

Star LAW analysis



## Land Administration Policy Inefficiencies and malpractices

SAIDUNNABI PIYAL

If we evaluate the policy of land administration in Bangladesh in the wider political and economic context, we will notice that the way land is currently administered remains firmly rooted in practices established during the colonial era. The British, from the outset, gave high priority to a centrally controlled management system that was designed to maintain political control and secure a steady source of state finance. Relatively little has been changed in the post-independence era. Attempts at redistributive reform through establishment of land ceilings have been a feature during both the Pakistan and Bangladesh periods. But whilst ostensibly designed to place land in the hands of the tillers and to return water bodies to those who fish them, these have largely been circumvented by the wealthy and the powerful.

High population densities and increasing fragmentation of holdings mean, in any case, that the scope for redistribution declines as time passes. Tenants' rights, including security of tenure, are enshrined in legislation. But these are currently almost invariably ignored in practice, and may offer some scope for intervention.

Measures are also in place promising the landless access to government land created by alluvion, and a range of water bodies. NGOs concerned with the land issue have tended, in recent years, to focus their attention on the different means by which these rights may, in practice, be secured.

If we go through the land policy and administration timeline, we will see that in 1793 the Permanent Settlement Act vested rights to land in a class of zamindars. Whilst intended to usher in the re-organisation of agriculture along capitalist lines, this had the actual effect of creating multiple-layers of sub-tenants. In 1882 the Transfer of Property Act, the forerunner relevant to present registration procedures, was passed. From 1888 to 1940 a Cadastral Survey (CS) of undivided Bengal created the original record of land rights. This is often still accepted as evidence by modern courts. In 1908 the Registration Act

established land registers kept by the sub-registrar, an official under the Ministry of Law. They assess and collect "ad valorem" based registration fees, stamp duty and transfer tax, and provide deeds relating to the transfer of land. 90,000 cadastral maps covering the whole of contemporary Bangladesh were published in 1927. These are still considered the most reliable cartographic record by modern courts. In 1946 the Tebhaga sharecroppers' movement campaigned for reforms in ratios and procedures governing division of produce. But nobody now really represents their interests or carries the movement forwards.

In 1947 Pakistan continued with a version of the net asset system but this declined in importance with reduced frequency of settlements and poor maintenance of land records. In 1950 Zamindari system was abolished. Control of land was passed to the Revenue Department, which subsequently becomes the Ministry of Land. In 1951 East Bengal State Acquisition and Tenancy Act (EBSATA) 1951 promoted the goal of retaining the agricultural character of land by giving cultivators first right of purchase and prohibiting other use; but the large number of exceptions and poor enforcement diluted impact. A land ceiling of 33.3 acres was imposed. From 1956 to 62 a State Acquisition Survey was conducted based on the CS blueprint and in 1961 land ceiling was raised to 125 acres. In 1965 survey and revisional settlement operation commenced, but progress was very slow and by 1995 it had only been completed in 10 percent of all thanas.

In 1972 a land ceiling of 33.3 acres was re-established and various presidential order provided for the distribution of khas land amongst the landless. It was expected that 2.5 million acres of excess land would be released, but in reality there was far less. In 1976 a variety of land related charges were consolidated into the Land Development Tax, which covers the whole country except CHT, but deficiencies in the record system mean individual holdings cannot be checked, and switches to more heavily taxed non-agricultural uses frequently go

unrecorded. In 1984 the Land Reform Ordinance limited future land acquisitions to 21 acres whilst retaining present ceilings. Benami (ceiling avoiding) transfers to relations were outlawed, but again evasion was easy. Legal recognition to the rights of sharecroppers was given for the first time and sharecropping was established as the only admissible form of tenancy contract.

In late 1980s Muyeed Committee recommended that functions of Land Registration (sub-registrar) and record (Tehsil) be brought together in a single office at field level but this was ignored. In 1988 cluster village programme resettled landless people on state land, but only 800, with some 32,000 households, have been formed by 1996. In 1989 Board of Land Administration split into Land Appeals Board and Land Reforms Board to deal with the ever increasing volume of quasi-judicial appeals. In 1991 a land administration manual laid down detailed instructions regarding inspection and supervision of Union and Thana land offices. In 1997 new Agricultural Khas Land Management and Settlement Policy was introduced. In 1998 total khas land was found to be 0.75 million acres (or 3% of arable land area). But the actual amount remains unclear as a result of de facto private control arising from informal local settlements.

