy Property under the said rule or thereafter in Govt. of Bangladesh under President’s order No. 29 of 1972 or under Ordinance IV/Act XLV of 1974. This kind of property could of course have been enemy property if its owner had gone to India, during the continuance of the state of war between India and Pakistan and settled there, but it ceased to be enemy property as soon as there was cessation of the State of war on 16.02.1969 or 26.03.72, as held differently in two decisions of the Appellate Division of the Supreme Court, viz. 33 DLR (AD) 30 and 27 DLR (AD) 52 respectively. There is no question of any property becoming an enemy property after the aforesaid date of the cessation of the state of war between India and Pakistan in respect of the territory now Bangladesh.

**Thirdly**, inspite of the fact that certain share or shares of a jointly owned property had rightly become vested property because of the owner or owners of such share or shares having gone to India before the 3rd December, 1965, the custodian of Enemy Property or the Government of Bangladesh did not acquire any right to take over such property, if co-sharer or co-sharers living in Bangladesh, as has been laid down by the supreme Court of Bangladesh in the case of Benoy Bhusan Bardhan and others Vs. The Sub-Divisional Officer, Brahmanbaria, 30 DLR (SC) 139. These have been no dissenting view expressed by the Appellate Division against the aforesaid view of the Supreme Court pronounced in the case of Benoy Bhusan. It has been pointed out in the said case that possession of the vested share or shares of the property can be taken by the appropriate authority by amicable partition or by instituting a suit for partition in the appropriate civil court and separating such share or shares under the final decree obtained in the said suit and not otherwise.

**Fourthly**, the whole object of vesting of an enemy property was ensure the security consistent with the defence of the country so long as the state of war between India and Pakistan to protect and manage such property consistent with the beneficial interest of the erstwhile enemy owner had been eclipsed because of such vesting and as such on the cessation of the state of war between India and Pakistan in respect of the territory now Bangladesh, in any view of the matter after the emergence of the sovereign Bangladesh, there seems to be no valid reason for taking over any property as vested property from the possession of the rightful occupants of such property.

**Fifthly**, Bangladesh being a sovereign independent state having friendly relations with India, and owning the comity of nations and there also being a Treaty of Friendship between the two countries, retention by the Government of Bangladesh in its possession, of any vested property taken over by the custodian of Enemy property, does not seem to be in keeping with law and equity and restoration of such property to the lawful Indian owners seems to be a lawful obligation of the Government of Bangladesh if such lawful owners are available and willing to take back such property.

In their absence, however, the Government of Bangladesh in which the property was lawfully vested may continue to manage the same or dispose of it consistently with public interest[[21]](#footnote-22).

**Transformation of enemy property into vested property (old wine in a new bottle):**

The proclamation of independence and formation of the provincial Government of Bangladesh took place at Mujibnagor on April 10, 1071 and the order named Laws of continuance. Enforcement on the same day purporting to keep in force all the Pakistan laws which were in force in the then East Pakistan on or before March 25, 1971. In other wards, ordinance No. 1 of 1969, which does not fit with the spirit of proclamation of independence of Bangladesh, automatically remained ineffective in the new state. Bangladesh is not a successor state of Pakistan. On the contrary, Bangladesh established itself by waging a war of independence against Pakistan[[22]](#footnote-23).

**The vested property act and the constitution of Bangladesh**

This Act is inconsistent with some articles of Bangladesh constitution. These are as follows-

**Article II of the Constitution:**

Fundamental principal of state policy proclaim that the republic shall be democracy in which the fundamental human rights and freedom and respect for the dignity and worth of human person shall be guaranteed.

**Article 27 of the Constitution:**

Fundamental rights chapter of the constitution proclaims that “All citizens are equal before law and entitled to equal protection of law.”

It is a fact not a fiction that certain group of people numbered in millions, even in the nineties of the twentieth century, were incorporated as ‘enemies’ of the country in the truest understanding of the word enemy and being evicted from their and / or (both in de facto and / or de jure) ancestor’s property in violation to the Hindu law of inheritance and the law of ownership of the Hindu joint family. The constitution, however, has provided that the person of such category also with the right to live under the rule of law and ensured them all the fundamental human rights as mentioned above. It is in contravention to the right of equality before law and entitlement of equal protection of law guaranteed by constitution. The right and privilege of citizens are grossly violated for the said segment of citizens who cannot even seek for relief from the court as the continuance of Defense of Pakistan Rule 1965 under different names and circulars does not permit them to do so.

**Article 13(C)** guaranteed “private ownership, which is ownership by individuals within such limits as may be prescribed by law.” Article 25 (I) proclaimed that: “The state shall uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and support oppressed peoples throughout the world against imperialism, colonialism or racialism.”

From the analysis presented above. It is evident that the de facto continuance of the vested property contradicts the spirit of the proclamation of Independence and least mine articles of the constitution and therefore, adequate immediate measures should be taken by the law-makers and the Supreme Court of Bangladesh to recourse the prevailing undesirable situation.

Missing Hindu population major effect of enemy and vested property acts and blow against social capital formation.

The size of outmigration was different during various historic periods. For example, the approximate size of the missing Hindu population was as high as 703 persons per day during 1964 – 1971, 537 people per day during 1971 – 1981 and 439 people during 1981 – 1991. If the above estimates are close to reality then the inference emerges that the Enemy and vested property Acts acted as an effective mechanism for the extermination of Hindu minorities from their motherland, and thereby, affected the process of social-capital formation in our country[[23]](#footnote-24).

***Related Legislations***

**i)The Defence of Indian Act, 1962**:

This act was enacted in 1962 on the commencement of Indian- China war. It was consequence on the Chinese aggression against Indian. [[24]](#footnote-25)Purpose of this Act:

It introduced the concept of enemy property in Indian for the first time in consequent of the war between Indian and China in 1962. It was a measure to deal with such enemy properties.

**ii)The Defence of India Rules, 1962:**

On the commencement of the India-China war in 1962 the defence of India Rules were framed under the Defence of India Act.

**Purpose of this Act[[25]](#footnote-26)**: The Defence of Indian Rules was framed in 1962 for facilitating the defence of the county and for preservation of peace and order there in the context of the state of war between the two countries. At the same time immoveable properties Immoveable properties balance and firms belonging to Chinese nationals in Indian valued approximately at Rs 28.85 lakhs were vested in the custodian of Enemy property in India appointed under the Defence of Indian Rules, 1962.

iii)The Defence of Pakistan ordinance, 1965:

Promulgation of the Defence of Pakistan ordinance 1965 and the Rules Framed there under on the commencement of the war between Indian and Pakistan, the armed conflict between India and Pakistan commenced on the 6th September, 1965. On that day Pakistan proclaimed a state of Emergency and promulgated that Defence of Pakistan ordinance, 1965.

**Objective of the Defence of Pakistan Ordinance, 1965**[[26]](#footnote-27): The whole concept underlying the law relation to enemy firm or enemy property was that the control and management of such firm or property should be with the Government of Pakistan so that the benefit arisin out of it, whether trade or business or lands and buildings, should not go, during the continuance of the war, to the enemy, so as to affect the war, to the enemy, so as to affect the war efforts of Pakistan or impair its defence in any manner.

These were essentially temporary measures for the period of the war for the purpose of control and management of the trade or business of enemy firms and protection and administration of enemy properties. During this period, the trade or business of some enemy firms would remain under the control of the controller of Enemy Firms or under the management of some person, appointed by the Government of Pakistan in its discretion, or some enemy property would remain vested in the custodian of Enemy property for the purpose of management and such firms and properties would be returned to the rightful owners after the termination of the war on conclusion of peace.

The control and management of some of the interest of the Indian nations in the firms and companies lying in East Pakistan now Bangladesh,were taken over by the Government of Pakistan after the proclamation of Emergency on 6-9-65. On 2-12-62 a general notification under Rule 182 of the Defence of Pakistan Rules, vesting the custodian of Enemy property, all lands and buildings belonging to the enemy, but not connected with any firm, was published, some of the lands and buildings belonging to individual enemy owners were also taken over as enemy property by the custodian of Enemy property in East Pakistan after the publication of the said notification, but most of such properties were not as a matter of fact, taken over as such.

