

LAND MANAGEMENT IN BANGLADESH WITH REFERENCE TO KHAS LAND: NEED FOR REFORM

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I. PRELUDE

In developing countries land continues to constitute the principal source of livelihood, security, and status. Land remains important in a variety of ways in the economic and social life of Bangladesh. Hindu common law states that the right to occupy land vests in the person who first makes a beneficial use of the soil. During that period land was plentiful and many villages were in the process of formation. No one would undertake to clear a plot of land unless he had the right to enjoy it on a permanent basis.¹ The history of law relating to land in this sub-continent, particularly in Bangladesh, is indeed very broad and also quite complex. History shows how the people of Bangladesh struggled to gain proper legislation to regulate the relationship between landlords and tenants.

In order to enhance and sustain the productivity of land and reduction of poverty, there should be meaningful land reform with consideration for khas land (government owned land), absentee land ownership, land ceiling, etcetera. The

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1. MRIDUL KANTI RAKSHIT, THE TENANCY LAW OF BANGLADESH, 2 (1979).

effective distribution of khas land will create enormous employment opportunities, reduce rural-urban migration, and reduce the overall rate of poverty.

The land grabber first prepares fake deeds in connivance with a section of dishonest land administration employees, and then captures newly emerged lands of poor and marginal farmers with the help of muscle power. It is difficult to take back the grabbed lands from the influential because land law is so obscure. If the landless poor can establish their rights on khas land of the char (an accretion of land into a body of water) areas, the impact will be revolutionary for the poverty alleviation efforts in Bangladesh. The key focus should be on reforming land administration, with special attention to the distribution of khas land, and possible measures on how to make necessary changes relating to land.

This article categorizes and analyzes the forms of land evolution from ancient Bengal to modern times. It then provides some ideas for khas land management and offers conclusions and recommendations.

II. LAND MANAGEMENT IN BENGAL

Since ancient times², the laws regarding land in Bangladesh have not changed significantly, except for the payment of the share of the produce to the king or his representatives. An example of this exception can be found in a comment on *Arthashastra*³: “[t]hose who are well versed in the Sastras admit that the King is the owner of both land and water, and that the people can exercise their right of ownership over all other things except these two.”⁴ The King’s primary duty was to protect his people. In return he received the obedience of his people. The peoples’ contributions provided for the maintenance of royalty, called *bali*. The King also performed the duties of a judge in the court of final appeal in civil justice, and in criminal justice he exercised a wide jurisdiction.

“The Veddah hunters⁵ generally roamed about in groups of half a dozen.”⁶ The tribal community compelled the food gatherers to move about from one place to another for hunting and grazing.⁷ In contrast, Brahmin cultivation and settlement is fixed or permanent (Brahmin is the class of educators, scholars

2. The most ancient land laws in Bangladesh can be traced to the practices of aboriginal communities involving payment of a share of the produce of the land to the head of the tribe, the right of the family to cultivate the land in its possession, and the power of the head of a “Panchayet” to distribute land of the community to its families, and settle land disputes.

3. *Arthashastra* means “The Science of Material Gain.” It is a “singularly important Indian manual on the art of politics, attributed to Kautilya (also known as Chanakya), who reportedly was chief minister to the emperor Chandragupta (c. 300 bce), the founder of the Mauryan dynasty.” Encyclopedia Britannica Online, *Artha-shastra*, <http://www.britannica.com/EBchecked/topic/36913/Artha-shastra> (last visited Sept. 13, 2009).

4. VINCENT A. SMITH, *THE EARLY HISTORY OF INDIA*, 138, n. 1 (4th ed. 1967).

5. The Veddah were a transient group of forest-dwelling hunters. The Free Dictionary, *Veddah*, <http://www.thefreedictionary.com/veddah> (last visited Sept. 13, 2009).

