

A Study on the Land Reforms Laws: Bangladesh in Context

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Abstract

Land reform is a long-standing issue in Bangladesh, but a solution is elusive. Land reform is a widely-recognized social, political and economic objective in Bangladesh, and the Land Reforms Ordinance, 1984 was promulgated as the very first law that paved way for the reformation of lands. The word 'land' includes not only the face of the earth, but also everything under or over it, and has an indefinite extent upward or downward. Non-agricultural land means land used for purposes not connected with agriculture or horticulture, and does not include a homestead, land originally leased for agricultural or horticultural purposes but not used for that purpose. Land is scarce and population dense in Bangladesh, making it difficult to maximize agricultural production. Efforts to regulate tenancy rights and tackle subdivision and fragmentation of land holdings are ineffective, as they do not include measures to improve land management and crop yields. This paper will draw attention to that land reform is an imperative for Bangladesh to reduce the disparity and non-equity that exists among the people, further aggravating the survival of land and agriculture dependent masses.

Keywords: Land Ceiling, *Benami* Transaction, *Borga* Cultivation, *Bargadars'* Rights.

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1. Introduction

Axiomatically, the land reform seems to be a marginal issue in the policy agendas of Bangladesh government. It is a well-celebrated issue in Bangladesh, yet a solution to the problems has proved to be elusively a distant dream. Regardless of the debates from the view point of an Islamic or Semitic scholar, the world exists as a God or Allah's creation or Big Bang's resultant, no one can deny that during emergence of the world, nothing was about the land concept, let alone its ownership. But after the passage of the world's 600 crore years, people don't possess land not just for living like the primitive age. Progressively, from the stone and silver ages to date, the concept of ownership over landed property has been injected in the brain of each and every society. This way, the land becomes a precious property, of which, the more price is increasing, the greater the disputes over it. These disputes are the longest than any other civil or criminal disputes, and so, strict and befitting rules are needed to be enacted regarding this. Most of the disputes are about the ownership of the land and the rights and liabilities of the people around it.

Like many other jurisdictions, Bangladesh being not an exception to it, its land also has had, and continues to have connotations to religion, ethnicity, symbolism and economic power. It has a very complex but a dynamic pattern of land ownership. There pre-eminently arises here a widely-recognized social, political and economic objective of Land Reform. Accordingly, pressure on population, change of the times and requirements of economic development make the introduction of land reforms imperative. Likewise, the Land Reforms Ordinance, 1984 was promulgated as the first law that paved way for the long cherished reformation of lands in Bangladesh (The Land Reforms Ordinance, 1984).

2. Understanding of 'Land', and 'Land Reforms'

The word 'land' includes not only the face of the earth but also everything under or over it, and has in its legal significance an indefinite extent upward or downward giving rise to the maxim, *cujus est solum cujus est usque ad columm*. The word 'land' is wide enough to include all lands, whether agricultural or not, and it would be plainly unreasonable to assume that it include non-agricultural lands but does not include agricultural lands. It includes the water into the earth, which is the result of natural and ordinary percolation through the soil, such water being a part of the land itself. It also includes the sites of villages, towns and cities, trees, growing crops and grasses, fruits upon, and juice in trees, rights of way, ferries, fisheries and all other benefits to arise out of land and things attached to the earth or permanently fastened to things attached to the earth (Islam, 2005).

In section 2(16) of the State Acquisition and Tenancy Act, 1950, the term 'land' is defined which actually includes agricultural land (The State Acquisition and Tenancy Act (East Bengal Act), 1950); and section 2(4) of the Non-Agricultural Tenancy Act, 1949 defines the term 'non-agricultural land' in ways that non-agricultural land means land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not, but does not include a homestead, land originally leased for agricultural or horticultural purposes but is not used for that purpose without the consent of the landlord and land which is held

for purposes connected with the cultivation or manufacture of tea (The Non-Agricultural Tenancy Act, 1949). But it is notable that no such term is defined in the Bengal Tenancy Act, 1885 and the Land Reforms Ordinance, 1984 (The Land Reforms Ordinance, 1984).

