

Forceful Dis-Possession of Land: Law as a Weapon for Exploiting Minority People's Land in Bangladesh

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Abstract

The present-day land administration of Bangladesh is the result of thousands of years of legal and administrative evolution. And the history testifies regarding the misery of the minority groups of this land. Irrespective of ethnic and religious identity, the minority people were victims of land grabbing by the majority and that is without any legal remedy. Although, law is supposed to provide protection to the citizens from any illegal actions but in the case of minority land rights, the reality totally prescribes the opposite. In Bangladesh, religious minorities have been tagged as 'enemy' and their lands have been grabbed in the name of 'enemy property', a phenomenon that can be regarded as a gross violation of human rights. Although, subsequent legal developments were made to return the grabbed lands, but the field reality raises the question of political goodwill to really implement such laws. Again, the ongoing land grabbing through misuse of law and through illegal ways has posed a threat to the peace and stability of the country. The minority is active in protest for their right, but their voices are being suppressed by the deep-rooted evil enterprise in the country. But if effective legal reforms are taken to mitigate such legal barriers, the situation is bound to improve. But to bring forth such reforms the political goodwill is a must. Without such goodwill, the misery of the minority would come around in circles just like it did in the past.

Keywords: *Minority; enemy property; human rights; forceful dispossession; land grabbing.*

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1.1 Introduction

The Bangladeshi land administration is a complex system that has evolved through various historical phases [1]. The past rulers have done a tremendous work developing the land laws. But while doing so, they have often disregarded the cultural reality of the subcontinent [2]. It has resulted in the subsequent misuse of land law by the powerful segment of society to consume the land of the weak, especially of the minorities of this country. Although, the legal recognition of land ownership and possession in the Indian sub-continent can be traced back to the ancient religious customs and indigenous laws, but such ownership did not necessarily belong to the general people back then [3] Yes, there were mechanisms to prevent illegal occupation of land, but there was no means to prevent immoral and forceful land grabbing by the then rulers or their auxiliaries.[4] So, land grabbing under the cover of law was somewhat a common scenario in this subcontinent. There was no codified substantive or procedural law regarding land acquisition, and it was the arbitrary power of the rulers to evict the general people from their land. However, from the first praiseworthy development of legal protection under the Pitt's India Act 1784 to the enactment of two major latest laws, namely: *Bhumi Oporadh Protirodh O Protikar Ain 2023* (Land Crimes Prevention and Remedy Act 2023),[5] and *Bhumi Songskar Ain 2023* (Land Reforms Act 2023),[6] legal system of Bangladesh has provided numerous laws protecting the land rights of the general people. Most important among such laws perhaps is the State Acquisition and Tenancy Act, 1950 which abolished the intermediary aristocrat class, known as *Zamindars* and established the right of the people over the land.[7] Another important document of such nature is the Constitution of Bangladesh which under Article 42 recognizes the right to property of general citizens as well as provides equality before law under Article 27 and right to protection of law under Article 31.[8] So, under the constitution, the minority of Bangladesh has the right to own and possess land and the right to take judicial protection if such right is violated. But in reality, incidents of illegal eviction of minorities are rampant. And most of the time existing laws are used for such eviction and the evicted people do not get a judicial remedy guaranteed in the constitution. The situation is so dire that even the property of the national Temple, *Dhakeshwari Temple*, was forcefully occupied by the government itself in the cover of Vested Property. Originally built on 20 bighas of land, the temple had around 13 bighas of land occupied by the government and local mob, of which only 1.5 bigha was returned by the government.[9] On the other hand, the various hostile actions and so-called development initiatives taken by the government for decades have infringed the land rights of the indigenous people of Bangladesh in such a manner that *Abul Barakat* has

identified it as “unpeopling of indigenous people”.[10] Frequent incidents of protest by the indigenous people like the one against the construction of a five-star hotel in Chimbuk Hill, are proof that there might be some serious lacking on the part of the legal system in ensuring the land rights of the minority.[11] Therefore, it is a time-worthy task to find out the various conflicting legal aspects related to the minority land rights in Bangladesh and to invent effective solutions to such problems.