6. DAMODAR DHARMANAND KOSAMBI, *AN INTRODUCTION TO THE STUDY OF INDIAN HISTORY*, 115 (2d ed. 1975).

7. *Id.*

and preachers in Hinduism). The Brahmin⁸ carried out “slash and burn” cultivation.⁹

People cultivated family holdings, which were an inalienable right [derived] from membership in a tribal or other community group, and a mark of such membership. Yet a new type of land holding was about to develop, because the Brahmin need not have fixed ties with any tribe, yet he too always has a caste group.¹⁰

“The native law of India has ordinarily recognized agricultural land as being Crown property, and has admitted the undeniable right of the ruling power to levy a crown rent, or ‘land revenue’, to a considerable portion, either of the gross produce or of its cash value.”¹¹ “The normal share of the gross produce taken by the Crown is said to have been one-fourth; but in practice, no doubt, the proportion taken varied largely, as it does to this day, and all the provinces could not be treated alike.”¹² The treatise of “Manu and Yajnavalka” by Jayaswal states that the king gets a one-sixth share in the produce of the land that is protected by him.¹³ The one-sixth share was payment for giving protection to the subjects.¹⁴ Good governing practices and providing for the welfare of the people were characteristics of the Maurya emperor Asoka.¹⁵ The government storehouse that was provided with grains for the relief of the people during flood or famine found its support from the Arthashastra.

During the Muslim period of the country, modern land management policies and strategies were introduced. The first systematic attempt to regulate the system of revenue collection is found in the Institution of Timur in year 1398.¹⁶ The management strategy directed that two-thirds of the produce of the cultivated land should go to the cultivator, and one-third to the royal treasury.¹⁷

During Mughal Rule¹⁸ the land revenue system was systematized and consolidated by assessing the land revenue of the entire country at the rate of one-third of the produce.¹⁹ Revenue was assessed by government officers known

8. A Brahmin is “a member of a social and cultural elite. . . .” The Free Dictionary, Brahmin, <http://thefreedictionary.com/brahmin> (last visited September 13, 2009) .

9. *Id.*

10. *Id.* at 139.

11. SMITH, *supra* note 2, at 137-38.

12. *Id.* at 138.

13. BEAMAN, GEORGE BURNHAM, ON THE SOURCES OF THE DHARMA-SASTRAS OF MANU AND YAJNAVALKA (1895).

14. *Id.*

15. SMITH, *supra* note 2, at 187-88.

16. “Evolution of Land Laws” Lecture at BRAC University, Bangladesh <http://student.bu.ac.bd/busf/TSR/LLB/Law%20301%20CTR/evolution%20of%20land%20laws.doc> (last visited Sept. 13, 2009).

17. *Id.*

18. The Mughal Empire ruled from the late seventeenth century to the early eighteenth century. I love India.Com, Mughal Empire, <http://iloveindia.com/history/medieval-india/mughal-empire/index.html> (last visited Sept. 13, 2009).

19. *Id.*

as *amins*, who settled land disputes.²⁰ These officers would assess revenue with the help of the *kanungo*, who knew the customs and regulations regarding land.²¹ “Zamindars,²² jagirdars,²³ or aymadars²⁴ were not proprietors of the land under their control.”²⁵ They received a share of their collection of land revenue as their remuneration and collection cost.²⁶

III. BRITISH RULE IN BANGLADESH

A land tenure system refers to the manner in which land is held by the different classes of society. The land tenure and revenue systems of Bangladesh have been undergoing changes along with the changes in the country’s political set-up. The present land tenure system of Bangladesh is mainly the result of the gradual evolution of the revenue system under the forces of socio-economic and political parameters.

Tenancy Laws connected with agricultural and non-agricultural lands have been developed stage-by-stage. The laws relating to lands of agricultural and non-agricultural property have developed differently with the historical and socio-political conditions of Bangladesh.²⁷

The greatest disruption in the history of the Bengal region occurred on June 23, 1757, when the East India Company, a mercantile company of England, became the virtual ruler of Bengal by conspiring against and defeating *Nawab Siraj-ud Daulah*.²⁸ Territorial rule by the trading company resulted in the commercialization of power.