**Case[[27]](#footnote-28):**

According to the view expressed in the case of Benoy Bhusan an enemy property was vested in the custodian of Enemy property under the relevant provisions of the defence of Pakistan Rules, 1965 for its temporary protection and administration during the state of war subsisting between Indian and Pakistan and was to be restored to the enemy owner on conclusion of peace between the two countries. To view expressed in the case of Rahima Akhtar, however, appears to be that the vesting of the enemy property initially in the custodian of Enemy property and ultimately in the Government of Bangladesh is absolute and the enemy owner lost all of his title and interest in his property after such vesting learned Judges deciding the Rahima Aktar's case took office of the view expressed in Benoy [[28]](#footnote-29)Bhusans's case decided several years ago as to the nature and character of an enemy property and seem to have rejected it as to say least misreading of law.

**iv)The defence of Pakistan Rules, 1965**[[29]](#footnote-30):

There were certain rules framed under the Defence of Pakistan ordinance, 1965 known as defence of Pakistan Rules were framed.

Objective of the defenc of Pakistan Rules, 1965: Under the said Rules, all interests of Indian nationals and the residents in Indian in the firms and companies as well as in the lands and buildings lying in Pakistan became liable to be taken over by the central Government of Pakistan became liable to be taken over or the control Government of Pakistan or the Custodina of Enemy property appointed by it as Enemy firm or Enemy property for control or management of the same. An enemy firm included, by definition, a company incorporated under the companies Act. To give effect to such object, the Government of Pakistan could appoint controller of Enemy Firms under Rules 171 of the Defence of Pakistan Rules, generally or for a particular area , for supervision and securing compliance with the rules relating to enemy firms, or appoint some person under Rule 181 of the Rules for continuing the trade or business of an enemy firm, which has been affected by the state of war, or appoint custodian of enemy property under Rule 182 of the Rules for preventing the payment of any money to an enemy firm and the management of enemy property and vest such property in him.

**v)The Enemy property (Custody of Registration) Order, 1965:**

The Enemy property (custody and Registration) order, 1965 was made under rule 182on 9.9 65 immediately after the making of the rules providing for, inter alia the powers and duties of the custodian appointed under the main said rule 182.

**Objective of the enemy property (custody of registration) order, 1965[[30]](#footnote-31):**

Such powers and duties included the main responsibility of taking such measures by the custodian as he considered necessary and expedient for preserving the property and without prejudice to such responsibility, also to transfer by way of sales or mortgage or otherwise dispose of the property. The general order of vesting in respect of all lends and buildings which were enemy property and not connected with an enemy firm was made under the defence of Pakistan Rule 182 (1) by a notification dated 3.312.65.

**vi)The East Pakistan Enemy Property (Lands and Buildings) Administration and Disposal Order, 1966:**

Though the war between Pakistan and India came to an end after the Tashkhant Declaration, there existed a controversy regarding the Question whether there had been an end of war situation between India and Pakistan. Using that controversy the then East Pakistan Government enacted the East Pakistan Enemy property (Lands and Buildings) Administration and Disposal Order, 1966.

**Objectives of East Pakistan Enemy property (Lands and Buildings) Administration and Disposal order, 1966[[31]](#footnote-32):**

The East Pakistan Enemy property (Lands and Buildings) Administration and Disposal order, 1966 was enacted for the protection and management of enemy property. The whole idea behind these provisions seems to be that during the Emergency which was declared on the commandment of the war between India and Pakistan. The individual enemy owner was not considered suitable or sate for the management of his property or it might be that because of his restriction on his movement or detention in prison an enemy subject was incapable of managing his property properly and such it was necessary to make adequate provisions for the protection and management of such properties.

**Management of such properties[[32]](#footnote-33):**

To carry out the purposes the property was caused to be bested in an officer, who was charged with the responsibility of protecting and managing the properties. Realizing the money or compensation which was due to the enemy enemy owner and keeping proper accounts of the same, so that the interest of the enemy owner might not be substantially affected. The right, title to be extinguished in any way, but was purported to be placed in a state of hibernation, during the continuance of the Emergency. These were essentially temporary measures for the management and protection of property as stated in clause (lll) of paragraph of the Enemy property (Lands and Building) Administration and disposal order, 1966. It was a binding obligation of the managing custodian to maintain a separate account of all receipts and payments respecting each enemy property vested in him in accordance with the provision of clause (v) of paragraph 3, which was subject to periodical audit. The subsisting interest of the enemy owner is highlighted by the provision of clause (iv) of paragraph 3, which authorized the custodian concerned to our expenditure for the maintenance of the individual enemy owner or his family.

**Positive side of this legislation**[[33]](#footnote-34):

The predominant idea behind the taking over management of the enemy property under this order seems to have been the prevention of certain acts which might be prejudicial to the war efforts to the Government of Pakistan and the protection of the said properties during the continuance of the war. It seems to have been never in the contemplation of the Government of the country to acquire for itself any beneficial interest in the poorer ties of any individuals enemy owner but to but to protect and manage the properties, so that the rightful owners could get back the properties on the conclusion of peace.

**vii)The Enemy property Act, 1968:**

The Enemy property Act. 1968 was enacted with effect form the 10 the July, 1968 for the continued vesting of enemy property vested in the custodian of Enemy property for India under the Defense of India Rules, 1962.

Purpose of his Act[[34]](#footnote-35):

The proclamation of Emergency which was declared in 1962 was revoked by India with effect from the 10th January, 1968 and consequently the powers under the Defense of India Act, 1962 and the rules made there under were remain in force only for a period of six months thereafter up to the 10th July, 1968. It having not been possible for the Government of India to come to some agreement with the Government of Pakistan for the administration of the enemy properties laying in the respective countries it become necessary to have fresh legislation with effect from 10th July. 1968.

The purpose to confer fresh legal authority for the continuing administration of the Chinese and Pakistani properties which had already vested in the custodian of Enemy property for Indian and were being administered by such custodian.

This act was enacted for the continued vesting of enemy property vested in the custodian of Enemy property of India under the Defence of India Rules , 1962. For the purpose of such continued vesting, however, the essential requirement is that the property concerned must be a property belonging to on enemy.

**viii)The Enemy property (continuance of Emergency provisions) ordinances, 1969:**

In February 1969 the Emergency which was declared on the commencement of the war was revoked. Then the enemy property law should not remain valid. But the Government of Pakistan promulgated a new ordinance named the Enemy property (continuance of Emergency provision) Ordinance, 1969.

**Purpose of this ordinance[[35]](#footnote-36):**

This ordinance was enacted purporting to continue despite the repeal of Defence of Pakistan ordinance and rules. Under this ordinance the Government was not competent to make any fresh order of vesting of any property in the custodian of Enemy property and that the ordinance No. 1 of 1969 merely authorised the management and administration of the properties which had already vested before the repeal of the Defence of Pakistan ordinance and Rules framed there under.

**ix)The Defence of India Act, 1971:**

The Defence of India Act. 1971 was enacted on the 4th December, 1971.

**Purpose of this Act**:

This Act was enacted when Pakistan committed external aggression against India and as such a citizen of Pakistan might be deemed to have been an enemy and the property belonging to such a person might be considered to be enemy property in India within the meaning of the provision referred to above such aggression.

Under this Act, the property of an Indian national lying in Indian could not be considered to be an enemy property even though the Indian owner of such property became a resident of Pakistan during the state of war between the two countries because under the Indian law he did not lose his nationality nor did he become an enemy within the meaning of the relevant provision of the said law because of the change of his place of residence.

**x)The Bangladesh (Vesting) of property and Assets) Order, 1972 (President's order No. 29 lf 1972):**

In pursuance of the proclamation of Independence read with the provisional constitution of Bangladesh order, 1972, a president's order being the Bangladesh (Vesting of property and Assets) Order, 1972 was enacted on and form the 26th March, 1971.

**Purposes of this order[[36]](#footnote-37):**

All properties and assets which had been vested in Government of Pakistan or any other appointed by such Government or wore vested in or managed by any Boad, constituted by or under law or in the former Government of East Pakistan were deemed to have vested in the Government of Bangladesh under this order.

By virtue of this presidential order, all the enemy properties which were taken over and were being managed by the Government of Bangladesh. This vesting does not imply anything more than the limited rights of custody and management of the properties belonging to some Indian nationals, which the Government of Pakistan or the Pakistan custodian of Enemy property had been exercising under the relevant provisions of the Defence of Pakistan rules and order there under till such properties were returned to the right Indian owners.