The Land Reform Process basically focuses on three areas: restitution, land tenure reform and land redistribution. In Bangladesh, ownership of land is vested in either private individuals or entities of the State. *Khas* land is government owned land, which applies to agricultural, non-agricultural and water-bodies (Salaudin & Barakat, 2005). The rest is of the private individuals. Land reform encompasses the both sort of lands. It involves the changing of laws, regulations or customs regarding land ownership. Land reform may consist of government-initiated or government-backed property redistribution, generally of agricultural land. Therefore, Land Reform may refer to transfer of ownership from the more powerful to the less powerful. Such transfers of ownership may be with or without compensation; compensation may vary from token amounts to the full value of the land. Aftermath independence of Bangladesh, the Land Reforms Ordinance, 1984 is the first autochthonous legislation that was intended to pave way for the long cherished reformations of lands (The Land Reforms Ordinance, 1984).

3. Legislative Initiatives on Land Reforms in Bangladesh

Land is valued for its social and historical significance, but it also has productive and economic value. The intention of land reform initiatives is usually to (re)establish equality in land holding in such a way as to ensure equity and agricultural productivity. The Land Reforms Ordinance, 1984 was promulgated with holistic approach, the preamble of which ordains this way that 'an ordinance to reform the law relating to land tenure, land holding and land transfer with a view to maximizing production, and ensuring a better relationship between land owners and *bargadar*. Therefore, it can be opined that the main purposes of land reform were intended to determine the owner-*bargadar* relationship, fix the ceiling of land holdings of a family, determine the excess land, ensure rationalized land revenue, restore alienated lands, and distribute vested agricultural land.

From historical school of jurisprudence and originalist point of view, the background of an enactment is of highly value laden. Accordingly, attempts may be taken to focus on such ground-giving matters. Land Reforms measures are taken by the government to change land ownership and production relationships in land. A major step in the direction of land reforms dates back to the formation of a Commission called Bengal Land Reforms Commission in 1940, which had Sir Francis Floud as the chairman. This Commission was a broad-based one, and included a representative of the big *zamindars* (landlords). The Floud Commission recommended abolition of *zamindaris*. The Floud Commission did not recommend any ceiling of *khas* land, which could be retained by any individual landholder in his direct possession (T. Hussain, 2021). But the East Bengal State Acquisition and Tenancy Act, 1950 contained a specific provision to the effect that no individual land holder (be he the *zamindar* or a tenure-holder or a *raiyyat*) could retain in his direct possession any land exceeding 100 standard *bighas* or 13.5 hectares (The State Acquisition and Tenancy Act, 1950 (East Bengal Act)).

The East Bengal State Acquisition & Tenancy Act, 1950 is the first major attempt in the direction of land reforms. The main provisions of the 1950 Act were three folds, *i.e.* abolition of all rent-receiving interests; prohibition of future subletting; and putting a ceiling on land holdings per family beyond 100 standard *bighas* (33.33 acres). The ceiling was subsequently raised to 375 standard *bighas* (125 acres) during the martial law regime of Ayub Khan. However, it is pertinent to mention that the East Bengal State Acquisition and Tenancy Act did not solve all the problems of ubiquitous share-cropping, widespread sub-marginal holdings, acute subdivision and fragmentation of holdings, dubious land-records prepared under the traditional system, and peculiar problems associated with the management of government *khas* or *char* (accretion) lands.

The East Pakistan Land Revenue Commission was constituted in 1959. The main recommendations precisely includes, landlordism has been abolished and all tenants have really become "peasant properties", it is appropriate that they should be called "*malguzars*" rather than "*raiyyats*." The ceiling of the area of *khas* land which a person may be entitled to retain would be fixed at 100 acres per family, including the homestead and orchards. But for the local areas where the average production of land is less than 15 mounds' per acre, the ceiling should be 133 of land per family.

Aftermath our glorious independence, the first initiative towards land reform was taken in 1972. The notable aspects of the proposed reform were: a) reducing the maximum limit of land ownership to 100 *bighas* per family; b) distributing *khas* land among the landless poor; c) making up to 25 *bighas* land tax exempt; d) withdrawing to government some authorities given to farmers in matters of taking possession of newly accreted shoals and abolishing lease of *sairatmahal* and *khas* land, *haat-bazar*, water bodies, ferry *ghat*, etc. and prohibiting mortgage of agricultural land under exploitative terms.