The initial effects of the British rule were highly destructive. The land tenure system introduced during the British rule rapidly increased the number of landless people, who in most cases ultimately turned into agricultural day-laborers. Repeated famines forced British rulers to take a number of actions for the development of agriculture. All of their efforts targeted the landed cultiva-

20. *Id.*

21. *Id.*

22. A Zamindar was a land revenue collector for the government during the Mughal Rule. Merriam-Webster’s Online Dictionary, Zamindar, <http://www.merriam-webster.com/dictionary/zamindars> (last visited Sept. 13, 2009).

23. A Jigardir was a state official who was assigned to “land, it’s revenues, and the powers governing” the land in the early thirteenth century. The Free Dictionary, Jagirdar System, <http://encyclopedia2.thefreedictionary.com/jigirdartsystem> (last visited Sept. 13, 2009).

24. Aymadars are government lessees. See Kazi Ebadul Hoque, *Land Laws, Bangladesh*: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/L_0046.HTM (last visited Sept. 13, 2009).

25. *Id.*

26. See MOSHARAFF HOSSAIN, *AGRICULTURE IN BANGLADESH*, 122-24 (1991).

27. Syed Rafiqul alam Rumi, *Underdevelopment and Agrarian Structure in Bangladesh, 1880-1970*, 10 J. OF THE INST. OF BANGLADESH STUD. 49, 50-52 (1987).

28. British Rule in Bengal, An Amerikan Chimaera, <http://www.jollybengali.net/amrikanchimaera/bangladesh-intro/history/british-rule-in-bengal/> (last visited Sept. 13, 2009).

tors however, and not the landless day-laborers. “About 26% of the rural households subsisted on labor as their only or principal occupation, while another 13% took it as a secondary source of income.”²⁹ “Thus, 13 million rural Bengalis were fully or partially dependent on wage labour.”³⁰ The Master Survey of Agriculture conducted from 1965 to 1966 by the government of East Pakistan revealed that 25% of the cultivators earned wages for their labour, while three-fifths of these wage-earning cultivators were landless.³¹ “The common trend revealed an increase in waged-agricultural labourers.”³² Regional differences in wages and the mobility of labourers also existed.³³

At the arrival of East India Company in Bangladesh, the laws enacted mainly regulated landlord and tenant relations with regard to agricultural land. It does not appear that there were any codified laws relating to leases of non-agricultural land until 1882. It is notable that the East India Company’s earliest experimental legislative measures, such as Permanent Settlement Regulation (Regulation I of 1793) or Panti Taluk Regulations (Regulation VIII of 1819), generally dealt with the interest of Zaminders, holders of Estate and Talukders, and other Tenure holders.³⁴ The East India Company, however, was not much concerned with the rights and conditions of tenants of agricultural holdings who were the actual tillers of the soil.³⁵

The Transfer of Property Act (Act IV of 1882) (T. P. Act) was passed in 1882, and made certain provisions for the lessor and lessees of non-agricultural land.³⁶ It is to be noted that the T. P. Act was enacted three years before the enactment of the Bengal Tenancy Act (Act VIII of 1885) (B. T. Act).³⁷ Prior the B. T. Act, Chapter V of the T. P. Act, sections 105 to 117, dealt with leases of immovable property.³⁸ The tenants of agricultural land were given certain rights by the B. T. Act, but no such rights had been given to the tenants of non-agricultural lands who were under the existing legal position governed by the terms of contract and the provisions of the T. P. Act.³⁹

29. M. Abul Kashem, *Agriculture*, Banglapedia: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/A_0077.HTM (last visited Sept. 13, 2009).

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Sirajul Islam, *Permanent Settlement*, Banglapedia: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/P_0147.HTM (last visited Sept. 13, 2009) [hereinafter *Permanent Settlement*].

35. RAKSHIT, *supra* note 1, at 13.

36. The Transfer of Property Act, 1882, (Act No. IV of 1882), available at [http://dolr.nic.in/Acts&Rules%5CTransferOfPropertyAct\(1882\).html](http://dolr.nic.in/Acts&Rules%5CTransferOfPropertyAct(1882).html).