Under the President's order No. 29 of the Government of Bangladesh had acquired full title to such properties and was therefore free to deal with them in any matter it thinks fit, particular by power when the power of disposal has been conferred upon it. Under the said presidential order, the Indian properties have vested in it in the same right and to the same extent to which they had vested in the Custodian was the of Enemy property as his designation itself implies was not obviously the fall owner of the said property.

**xi)The Enemy property (continuance of Emergency provisions) (Repeal) Act., 1974**:

In 1971, after liberation of Bangladesh, the Government of Bangladesh passed the Enemy property (continuance of Emergency provisions) (Repeal) Act, 1971, repealing ordinance 1 of 1960. But despite the fact of repealing ordinance 1 of 1969 all enemy properties and firms which were vested with the custodian of enemy property in the then East Pakistan remained vested in the Government of Bangladesh under the banner of vested property.

**Scope of this Act[[37]](#footnote-38):**

Under this Act the Government of Bangladesh has been taking possession of certain properties, of which some Indian national is alleged to be the owner or a 10 owner, by throwing out the persons who are in possession of such properties wither as co-sharers or on the basis of some arrangement with the owner. The hardships and harassments caused to a number of persons, who are Bangladesh citizens and are otherwise in lawful possession of such properties prompt us to analyze closely the provisions of the said Act and to find out there real meaning and import so as to appreciate the legality and propriety of the said actions.

**Purpose of this Act:**

This Act provided for the repeal of ordinance No. 1 of 1969 with the effect form 23-3-74. This Act was enacted for the purpose vesting in the Government of Bangladesh all enemy properties vested in Gestodian of Enemy property, and all enemy times the trade or business of which was-being carried on by any person or Board, appointed or authorized.

**Condition of Vested properties under this Act[[38]](#footnote-39):**

The Government of Bangladesh appears to be acting under an incorrect view that since the properties of the Indians have vested in the Government of Bangladesh under this Act. the Government has acquired full title to such properties and is therefore free to deal with them in any manner it thinks fit. Actually the Government of Bangladesh did not acquire full title to the vested properties. The right of the custodian was the limited right of protection and management of the said properties during the period of the war with transgressing the title of the owner of the said properties and the said two pieces of legislation of Bangladesh did not confer upon the Government of Bangladesh any higher right than that.

**Negative sides of this Act[[39]](#footnote-40):**

The Government of Bangladesh, has not only been managing and administering the Indian properties and times which were being managed by the Pakistani custodian of Enemy property or some Pakistani officer or Board, but has also been taking over possession of such Indian properties as were never taken possession of by the Government of Pakistan or the custodian on the view that it was entitled to take over possession of and administer the Indian properties in the same way as the Government of Pakistan was authorized under the Defence of Pakistan ordinance and Rules.

**Xii)The Vested and Non-resident property (Administration) Act, 1974:**

This Act was enacted for the administration of certain properties vested in the Government or belong in to nonresidents and this Act came in to farce on the 23rd day of March 1974.

**Purpose of this Act[[40]](#footnote-41):**

This Act provided for the constitution of Management committee for the properties which were Purported to be vested.

The properties belonging to a person who is not or has ceased to be a permanent resident of Bangladesh, has acquired foreign nationality and also for management of such properties. It was an expedient to provide for the admonition of certain properties vested in the Government or be longing to non-residents and for matters connected therewith.

**Vested property and Non-resident property under this Act[[41]](#footnote-42):**

The learned Judges have noticed the enactment of Ordinance Nos. IV and of 1974 and subsequent replacement of the two Ordinances by Act Nos. XLV and XLVI in paragraphs 17, 18 and 19 of their judgement.It has already been pointed out that the observation of the learned Judges in paragraph 17 as to vesting of the enemy property in the Government under Ordinance No. IV of 1974 was made without noticing that the said property had already vested in the Government under President's Order No. 29 of 1972. In paragraph 18 of the judgment the learned Judges have referred to the different provisions of Ordinance No. IV of 1974 under which the vested property and non­resident property were to be placed under the charge of a Committee of Management and have observed that under Section 10 of Part V of the said Ordinance for the first time a legislative change has taken place and a non-resident has also been given a right to dispose of his property. The learned Judges appear to have given much importance to this aspect of a non-resident property. Although it has been stated before the above mentioned observation in paragraph 18 that the Vested property and non-resident property had been differently treated in different chapters of Ordinance V of 1974 , but the observation of the learned Judges following there after as quoted above, and th, subsequent reiteration of a non-resident's right of disposal of .His property in different paragraphs referred to above are likely to lead to a confused thinking that a non-resident property was the same as a vested property.

However, the observation of the learned Judge's in paragraph 21 of the judgment that the " process" as to a non-resident's right of disposal ' of his property subject to the approval of the Committee was done away with in 1976 when the Government took power for transfer and disposal of such property shows that the learned Judges had been dealing with vested property and non-resident property on the same footing. As a '. matter of fact a non-resident property was a kind of property which had : \never vested in the Government. Such *a* property was to be vested in the Committee after such Committee had been, constituted under Section 3 of Ordinance No. V of 1974 or Act XLVI of 1974. Such a,' Committee having never been of law, a non-resident was never divested of the right to his property and as such the question of a non-resident for the first time being given a" right to dispose of his property by a legislative change, as mentioned In paragraph 18 of the judgment or that of the Government taking power for transfer and disposal of such property after the repeal of Act XLVI of 1974 as mentioned in paragraph 21 of the judgment does not at all arise.

**Comparative Study of Several Judgments of the Appellate Division and High Court Division of the Supreme Court[[42]](#footnote-43):**

For proper appreciation of the true import of the enemy property laws as judicially interpreted, it is necessary to make a comparative study of the several decisions of the Appellate Division of the Supreme Court dealing with such laws.

The Appellate Division of the Supreme Court appears to have considered certain questions relating to the application of the enemy property laws in the case of ***M/s. Dulichand Omrao Lal Vs. Bangladesh, (1981*)[[43]](#footnote-44)**, in which the said court has expressed a dissenting view against a decision given in a earlier judgment of the said Court in the case of ***Bangladesh Enemy Property Management Board Vs. Md. Abdul Majid, (1975***)[[44]](#footnote-45) to which reference has already been made and has also given expression lo certain other views which, it is respectfully stated, have given rise to certain anomalies and as such require reconsideration.

The question on which he dissenting view has been expressed is as to when the State of War which commenced between India and Pakistan on 6.9.1965 came to an end. In the earlier case, the Appellate Division after referring to the ***Halsbury's*** Laws of England, a decision of the Supreme Court of Pakistan and another of the High Court of East Pakistan expressed its view on the question in the following words:

"It therefore appears that the question/whether the state of war between India and Pakistan had come to an end on the date of the order of vesting in the instant case, depended on the question whether an announcement to that effect had been made by the then Government of Pakistan and since admittedly no such announcement had been made, no presumption that the state of war had ended can be drawn *as* was sought to be done by the learned Counsel for the respondent, for the mere fact that the emergency was withdrawn. On the contrary, it appears that even after withdrawal of the proclamation of emergency the legislative and executive authorities of Pakistan continued to act on the presumption that the state of war was still continuing."[[45]](#footnote-46)

The learned Judges deciding the case ***Dulichand Omrao Lal***[[46]](#footnote-47)have taken notice of the various enemy property legislations enacted from time to time and have recited them seriatim; it is respectfully stated, more or less in a mechanical manner without any judicial appraisement of the said laws as to their legal effect, almost in the same way, as has been subsequently done by the learned Judges of the same court in the later case of ***Rahima Akhtar[[47]](#footnote-48)***, which has been referred to and discussed above. As to the continuance of Ordinance I of 1969 after the emergence of sovereign independent Bangladesh as a valid piece of legislation, similar view as in the case of ***Rahima Akhtar*** has been expressed in the case of ***Dulichand Omrao Lal***, in the following words, it is respectfully stated, without appreciating the true import of Laws Continuance Enforcement Order, 1971 and the consequence arising from the promulgation of President's Order 29 of 1972:

"A combined reading of Proclamation of Independence, Laws Continuance Enforcement Order, the Constitution of Bangladesh. President's Order No. 29 of 1978, President's Order No. 48 of 1972 and Act XLV of 1974 as amended by Act XCIII of 1976 clearly indicates that Ordinance 1 of 1969 continued as a valid piece of legislation which wasrepealed by Act XLVof 1974”.[[48]](#footnote-49)