1.2 Aims and Objectives of the Research

The aim of this research is to offer a detailed identification of the land law provisions resulting in forceful land grabbing and provisions that are failing to ensure land rights of religious and ethnic minorities in Bangladesh. The research would enlighten us regarding the historical perspective of forceful land grabbing in Bangladesh. And it would further enable us to understand how the law has neglected the ethnic and religious diversity of the land in the past and failed to provide any safeguard regarding abuse of various provisions. Again, the research will identify how the past laws have disregarded any future possibility of harmonious cohabitation of various ethnic and religious people in Bangladesh by trying to enforce colonial ideas. The research objective is to identify the current conflict between the various legal provisions and to present a coherence of the already suggested solutions to the problem. Also, the research will scrutinise the literature that are praising the existing legal mechanisms and it will incorporate the logical legal arguments of such literature to enrich its solutions. As the research is willing to incorporate a comparative analysis of cases of countries with similar socio-economic backgrounds, which will further enrich our understanding of various legal systems and would help us to understand the vital factors that make ours unique.

1.3 Literature Review

The subject matter includes a vast array of literature positing different points of view on the subject matter. *Abul Barkat* has rightly pointed out how the attempt of ‘adverse inclusion’ of various minority communities has caused dispossession from land and severe alienation of those communities.[12] However, he failed to provide any solution as to any proper way of accommodating them in the mainstream. *Shelley Feldman and Charles Geisler* have provided a statistical analysis on how especially minority groups are losing their lands to powerful local occupiers and goons.[13] An important array is the dispossession of lands for natural causes like river erosion and flood and the subsequent occupation of alluvion or char lands by the powerful parties of the locality.[14] But effective legal solutions were missing in their research. Even shocking reports of the occupation of minority land in the name of the military

establishments and development projects can be found in *Shelley Feldman and Charles Geisler*.^[15] But the security concern of the nation and the malice of the government were not discussed in this literature. There are positive notions within the common law system, such as, by *Una Woods* who found the implementation mechanisms that are forceful possession in essence, such as adverse possession, severely detrimental to the original title holders and proposed a veto system on the part of the original title holder as a means of protection.^[16] However, *Tawhidul Islam* has adhered to the traditional view of appraising the system to rebuke the idle owner and to reward the active occupant.^[17] But the plight of the minority was missing from his works. Again, *Larissa Katz* described adverse possession and any such means of dispossessing the title holder as worse than robbery and comparable to a bloodless *coup d'état*.^[18] But they have greatly ignored the positive sides of such a mechanism. On the other hand, *Rabiul Hossain* had a more radical view regarding the subject matter, and he opined that religious minorities have used the proceeds of their property to transfer a vast amount of wealth outside of Bangladesh.^[19] His position was based on the literature of scholars, such as *Safdar Mahmud* and *Mushtaq*.^[20] Furthermore, *Alexandra B. Klass* is a supporter of the mechanism of adverse possession and emphasised on the modification of the existing system.^[21] Their research, though, did not incorporate the Indian sub-continental contexts, yet provided some interesting aspects of the subject matter. Therefore, two broadly different opinions are prevailing among scholars regarding the subject matter. The close study of such literature reveals that both positions taken by the scholars are quite biased, some lack foundational evidence and some lack coherence as to the reached conclusion. It is intended to synthesize the opposite views and to suggest new ways to improve the existing mechanism of adverse possession so that an effective system can be developed, and subsequent research can be done following its pathway.

1.4 Research Questions

1. How are the existing laws being used for grabbing the minority peoples' lands in Bangladesh?
2. What legal reforms could be brought to mitigate such misuse of law and to ensure land rights of the religious and ethnic minority of Bangladesh?

1.5 Methodology

Doctrinal Methodology has been used in this research. The main intention behind using doctrinal methodology has been to systematically exposit the rules governing the subject matter of dispossession in the cover of legality and to find out the rules

guaranteeing land rights of the ethnic and religious minorities in Bangladesh. It has further proposed a new framework regarding the subject matter. As part of the process, a vast amount of literature has been reviewed, and the limitations of such literature have been addressed in this research work. An analysis has been made on the relationship between the existing rules regarding the subject matter and a detailed explanation has been articulated about the areas of difficulty. Also, solutions have been provided to mitigate the identified difficulties. Most importantly, the use of doctrinal methodology in this research was cost-effective and less time consuming. Therefore, it has been possible to achieve the desired result through doctrinal methodology considering the time and budget constraints of this research.

Part I: Related Concepts

Before jumping into the main discussion, we must identify and define the major concepts related to unlawful dispossession. Firstly, we must have a clear definition and an idea regarding unlawful dispossession. Secondly, we must define and discuss minority ethnic groups. Thirdly, we must define the concept of minority religious groups and the related aspects. In the subsequent parts of the paper, we will analyse how these three concepts intersect and how law has become a weapon of exploitation for the ethnic and religious minorities in Bangladesh. So, let's start by defining unlawful possession.