The present day administration of land splits into four different functions, divided between two Ministries. The Directorate of Land Records and Surveys (DLRS) in the Ministry of Land conducts cadastral surveys, from which it produces mouza (revenue village) maps showing individual plots of land and khatian (individual land record certificate). The Land Reform Board, also in the Ministry of Land, has a number of functions that it discharges through Upazilla land offices and Union Tehsil offices. It administers khas (public) land, and manages abandoned and vested property. It updates maps and land records between surveys, and sets and collects the Land Development Tax. It is also formally responsible for the implementation of land reform legislation and the implementation of tenant's rights.

The Land Appeals Board (again in the



Ministry of Land), is the highest revenue court in the land, serving as the final arbiter in matters of khas land, changes in records, plot demarcation and taxation which cannot be resolved at lower levels. As such, it represents the final link in a chain running upwards from the Assistant Commissioner (Land) and the Nirbahi Officer at the Upazilla, through the Additional Deputy Collector (Revenue) and the Deputy Revenue Collector at the district. Finally, the Department of Land Registration in the Ministry of Law, Justice and Parliamentary Affairs records land mutations arising through sale, inheritance or other forms of transfer and reports changes to the Ministry of Land

as well as collects the Immovable Property Transfer Tax.

Amin and two chainmen are responsible to draw revised mouza map showing changes in area, location and characteristics of land followed by demarcation of boundaries. These are temporary junior staff. Insecurity and low pay affect their morale, performance, accuracy and reliability. Besides, they have to depend on the local elite for board and lodging during season and are thus open to their influence.

Display of notices and beating of drums summons owners, neighbours and interested parties to khatanpuri at which each claimant presents his/her case

and Amin fills up the columns of the khatian form giving plot number, khatian number, classification of land that affects land revenue, area, crops grown, name of owner, agricultural practices and this khatian also officially contains information on tenancy since 1984 Land Reform. Again poorly paid field workers are susceptible to bribery here. Besides, in practice tenancy is rarely recorded because of pressure from the rich.

Tehsildar, assisted by clerk, hears from each owner, listens to any disputes and, if satisfied, attests the khatian by signing it in red. Otherwise a re-survey may be ordered. 60 khatians may be attested in a day, but there are particular backlogs at this stage. It may take two years to clear the work of one field season.

Where objections arise, cases are heard by ASO with decisions recorded in violet. Under these circumstances, these mid level staff have few chances for promotion while extra field allowances that used to be provided have been stopped. Naturally this encourages corruption.

ZSO and ASO hear appeals at Upazilla and some are referred on to District level where decisions marked in black. Again long delays are caused by shortage of suitably qualified staff to hear appeals. Map correction, amalgamation and splitting up of jamas (interests) are done by the permanent surveyors and their supporting staff. In documents about to be dispatched for printing, powerful local people often intervene for changes.

Once completed, copies of the ROR are passed to DC, thana and union land offices for land management with originals retained at district under lock and key and records are then updated as a consequence of sale and transfer is done through mutation process. Tehsil registers are not freely open to inspection, but for payment of a small fee, landowners are formally entitled to a certified copy of the ROR and mouza map. In this situation, local officials are unable to keep records updated. If they could, there would be no need for revisional settlement. In practice a substantial bribe must be paid to access registers.

In question of the land transfer process through sale the reality is that some

transfers occur on an entirely unofficial basis, perhaps when land is mortgaged, although this is becoming less common. Some buyers may not try to check the AC records first and even if they do, these may well not be up to date. The deed writers and Sub-Registrar allegedly collude to ensure that this step only proceeds if a bribe is paid first, whilst the buyer and seller may also collude to reduce the amount of Immoveable Property Transfer Tax (IPTT), which is levied at 10 percent of the sale value. There is no requirement to check the legality of the transaction and it is not uncommon for the same plot to be "sold" to several different buyers, although this is much more frequent in urban areas.

The diversity of ways in which land records may be updated and the problems associated with each give rise to numerous disputes let the rich and the powerful inevitably enjoy the upper hand. Where a decision relating to the recording of land title is disputed, the appeals process starts from Tehsildar and then moves progressively upwards until the appellants and other interested parties either accept the judgement given or lack the resources to proceed further.