It is pointed out, it is respectfully stated, that such a view is not consistent with the correct interpretation of the Laws Continuance Enforcement Order, 1971 and the legal effect arising from the promulgation of President's Order 29 of 1972. The ultimate conclusive decision by the learned Judges as to the character of the Vested Property and the nature of the right of the owner of such property is, however, very positive and the said pronouncement, as quoted below, it is respectfully stated, appears to have provided a correct guideline :

“Upon a true construction of the laws aforesaid, we get that all rights in such property vest in the Government of Bangladesh and the title of the owner of the properly remains subject to the over-riding power of the Government or in other words the title of the owner remainseclipsed or suspended so long as the property remains vested in the Government. The consequence is that the Government has all the power of management and disposal of the properties and also the power to release those properties."[[49]](#footnote-50)

This view of the learned Judges as to the subsistence of the title of the enemy owner in the vested property in an eclipsed or suspended form was followed by the Bench of the Appellate Division comprising all the five learned Judges of the Division including the three learned Judges subscribing later to the judgment in the case of Rahima Akhtar, in the case of ***Goutam Ranjan Sen and others Vs. Bangladesh***, with the following observation:

"It is true that the property having become an enemy property the-will executed by the testator became inoperative and so his title as well as the title of the legatee under the will became eclipsed and must remain suspended so long the enemy character which has now been transformed into vested property shall continue. So long as this state of affairs continue the plaintiff cannot get any relief, but then since the title has become eclipsed and not extinguished, the suit cannot be dismissed either."[[50]](#footnote-51)

The positive opinion expressed in the above two judgments of the Appellate Division as to the true nature and character of the vested enemy property is in accord with the view expressed in the earlier case of ***Benoy Bhusan***, but, it is respectfully stated, the learned Judges deciding the case of ***Rahima Akhtar,*** three out of four of whom were the consenting members of the five Judges Bench of the Appellate Division deciding the aforesaid case of ***Goutam Ranjan Sen***, did not take into their consideration the above quoted views as expressed in the judgments of the two Appellate Division cases referred to above before they thought it proper to express their contradictory view on the said question in the judgment of the case of ***Rahima Akhtar***.

There is another observation in the judgment in the case of ***Dulichand Omrao LaI***, which standing by itself, it is respectfully submitted, has created a very anomalous situation. The learned Judges in the said case, after referring to their view, as expressed in the said case, that the State of War between India and Pakistan came to an end on the revocation of Proclamation of Emergency on 16.2.1969 , have made the following observation:

"Interpreted in this way there cannot be any question of supposed continuation of stale of war or military operation after 16th February, 1969. If any action is sought to be taken with regard to any property after 16.2.1969 as enemy property, it is to be seen whether the property sought to be taken over as enemy property was so between 6.9.65 and 16.2.69, the promulgation and revocation of proclamation of Emergency. H at any time during the currency of the Emergency with the Defence of Pakistan Ordinance and the Rules remaining in full force, the property comes within the definition of 'enemy property", it continues to remain so, even though actual steps might not have been taken by the appropriate authority to take it over, and so the authority whether the Custodian or Additional Custodian or Assistant Custodian or Board, may, for its management or control and vesting or transfer either under Rule 181 or 182 of the Defence of Pakistan Rules take action. It is to be observed that an individual or a property becomes an 'Enemy' or 'Enemy Property by operation of law on the fulfillment of the conditions laid down by the relevant Defence of Pakistan Rules and no further formal declaration by an officer or authority is needed and once a property comes within the definition of 'Enemy Property' within the period of 6.9.65 lo 16.2.69 subsequent taking over such property is permissible and not otherwise."[[51]](#footnote-52)

Careful perusal of the provisions of the Defence of Pakistan Rule 182 along with those of the **Enemy Property (Custody and Registration) Order**, 1965 and East Pakistan Enemy Property (Lands and Buildings) Administration and Disposal Order, 1966 will make the position absolutely clear. The prescribed Custodian acquired the right to take over an enemy property only if there had been a previous order of Vesting of an enemy property in the prescribed Custodian under the Defence of Pakistan Rule 182(1) (b). It was only in respect of a vested enemy property that the right to take over such a property could accrue and in the absence of such an order of vesting by the authority concerned during the continuance of the State of War, the Custodian could not exercise the power of taking over ‘the property even if the said property was an enemy property in all respects. Such a property ceased to be an enemy property on the termination of the war either on 16.2.1969, as held in *33 DLR (AD) 30* or on 25.3.71, as held in *27 DLR (AD) 52*. As there has been no order of vesting of the lands and buildings, not connected with an enemy firm, 'after the omnibus notification of vesting dated the 3rd December, 1965, the Custodian of Enemy Property or the Government of Bangladesh did never acquire any authority to take over any such lands and buildings which became enemy property after the said date.

It may, however, be pointed out that as a matter of fact, the administrative department of the Government of Bangladesh dealing with the vested property seldom applies its mind to the question as to whether or not the owner or the alleged enemy or vested property assumed the character of enemy before or after the latest order of vesting dated 3.12.1965, so far as the lands and buildings not connected with enemy firm are concerned. There having been no other order of vesting of enemy property not connected with an enemy Firm subsequent to the aforesaid order of 3rd December, 1965, there was no vesting of any property in the Custodian of Enemy Property after the said date, even if the owner of any property had gone to India and settled there after the said date during the continuance of the State of War between India and Pakistan in this part of the country, now Bangladesh. Such property had of course become an enemy property in the Custodian of Enemy Property under the Defence of Pakistan Rule 182 (1) the Custodian did not acquire any jurisdiction or right to take, over such property, even though it was an enemy property and continued to be so during the continuance of the said State of War In case of any person going to India and settling there after the termination of the State of War between India and Pakistan respecting the territory now Bangladesh the question of his property in Bangladesh becoming an enemy property does not arise.

The above-mentioned Department of Bangladesh Government dealing with the vested properties have been declaring and taking over most unlawfully and in a high handed manner any number of properties as enemy or vested properties on the plea that one or some of the co-sharers of the Bangladeshi owners had gone to India, irrespective of the point of time when such co-sharer or co-sharers are supposed to have gone there.

The learned Judge of the High Court Division appears to have clearly explained this provision of law relating to vested property in the judgment of the case referred to above in the following manner:

"The real criterion for determination whether a particular property is a vested property or not, therefore, seems to be whether it was an enemy property within the meaning of the term as defined in Rule 169 (4) of theDefence of Pakistan Rules on 3rd December, 1965 and not on a date subsequent there to , as it is only those properties which had vested in the Deputy Custodian of Enemy Property by virtue of the notification of 3rd December, 1965 and had subsequently vested in the Government of Bangladesh either under President's Order No. 29 of 1972 as amended under President's Order No. 134 of 1972 or under Act XLV of 1974. There having been no subsequent order of vesting under Rule 182 (1) (b) of the Defence of Pakistan Rule, 1965 with respect to enemy properties which were not connected with any enemy firm, the properties which might have become enemy properties after 3rd December, 1965 did not get any scope for vesting in the Custodian of Enemy Property or any other authority. The said properties have naturally ceased to have the character of enemy property on the cessation of the State of War between India and Pakistan in respect of the territory comprised in Bangladesh.”[[52]](#footnote-53)

The above-mentioned Government Department dealing with the Vested Properties appears to have a strong attachment for the offices of the Custodian, Deputy Custodian , Assistant Custodian of Enemy Property created by the Government of Pakistan under the Defence of Pakistan Rules and it has been using the names of such offices in respect of all sorts of proceedings regaling to vested property in an illegal and irregular manner, despite the fact that the said offices have ceased to exist on the emergence of the sovereign state of Bangladesh and cessation of Ordinance 1 of 1969 and that all properties vested in lieu Custodian of Enemy Property and such other Pakistani Officers Vested in the Government of Bangladesh under President's Order No. 49 of 1972. That the Government of Bangladesh alone is the party interested in a proceeding relating to vested property since the emergence of Bangladesh and such a proceeding is in fructuous and of no legal consequence in its absence has been clearly laid down by Appellate Division in the case of ***Bangladesh Enemy Property Management Board Vs. Md. Abdul Majid. 27 DLR (AD) 52.***

**Comprehensive Review of all the Decisions of the then Supreme Court and the Appellate Division of the Supreme Court Relating to Enemy Property Is imperative and Urgent[[53]](#footnote-54):**