2.1 Unlawful Dispossession of Land

Land possession refers to the action of acquiring control over any particular land with the objective of owning such land.[22] The initiation of the concept focused on the physical aspect but now it is an abstract concept. For example, a servant has an object in hand does not mean he has the possession; rather the possession lies with his master who might be living in a foreign place. However, illegal dispossession of land refers to a situation where a person without a proper title or legal means possesses land.[23] The act of illegal dispossession often involves fraud, coercion and other unlawful means to evict the previous possessor from the land. Many of the legal disputes in Bangladesh are related to illegal possession of land.[24] Land is a valuable asset in Bangladesh and the laws are quite flexible regarding the occupation of land.[25] That is why it is such an attractive target for the unscrupulous people. Such people generally forge various documents to establish their false ownership. Again, adverse possession has made land property wide open as a target for unlawful grabbing. Although, occupation without the consent of the owner is a criminal offence, yet the occupier often resorts to various coercive means to prevent the original possessor taking help from the legal system. However, if there is consent from the owner

regarding the occupation or if the owner leases the land in exchange for rent, then such an arrangement is completely legal. But the manner and tenure of such occupation is to be within the ambit of their agreement and if the occupier infringes the terms of their agreement, then such occupation would be illegal. Now, an important exception to illegal occupation is adverse possession that is to be discussed in the next part.

2.2 Adverse Possession

Adverse possession refers to the mechanism where a land is occupied by any individual for the limitation period and which resulting into the dispossession of the previous owner giving the occupier legal ownership.[26] Any occupation with an interval does not amount to adverse possession.[27] There are four elements to be met for a possession to convert into adverse possession: a) the original owner had authority to possess the land in question, b) the original owner was not in any kind of possession of that particular land within such limitation period, c) a squatter had been occupying the land for such limitation period, and d) such occupation was hostile in nature and adverse to the original owner.[28] This Austinian coercion based system has been introduced to rebuke the idle owner and reward the active squatter so that people do not lie idle on their property. Adverse possession has been recognized under the Non-Agriculture Tenancy Act, 1949 section 7, section 8, section 9; State Acquisition and Tenancy Act, 1950, section 28, Transfer of Property Act section 23 and in many other laws. The requirements of adverse possession consist of a visible and hostile occupation of the land.[29] Also, continuous possession is a key requirement and there cannot be any interruption from the title holder of the land and the possessor must exclusively possess the specific land.[30] Any claim regarding the possession of the land must be brought within twelve years, as has been stipulated under section 28 of The Limitation Act, 1908.[31] However, the claim of adverse possession is negated by co-ownership.[32] Also the *Thakur Kishan Singh v. Arvind Kumar* case decision suggests that permissive possession the defence of adverse possession is inapplicable.[33] Moreover, part-performance has been described as another ground in which the adverse possession claim is inapplicable in *Mohan Lal through his LRS. Kachru & Ors Vs Mirza Abdul* case.[34] Now, the difference between adverse possession and unlawful possession must be elaborated in the subsequent section.

2.3 Adverse Possession vs Unlawful Possession

In Bangladesh, adverse possession refers to occupation of other's land for at least a period of 12 years.[35] If no objection is given or no legal proceeding is taken by the original owner, then upon expiry of the limitation period the property lawfully belongs to the occupier. On the other hand, illegal possession of land is a crime where the

lawful owner has a right to take the help of law to evict the illegal possessor. Adverse possession is on the contrary a lawful mechanism and upon achieving adverse possession, the squatter takes the place of the original owner in respect of the property-related rights, duties and obligations. In adverse possession the ownership is transferred because of the negligence of the original owner regarding land. Whereas, in the case of unlawful possession of land no ownership is transferred despite the tenure of occupation. Adverse possession assigns a right to the squatter but illegal occupation attributes a crime upon the illegal occupier. An illegal occupier can be evicted under Section 145 of the Code of Criminal Procedure, 1898.[36] Also, sections 8, 9 and 42 of the Specific Relief Act, 1877 can be used to evict an illegal occupier.[37] But after the expiration of the limited period the adverse possessor cannot be evicted legally from the land. Now, the legal mechanisms like adverse possession, vested property and the illegal mechanisms are used by the unscrupulous people to occupy the land of minorities in Bangladesh. Before jumping into that discussion, the concept of a minority must be defined first.

