

Essentiality of Reforms of the Registration Act 1908: E-Registration Perspective

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Abstract

In Bangladesh and many other countries worldwide, managing registration and land ownership is extremely difficult. This method is extremely sluggish. Innovation with professional integrity and updated legislation is the key to a smart registration system in a state. An ownership change record from a sub-register office to a central database may not be updated for up to two years. E-procha, already available online and involves e-checking deeds of landed property transfer, will eradicate land transfer fraud and forgery. Comprehensive e-registration and information services, including e-registration of documents, property conveyance alert service, and automatic e-mutation, will contribute highly to these aspects. The Registration Act of 1908 needs to be reformed, which is a must to fulfill the era's demands. Erroneous, forged, or twisted deeds result in thousands of civil suits in Bangladesh. An innovative and modern technology-based registration system can help remove the complications of land transactions today.

Keywords: *Reforms; Registration act; Essential; E-registration*

Introduction

Bangladesh's land registration procedure is per the Registration Act of 1908. This paper is about recommendations for updating the Registration Act 1908 and the necessary aspects of the e-registration of documents service (e-DRS) to cope with the pace of 2041 towards smart Bangladesh. Without proper verification of the title, it can't be possible to buy any unencumbered land [1]. Certain acts are directly interconnected with the Registration Act of 1908, such as the Transfer of Property Act of 1882 and the Contract Act of 1872. According to section 17 of the Registration Act of 1908, every transfer of immovable property has been made compulsory for registration. There have already been minor changes through amendments up to 2012. This article proposes extensive changes in the context to fill the demands of the 21st century. These issues can be solved by reforming the abovementioned Act in 1908 and implementing an immutable, transparent, and reliable record-keeping system through

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electronic registration. Due to handwritten record-keeping, people frequently struggle to determine the valid owner of any land. Numerous forgeries assert bogus ownership of other people's land and cause interpersonal conflicts. According to section 49 of the Registration Act of 1908 [2], documents for which registration is required under the Registration Act 1908 must be compulsorily registered; otherwise, they will not operate to create, declare, assign, limit, or extinguish, whether in the present or the future, any right, title or interest, whether vested or contingent, to or in immoveable property, or confer any power to adopt, unless they have been registered. Some mentionable amendments were made in 2004 as compulsory registration of the declaration of *Heba* under the Muslim Personal Law (section 17(1) (aa), an instrument of mortgage referred to in section 59 of the Transfer of Property Act 1882, an instrument of partition of immovable property effected by persons upon inheritance, registration of contract for sale, etc. (section 17A), the effect of unregistered contract for sale executed prior to section 17A becomes effective, every instrument of transfer required to be compulsorily registered under this Act shall contain the particulars necessary to convey the intention of the parties, complete the description of the properties to be transferred and nature of the transaction, and registration fee for a contract for sale, *Heba* and mortgage. Some minor amendments were also made in 2006 and 2012.

Methodology of Study

This paper applies a qualitative approach to research methodology. After reviewing the logic with references to specific existing laws and precepts, a proposal to amend and update several provisions in the Registration Act 1908 attempts to hypothetically investigate the necessity of reforms to fulfill the time demand. Primary materials such as statutory legislation, books, journals, law reports, etc., have also been consulted.

Objectives of the Study

The objectives of the study are:

- To find out necessary provisions that are to be amended to remove the loopholes in the Registration Act 1908,
- To introduce and add certain new provisions to cope with time demand,
- To find out the prospects and the challenges, and
- To propose provisions for the e-registration of documents in the said Act of 1908.

Essentiality of Proposed Reforms with Reasons

Overriding Effect

Most Acts contain provisions on the overriding effects of respective Acts. However, there is no provision for the overriding effect in the Registration Act 1908, so there should be a clause on the subject in a new section, 2A. However, most of the Acts contain a clause on overriding effects on particular fields, which this Act of 1908 lacks. For example, the following Acts, among others, contain such provisions, namely Section 2A of the Bangladesh Environment Conservation Act, 1995, which states the overriding effects. Section 3 of the Children Act 2013 states the same provisions. Section 3 of the Digital Security Act 2018 also provides the same provisions. Many other statutory laws provide the same provisions regarding their overriding effects.

Department of Registration

There is no mention of the establishment of the Department of Registration in “the Registration Act, 1908,” though it is found on the web page as the Department of Registration, and it is also known to the people as the Department of Registration. So, section 3 of the Act of 1908 may be amended as ‘there shall be a Department of Registration headed by the Inspector-General of Registration for Bangladesh.’ The website shows the ‘Department of Registration,’ but the Registration Act contains no provisions where the Department of Registration is mentioned. In many Acts, the Department of the respective office is inserted. The Department of Environment can be seen in section 3, “the Bangladesh Environment Conservation Act 1995,” which provides that the government shall establish the Department of Environment headed by the director general.