In order to realize a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens, as has been laid down in the preamble of the Constitution, as the fundamental aim of the Constitution the Supreme Court comprising. Appellate and High Court Divisions plays a very important role by ensuring that the law declared by it is certain, uniform and general. In legal philosophy, the decisions of the highest judiciary of the country, as precedents, act as an important source of law and Article III of the Constitution has given constitutional sanction to this principle by providing that the law declared by the Appellate (division shall be binding on the High Court Division and the law declared by either Division shall' be binding on all Courts Subordinate to it. In that view of the matter, it does not seem to be expedient and proper for the Appellate Division of the Supreme Court to express an opinion on any question of law in an indefinite and uncertain manner. In case of any difference of opinion on a question of law as declared in an earlier decision of the same Court if the Court feels that to enforce the rule of law and in the interests of the public good it is necessary to revise the earlier decision, it would be appropriate for the Court to express such contrary view in a definite and certain form alter proper review of the earlier decision. There seems to be no specific provision for review in the Constitution in such cases. The provision of review as laid down in Article 105 of the Constitution does not appear to be applicable to a case of difference of opinion with an earlier decision of the Court on a question of law. In such a case it is the inherent jurisdiction of the highest Judiciary to reconsider and review its own decision and revise the same, which may be exercised.

But such a jurisdiction is not to be exercised by the Appellate Division of the Supreme Court by expressing arbitrary dissent against the view taken in an earlier judgment of the same Court in a casual manner. The question of review and revision of a view on a point of law as expressed in a earlier judgment should be raised in specific terms in a later case before the Appellate Division of the Supreme Court so as to make the question of property or correctness of the said view is made clear to the members of the Bench as well as of the Bar for the proper appreciation of the said question and the correct law in question should be laid down in precise terms after such review and revision. For the sake of maintaining certainty and continuity of the law as administered in the court of the country, however, there should be certain reasonable restrictions on the exercise of such jurisdiction. A seven Judge Bench of the Supreme Court of India has given expression to this principle in the case of ***The Keshav Mills Company Limited Vs. The Commissioner of Income Tax, Bombay, A. I. R. 1965*** Supreme Court to the following effect:

"In reviewing and revising earlier decision, the Court should ask itselfwhether in the interests of the public good or for other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When the court decides a question of law, its decisions are, under Article 141, binding in all courts in the territory of India, and so it must be the constant endeavor and concern of the court to introduce and maintain an element of certainty and continuity in the inter predation of the law in the country. Frequent exercise by this court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the court to be more reasonable may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct its error; but before a previous decision pronounced to be plainly erroneous, the court must be satisfied with a lair amount of unanimity that a revision of the said view is fully justified."

It will be apparent from the discussion made above that some contradictory or dissenting views on questions of law have been expressed by the Appellate Division of the Supreme Court against the view of the same court as expressed in an earlier decision of the same court, sometimes without taking notice at all of such contradictory view and sometimes after taking notice of the same but without proper review of it in an appropriate manner. The legislative short comings and defects of the enemy property laws and the administrative mis­application of such laws by the concerned department of the Government of Bangladesh, as had been pointed out in the above mention article published in 30 DLR (Journal) 47, having not been brought to the notice of the learned Judges of the Supreme Court, Appellate or High Court Division, the legal position as to enemy property, it is respectfully slated, has not been put on the right track judicially and the various illegal and irregular practices by the Government Administration relating to enemy property have not been rectified or regularized. The learned Judges of the Appellate Division of the Supreme Court deciding the case of Rahima Akhtar having expressed their dissent from the view taken by the same court in the earlier case of ***Benoy Bhusan*** as to the nature and character of a vested property without a proper review of the said judgment and without taking notice of the judgments passed by the Appellate Division in the cases of ***M/s. Dulichand Omrao Lal and Goutam Ranjan Sen***, in which the view similar to that in the case of ***Benoy Bhusan*** as to the nature and character of enemy property, had been expressed, the said judgment passed in the case of Rahima Akhtar, it is respectfully stated, has instead of putting the administration of the Vested Enemy Property in Order, has created more contusion in regard to such administration. The later decision of the Appellate Division in the case of ***Priyatosh Talukder***, has merely followed the decision given in the case of Rahima Akhtar without any application of the judicial mind to the contradictory views on several questions of law as expressed in some earlier cases of the Appellate Division referred to above. For the purpose of settling down the law relating to enemy property in a definite and certain manner, a comprehensive review of all the decisions of the Appellate Division of the Supreme Court relating to enemy property seems to be imperative and urgent. Such a review is likely to remove the cloud of uncertainty as to the true import of the enemy property laws and put a stop to the frequent illegal and irregular executive actions relating to the supposed vested properties leading to the great distress and harassment of a large section of the people.

**Related cases with misapplication and abuse of the concerned laws :-**

There are various cases which decisions were held for the enemy property later on vested property regarding the concerned laws of enemy property both in the Pakistan and later on in Bangladesh . Following are the analysis of those case decisions :

1. ***M/S Dulichand Omraolal vs. Bangladesh[[54]](#footnote-55)***

Issue :Meaning of enemy property as given in Rule 161 , clause (a) and of enemy property as given Rule 169 (1)(a) .

Held the following postulated rules:

Definition of enemy property as given in the Rule 161(4) sought to be continued by section 02 of Ordinance 1 of 1969 need to be looked into .

Enemy has been defined under clause (a) to mean a state at war with or engaged in military operation against Pakistan or any individual residing in enemy subject has been defined in Rule 161 (1)(a) as any individual who possesses the nationality of another state at war with or engaged in military operation against Pakistan or having possessed nationality at any time has lost it without acquiring another nationality . Enemy property has been defined to mean any property for the time being on behalf of an enemy as defined in Rule 161 , an enemy subject or enemy firm[[55]](#footnote-56) .

1. ***Benoy BhusanBardhan vs. The Sub-divisional , Brahmaanbaria and others[[56]](#footnote-57)***

Issue: The purpose of the vesting of the enemy property meaning the **Defense of Pakistan Rules , 1965** Rule 182.

Held the prescribed purposes as such : The main purposes of such vesting as appears from it the payment of any money to any enemy firm and collect the same and to preserve the **Enemy Property (Custody and Registration )Order , 1965** which was made by the Central Government of Pakistan in exercise of the powers conferred by the sub-rule 182 .

It was also established the right of transfer, meaning vesting the enemy property in the Custodian of that property is to exercised when necessary for the purposes of substantial preservation of the enemy property .

1. ***Rahima Akhter vs. A.K. Bose[[57]](#footnote-58)***

Issue: Section 02 of the **Bangladesh (vesting of Property and Assets)Order** 1972. Property vested in the Custodian has vested in Government by the **Presidential Order No.29 of 1972** replacing the Custodian.

Held the principle of the Order :

**Presidential Order No.29 of 1972** provided that all properties and assets which were vested in the government of Pakistan or any officer appointed by such Government or were vested in or manage by the board constituted by or under any law or in the former government of East Pakistan shall be deemed to have been vested in the Government of Bangladesh on and from the date of 26th March of 1971.

The property thus vested in the custodian enemy property under the **Defense of Pakistan Rules 1965** had now vested by operation of law in the Government of Bangladesh[[58]](#footnote-59) .

* **Certain lapses in the judgement of the *Rahima Akthe*r case :-**

The judgement of ***Rahima Akther case*** , while referring to the judgement in ***Benoy Bhusan’s case*** recites the contention one of the learned lawyers appearing in the later case to the effect that:

“though in 1974 the legislature passed namely Ordinance no. iv of 1974 and Ordinance no. v of 1974 , subsequently the government acquired the power for disposal by the Acts of 92 and 93 of 1974 and the evolution of law was not traced in the case of ***Benoy Bhusan case*** and as such the decision is not good law .”

It may be mentioned that **Ordinance nos. xcii and xciii of 1976** have been mistakenly stated by the learned lawyer as quoted by the learned Judges to be **Acts xcii and xciii of 1976** . The learned Judges also appear to have endorsed the above mentioned contention of the learned lawyers in the following observation :

“ The subsequent legislations were not noticed in the case of ***Benoy Bhusan*** . Neither Ordinance no.1 of 1969 was noticed which continued Rule 182 nor **Presidential Order no. 29 of 1972** was noticed which vested such property in the government . Further the Ordinance no. iv of 1974 and v of 1974 which were repealed and re-enacted being Act nos. 45 and 46 of 1974 when a non-resident could dispose of his property with the approval of the Committee nor Order nos. 92 and 93 of 1976 which repealed Act 45 and 46 of 1974 were considered in Benoy Bhusan case .”