2.4 Who Are Minorities?

Minority refers to a group of people that are different from the majority group within a state structure.[38] The scientific point of view regarding minorities indicates particular characteristics, such as religious, ethnic or linguistic diversity.[39] There is an inherent feeling among such a group regarding their difference from the majority group. Also, they have somewhat static characteristics that are not to be found in the majority group. The term was first defined by the Permanent Court of International Justice.[40] As per the view, minorities are people who belong to a particular geography having distinct race, language, faith and a common norm of solidarity to preserve their tradition, maintaining their unique way of worship, and a unique tradition of upbringing the children following the spirit of their group.[41] After the formation of United Nations, the term remained undefined by the organisation for a long time. And the long-awaited codification came to realisation under Art. 27 of the Covenant on Civil and Political Rights when it came into force in 1976.[42] However, the covenant did not provide the minority protection as a group rather it protected them as individuals. The Constitution of Bangladesh in art. 23A has enshrined the fundamental principle of the state to protect the culture of minor races, ethnic sects and tribes.[43] However, for the purpose of our research, we are mainly focusing on the ethnic and religious minorities of Bangladesh. These concepts are discussed in the subsequent parts.

2.5 Ethnic Minority

Bangladesh has a majority of Bengali people.[44] The term Bengali indicates both the ethnicity and linguistic grouping of the people.[45] On the other hand, the ethnic community refers to people who belong outside of the Bengali linguistic and ethnic group.[46] The ethnic origin of the current Bengali people originated from the different races that once conquered or settled in this region.[47] On the other hand, there are more than fifty ethnic minority groups living in Bangladesh constituting around 1.8% of the whole population.[48] They are known as the ethnic minority of the land. In a broader notion, ethnic minorities are less in number, and they have distinct cultures, religions and languages from the majority.[49] They belong to a totally different race than the Bengali people and are conscious to preserve their own identity.[50] However, the ethnic minorities are the dominant group in places like Chittagong Hill Tracts Region (CHT Region).[51] The CHT region has a distinct legal and administrative arrangement.[52] Although, the government institutions have concurrent jurisdiction in the region, they usually refrain from exercising so.[53] Therefore, in the CHT region the land ownership and use are governed by the customary law of the area. Also, there are ethnic Bengali people living in the CHT area that follow such customs regarding land use.[54] But except for the CHT region, the formal law of the land applies to the whole of Bangladesh. Both the hill and plain land minorities are subject to prohibition if they want to transfer their land outside of their group.[55]

Now, let's discuss the concept of religious minority.

2.6 Religious Minority

The religious minority in Bangladesh consists of Hindus, Buddhists and Christians.[56] The applicability of the land law is the same for both the religious majority and the religious minority. The Constitution of Bangladesh has declared all people of the land equal before the law and ensured equal protection of the law for all.[57] But in reality, the religious minorities are subjected to exploitation regarding their land, livelihood and religion. The plain-land ethnic minority also belonged to the religious minority group and because of the lack of existing legal provisions their land right is severely violated. The religious minority has suffered because of the Vested Property Act of 1974.[58] Large scale incidents of grabbing the property of Hindus, Buddhists and Christians using the law have been reported. Even the national temple, *Dhakeshwari* temple, lost around 13 bighas of land because of the misuse of such legislation.[59] The Vested Property Act 1974 enabled the Government to confiscate properties of individuals who have been designated as the 'enemy of the state'. [60] It

was a common political practice back then to grab the minority land by giving them 'enemy of the state' tag. Statistics indicate that around 45% religious minority population lost 2.6 million acres of land under such legal mechanisms.[61] After decades of protest from the minority groups, the Vested Property Act was repealed in 2001 and an endeavour to return the occupied land to the minority was taken by the government under the Vested Properties Return Act of 2001.[62] But such legal development fell apart in the face of subsequent regime change and such inaction on the part of the government was highly criticised. Thus, the account of the religious minority in Bangladesh has been a saga of oppression through law for a long time. And to change such a miserable situation through legal reform, we must first know the historical account of land law in this land.

2.7 Historical Account of Land Law

In order to challenge the existing system of unlawful possession, it seems very important to identify the core historical concepts related to land law. We must evaluate the identified concepts to apprehend which particular concepts to challenge in the whole system. Historically, legal intellect and institutional arrangements have been transferred from one regime to another regime in Bangladesh. The aggregated result has been that the current system has a completely unique characteristics from its ancestors. From the ancient period till date, law has been recognising various rights of the people, yet scarcely has it been in favour of the minority of this land. The rulers have mostly exploited the minority groups of this land, a trend that surprisingly still exists in independent Bangladesh. Therefore, despite having uniqueness regarding so many aspects, the exploiting feature of the legal system is yet intact. The later parts are a description of the miserable past of the minority of this land.