In a deviation of the traditional thinking on land Reforms, which mainly deals with tenancy Reform and fixing ceiling upon land holdings, a study was undertaken in early 1980, at the instance of General Economic Division of the Planning Commission, Planning Ministry, Government of the Peoples Republic in Bangladesh, to determine the problems of land reforms with a view to increasing agricultural productivity through

modernization. The government in 1984 realized that the importance of introducing a new land reform rules, which would reflect the demand of reality (The Land Reforms Ordinance, 1984).

4. Exploration of the Important Provisions relating to Land Reform Initiatives

With the objectives so contemplated, the Land Reforms Ordinance (Ordinance No. X of 1984) has brought about drastic reforms in the land law and revenue system in the following way (The Land Reforms Ordinance, 1984):

4.1. Of Land Ceiling

It puts limitation on acquisition of more than sixty *bighas* of agricultural land whether by way of transfer, inheritance, gift, will or other means, and it also provides for its being vested in the government in excess. Section 4 contemplates that no *malik* who or whose family owns more than sixty standard *bighas* shall acquire any new agricultural land by transfer, inheritance, gift or any other means. A *malik* who or whose family owns less than sixty standard *bighas* of agricultural land may acquire agricultural land by any means. However, such new land, together with the agricultural land owned by him, shall not exceed standard *bighas*. If any *malik* acquires any new agricultural land in contravention of the provisions of this section, the area which is in excess of sixty standard *bighas* shall vest in the government, and no compensation shall be payable to him for land so vested, except in the case where the excess land is acquired by inheritance, inheritance, gift or will. However, it is also made clear that the aforesaid provisions will not affect a person who has already got more than the aforesaid ceiling before this provision came into effect (The Land Reforms Ordinance, 1984).

4.2. Of Benami Transaction

In contemplation of section 5, it reveals that purchasing of agricultural land by any person in another's name, i.e. *benami*, is prohibited. So, no person shall purchase any immovable property for his own benefit in the name of another person. Where the owner of any immovable property transfers or bequeaths it by a registered deed, it shall be presumed that he has disposed of his beneficial interest therein as specified in the deed and the transferee or legatee shall be deemed to hold the property for his own benefit, and no evidence, oral or documentary, to his beneficial interest therein or that the transferee legatee holds the property for the benefit of the owner, shall be admissible in any court or authority (The Land Reforms Ordinance, 1984).

It is also provided that where any immovable property is transferred to a person by a registered deed, it shall be presumed that such person has acquired the property for his own benefit, where consideration for such transfer is paid or provided by another person it shall be presumed that such other person of the transferee holds the property for the benefit of the person paying or providing the consideration, shall be admissible in any proceeding before any court of authority. In fact, this ordinance annulled the *benami* transaction which became more successful. Because of this *benami* transaction, one group in the society became helpless. To get rid of this situation, the implementation of this ordinance was a revolutionary step. Hence, there is no gainsaying that these provisions allow no evidence, oral or documentary, to show that the transferee holds the property for the benefit of any other person or for the benefit of the person paying or providing the consideration shall be admissible in any proceeding before any Court or authority (The Land Reforms Ordinance, 1984).

4.3. Of Barga Cultivation and the Bargadars' Rights

The Chapter V of the Ordinance provides for a detail provision for *barga* cultivation. It provides for equally sharing cost of seeds, irrigation, manure etc. by the owner of the land and the *bargadar* to equally share the produce of the land cultivated by the labour of the *bargadar*. It also provides for giving two-thirds of the produce to the *bargadar* if the owner of the land failed to pay his share of such costs. This law also provides for entering into a written contract between the owner of the land and his *bargadar* and prohibits evicting the *bargadar* without valid reasons. It also allows heirs of the deceased *bargadar* to *barga* cultivate the land within the *barga* period of such land. So, it is deducible that the rights of the *bargadar* are recognized. Before this ordinance, there was no effective law to protect the right of the *bargadar*. This ordinance gives the *bargadar* a legal status in the society. *Abarga* contract shall be a period of five years commencing from specified in the *barga* contract (Barkat et al., 2007; The Land Reforms Ordinance, 1984).