37. Sirajul Islam, *Bengal Tenancy Act, 1885*, Banglapedia: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/B_0421.HTM (last visited Sept. 13, 2009) [hereinafter *Bengal Tenancy Act, 1885*].

38. RAKSHIT, *supra* note 1, at 14; Aminul Huq, *Transfer of Property Act, 1882*, Banglapedia: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/T_0212.HTM (last visited Sept. 13, 2009).

39. RAKSHIT, *supra* note 1, at 14.

There have been changes in laws relating to the leasing of non-agricultural lands with gradual change in the socio-economic condition of Bangladesh. Also, there has been an increase in the population in urban and other areas of the country, resulting in greater demand for land and housing for purposes other than agricultural. It is to be noted that from 1882 to 1940 neither the T. P. Act nor any of its provisions were ever amended so far as the Tenancy Law was concerned.⁴⁰

The Bengal Tenancy Act of 1885 defined the rights and liabilities of the tenants in relation to their superior landlords.⁴¹ The permanent settlement outlived its utility, and there was a demand for agrarian reform.

It culminated in the formation of a Land Reform Commission in 1938 under the chairmanship of Sir Francis Floud. [The] Floud Commission was assigned to report, amongst other things, whether it was practically desirable for the government to acquire all superior interest to bring actual cultivators into direct contact with the government.⁴²

The Land Reform Commission recommended “the abolition of the zamindari⁴³ system with the tenure rights of other intermediaries.”⁴⁴ “The recommendation of the Land Revenue Commission remained under consideration of the government with a view to implementing the decision.”⁴⁵

[The] Bengal State Acquisition and Tenancy Bill was introduced on 10 April 1947, but no further progress was made because of the Partition of Bengal. After the Partition, the East Bengal State Acquisition and Tenancy Bill was framed and published on March 31, 1948. It was then referred to a Special Committee of the House. Thereafter the bill was passed, and it got the assent on May 16, 1951.⁴⁶

Under the scheme of the East Bengal State Acquisition and Tenancy Act of 1950 (SAT Act), “the government became the only landlord to acquire all rent receiving interest by phases. By operation of section [three] of the Act, all holders of land became directly tenants under the government, and they are described as *malik* (owner).”⁴⁷ All interest in subsoil rights to minerals, hats, bazaars, fo-

40. *Id.* at 13-16.

41. *Bengal Tenancy Act, 1885*, *supra* note 28

42. Abdul Quayum, *East Bengal State Acquisition and Tenancy Act 1950*, Banglapedia: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/E_0004.HTM (last visited Sept. 13, 2009); see *The State Acquisition & Tenancy Act, 1950* (East Bengal Act No. XXVII of 1951), available at http://bdlaws.gov.bd/pdf_part.php?id=241.

43. Indian Officer, *Zamindari System*, <http://www.indianofficer.com/forums/history-wiki/1568-zamindari-system.html> (last visited Sept. 13, 2009) (“The zamindar was considered a lord, and would collect all taxes on his lands and then hand over the collected taxes to the British authorities (keeping a portion for himself”).

44. HOSSAIN, *supra* note 23, at 124.

45. Quayum, *supra* note 39.

46. *Id.*

47. *Id.*

rests, fisheries and ferries were vested in the government, however, since the law authorized the government to own and manage them.⁴⁸

The Act is composed of 152 sections divided into five parts and nineteen chapters.⁴⁹ The preamble of the Act states that:

it is to expedient to provide for the acquisition by the State of the interests of rent-receivers and certain other interests in land in Bangladesh and to define the law relating to tenancies to be held under the State after such acquisition and other matters connected there with.⁵⁰

In the significant part of the introduction to the State Acquisition Act, there exists no intermediary interest between the government and the tenant—the government has become the only landlord.⁵¹ “Acquisition of rent receiving interest has been done under a scheme of compensation payments to zamindars and intermediary interest holders.”⁵²