2.7.1 The Aryan Period

The most ancient account of land management in this land is of the time of the Dravidian period. The Dravidian or Mongolian people first started cultivation in the land of India.[63] Their unique method of cultivation is still followed to date in the CHT area and is known as *Jhum*. [64] They were defeated by the Aryan people who made them slaves and confiscated the land that belonged to them.[65] Probably this was the first story of exploitation through legal means in the subcontinent. The Aryan legacy can be found in the *Rig Veda*. [66] The historical records of the subsequent Aryan periods are to be found in the Sanskrit hymns and various books related to religious law.[67] It can be perceived from these sources that an organised agricultural system existed during that period. [68] According to *Manu*, land belonged to those who had cleared such for cultivation.[69] Sources like *Kautilya* also depict that the

Sovereign was entitled to a sixth of the agricultural proceeds in exchange for the protection given by them.[70] The power to evict the subjects was arbitrary and the minor races were deprived of any right as a human being, let alone any land rights.[71] And the situation of the minority hasn't improved that much even after the subsequent arrival of the Muslim and Mughal rulers.

2.7.2 Muslim Period

The most interesting approach of the Muslim rulers was that they did not occupy the land of the religious minority on a wide scale. There were incidents, however, of land grabbing by the Royal decree to gift such lands to the war heroes or the members of the Royal Council, most of the time disregarding any notion of land rights of the minority. The land revenue that was fixed in exchange of the land occupation was called *Khiraj*. [72] Even the tribal Chieftains were left on their old duty to collect revenue for the ruler. [73] The Mughals introduced surveying and fixed rent for the land which boosted the revenue of the empire. The revenue used to be determined by the quality of the land. [74] As a result, the minority found a somewhat certainty as the rent, rate of the tax and security of their land possession which they had not had for millennia. But then the situation got worse at first in the British period with subsequent legal development giving somewhat certainty regarding the land rights of the minority.

2.7.3 British Period

After the Battle of Plassey, the East India Company introduced the *Zamindari* system in April 1777. [75] At first it was a serious blow to the minority rights of the land as the *Zamindars* used their feudal rights quite arbitrarily and used coercive means upon their minority subjects to collect a very high amount of rent. However, The Pitt's India Act 1784 gave some relief to the minority landholders as it gave them some definite framework regarding their rights. [76] In reality, the poor minority could hardly avail such protection against the *Zamindars*. [77] As a result numerous revolts were staged by the minority against the colonials. There have been seventy-seven such revolts where thousands of minority peasants took active participation. [78] And the revolts were suppressed with brutality by the colonials. [79] But such revolts resulted subsequent legal developments such as the Rent Act of 1859, which further protected some of the vital rights of the subjects. [80] The subsequent introduction of the Bengal Tenancy Act, 1885 and subsequent amendments restored the vital rights of the minority in respect of land that was destroyed by the Permanent Settlement Regulation 1773. [81] The subsequent Floud Commission report declared *Zamindari* system untenable and the immediate abolition of such a system might be peak point in

achieving the minority land rights in British period.[82] However, the British could not end the problem they created.

2.7.4 Pakistan Period

The most important reform in the history of this country's Land Law happened in 1950 when the State Acquisition and Tenancy Act, 1950 was enacted in 1950 and the *zamindari* system was abolished.[83] Again, the Non-Agricultural Tenancy Act 1949 ensured the tenancy rights of the non-agricultural tenure.[84] For a very brief period of time, the minority gained ownership of their land in this period. But upon the outbreak of 1965 India-Pakistan war, the Enemy Property Act (EPA) was promulgated.[85] The Act proclaimed India as an enemy state and captured all the property of those who were residing in India.[86] In reality, the government attributed the properties of the ethnic and religious minorities as enemy property and such properties became targets of government seizure as well as occupation by the local powerful people.[87] Minority lands tagged as enemy property were lost forever. Many minorities were falsely accused of supporting India under this Act and were persecuted by the government.[88] There were also minorities who temporarily fled to India to save their lives and lost their land under such a controversial arrangement.[89] Unfortunately, this law remained in effect even several years after Bangladesh gained independence from Pakistan.