4.4. Of Ceiling of Barga Land

Section 14 of the Land Reforms Ordinance 1984 spells out that no *bargadar* shall be entitled to cultivate more than 15 standard *bighas* of land. It is explained as that in computing this ceiling area of any land owned by the ...well as land cultivated by him as a *bargadar* and held by him under a complete usufructuary mortgage shall be taken in to account. If a *bargadar* cultivates land in excess of 15 standard *bighas*, the share of the produce due to him as a *bargadar* in respect of the excess land may be compulsorily procured by the government by order made in this behalf by the prescribed authority. But before the Ordinance, if a *bargadar* cultivated more than 6 hectares of land, the owner of the land shall be entitled to terminate cultivation of his land by the

bargadar. And after the ordinance, there came the limitation regarding *barga* land and the government has been given the power to procure the excess land cultivated by the *bargadar* (Islam, 2005; *Land Policy and Administration in Bangladesh: A Literature Review*, 2003).

4.5. Settlement of Khas Land for Homestead

Section 7 of the Land Reforms Ordinance 1984 provides a unique provision for the settlement of *khas* land to the landless people for their homestead. It says that where in the rural areas any *khas* land fit for being used as homestead available, the Government shall, in settling such land, give preference to landless farmers and labourers. However, not more than five *kathas* of such land shall be allotted for such purpose to any individual. It is pertinent to note that any land settled under this section shall be heritable but not transferable (The Land Reforms Ordinance, 1984).

4.6. Of Bargadar's Right to Pre-emption

This law provides for exercising the right of pre-emption by the *bargadar* when the owner of the *barga* land transfers it to somebody else. Section 13 says that where the owner intends to sell the *barga* land, he shall ask the *bargadar* in writing if he is willing to purchase the land. However, this provision shall not apply where the owner sells the land to a co-sharer or to his parent, wife son, daughter or son's son or to any other member of his family (The Land Reforms Ordinance, 1984).

4.7. Of Protection of Homestead Land

This law debars the Court or any other authority from attaching, forfeiting or selling any homestead land of an agriculturist, and from dispossessing or evicting him from such land. Section 6 lays down that any land used as a homestead by its owner in the rural area shall be exempted from all legal processes, including seizure distress, attachment or sale by any officer, Court or any other authority and the owner of such land shall not be divested or dispossessed of the land or evicted there from by any means. However, it is also made clear that nothing in this section shall apply to the acquisition of such homestead under any law. It is thus comprehensible that a decree in a suit for declaration of title and recovery of possession of homestead land passed by a civil court cannot be rendered nugatory by application of section 6 of the ordinance (The Land Reforms Ordinance, 1984).

4.8. Of Restriction on Cultivation and Embargo on Bargadar's Becoming a Tenant

A *bargadar* will never be a tenant, and a tenant will never be a *bargadar* for he, who will be a *bargadar*, cannot be a tenant, and likewise, a tenant cannot be a *bargadar*. Section 15 allows a person to cultivate the lands of another only under a *borga* contract or complete usufructuary or as a servant or laborer. The produce of such land in contravention of this provision may compulsorily be procured by the government (The Land Reforms Ordinance, 1984).

5. Comparative Appraisals on the Land Reform Laws in Bangladesh and the Tentative Way-out

Comparative appraisals on the land reform laws in Bangladesh and the tentative way-out are mentioned below:

5.1. Ownership Ceiling of Agricultural Land

The ownership ceiling of agricultural land per family had been changed many times: from 33.3 acres (100 *bighas*) in 1950, 125 acres (375 *bighas*) in 1961, then again 33.3 acres (100 *bighas*) in 1972, and 20 acres (60 *bighas*) in 1984. Pragmatically, it can be argued that a significant quantity of land could not be recovered by such reforms, rather, ironically only an insignificant portion of cultivable land (under 1%) could be redistributed through these ownership ceilings. In Nepal, the legal limit on rural holdings is 7.3 hectares in the *Tarai*, 1.55 hectares in Kathmandu Valley, and 3.75 hectares in the hills and mountains (Reza, 2009).