In this observation also , there is an accidental mistake of fact . Although **Act of 46 of 1974** was repealed, but **Act 45 of 1974** was not repealed . It was amended by **Ordinance no.xciii of 1976** by the addition of some words and the said amended Act is still in force today.

But the learned Judges themselves have of course dealt with the subsequent development of the laws relating to enemy property in the judgement of ***Rahima Akther case*** , but unfortunately it has been done rather in a mechanical manner without proper appraisement of the said laws as is required of Supreme Court of a country charged with the responsibility of laying down the correct law for the entire country .

This aspect of the matter will be dealt with after the examination of the dissenting comments of the learned Judges in the judgement of the ***Rahima Akther case*** about the decision in the ***Benoy Bhusan case*** as to the interpretation of the relevant enemy property as were in force in the East Pakistan .

* **Critical evaluation of *Benoy and Rahima Akther*** ***case*:-**

Contradictory views have been expressed as to the nature and the character of the enemy property or vested property . According to the view in the case of ***Benoy case*** , an enemy property was vested in the Custodian in the enemy property under the relevant provision of the **Defense of Pakistan Rules , 1965** for its temporary protection and administration during the state of war subsisting between the two countries .

In the view in the ***Rahima Akther case*** , it is appeared to be that the vesting of the enemy property initially in the Custodian in the enemy property and ultimately in the Government of Bangladesh is the absolute and the enemy owner lost all of his title and the interest concerning the property after such vesting .

So , after dissecting it can be said that with the decisions of these case there was no correct exposition of the laws concerning the enemy property.

1. ***Goutam Ranjan Sen and Others vs. Bangladesh[[59]](#footnote-60)***

Issue: A property being property can not be dealt with by execution of a will. The property being but the enemy property the title to the property is not extinguished but only eclipsed . So, a suit for that property shall not be dismissed but stayed until the time remains a vested property .

Held : It is true that the property having become enemy property the same will be executed by the testator become inoperative and so his title as well as the title of the legatee under the will became eclipsed and must remain suspended so long the enemy character of the property which has now being vested property shall continue . So long as the state of affairs continues , the plaintiff cannot get any relief but then since the title has become eclipsed and not extinguished the suit cannot be dismissed either .

* **Citical analysis of *Goutam and M/S Dulichand case with the Rahima Akther case :***

In the ***Goutam and M/S Dulichand*** *case* it was stressed the contrary view as to substance of the title of the enemy property , though in an eclipsed or suspended form and to the latter of which there of the four learned judges deciding in the***Rahima Akther*** *case* were subscribing parties . After the consideration of the various views expressed in the *case of* ***Rahima Akther*** case in the light of the relevant laws , the decisions in the other cases will b considered in their correct perspectives.

1. ***Bangladesh Enemy Property Management vs. Md. Abdul Majid [[60]](#footnote-61)***

Issue: Rules 182 , 161, and 162 . Authority to vest enemy property in the Custodian remains in tact even after 16.02.1969. Meaning of the expression enemy property , enemy subject and enemy firm under **Ordnance no.01 of 1069**.

Held: It is true that the Defense of Pakistan Order caused to have effected from 16.02.1969 but the section of **Order No. 1 of 1969** which was promalgated on the date , provided that notwithstanding the cessation of the effect of the Defense of Pakistan Ordinance , the Defense of Pakistan Rules mentioned in the schedule of the said Ordinance no.1 of 1969 , shall continue in force and shall have effect subject to the notification therein.

It was also held that power to order vesting enemy property continued as before .

6.***Haji Azmal vs. Singleton Binda***

Issue : The Laws Continues Enforcement Order ,1971 with the scope and extent of the Defense of Pakistan Rules , 1965 .

It is seemed from this case that a mistake on the part of the Bangladesh to conceive that the Ordinance which was enacted by the Pakistani Government on the Basis that there was a war between India and Pakistan and that India and Indians were the enemies , could continue as the laws of Bangladesh under the said Order of 1971 as the effect of continuing the provisions of the Ordinance in Bangladesh was to continue the war between India and Pakistan as a war between India and Bangladesh and to make India and the Indians the enemy of Bangladesh.

***7.Priyatosh Talukdar vs. Assistant Custodian[[61]](#footnote-62)***

Issue : Vesting when completed , cannot be otherwise qualified or limited .

Held: Vesting when completed , cannot be considered to be otherwise qualified or limited without any limitation or qualification of the expression vest in the Act itself , so it cannot be pronounced to be partial and not absolute .

So in the above mentioned cases the laws concerning the enemy property in Pakistan and in Bangladesh they are contradictory each other . Through these cases the misapplication and abuses of the concerned laws regarding the enemy property are enlightened.

***THE CAUSES BEHIND RESTORATION OF THE VESTED PROPERTY ACT IN 2001***

On 9 April 2001, the Parliament of Bangladesh passed the Restoration Vested Properties Act, 2001. In December 1998, the Government had set up a Parliamentary Sub-Committee under the Ministry of Land, to repeal the Vested Property Act and restore vested properties to original owners. There are so many reasons for repealing Vested Property Act and restoring properties to the original owners.

*The Rise of Bangladesh and the Enemy Property Act:*

"After a long struggle and a bloody war of Independence the rise of Bangladesh naturally conveyed the message to the democratic and progressive forces that the communally promulgated Enemy Property Act would not continue. The Mujib Nagar Declaration which speaks to end laws of this kind found reflection in our original constitution of 1972. But it was a classic irony that newly born Bangladesh saw the continuation of two mutually opposed things simultaneously. One a secular democratic constitution and the other the continuance of the Enemy Property Act though in a new name".[[62]](#footnote-63)

"Apart from comprehensive review of the contradictory judgements of highest judiciary of the country it appears to be a bounden duty of the ruling authority of the country to take executive steps with immediate effect for the repeal of Act XLV of 1974 under the cover of which a large number of illegal acts are being committed at the instance of the selfish vested interests in collusion with the corrupt bureaucratic elements of the Government."[[63]](#footnote-64)

"Bangladesh’s Vested Property Act (VPA) is a racist law. It provides the government—which really means the corrupt politicians in the ruling party—with the power to seize the homes and farms of innocent citizens and distribute them as graft to their cronies. The VPA has its roots in Pakistan’s Enemy Property Act. After another embarrassing defeat at Indian hands in 1965, the Pakistani government passed a retaliatory law that allowed it to declare citizens (read Hindu citizens) enemies and confiscate their property. The Pakistani law was openly anti-Hindu, which matched the national rhetoric at the time and national sentiment most of the time.   
 "When Bangladesh passed the VPA three years after its independence, it had to be more circumspect in its description, even though the law was worded to make it clear that the VPA’s substance was no different from its Pakistani forebear. After all, the Awami League politicians who passed the VPA then and now tries to maintain a fiction that they care about Bangladesh’s non-Muslim minorities. Good politics, you know. Moreover, most people still appreciated the fact that Bangladeshi independence was possible about only with the help of Indian arms. But the effect was the same. While the act has been used against other religious and ethnic minorities, Hindus have been the real targets. Professor Abul Barkat of Dhaka University undertook the most authoritative study of the VPA and concluded that by 1997, 40 percent of Hindu families in Bangladesh had been affected by it and more than half of all Hindu-owned land already had been confiscated under the act. Much more land and many more Hindus have been affected in the eleven years since then. So, there is no doubt that the VPA is a critical ingredient in ethnic cleansing. The fact that the percent of Hindus in Bangladesh has been cut in half concurrent with the act is evidence of those even more sinister, ethnic cleansing, motives behind the law."[[64]](#footnote-65) The sufferings of minorities in Bangladesh have multiple dimensions such as economic, political, constitutional and socio-cultural. Their sufferings have multiplied due to the promulgation to the promulgation of the various black ordinances and laws the last fifty years during both Pakistan and Bangladesh period. In Last March 1996 Professor Professor Abul Barkat and Shafiq Uzzaman showed in a seminar that the approximate number of families victimized under the enemy property act. is 10, 48, 390 and the total area of land lost is not less than10 lakh acres.