2.7.5 Bangladesh Period (1971-1974)

Bangladesh fought the War of Independence against Pakistan because of 24 years of economic marginalization, political repression and wide-scale racial discrimination.[90] Many people lost their lives during the war and millions were displaced.[91] And among their sufferers were the minority communities of Bangladesh whose lands were robbed, and they faced wide-scale atrocities.[92] So, the optimism was that Bangladesh would be a pluralistic state where all people will live with their democratic rights. But soon after the Liberation War such optimism died. The government continued the EPA through the Laws Continuance Enforcement Order 1971.[93] In the subsequent year, the Vesting of Property and Assets Order, 1972 was promulgated by which the government vested the so-called 'enemy property' upon itself.[94] There was no chance of judicial review against the order so no one could challenge the legality of the order.[95] Although, the order was intended to seize the abandoned property of the *Biharis* but the vast majority of such property was actually previously owned by various minority groups.[96] Subsequently, the Vesting of Property and Assets Order was introduced in 1972 and the EPA was abolished.[97] However, the implication of the new Act was to make the minorities

the main target and the government continued to own their land. Even under VPA persons who left Bangladesh for a temporary period were also tagged as ‘enemy’ and their properties were seized by the state. Especially, in the case of the religious minority, if someone left the country, then his entire land would be confiscated by the government.

2.8 Analysis

Land grabbing from the minority is not the sole legacy of the Bangladesh era. Rather almost every regime of this land is responsible for infringing the land rights of the minority of the land. From time to time, there were positive reforms that recognized and upheld the land rights of the minority groups of this land. But very often, the subsequent developments did not uphold such positive reforms. The independent Bangladesh bears all the positive developments as well as the scars of the Draconian laws infringing on minority rights. Most of the legislation that infringed on minority rights did not consider the cultural reality of the land. Actually, it would be regarded as high hopes if one expected that the colonials would make legislation that suits the cultural reality of this land. Because the colonials were mainly interested in maximizing their gain from the land, they hardly thought about the people. However, in an independent Bangladesh, it is the expectation of the ordinary citizens that the government would promulgate laws keeping in mind the socio-economic and cultural reality of the land. In reality, the government failed to do so immediately after the independence. Therefore, it is necessary to understand the root of the plight of minority groups if we want to discuss the current situation of the problem. Although, the problem dates back to a thousand years, some aspects like the recognition of land rights and a colonial free and independent country have been established. But the infringement of minority land rights is still a burning problem in the country. The subsequent part elaborates on this situation.

Part II: Present Situation of Minority Land Rights

3.1 Current Legal Recognition of Land Rights of Ethnic and Religious Minority

One of the most positive developments of the Bangladesh period has been the creation of a Land Commission under the Chittagong Hill Tracts Land Dispute Resolution Act, 2001.[98] This Act may be regarded as the reflection of the values of Article 23A of the Constitution as well as an important step toward the realisation of the Chittagong Hill Tracts Peace Treaty.[99] Land property of the ethnic minority or indigenous people are inalienable and it is protected from the majority group under SAT Act 1950.[100] But illicit means are still resorted to by the immoral people to grab the land

of ethnic and religious minorities. There are reported incidents of criminal activities such as forging false documents, physical torture, destruction of property, threatening, rape, arson to evict the ethnic minority groups from their land.[101] As the minority groups have been a minority for a long time, they cannot cope up with such powerful people and lose their land rights. There have been 44 false cases recorded against people belonging to ethnic minority in the year 2014 and 89 families have been reportedly displaced from their land in the face of such land grabbers.[102] As many of the minority groups are poor and illiterate, they often give up their property, failing to go for long and costly court battles. Also, as the minority has been alienated by the state for a long time and the ADR process is not available for them either because they do not know about it or because they are stopped by force from taking resort to such protection. Also, ignorance regarding the legal process is another problem that is making the minority land rights weaker against the majority.

3.2 Current Situation of Land Grabbing of Religious Minority

The plight of the religious minority continues to date from the initiation of the Vested Properties Act 1974 (VPA) in Bangladesh.[103] The VPA was actually the continuation of the legacy of the previous Enemy Property Ordinance, 1969 (EPO) which had an intention to persecute the ethnic and religious minorities of the land. By the sanctity of this law the state grabbed a large amount of property from the religious minority, which continued to be in state possession even after independence. Despite being void in 1974 the local and political elites of the state continued the possession of minority land using the state mechanism.[104] It has been reported that around 43% religious minorities have been victims of such legalized land grabbing.[105] Even the subsequent President Ordinance XCII of 1976, empowered the government to transfer the ownership of such land. However, because of the growing pressure from the minority community in 1984 the government declared not to enlist any more minority property as vested.[106] But the subsequent government decision to sell the vested property to the occupant further hampered the right of the original owner over the vested property.[107] But a ray of hope came as the Vested Property Return Act 2001 was introduced to give back the seized land to the religious minority.[108] But the decision was criticised as a cheap political move to gain the minority vote before election time.[109] The critics said that if the then government had a real intention to implement such a law, then they would have done so right after assuming power.[110] However, some of the distinguished features of the Act include returning the seized property within 180 days of publishing the official gazette.[111] But there was no compensation mentioned under the law as to the already sold or leased property. There