Many issues are dealt with in informal local shalish and so never reach the Land Appeals Board. Where suits do enter the formal system, the cost is considerable and suits can take 15-20 years to resolve, with different parties often in possession of documentation from different official bodies. Only the rich and well connected are able to climb all the way to the top.

Where a settlement survey is under operation, appeals passing beyond the Tehsildar are supposed to be heard by the ASO and if not resolved then pass on directly to the district level. All civil court proceedings relating to land should formally be suspended when a settlement is in process, but this would lead to even further delays and is thus generally ignored, adding further confusion by having two channels in operation at the same time.

The author is doing his PhD in School of Law, University of Aberdeen, Scotland, UK.

### LAW education



## Legal education in Bangladesh Problems and prospects

DR. M. ASHRAFUZZAMAN

I think knowledgeable persons from the society should come forward to discuss the problems in legal education and seek possible solutions to the problems. I would like to look into the matter from a different perspective. I believe threat of cancellation of affiliation of a university is just not a proper solution; rather there should

cope with the growing number of students seeking higher education. If we concentrate our attention on the faculty of law, we see that there are four public universities in our country with law as a regular subject of teaching. Besides, the National University imparts teaching of law through law colleges. All four universities together could accommodate less than five hundred students per annum. If we take that all

UK, where the population is about 1/3 of ours, there are 53 public and one private university with law faculty. From those universities every year come out about 8,000 graduates. Moreover the external programme of London University or Open University also produces about 1,000 law graduates every year.

**Major problems**  
a. Role of Bangladesh Bar Council:

courses for the new admitants. Bangladesh Bar Council could follow examples of UK, Australia or USA. Their Bar Councils have given permission to several universities to conduct pre-admission training for the legal practitioners. Also, the Bar Council could set a detailed guideline regarding the syllabuses. At present all universities follow their unique syllabuses and sometimes there is lack of minimum similarities. Also, there are institutions teaching law without a proper library or even a proper teacher. The Bar Council must ensure the teaching environments not only in universities but also other institutions producing larger number of lawyers.

b. Role of government: The government does not have any control over the legal education in Bangladesh. There are cases where a law graduate never attended any formal class. This is the only profession in the country where there is no realistic professional conduct rules. Everyone seems concerned that the standard of legal profession has fallen but there is no initiative from government to maintain the standard let alone raise it.

c. Role of universities: Universities having law faculties are like individual islands. They do not have real co-ordination with one another. There is almost a hostile relationship between public and private universities. Also, the universities do not have minimum connection needed with other legal institutions i.e. judiciary, bar council. In UK the Bar, the bench and the universities act together for the legal education as this is very much a practical subject. There is no medical college in this country without a hospital and so in the legal profession a student could never

become a lawyer without having a real courtroom experience. Some private universities deserve an applause for the efforts that are being made to raise the standard of teaching in legal education and to reward excellence in teaching. Everyone should welcome the emphasis being placed upon the development of close links between universities in the country and outside.

We note the emphasis being placed upon a new qualification, "the collaboration degree". We can see ways in which such degrees can play an important role in providing a new opening for higher education to those who could not afford to go to UK to become a Barrister to raise standards in respect of provision of legal services. However, we believe that the development of these degrees must not lead to any diminution of standards in respect of the undergraduate honours degree as we note the government's commitment to safeguarding the standards of traditional honours degree.

The problems have been very carefully identified and its solutions have been collected from other countries that faced similar problems in establishing university to teach law. All proper legal education systems cited above have a long history behind their establishment. We are lucky that we can follow the good things from their examples. Now, this is time to consider and act.

The author is Asst Professor and Head, Department of Law, Northern University, Bangladesh.

### HUMAN RIGHTS monitor



SRI LANKA

## Call for inquiry into attack on displaced civilians

THE world's civil society is deeply concerned by reports of the killing of as many as 65 civilians taking refuge in a school in Kathiraveli, a coastal hamlet 15 km north of Vaharai in the eastern district of Batticaloa. The Sri Lankan Army (SLA) reportedly fired multi-barrel rockets and artillery shells which hit a school where internally displaced people (IDPs) were taking shelter. As many as 40 bodies are reported to have been recovered from the scene and more than 100 have been wounded. It is likely that many more may have been injured as the area targeted was densely populated and inhabited by some 5000 IDPs.