The law had abolished the zamindari system, but it was substituted by a hierarchy of revenue officials with the Board of Land Administration at the top and revenue officers, now called assistant [land] commissioners, at the bottom. [The collector and deputy commissioner acted as the heads of revenue administration at the district. A collector/deputy commissioner was assisted by one

By abolishing the zemindary system, the *raiya*s⁵³ have regained their ancient rights to hold land directly under the Government as they were under the Hindu and Muslim Governments. The Act has declared them as *malik*.⁵⁴ A *raiya* is now the proprietor of his holding which is inheritable and transferable.⁵⁵ He may hold 375 standard bighas of land, or an area equal to ten standard bighas for each member of his family, whichever is greater.⁵⁶ There are no restrictions whatsoever on the user of the land.⁵⁷ The land may be used in any manner the user likes.⁵⁸

The Act is a complete and self-contained enactment so far as the most important agrarian legislation is concerned. The Act fills many gaps in the agrarian field. It has described the rights and obligations of a *raiya*; it has stated the limitations for the transfer of holdings to prevent a few hands from accumulating

48. *Id.*

49. *Id.* For a full breakdown of each chapter of the Act, visit Abdul Quayum, *East Bengal State Acquisition and Tenancy Act 1950*, Banglapedia: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/E_0004.HTM (last visited Sept. 13, 2009).

50. The State Acquisition & Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951).

51. Quayum, *supra* note 39.

52. *Id.*

53. A ‘raiya’ is a peasant laborer. Merriam-Webster’s Online Dictionary, Raiyat, <http://merriam-webster.com/dictionary/RAIYAT> (last visited Sept. 13, 2009).

54. LUTFUL KABIR, *LAND LAWS IN EAST PAKISTAN*, 6 (1969); A ‘malik’ is a town or community leader. The Free Dictionary, Malik, <http://www.thefreedictionary.com/malik> (last visited Sept. 13, 2009).

55. KABIR, *supra* note 51.

56. *Id.*

57. *Id.*

58. *Id.*

large amounts of land; it has introduced a rational system of assessment of rent on fair and equitable basis; it facilitates the enhancement and reduction of rent; it specifies the grounds for ejection; it prescribes rules for installments, receipts, and interest upon arrears; it has abolished the subletting of land; it provides for preparation and revision of record-of-rights; it lays down rules for pre-emption; and it has introduced the procedure for amalgamation, sub-division and consolidation of holdings, and formation of co-operative farms.⁵⁹

IV. NECESSITY FOR CHANGES IN LAND LAWS

Land Law is one of the most neglected areas of law in Bangladesh. The lack of a proper land distribution system has caused an increase in the number of landless people. The SAT Act provides for a usufructuary mortgage, and states that a raiyat cannot enter into any other transaction of his raiyat holding except a complete usufructuary mortgage.⁶⁰ It was enacted to protect the helpless raiyat, but this type of mortgage is not practiced in all rural or urban areas in Bangladesh.

The Act also provides for preparation and revision of record-of-rights.⁶¹ It is thought that the local land officers, including the Union land office, are areas of great corruption. The record of rights must be maintained electronically to help prevent such corruption.

The procedures for amalgamation, sub-division and consolidation of holdings and formation of co-operative farms are specified by the state Acquisition and Tenancy Act of 1950.⁶² However, Bengalis are not interested in cultivating land in co-operative ways.

The law related to bargadars (sharecroppers) in the Land Reforms Ordinance of 1984 is not practiced by the owners of land.⁶³ The ordinance provides for a registry barga-contract for five years and ensures a two-thirds share for the bargadar in the crop produced by his labor, plough, seeds, irrigation water and fertilizer.⁶⁴ The Land Reforms Ordinance of 1984 could be amended by inserting provisions, like the Operation Barga, to make registration by the real owner binding and force them to bear cost. It could also be amended in the name of the bargadar for making khatiyani (a document of rights to land) in an effort to protect the interests of the bargadar.⁶⁵

59. *Id.*

60. The State Acquisition & Tenancy Act, 1950 ch. VIII, sec. 95 (East Bengal Act No. XXVIII of 1951).

61. The State Acquisition & Tenancy Act, 1950, ch. XVII (East Bengal Act No. XXVIII of 1951).

62. The State Acquisition & Tenancy Act, 1950, ch. XV (East Bengal Act No. XXVIII of 1951).

63. The Land Reforms Ordinance, 1984 (Ordinance No. X of 1984), available at http://www.bdlaws.gov.bd/pdf_part.php?id=665.