A report by Daily Sangbad on 21st March 1977 shows that according to government census 7, 02,335 acres of cultivable land and 22,835 dueling houses are enlisted as enemy property, Another investigation shows that since 1948 75% of the land of religious minorities was been usurped, the same has been done on indigenous and tribal peoples' property."[[65]](#footnote-66) "In 1999, about 29 cases of forceful occupation of land and property of the Hindu community have been reported in different newspapers. These include their homesteads, farmlands and religious places. Influential political forces and their goons have also occupied many of the properties listed as vested property. In 1999 in the Sunamgonj district out of 21,000 acres of vested property land 16,000 acres have been illegally occupied (Bhorer Kagoj, 17.5.1999); likewise in the Mymensingh district out of 29,722 acres of vested property land, 28,000 acres of land and 300 houses (vested property) have been occupied by one influential person (Bhorer Kagoj, 12.5.1999). People with political backgrounds commit the above - either as members of political parties or as supporters. It matters little if the party is in power or in opposition. Statistics as cited in the ASK Human Rights Report (p.193-194) show that in 1995, 72 per cent of all vested property was acquired by members of Bangladesh National Party (BNP); and in 1998, 44 per cent was acquired by the Awami League and 32 per cent by the BNP. "[[66]](#footnote-67) "The ruling Awami League has passed the Bill in haste after it was tabled in the Parliament only on 29 March 2001. It was referred to the Parliamentary Standing Committee on Ministry of Land for cursory scrutiny. As general elections approach, the ruling Awami League is only too aware that the votes of the Hindu minority could be decisive in a closely contested election. The law is an exercise in half-hearted political tokenism. The remedial nature of the Act also confirms the reports of wrongdoing South Asia Human Rights Documentation Centre (SAHRDC) raised last year at the United Nations Commission on Human Rights and concerns expressed by the Special Reporter on Religious Intolerance after his visit to Bangladesh in May 2000".[[67]](#footnote-68)

So, above discussions indicates that, the reasons behind the repeal and restoring the VESTED PROPERTY ACT are:

1. political tokenism that play important role to get support of the minor community,
2. the Act paved the way to the corrupt political leaders and public officials to take over the property of the minor community illegally,
3. even some new properties or certain shares of such properties declared as vested property,
4. by this Act main sufferers were the citizen of Bangladesh whose property were taken over by the name of the said Act illegally,
5. to set free the minor community from being the doll of the political leaders,
6. to remove remorse of the minor community,
7. to remove rumours about minor community that spread over the world,
8. to make sure the human rights,
9. to establish rule of law and democracy,
10. to secure and implement the sprit of the liberation war.

**REPEAL OF ENEMY PROPERTY (CONTINUANCE OF EMERGENCY PROVISIONS) ACT, 1974 AND RESTORATION OF ALL VESTED PROPERTIES TO THE RIGHTFUL OWNERS[[68]](#footnote-69):**

After the emergence of sovereign independent Bangladesh by defeating the army of Pakistan in the war of liberation with the help and assistance of the Government and People of India and particularly after the execution of Friendship Treaty between Bangladesh and India, there cannot be in any view of the matter a State of War between India and Bangladesh and no Indian property can be taken over as enemy or vested property on behalf of the Government of Bangladesh. It is really incomprehensible that during this period since the elimination of Pakistan and the emergence of Bangladesh in its stead in this part of the country any number of properties have been declared as enemy or vested properties continually causing great distress to a large section of people, who are all citizens of Bangladesh, because all those properties, though technically were of Indian ownership are actually being possessed and enjoyed by Bangladeshi citizens. Every day, some new properties, certain shares of such properties were being declared as enemy or vested properties and put under possession of certain persons called lessees under the Government of Bangladesh. Such actions were being taken under the cover of Act of 1974 were absolutely without any legal validity.

In order to put a stop to such illegal maladministration, it was imperative that the said Act of 1974 should be immediately repealed and the properties which had been taken over either during the days of Pakistan or of Bangladesh should be handed over back to the rightful owner or those from whom such properties had been taken over. In this context, it was the urge of time that the Restoration of Vested Properties Act is to be enacted.

**REPEAL OF ENEMY PROPERTY (CONTINUANCE OF EMERGENCY PROVISIONS) ACT, 1974:**

During Bangladesh’s first three decades of independence many politicians made empty promise to repeal the Act of 1974. The first government of Sheikh Mujibur Rahman vowed to repeal any laws that contradicted the values of the newly liberated country; the Enemy Property Act contravened non-communal provisions of the new constitution. But instead of being repealed it was sustained under a new name in 1974.

Finally in the run-up to the 2001 election Sheikh Hasina and the Awami League succeeded in a drive to repeal the Act. The vested Properties Return Act (2001) was implemented in an effort to make amends for the confiscated property. However, little progress has been made in returning or compensating lost property under the Khaleda Zia government from 2001-2006. In 2008, HRCBM (Human Rights Congress for Bangladesh Minorities) filed a writ before Bangladesh Supreme Court under Article 102 of the Constitution[[69]](#footnote-70).

**INTERNATIONAL CONCERN:**

Congressman Crowley of the Bangladesh-American caucus had called for the repeal of the Act, as had several Bangladeshi politicians and human rights activists.

An international conference organized by several Hindu activist groups held in London on 16 June 2005 was addressed by, among others, Lord Avebury of the British House of Lords and called for repeal of the Act.

The law has been highlighted by the U. S. Department of State and Amnesty International as a major human rights concern that has contributed to internal displacement, emigration and disenfranchisement.

**Restoration of vested property Act, 2001:**

On 9 April 2001, the Parliament of Bangladesh passed the Restoration of Vested Properties Act 2001. In December 1998, the Government had set up a Parliamentary Sub­committee under the Ministry of Land, to repeal the Vested Property Act and restore vested properties to original owners. The Draft Bill came under severe criticism by civil society.

The ruling Awami League has passed the Bill, in haste after it was tabled in the Parliament only on 29 March 2001. It was referred to the Parliamentary Standing Committee on Ministry of Land for cursory scrutiny. As general elections approach, the ruling Awami League is only too aware that the votes of the Hindu minority could be decisive in a closely contested election. The law is an exercise in half-hearted political tokenism. The remedial nature of the Act also confirms the reports of wrongdoing South Asia Human Rights Documentation Centre (SAHRDC) raised last year at the United Nations Commission on Human Rights and concerns expressed by the Special Rapporteur on Religious Intolerance after his visit to Bangladesh in May 2000[[70]](#footnote-71).

According to the Association for Land Reform and Development (ALRD), an NGO based in Dhaka, the estimated total Hindu households affected has been 1,048,390, and the estimated area of dispossessed land has totaled 1.05 million acres. About 30 percent-10 out of every 34 of the Hindu households (including those that are categorized as missing households) have been the victims of RPAYVPA, These estimates, although based on some debatable assumptions, should be considered as sufficiently indicative of the gravity of the law's impact.

South Asia Human Rights Documentation Centre submitted a written statement oil the issue contained in document E/CN.4/2000/NG014 at the 56th Session of the Commission on Human Rights in Geneva in March-April 2000. The Government of Bangladesh has .now submitted its Comments on the statement by the South Asia human Rights Documentation Centre (SAHRDC) contained in document E.CN.4/2001/18 at the ongoing 57th Session of the Commission on Human Rights in Geneva.

The Government of Bangladesh uses language such as baseless, seemingly tondentious factually inaccurate" to describe SAHRDCs written statement. SAHRDC ts proud" of its credibility including its reputation for reliable and objective human rights documentation. Facts are sacred while comments are free. In our considered view, a closer study of our written statement would have provided for ft more constructive debate. If the Government of Bangladesh's reply to SAlRDC's written statement is any indication, the status of the Restoration of Vested Properties Act, 2001 is a serious cause for worry.

The Government of Bangladesh in its reply stated "there is no legally identified enemies of Bangladesh, legally or otherwise. However, "legally identified enemies" are implicit in the very title of the Enemy Properties Act passed by the then Government of Pakistan and in the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 of the Government of Bangladesh.

Consider also the following statement of the United Nations Special Rapporteur on Religious Intolerance, Mr. Abdelfattah Amor, in his Interim Report to the Millennium Session of the General Assembly after his visit to Bangladesh from 15-2^1 May 2000; "After Bangladesh won independence from Pakistan, the President of Bangladesh, in his Order No, 29 of 1972, changed the nomenclature to Vested Property Act, without altering the content of the law[[71]](#footnote-72).