In India, by 1961-62, all the state governments have passed the land ceiling Acts. But the ceiling limits varied from state to state. To bring uniformity across states, a new land ceiling policy was evolved in 1971. In 1972, national guidelines were issued with ceiling limits as 10-18 acres for best land, 18-27 acres for second class land and for the rest with 27-54 acres with a slightly higher limit in the hill and desert areas. In general, Individual land ceiling for standard land in Kerala is 5 Acres, Tamil Nadu - 30 acres, West Bengal - 24.7 acres. Companies are exempt from this rule. The Urban land ceiling was governed by Urban Land (Ceiling and Regulation) Act, 1976 which has got repealed in lot of states (The Urban Land (Ceiling and Regulation) Act, 1976).

It is, hence, necessary to review the dormant Ceiling Act adopted in 1984, and make it further practical and effective and bring the urban lands too under ceiling. The land ceilings should be further lowered considering the increase of population, the scarcity of land and the need for distributive justice. If the land ceiling is lowered to 30-35 *bighas* for each family, for example, and if there is strong political and administrative will on the part of the Government, the ceiling surplus land can be distributed amongst the landless and poor-displaced-people.

Such initiatives, if taken and implemented, certainly shall ensure economic and social security and mental peace of three crore landless people of the country as well as add remarkably to the poverty alleviation efforts in this land of enormous potentials. Reduction of the amount of ceiling of land is now call of the time. Most importantly, since there is no variable on rural or urban land ceiling, the same can also be different for each district, urban/rural and is dependent on the class of land, individual/family, etc. (Barkat et al., 2007).

5.2. Epithet of ‘Reasonableness’ in Repugnance of the Interests of Bargadars

Section 11 envisages that an owner shall be entitled to terminate a *barga* contract in execution of an order on the ground that the *bargadar* has, without any reasonable cause, failed to cultivate the *barga* land or fail to produce any crop equal to the average output of such crop in any land similar to the *barga* land in the locality; or used the *barga* land for any purpose other than agriculture. There arises a question of reasonableness in terminating *barga* contract in some certain cases. But it is not made clear that how reasonableness would be determined or constituted. Therefore, there may have a great chance to abuse or misuse the very word reasonableness-substantive consideration- in favor of owner or *Malik* of *bargaland* (Kabir, 2021).

Another conundrum comes across in this episode that if the *bargadar* without reasonable cause fail to produce average crops. This is a whimsical portion of law, because every year the time for cultivation is not same. It varies upon the weather or climate change. If once the cultivator fall in trap, then according to this section *Malik* shall take privileges than *bargadars*. Here also interest of the *bargadars* has been vitiated. The third question is that, if the *bargadar* for any reason partly or wholly use the land without agricultural purpose, then contract would be terminated. In fact, there are two seasons for cultivation in our country, and in the left seasons, land is to be uncultivated. If the *bargadar* wants to cultivate during that unseasoned then contract of *barga* land shall be terminated, it is against the interest of the *bargadars* (Kabir, 2021).

5.3. The Interests of Bargadars are not Sufficiently Protected

According to section 10 of the Land Reforms Ordinance, 1984, where the *bargadar* dies without leaving any person in his family who is in a position to cultivate the land, the owner of the land may bring the land under his personal cultivation or allow such land to be cultivated by another *bargadar*. Albeit the family is defined in the Ordinance, these provisions go against the interest of the *bargadar*, because the provisions regarding that whole *barga* land shall return to the owner or *malik* seem to be against the interests of *bargadar* (Barkat et al., 2007).

5.4. Reforms Mostly Touch Only Future Agrarian Lands

The Land Reform Ordinance 1984 brought about some provisions under which families owning lands up to 60 *bighas* at a given time were to be barred from acquiring further land by purchase, inheritance, or otherwise. The Land Reform Ordinance thus limits future land acquisitions to 21 acres whilst retaining present ceilings but it does not disturb those who had already lands more than 60 *bighas*. More egalitarian policy is intended in this redistribution and limitation process. Again, it only limits the ceiling of agricultural lands; reforms regarding non-agricultural lands in this respect still remain a far cry (*Land Policy and Administration in Bangladesh: A Literature Review*, 2003).