was also a provision requiring continuous citizenship of Bangladesh to make any claim under such law that made the process strict.[112] Also, the subsequent implementations took a long time. Furthermore, the District Commissioners power to take all decisions under the Act.[113] As a result, the process of returning vested property came to stand standstill as the District Commissioners did not make that many decisions regarding this sensitive issue. So, no improvement was actually made for minority land rights. Rather, more lands went under the control of political cadres making the overall situation worse.[114] However, an amendment was passed in 2011 by the parliament to return the vested properties.[115] However, because of the legislative drawbacks the return of the vested property could not be achieved till now and this legislative drawback will be discussed in detail in the later part.

3.3 Land Grabbing of Ethnic Minority

There are formally recognised legal and administrative protections regarding ethnic minorities in Bangladesh. But in reality, ethnic minority land rights are violated at a high rate in Bangladesh. The most important concern regarding the ethnic minority is that their indigenous identity has long been disregarded by the state.[116] After the peace treaty the new problem has arisen in the cover of so-called development initiatives. There is a subtle military control over the region, and they are also grabbing the ethnic minority land in the name of military installations and various development projects.[117] The state-sponsored resource mobilisation for so-called development activities are greatly hampering the land rights of minorities. Even, industrial structures are being built, displacing the ethnic minority in various places. In almost all the situations, the cultural sensitivity of the ethnic minority is not kept in mind while taking these development initiatives. As a result, the state often found itself in a conflicting situation between the majority Bengali and the ethnic minority. The situation is even dire in the case of plain land ethnic minority. It has been reported that around 60% of ethnic minority lands were grabbed in the north-west districts of the country just over the last decade.[118] Because of their illiteracy and simple lifestyle, they are often unaware about the formal documents such as *Khatiyans* and land deeds. As a result, the powerful quarters could easily displace them from their land. Although, there is a protection of taking approval from the government regarding selling ethnic minority land, it was reported that around 40% of the total sold land was sold without a genuine reason.[119] The corrupt administrative and land officers are often responsible for ethnic minority land grabbing in the cover of law.[120] They often help the land grabbers by providing fake land documents and even by evicting the ethnic minority from their own land.[121] The ethnic minority fights an uneven

battle when their land right is threatened, and they face death threats and frequently end up being killed.[122] There is hardly any report of punishing the land grabbers as most of the time the land grabbing occurs with the protection of the administration.[123] So, the trend of using law for minority land grab is clearly established, which is elaborated in the next part.

3.4 Trend of Using Law as a Weapon of Exploitation

Law has been used as a weapon to exploit the minority regarding their land rights from time immemorial. In the ancient period, it was in the form of making the minority slaves of the majority.[124] In the medieval period it was in the form of imposing various taxes on the minority.[125] During the British period law enabled the feudal lords to deprive the minority all the rights related to land,[126] which evolved into the religious persecution through law in the Pakistan period. Unfortunately, it was carried on in independent Bangladesh by different regimes. All the incidents of the past and present suggest that the powerful majority uses law to validate their action of minority land grabbing. Even the right to seek judicial protection has often been barred by law. Law instead of being a protective mechanism became a weapon for exploiting the land of the ethnic and religious minority of the land. This concept of law being used as a weapon of exploitation might sound similar to Karl Marx's theory of "superstructure of exploitation".[127] Marx's theory has given birth to the socialist states. But our aim here is to identify how minority land right is infringed by the cover of law and how such can be stopped. As has been mentioned, legal mechanisms like vested property, adverse possession, and acquisition in the name of so-called development projects are mainly being used to grab the land of the ethnic and religious minority. These were originally mechanisms to ensure the economic development of the state. But as the various provisions related to these mechanisms are enabling exploitation of the minority, these legal mechanisms can be considered as weapons that are being used by the powerful part of society to exploit the minority part. So, the later part suggests reforms that could modify the legal system to make it perfect for the needs of the current society.