Electronic Registration of Land

The government has initiated a project to implement e-registration of lands to expedite and streamline the land management system. The Daily Sun [3] reported that the Directorate of Registration under the Ministry of Law, Justice, and Parliamentary Affairs has adopted the “Land Registration Management Digitization Feasibility Test Project” scheme at the cost of Tk 1,60,32,000. The government will start e-registration of documents after completing the pilot projects in 17 Sub-registry offices throughout the country. This is initiated to implement e-registration of lands to expedite and streamline the land management system. The legislation website [4] mentioned, however, that no provision in the Registration Act 1908 allows e-registration of documents, as we can see in sections 91 and 92 of the Registration Act 2002 of the UK. Economictimes [5] reported that the development of electronic conveyancing coincides with the development of the National Land Information Service, which is an

online system of access to a range of information sources about property held in disparate places. The UK publication on Land Registration for the Twenty-first Century: A Conveyancing Revolution [6] stated that it is worth emphasizing that electronic registration will employ well-established computer technology and will be capable of operating from the personal computers that most practitioners already have. The move to electronic conveyancing will not require their significant capital outlay. So, specific rules will undoubtedly be added to the point of e-registering documents. The provisions on power and procedure of e-registration of documents are to be inserted in the Registration Act 1908 in suitable sections. The Financial Express [7] reported on 5 July 2018 that a central database must have a comprehensive link to all land-related organizations under a single network. Alam [8] found that a greedy landowner can sell land multiple times with full payment if the registration and mutation (change of ROR) is not completed. Sometimes, powerful land sharks create false documents with the help of intermediaries and government officials and forcefully grab control of a piece of land. It takes the rightful owner a very long time (sometimes years) to retain the ROR through the judicial process. These offices are crammed with handwritten paper documents and almost a hundred years old registers. Many of those are already damaged due to humidity or are half-eaten by booklice, woodworms, termites, mice, and cockroaches. Ali [9] showed in his research article that the absence of an updated database is the primary reason behind land disputes. A central database is needed for a comprehensive link to all land-related organizations under a single network. Electronic conveyancing through the e-registration process will undoubtedly be suitable for preserving documents in a database and keeping them safe from being destroyed.

Assistance from Law Agencies

The functions of the Registering Officers are directly linked with the public at large, but no provision is mentioned in the Registration Act 1908 regarding seeking assistance from law enforcement agencies in case it is necessary. The same provisions are available in several Acts: The Consumer Rights Protection Act 2009, section 28; The Environment Conservation Act 1995, section 4A (as added in 2002); The Electricity Act 2018, section 55, which may help the registering officers to work more smoothly, as there is direct involvement of mass people. Rules on the issues are to be included in the Registration Act 1908 so that the registering officers may instantly seek assistance from the law enforcement agencies concerned whenever necessary.

In Case of Conflict, Bangla will be Preferred

বাংলা ভাষা প্রচলন আইন ১৯৮৭ insists on introducing Bangla in all spheres. As per article 21 of the Constitution of the People's Republic of Bangladesh, citizens are legally bound to abide by the country's laws. Their mother tongue is Bangla, so there must be an officially translated copy of the Registration Act 1908 in Bangla. In case of conflict between English and Bangla, the latter shall prevail. Hence, provisions in this regard must be incorporated in the Act described above 1908.

Delegation of Power by the Inspector General of Registration (IGR)

In different Acts, there are provisions on the delegation of power by the head of the Department to subordinate officers; for example, the Mobile Court Act 2009 may be mentioned; in this Act, section 11 empowers the district magistrate to delegate powers to subordinate executive magistrates. Besides, the director general of the respective departments is empowered to delegate some of the powers to subordinate officers under section 15 of the Coast Guard Act 2016, section 79 of the Consumers Rights Protection Act 2009, section 19 of the Environment Conservation Act 1995, section 29 of the Weather Act 2018. Therefore, provisions may be inserted in the Registration Act 1908, empowering the Inspector General of Registration (IGR) to deliver some of its powers, if and when necessary, to subordinates or to registering officers.

Legal Protection for the Registering Officer for Bonafide Acts

The office of the sub-registrar is quasi-judicial. So, there should be protection against bona fide acts that are done or refused in his official capacity. There are certain acts where legal protection is ensured for the concerned officers. The acts are as follows: Section 14 of the Mobile Courts Acts 2009 ensures that no suit or criminal proceedings can be filed against a District Magistrate/Executive magistrate for any acts done or action taken in good faith, which ensures more protection for them.