5.5. No Reforms as to SairatMohol

Since the ordinance advances no reforms with regard to *sairatmohol* i.e. *jolmohol*, *balumohol*, etc., keeping such lands beyond the reach of lands reforms; a pragmatically viable land-reform mechanism cannot achieve its optimal objectives (*Bangladesh: The Fight for Land Rights Moves Forward*, 2011).

5.6. Land Ceiling on FDIs

Limiting foreign direct investment in land is not a bad thing as such. In some countries, the governments are imposing ceilings on the amount of farmland foreigners may acquire. Argentina and Brazil have recently moved in this direction. In New Zealand, any farmland purchasing by a foreign investor bigger than five hectares must get clearance from the Overseas Investment Office. Like Brazil, Peru's constitution holds that no foreigners may own or possess land within 50km of its border, although exceptions are possible. So, Bangladesh may ponder over such example in FDIs attraction for land grabbing has here become a structural plague of our time alongside equally important and interconnected processes such as growing land concentration and other forms of resource grabbing (*Bangladesh: The Fight for Land Rights Moves Forward*, 2011; *Land Rights and Poverty Alleviation*, 2005).

5.7. Redistribution Must be a Reality, not Merely Rhetoric

In Bangladesh, Pakistan and India, between a quarter and a half of the rural population are landless. So, law regarding redistribution of *khas* land should be revisited as an on-going process. The Ordinance is not going in pace with our societal reality and people's needs. In Africa, redistribution is the most important component of

land reform in South Africa. Initially, land was bought from its owners (willing seller) by the government (willing buyer) and redistributed, in order to maintain public confidence in the land market. In South Africa, the main model of Land Reforms that was implemented was based on the Market-led Agrarian Reform (MLAR) approach. Bangladesh may visit their successful footsteps in this regard (Barkat et al., 2001).

6. Gaps, Drawbacks, and Recommendations

Gaps, drawbacks, and recommendations in this regard are mentioned below:

- Reduction of the amount of ceiling of land is now call of the time.
- Transformation of agricultural land for other uses must be stopped; particularly, land in the rural area under agriculture should not be used for any other purpose;
- Government should establish a land commission to identify the accurate amount of *khas* land;
- Land policy towards chars should give high priority that all accreted new chars are undertaken by the government and protected from illegal occupation of land grabbers;
- The land reform policy should be on the basis of land for the tenants; policy should permit immediate distribution of *khas* land among the genuine landless.
- Eviction of slum dwellers and the rural landless from *khas* land should be stopped and they should be fast rehabilitated as promised.
- *Khas* water-bodies should be distributed based on principle “water body to the fishermen”: Land use policy should assign high priority in identification and regular updating of information about *khas* water-bodies by geographical areas;
- It is strongly recommended for revolutionary change in land ownership, administration and use. Land must be managed with the aim of ensuring the welfare of the majority of the population, in an ecologically sustainable way. The present exploitative and discriminatory system of land ownership must be replaced with equitable ownership, as well as equitable distribution of agricultural products.

7. Conclusion

Land is scarce and population dense in Bangladesh. Accordingly, there is great need to maximize agricultural production with intensive cultivation and the diffusion of modern technology. The realization of this goal, however, is impeded by the prevailing inequitable and inefficient structure of agricultural land tenure in which a few rural households hold the bulk of cultivatable land. In fact, crop-sharing and the system of land tenancy perpetuates low-productivity and stagnation throughout the country. Efforts in land reforms depicted in the paper cover the regulation of tenancy rights, including those of sharecroppers and measures to tackle subdivision and fragmentation of land holdings. But they remain ineffective largely because they do not include measures to improve land management and to ensure improvement of crop yields through providing necessary inputs, organization of credit and marketing facilities of the farm produces.

Since the issue of land reform is too important to be overlooked in the overall socio-economic reality, it's an imperative now for Bangladesh from whatever angle - social, economic, political - you look at it. Because to reduce the endless disparity and non-equity that dangerously exist among the people of Bangladesh, there is little option to ignore the issue. A glance at the income-expenditure and lifestyle of sections of society reveals how deep and sharp this disparity exists to the detriment of the society itself. Especially, this is further aggravating the very survival of the land and agriculture dependent masses.

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