Part III: Legal Reform

4.1 Legislative Drawbacks

A major legal drawback regarding minority land rights is that many minority lands were declared as vested property after 1974 in order to grab such land under the sanctity of law. It was held in *Laxmikanta Roy vs UNO and others* case that declaring properties as vested after 23 March 1974 is illegal.[128] But there was no step taken

by the government to execute such a decision. Even though there is no legal initiative by the government to exclude such property from the list of vested property. Even, the existing Vested Property Return Act has a problem with its section 10 where a very small limitation period up to December 2013 was given to raise the claim.[129] But the majority of the claimants could not raise their claim within such a period. As a result, implementation of the Return Act has been greatly hampered. Even the provision of appeal under section 18(4) is problematic as because of the lack of a certified copy of the decree it is impossible to appeal within 45 days.[130] More often the tribunal gives a verdict returning Ka Schedule vested property to the minority owner, but the government officials create administrative complications, and the minority owners do not get back their property. Even the District Magistrates are often reluctant to execute the decision of the appeal tribunal despite having an obligation to execute such a decision within 45 days.[131] There are also serious errors in the published Ka Schedule under such Act, and this must be amended.[132] There seemed to be not enough effort or goodwill on the part of the government to implement the law and return the vested property to the affected minority. So, a new law must be introduced mandating the swift return of the property of the religious minority. Moreover, Bangladesh has ratified various important international conventions such as ILO Convention on Indigenous and Tribal Populations right after its independence, but no visible implementation activity on the part of the government.[133] Because of a lack of efficient government policy regarding the protection of ethnic minority land rights it is possible for the corrupt to grab minority lands. The lack of awareness and high illiteracy rate among the ethnic minority is an important factor that needs to take into account. Documents like *Khatiyans* and deeds are hard to manage on their part. In the past, many Bengalis have taken citizenship of CHT area by forgery with the help of corrupt government officials. They have been a major threat to ethnic minority land rights. Also, the punishment for forging deeds is not adequate to stop the criminals.[134] Again, mechanisms like adverse possession of land do not protect minority land rights as the original owner has no say over the adverse possession. Furthermore, minority land grabbing in the name of so-called development projects is a serious threat to minority land rights. Now, the way out of this situation has been discussed in the subsequent section.

4.2 Reforms Suggested

To properly modify any legal mechanism through law reform, we must have a clear *mentalité* regarding its historical developments or in other words, we must understand why such a mechanism contains the particular legal provisions and what is to be done

or to be challenged for its modification. The former part regarding the historical development indicates that the rich and politically affluent are using the law to exploit minority lands. To stop that, the first step is to amend the Vested Property Return Act and null all the incorporation of vested property after 23 March 1974. The limitation period under such Act must be increased and at least a fresh 5-year period must be given for the new claims. Section 18(4) should be amended, and the limitation period of 45 days' appeal must be increased in a reasonable manner, and such limitation must be counted from the date of certified copy publication. The government officials must be made responsible for executing the decree of the tribunal within 45 days and failing to do so they must be held liable. The errors of the Ka Schedule must be amended. A new law must be introduced mandating the swift return of the properties that are not vested property but were grabbed from the ethnic and religious minority. Again, special tribunals could be introduced in this regard. Laws must incorporate all the international standards, including ILO Convention on Indigenous and Tribal Populations. The lack of awareness and high illiteracy rate among the ethnic minority is an important factor that needs to be taken into account and the burden of proof must be relaxed for ethnic minority lands. The punishment for forging deeds must be increased. The corruption of the government officials must be stopped and the Bengali citizenship of CHT area must be thoroughly verified. Again, mechanisms like adverse possession of land do not protect minority land rights as the original owner has no say over the adverse possession. An important instance of reform regarding adverse possession can be brought from the British legal system. Before 2002, adverse possession in England and Wales was subject to application by the adverse possessor and the original owner had no say in the process. But later on, a qualified veto system was introduced in 2002, where the original possessor could veto regarding the process of transfer under adverse possession.[135] Also, there is a requirement to serve notice to the original possessor regarding adverse possession that can also be incorporated into our legal system. Also, there is a requirement to register such land that has been acquired through adverse possession.[136] This must be made mandatory in our legal system too. Furthermore, minority land grabbing in the name of so-called development projects must be stopped and sustainable development programs must be ensured.

Conclusion

Bangladesh is constitutionally a secular country where the people of all ethnicities and religions have the right to live equally. But all along the history of this land, the political rulers and elites have acted against the rights and interests of the minority population. As a result, the ethnic and religious minority of this land have been the

sufferers of land grabbing in the name of law for a long time. The current political rulers are, however, known for their pro-people stands and actions. As the political situation of the country is currently in favour of the people's rights and the country is going through swift legal and administrative reforms, it seems high time to take necessary steps to prevent minority land grabbing by introducing appropriate legal reforms. And it is a hope that the recommendations made in this research work would not only help the government but also enable a scope of further legal research in this subject matter in the future.

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