64. The Land Reforms Ordinance, 1984, ch. V, sec. 8(2), (Ordinance No. X of 1984), available at http://www.bdlaws.gov.bd/pdf_part.php?id=665.

65. T. HUSSAIN, LAND RIGHTS IN BANGLADESH, 108 (1995).

Provisions for a Land Survey Tribunal and a Land Survey Appellate Tribunal were inserted in 2004, but the government has not yet established a tribunal (with the exception of Dhaka), and has not yet put notification in the official Gazette.⁶⁶ Legislation could be enacted empowering village courts to dispose of suits relating to partition, pre-emption, demarcation of boundary, and mortgage by alternative land dispute resolution.⁶⁷ The SAT Act provides grounds for ejectment, in which case the interest of a raiyat in a holding is extinguished.⁶⁸ When any property is imposed on the government, that property is completely disposed by the government. The following circumstances are examples of types of land that are khas land:

- i. If any holding or part of it is sublet, the interest of the raiyat shall be extinguished.
- ii. If any person voluntarily abandons his residence or does not cultivate his land for a period of three years without payment of rent, his interest shall be extinguished.
- iii. If a char emerges from river or sea, government will possess the land if there was no owner of the land ever before.
- iv. If the diluvium land becomes alluvium again after 30 years, the government can claim the ownership of that land. These types of land are called khas land.
- v. When a person dies intestate leaving no heir entitled to inherit under the law of inheritance.
- vi. When any person purchases land exceeding 60 bighas violating Presidential Order of 1984.

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

V. PROBLEMS OF EXISTING LAWS RELATING TO KHAS LAND

The land administration system in Bangladesh is corrupt, inefficient, and unreliable and inherently contains systematic weaknesses. Equality before the law is recognized on paper, but in practice the law operates against the poor due to discriminatory legal and administrative systems. The principles were issued

66. The State Acquisition & Tenancy Act, 2004 (Act No. IX of 2004) (amended 2004).

67. KAZI EBADUL HOQUE, *GRADUAL DEVELOPMENT OF LAND LAW AND LAND ADMINISTRATION*, 261 (2000).

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

to distribute khas land among the landless on July 1, 1987.⁶⁹ After the failure of the previous principles, the Principle of Agricultural land and Settlement Act of 1997 was created.⁷⁰ Again the result was nothing. Government cannot take absolute possession of new chars. The laws seem to be a barrier in these respects:

- a) Local land offices in the respective areas do not survey alluvium and diluvium lines or submit reports after land alluvium and diluvium. Thus, there are problems regarding identification of newly alluvium land.
- b) Lack of support from land and general administrations.
- c) Land owners of the erosion-level areas who stay in the town usually face problems in regaining possession of their land after a long gap.
- d) There is always a chance of tampering of documents during determining ownership of char.
- e) There is an increasing trend of preparing fake deeds and documents.
- f) Lack of proper implementation of ceiling law. Ceiling of land is not properly justified as all lands are not in one document. As a result, it has been easier for *Jotdars* to take possession of these lands.
- g) *Jotdars* have a desire to establish themselves in char owing to their claims of inheritance.