Similarly, Section 31 of the Right to Information Act, 2009 ensures that no suit or criminal proceedings can be filed against the information commission or any officers or staff for any acts done or action taken in good faith. Section 31 of the Anti-Corruption Commission Act, 2004 assures any commissioners, officers, or staff the same protection. Sections 77 of the Consumers' Rights Protection Act 2009 and 29 of the Restoration of Vested Property Act 2001 provide the same provisions.

However, the Registering Officers are protected only from civil liability for anything done or refused in an official capacity and good faith. It can be found in section 86 of the Registration Act, 1908, which enumerates the legal protection to the registering officers as it states that "no registering officer shall be liable to any suit, claim or

demand because of anything done in good faith or refused in his official capacity.”The Judicial Officers Protection Act 1850 also applies to them and protects them from civil liability only. So, Section 197 of the Code of Criminal Procedure 1898 is to apply to them so that they feel secure from criminal liability as well for anything done in good faith. Section 228 of the Penal Code, 1960 also applies to them for contempt in case of insult, interruption, or disturbance to their official functions. Sometimes, it is found that parties twist or defraud the opposite party intentionally, which cannot be detected by the registering officers, but they are made to be accused when any criminal case is filed by the aggrieved party regarding the deed registered by them as if they are directly involved in fraud. Section 84 of the Registration Act 1908 recognizes that every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Penal Code, 1860. Any proceedings of the registering officers shall be considered a judicial proceeding under this Act.

Complexity in the Search Procedure

The idea of verification is troublesome because the register books (locally called *Balam*) of sub-registry offices and land offices, in some cases, are almost destroyed or about to be destroyed, and the government may introduce computerized and digitalized documents to identify the title easier which will also minimize civil suits, save time and money in dealing with these disputes. If he cannot provide all the information, a person cannot determine the owner of any specific property or whether he possesses any property. The Registration Act of 1908 makes all registered documents kept in public offices public documents, as mentioned in the Evidence Act, 1872, Section 74, but, regrettably, the public cannot investigate such public records without providing all the data, which makes it challenging to carry out. A search by electronic means can be made more accessible by putting the minimum information on the issue. If the concerned ministry and Department intend to remove the complexity in the search process, locally called *Tallash/talash*, the search process must be digitalized so that any search can be successfully done by providing minimum information regarding the landed property.

Jamil [10] proposed that a registered deed of sale can be verified or inspected, and the certified copy can be withdrawn upon depositing the prescribed fees from the office in which the deed was registered. Many other documents must also be verified, i.e., a *bia* deed, a record of rights, mouza, any previous transfer or charge upon the same landed property etc., which is a troublesome and complicated task to do. All *Balams* are to be digitalized, both previous and future ones. All Records of Rights (*khatians*) will be digitalized side by side. This will undoubtedly stop twisting or tempering these

documents, which will be preserved electronically through a database software system.

Compulsory No Encumbrance Certificate (NEC) in Buying Immovable Property

Khidmat [11] recommended that a No Encumbrance Certificate(NEC) is proof that the concerned property is unencumbered from any financial and legal debts. It proves that the property can be sold as a free title and that you will receive ownership free of encumbrances. An individual can obtain this document from the registration authority's office. It confirms that the asset one intends to invest in is accessible, clear of all liens, and has a marketable title, which will reform some sections that regulate strict rules for a mandatory No Encumbrance Certificate (NEC) in property buying.

Checking Indexes in Book No. 1

Section 57, which provides Registering Officers to allow inspection of certain books and indexes and to give certified copies of entries under the Registration Act 1908, makes it quite explicit that anyone applying for registration must always be able to inspect the indexes relating to Book No. 1(the register of on-testamentary documents relating to immovable property), yet in practice, these indexes have been prepared and are created, but this is not digitalized. Thus, events like these are primarily to blame for the Registration Act of 1908's failure. Section 51 of the Registration Act of 1908 provides that register books (books: 1-5) and indexes be kept in several offices. Due to analog indexing systems, checking and searching have become more complicated. So, probable solutions may be firstly to ensure the digitalization of indexes and, secondly, the proper organization of indexes so that inspection can be done quickly. Section 51 of the Registration Act 1908 shall be amended to include electronic indexing and maintenance provisions for those books.

Registration of a Power of Attorney

Section 32 of the Registration Act of 1908, the clause states that any person duly authorized by a power-of-attorney executed and authenticated in any manner in the future mentioned may present a deed for registration. A power of attorney deed that empowers the power receiver to transfer immovable property must be compulsorily registered. So, Section 17 of the Act of 1908 shall be a provision for registering a power of attorney deed as a must. Though there is the Power of Attorney Act 2012, the Registration Act 1908 is to be amended.