Amnesty International is appalled that the military should attack a camp for displaced people -- these were civilians who had already been forced from their homes because of the conflict. Amnesty International condemns all attacks on civilians and is particularly saddened and shocked to see such a large-scale attack on civilians just days after the government's announcement of its Commission of Inquiry into human rights abuses.

A Sri Lankan military spokesman has confirmed heavy artillery and mortar bomb exchanges in Batticaloa district, but has accused the Liberation Tigers of Tamil Eelam (LTTE) of using civilians as human shields. The UN High Commissioner for Refugees (UNHCR) estimates that 60,646 people remained displaced in Batticaloa district alone, as of 23 October 2006, and over 200,000 have been displaced in the north and east of Sri Lanka since 7 April



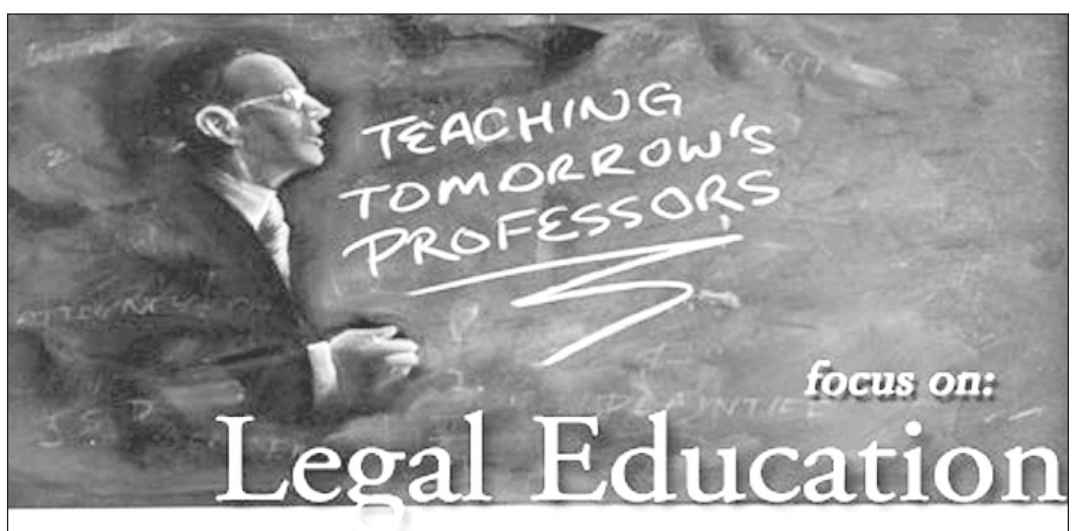
2006.

Amnesty International condemns the targeting and killing of innocent civilians and calls on the Government of Sri Lanka and the LTTE to take immediate and adequate precautions to protect civilian lives. All parties to the hostilities must comply with international humanitarian law, which prohibits murder or other violence to those taking no active part in hostilities, requires parties to ensure that their forces comply with the principle of distinction between civilian and military targets and do not target civilians or carry out indiscriminate attacks.

The organization calls on the Government of Sri Lanka to initiate an immediate inquiry by interna-

tional and independent human rights experts into this incident and all serious violations of human rights law and international humanitarian law. Amnesty International reiterates the urgent need for the Government of Sri Lanka to establish a strong and effective international human rights monitoring operation as a matter of urgency to respond to the dramatic deterioration of the human rights and humanitarian situation. Such a mechanism must have the full cooperation of both the government of Sri Lanka and the LTTE and the support of the United Nations and its member states.

Source: Amnesty International.



be supportive measures from government and non-government sectors.

#### Need for private universities

Establishment of a university is a tough job. Lots of sacrifices, dedication and tolerance are needed. But there is no doubt that we need universities. However, there is doubt amongst us that whether the public universities are sufficient to

of them eventually complete the courses then we get 500 regular law graduates in a year. For a country with 150 million people this figure is unacceptable. On the other hand National University's role in making lawyers is limited to a certificate awarding body rather than a law institution. So, the quality of graduates from National University varies enormously among themselves, let alone any possible comparison with others.

If we compare the situation with

The Bar Council is the regulatory authority for the legal profession in this country. It has changed few times its procedure of enrolment. However, its role as a quality controller may not be beyond question. The Bar Council through its Legal Education and Training Institute has attempted to establish itself also as an educational institute, although it does not have such expertise. It however could arrange re-educating seminars for the practitioners rather than trying to establish