VI. THE PATTERN OF LAND DISTRIBUTION

Since the number of landless, poor families is around 10 million, Bangladesh has 10 million bighas⁷¹ of distributable khas land that is potentially available for cultivation by those with no land.⁷² According to the gazette of the Bangladesh government published on May 8, 1997, the husband and wife of a landless family are to jointly receive 1.5 acres of khas land.⁷³ Overall rehabilitation of 430 families, or 2,322 persons, is possible within 1 square mile.⁷⁴ The average number of members per family in Bangladesh is 1,722.89 square kilo-

69. See ABDUL BARKAT & PROSANTA K. ROY, POLITICAL ECONOMY OF LAND LITIGATION IN BANGLADESH: A CASE OF COLOSSAL NATIONAL WASTAGE 46 (2004); ID21 Global Issues, Non Governmental Organisations on Trial in Bangladesh, <http://www.id21.org/society/s8cjd1g1.html> (last visited Sept. 13, 2009).

70. CARE RURAL LIVELIHOODS PROGRAMME, LAND POLICY AND ADMINISTRATION IN BANGLADESH: A LITERATURE OVERVIEW 10 (2003), available at <http://www.carebd.org/Lang%20Policy%20and%20Administartion.pdf>.

71. "A measure of land in India, varying from a third of an acre to an acre." Webster's Revised Unabridged Dictionary, bigha, (1913), available at <http://www.thefreedictionary.com/bighas>

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

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

74. *Id.*

meters or approximately 672 square miles.⁷⁵ It is possible to permanently rehabilitate 28,960 families, or 1,560,384 landless poor on 627 square miles.⁷⁶

Char land is very fertile for agricultural production. If these lands can be distributed among the landless poor, each and every piece of land will be properly utilized. It has the potential to be the best means for reducing poverty in Bangladesh and creating national development.⁷⁷ It will also help to reduce disorder and disputes which have existed in the char areas for centuries. As such, it will establish law and order in the char areas, while ensuring good governing practices and democracy. Enormous opportunities for employment will emerge if char lands are distributed among the true landless poor.

According to the book, *Political Economy of Khas Land in Bangladesh*, written by Dr. Abul Baakat:

identification and management of khas land (state owned land) and water bodies, distribution of the same to the landless and poor people, retention of such land water-bodies by the landless and pertinent rules and practices within the prevailing social-political context of Bangladesh constitute prime issues of agrarian reform.⁷⁸

Such reform will enable middle-sized peasant families to manage their food year-round from the allotted land. Moreover, it can solve the housing problem. When landless poor possess a piece of land, the family's status increases in society. The family's personal status will be recognized as well. They can actively participate in different social programs, including shalish,⁷⁹ which can help reduce rural to urban migration. Char based people would be able to establish their voting rights and exchange their opinions in different forum.

VII. RECOMMENDATIONS

1. Transparency is widely recognized as a core principle of good governance. The rural population in Bangladesh needs a legal framework that protects their interests. Nepotism, favoritism, and clientelism might easily apply to have land issued. Access to land in many situations is dependent upon kinship, especially under customary law where corruption is becoming more and more of an issue, particularly within land administration and land management. Access to land and the related benefits are important factors in reducing poverty and creating economic growth.

75. *Id.*

76. *Id.*

77. *Id.*

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

79. Shalish is a "social system for informal adjudication of petty disputes both civil and criminal, by local notables, such as *matbars* (leaders) or *shalishkars* (adjudicators)." Fazlul Huq, *Shalish*, Banglpedia: National Encyclopedia of Bangladesh, http://www.banglapedia.org/httpdocs/HT/S_0281.HTM (last visited Sept. 13, 2009).

2. The office of the sub-registrar, the office of the assistant land commissioner, and the tauhshal office should be set up in the same place, or the same office could be given the work of registering documents for transfer of land and its mutation.⁸⁰

3. As other professional cadre, the land AC cadre in the public Service Commission (PSC) should be introduced to students with legal backgrounds, who specialize land laws, and can concentrate on land issues freeing the land AC from performing other duties. Proper training and logistical support will be needed so that the students can handle the land administration efficiently.⁸¹