The UN Special Rapporteur on Religious Intolerance has also confirmed this process of appropriation of (he lands of the Hindus. The UN Special Rapporteur referred to "the insecurity fell by Hindus, due partly to the Vested Property Act, which was used for the illegal appropriation of their land, especially by Mafia-like groups enjoying political Protection[[72]](#footnote-73).

In its written statement, SAHRDC referred to a specific case: The properly belonging to 61 Hindu minority families in Ashefpur mid Chawkjara village of 14 Ashefpur Union and in Ganda Gram of 10 Sultanganj Union under Bogra Sadar Police station were identified as Enemy Properties under the direction of the Law Ministry of Bangladesh Memo No. Bhu, Ma/7-S/Arpita (Nitimala)/117/42 (Angsha)/638 (61) dated -1 November 1993.

In this case, the Government of Bangladesh commented: The affected persons may also seek redress in the courts of Bangladesh". This is little solace especially when the wheels of justice .move so slowly in Bangladesh. In fact, the Honourable Latifur' Rahman, Chief Justice of the Supreme Court of Bangladesh, has repeatedly, openly criticized the slow disposal and heavy backlog of cases. (For example, Lalifur Rahman, Democracy Cannot *Work without Rule of Law)[[73]](#footnote-74)*

In a recent editorial, the former foreign Minister and Ambassador of Bangladesh, Mr. Man/our A Choudhury, applauded the Chief Justice's candour: "The. Chief Justice touched the heart of the mailer when he said that one of the most critical problems for our legal system is that of delay in disposal of cases. The vast majority of people who unfortunately seek the protection of law and go to courts for justice would wholeheartedly agree with the Chief Justice".[[74]](#footnote-75)

With regard to the specific direction of the Law Ministry SAHRDC raised, the Government of Bangladesh further referred to "wrong enlistment of properties and illegal possession thereof. The verification was not intended to put the Hindu minority community to harassment". This is factually incorrect. The above order clearly states that it was also to "determine whether there are other enemy properties". The Order further stales "If the Committees find out any concealed properties it will investigate into the mailer and bring it to the notice of the Government..... It was under these clauses that the properties of 61 Hindu minority families were seized.

The Restoration of Vested property Act does not adequately address the catastrophe. The UN Special Rapporteur on Religious Intolerance raised several criticisms:

It appears, however, that this bill would present serious problems. According to the non-governmental sources, the bill provides that . properties legally vested under the ownership of the Government and those declared to be enemy or vested property after'16 February-1969 will not be considered as vested property after the said period. Most Hindu' property however, was declared vested property after that dale. The bill also states that the proprietorship status of the vested property will not be challenged if the property was transferred to the Government, a government institution, or to a private individual, has been sold or has been handed over permanently by the Government at the directives of a court. H will not even be possible to challenge such cases in court. According to the non-governmental organizations consulted, these, provisions are contrary to the spirit and objectives of the bill. The bill also provides that if the original owners do not submit their ownership documents lo a court within 1HO days following promulgation of the law, the Government will acquire their properly. The Hindu community considers this time period too short. Lastly, the bill provides that in the event of the decease of the original owner, rights of inheritance shall apply in accordance with Hindu religious personal laws. Hindu women would therefore be automatically excluded from inheritance, since Hindu religious personal laws do not accord any rights of inheritance to women.

**OBJECTIVES OF THE RESTORATION OF VESTED PROPERTY ACT[[75]](#footnote-76):**

According to section 182 of the Defence of Pakistan Rules, 1965, the citizens of East Pakistan who were staying in India on 6th September or who migrated to India from that date to 16th February, 1969, their immovable properties were termed as enemy property. After the revocation of emergency situation, according to the laws of the Enemy property (Continuance of Emergency Provisions) Ordinance, 1964, the laws related to enemy properties were still kept applicable. When Bangladesh got independent, it repealed the ordinance and proclaimed the Enemy property (Continuance of emergency provisions) Act, 1974. According to section-3 of this Act, all the enemy properties will be vested on the government.

In this legal situation, after the year of 1965, government enlisted the enemy or vested properties in different times, took possession and finally dealt with some of the properties, In this proceedings, in the some cases the properties of the citizens of this country were also been enlisted. Again, some people took the advantage of the situation of possession of vested properties and other complications and tried to take over these properties. They were succeeded in many cases and some cases are under legal trial Proceeding.

The complications regarding the vested property is a sensitive issue. Specifically, the enlistment of the properties of the citizens and permanent residents of this country is not acceptable at all. In this point of view, the then present government took necessary measures for preserving the fundamental rights and right to property of the people of this country and also took practical steps for the solution of this long termed problems of vested property. The ultimate result of these measure is “The Restoration of Vested Property Act, 2001).”

**CHARACTERISTICS OF THE ACT:**

The law regarding the restoration of vested properties, i.e. The Restoration of vested property Act, 2001 Restoration of vested property Act, 2001 possesses the following features:-

1. To meet the end of justice by maintaining the social order and balance, if any property of the citizens or permanent residents of this country was been enlisted as vested one, to restore such property to them is the objective of this law[[76]](#footnote-77).
2. Among the enlisted properties, the land and buildings which are possessed by the government, it will be restored to the main owner or his successor or successor-in-interest, if he is a citizen and permanent resident of Bangladesh[[77]](#footnote-78).
3. The list of properties that are to be restored will be punished within the determined time by notification in the official gazette[[78]](#footnote-79). For this purpose, required numbers of “Restoration of vested property Tribunals” will be established[[79]](#footnote-80).
4. The application of the claim for ownership regarding the vested properties is to be established by applying in those tribunals[[80]](#footnote-81).
5. There is provision to apply for appeal against the decision of such tribunal[[81]](#footnote-82).
6. Regarding the case of restoring the property, the decree given by the tribunal is to be implemented by the District Commissioner[[82]](#footnote-83).
7. The law has provision for the settlement of such claims of people by the tribunal in an easy method. In such case, the suits relating the vested property will be abated[[83]](#footnote-84).
8. The properties which are not claimed by anyone will be vested on the government and such can be settled by sale or any other method. [[84]](#footnote-85)
9. In case of sale, the co-sharers and in the absence of such co-sharer, the person who has been a lessee for continuous ten years will get priority over others.[[85]](#footnote-86)
10. The on-going Act regarding vested property, i.e. “Enemy property (Continuance of Emergency Provisions) Act, 1974” will be repealed wholly.[[86]](#footnote-87)

**Conclusion:-**

Bangladesh’s Vested Property Act (VPA) is a racist law. It provides the government—which really means the corrupt politicians in the ruling party—with the power to seize the homes and farms of innocent citizens and distribute them as graft to their cronies. The VPA has its roots in Pakistan’s Enemy Property Act. After another embarrassing defeat at Indian hands in 1965, the Pakistani government passed a retaliatory law that allowed it to declare citizens (read Hindu citizens) enemies and confiscate their property. The Pakistani law was openly anti-Hindu, which matched the national rhetoric at the time and national sentiment most of the time[[87]](#footnote-88). When Bangladesh passed the VPA three years after its independence, it had to be more circumspect in its description, even though the law was worded to make it clear that the VPA’s substance was no different from its Pakistani forebear. The Act is so beyond the pale of what decent nations subscribe to that its continuation has other, serious consequences for the people of Bangladesh.

The VPA is so clearly racist and immoral that the question of its being an outrage to every decent human being should not even a legitimate topic for discussion among civilized individuals. The Bangladesh Cabinet has approved the Vested Property Return (Amendment) Act 2009 for restoring property seized from minority groups, mainly from Hindus, during the united Pakistan era. The government should cancel the proposed bill and can solve the matter after bringing some changes in the Vested Property Return Act 2001 on the basis of those demands for the welfare of the minority.

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7. 7, DLR (AD) 522, [↑](#footnote-ref-8)
8. 26 D.L.R. 335; Contra 27 D.L.R. 52 S.C.; 33 D.L.R. 30 A.D. [↑](#footnote-ref-9)
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44. 27 DLR (AD) 52 [↑](#footnote-ref-45)
45. 12,27 DLR(AD) 52 at page 58 [↑](#footnote-ref-46)
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47. 40 DLR(AD) 23 [↑](#footnote-ref-48)
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87. Dr. Richard L. Benkin, an American Jew and independent human rights activist [↑](#footnote-ref-88)