Property Conveyance Alert Service and Appointment of Technical Officer/Stenographer

Shithy [12] found that a property Conveyance Alert Service is to be introduced through which a short message will be sent to the owner and co-sharer owners of the landed property whenever any transfer is made regarding that property. This system has been introduced in the UK HM Land Registry system. This Property Alert Service will alert the landed property owners and make them vigilant regarding transfer or attempted transfer. A provision shall be inserted in the Registration Act 1908 regarding the appointment of a Technical Officer to perform the technical functions of the e-registration of documents process. So, there shall be a provision for the appointment in the technical officer post, which will ease the e-registration process of the documents.

Findings and Recommendations

The following are the findings and recommendations for a smart and technology-based land registration system in Bangladesh.

- The proposed reforms of the Registration Act 1908 will contribute to the smooth functioning of the registering officers and the Department of Registration for the better interest of the public at large.
- Verification Access to NID/Birth Certificate/passport shall be given to the registering officers to verify and scrutinize the genuineness of transferors and transferees whenever necessary.
- The interconnections and inter-checking opportunities through the database system are to be provided to the Registering Officers and Assistant Commissioners (land) so that before registration, the Registering Officers can check the necessary information regarding the record of rights (*khatians*), and AC (land) office can check the registered deeds before mutation.
- All *Balam* is to be digitalized, both in the past and future. All Records of Rights (*khatians*) will be digitalized side by side. This will stop twisting or tempering on these documents, which will be preserved electronically through a database software system.
- Error-free deeds will reduce the number of civil suits arising from land transactions in Bangladesh.
- The mandatory and prior requirement of a No Encumbrance Certificate (NEC) in property buying will eradicate most of the frauds to the transferees.
- The Property Alert Service will alert the landed property owners and make them vigilant regarding transfer or attempted transfer.

- The Post of Technical Officer/Stenographer will facilitate the privacy of official drafting, etc., technical assistance with e-registration activities, and e-checking of details about property smoothly and without any error.
- Information for online registration of land and digital search opportunities will save time and money when searching for detailed information on landed property. It will also help remove corruption from land-related government offices.
- E-checking indexes in book No. 1 will help people search indexes easily at no cost.

Prospects and Challenges

There are certainly several challenges and prospects in implementing the e-registration of documents service in Bangladesh. The most prominent are now mentioned below:

- Here, managing land titles is a complicated and drawn-out procedure that is not adequately coordinated among several government offices, which presents a chance for land sharks, intermediaries, and dishonest government employees to fabricate documents and commit numerous land-related offenses. Due to the overwhelming majority of civil lawsuits, these burden the nation's legal system.
- In this research, an e-registration-based approach that handles immutable transaction records assures data openness, protects land transaction-related records, and ensures data accessibility. E-registration will certainly enhance and ensure the security of documentary records from destruction by fire, floods, theft, etc., as well as the documents preserved by the public authority through online technology.
- Recruitment for the proposed Technical Officer/stenographer post will undoubtedly involve some financial expense from the government's budget. Financial involvement is comparatively shallow because this Department collects the most revenue and is the most important in the e-registration of deeds. This will reduce and remove land-related disputes day by day.
- Digitalization, which means e-registration of deeds, will protect subsequent transferees from being victimized by fraud. The exact property will not be transferred to the next transferees, concealing the previous transfer(s).
- There will be a slight chance of hacking and digital fraud offenses, which the landed property database may cause. So, there shall be vigilant monitoring of

its security by declaring it a national security infrastructure under the Digital Security Act 2018.

- The digital search opportunity will open the doors of easy search and save time.
- Interconnections of the registry office and Assistant Commissioner (land) office through online checking of *khatians* and deeds by each other will ease the hassle of identifying genuine owners of landed property and remove forgery in transaction processes.
- The hacking of documents by hackers may create a security risk for online records.
- Amendments to the Registration Act 1908 may be time-consuming through vetting the Ministry of Law, Justice and Parliamentary Affairs proposal.

Concluding Observations

Resolving land disputes is a challenging process. The proposed mechanism for resolving the land disputes above is precise. The rules and regulations governing the resolution of land disputes are centuries old, having been mostly passed down from the colonial era, and are frequently found to be insufficient to handle the problems and difficulties the current land registration and administration is confronting. Land ownership determination, coordination among various government offices dealing with land-related services, land surveys, and record-keeping, facilitating easy access, and managing immutable transaction records are among the challenges that require immediate attention. The absolute requirement for ensuring the automation of land management is establishing a Digital Land Management System (DLMS). Computerizing property records under this system will make it easier for landowners to access records, lowering the likelihood of land ownership fraud and forgeries. As a result, there would be a significant reduction in land conflicts, relieving the judiciary of the weight of growing case backlogs.

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