4. The household survey in Bangladesh recommends: (1) better political will; (2) setting up an separate anti-corruption commission; (3) setting up a special judicial branch; (4) free flow of information; (5) appointment of a sector-wise ombudsman; (6) policy and institutional reforms; (7) social movement against corruption; (8) freely functioning media; and (9) inclusion of corruption issue in the curriculum in schools.⁸² A study of almost 3,000 households in Bangladesh shows that 97% of households that bought land had to pay bribes for land registration; 85% of the households who mutated their land ownership had to pay bribes for land mutation; 85% of households who collected land related documents had to pay bribes; 83% of households had to pay bribes for land survey; and 40% of households who received land had to pay bribes.⁸³ Tehsilders (revenue officers) were found to be the main actors of corruption in land administration, followed by land surveyors.⁸⁴

5. There is a common impression that corruption occurs only in developing countries. Corruption has the most devastating effects in developing countries like Bangladesh, because it hinders any advancement in economic growth and democracy.⁸⁵ It is clear that the sectors of land administration and land management are subjected to corruption. The recommendations are to: (1) strengthen accountability in order to close the “accountability vacuum;” (2) set norms and standards in order to make officials accountable for the service delivered; and (3) enhance citizen participation in governance in order to mobilize the role of civil society as a force for improvement of services. The following elements might play a role in curbing corruption in the land sector:

- Clear definition of land tenure
- Enforcement of the law

80. HOQUE, *supra* note 64, at 254-55.

81. *Id.* at 257-58.

82. TRANSPARENCY INT'L BANGLADESH, CORRUPTION IN BANGLADESH: A HOUSEHOLD SURVEY 3 (Apr. 2005), available at <http://www.ti-bangladesh.org/documents/HouseholdSurvey200405-sum1.pdf>.

83. *Id.* at 2.

84. *Id.* at 1-3; Paul van der Molen and Arbind Tuladhar, GEO Informatics, Corruption is Everywhere: Transparency and Land Administration (Nov. 11, 2007), <http://www.geoinformatics.com/blog/online-articles/transparency-and-land-administration>

85. PAUL VAN DER MOLEN & ARBIND MAN TULADHAR, CORRUPTION AND LAND ADMINISTRATION, INT'L FEDERATION OF SURVEYORS 2 (Mar. 2007), http://www.fig.net/pub/monthly_articles/march_2007/march_2007_vandermolen_tuladhar.pdf.

- Make land information available
 - Guarantee open access to all information and free flow of information
 - Investigation by the Anti Corruption Bureau
 - Preparation of land use plans
 - Monitoring illegal land sales
 - Address corruption issues in school curriculum
 - Computerization of land record
 - Creation of Land Title Tribunal
6. If land reform is to make any sense, the land ceiling will have to be reduced to approximately twenty to thirty bighas per family.
7. Conduct awareness programs should be created to make the citizens aware of land laws and administration such as land survey, registration, transfer and litigation.

VIII. CONCLUSIONS

Every citizen has fundamental rights guaranteed by the Constitution of Bangladesh, and each person has the right to enjoy such rights. Article thirty-two of the Constitution has ensured the right to life for every citizen of Bangladesh.⁸⁶ There are many human rights organizations that are working to establish a right to shelter and permanent settlement for the urban poor.⁸⁷ If the lands can be recovered and distributed among the landless poor, then the damaging trend of rural to urban migration will be diminished. Poverty of the society can be reduced. Reconsideration of the existing land laws, especially alluvium and diluvium land laws, can contribute significantly to the development of the socio-economic and political aspects of the char land. If the landless poor can establish their right on khas land of the char areas, the impact will be revolutionary in the effort towards alleviating poverty in the country. Though the law of landlord and tenant has been simplified, it is still not easy to understand the various provisions of the SAT Act. The provisions and the procedure to be followed are so complicated that from time to time amendments necessarily had to be introduced, to make the provisions of the Act and the procedure more comprehensible. Above all, no policies or laws are going to change the life of the landless poor until the government is willing to implement them. In Bangladesh, we think that some specific measures might immediately alleviate control corruption in the land sector.

86. BANGLADESH CONST. part III, art. XXXII.

87. See *ASK v. Bangladesh*, 19 BLD (HCD) 488; *Modhumala v. Bangladesh*, 53 DLR 540 (2001).