

LAW opinion

Necessity of changes in laws dealing with land erosion by rivers

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LAND law is one of the most neglected legal sectors in our country. For the lack of proper land distribution system the number of landless people is increasing. Every year so many people lose their land for various reasons especially due to the erosion caused by rivers. So the laws relating alluvion-diluvion have a strong implication in our land management. If existing char lands of the country could be distributed among the landless then the problems related to land can be solved to some extent.

Char area

According to ISPAN (Irrigation Support Project for Asia & Near-east) in their publication 'Riverine Chars in Bangladesh' in 2000, Bangladesh has around 1722.89 sq.km. of Charland on her 05 major rivers which is equal to the district like Natore. Besides, there is lots of chars on minor rivers of the country. If the charland can be distributed properly among the landless poor by taking those in Khas account, it can contribute significantly to the alleviation of poverty in the remotest areas of Bangladesh. But major causes to failure the distribution of Khas land among landless and other poor people are:

- Negative impacts of unjust land laws and land policies especially Alluvion-Diluvion laws
- Problems regarding land survey and settlement
- Negative impacts of local administrative actions
- Discrepancy in political will of the political parties

Char life: A turbulent battle field

As there are no pro-landless laws and sympathetic administration in the char areas, a kind of anarchism is prevailing in these areas. Oppression, torture and false cases against landless are a regular and common phenomenon in the char areas. But most alarming situation is that people of most of the char areas are out of every kind of state provided facilities like education, health, communication so on and so forth. Other remarkable socio-economic discrepancy faced by the charland people are:

- Acute shortage of safe drinking water
- Lack of proper sanitation
- Oppression of jotdars (land grabber) and their hoodlums
- Exploitation by money lenders
- Violence against women including sexual oppression
- Religious fundamentalism

On the other hand, a relationship has allegedly been developed among land and police administration and local land grabber elite of the char areas which has also contributed to making life difficult for charland poor people.

If we observe Alluvion and Diluvion land laws carefully, than we will see that this law somehow serve the purpose of land grabbers to some extent.

Alluvion-Diluvion Laws

From the history of alluvion-diluvion Laws EBSATA - 1951, Alluvion-Diluvion Land Laws: 1972 and Alluvion and Diluvion Land Laws: 1994 are most important in this regard.

The East Bengal State Acquisition and Tenancy Act (EBSATA) of 1950 offered that if land is lost due to river erosion, it can be given back to the original owner but under the following conditions:

- the resurfacing of the land must occur within 20 years.
- The owner may get the land back by paying rent as settled by the revenue officer; and



c. The original owner must not possess land upward of 375 bighas. The act was mainly restoring the rights of owner whose land was eroded. It also provided that such restoration must take place within 20 years.

Alluvion and Diluvion Land Laws: After the independence of Bangladesh the approach was people-oriented, especially with regards to landless peasants. The President's Order No. 135, aimed to rehabilitate the landless was promulgated in 1972. P.O. 135 changed few sections of EBSADA 1951 as:

- Previous owner will lose his/her ownership on diluvion land and s/he has not to pay revenue for the land.
- All new lands in the form of accretion or reformation after alluvion would vest in the government. Government would lease out such lands among the landless.
- Preference was to be given to families affected by diluvion but families with land exceeding 25 bighas were to be excluded.
- The total quantity of land held by such a person or his family before loss by diluvion, whichever is less. It may be noted that the highest ceiling of land ownership was redefined as the 100 bighas on August 15, 1972.

Alluvion and Diluvion Land Laws (P.O. Order No 15/1994-13th July): The Alluvion and Diluvion Land Laws was again changed in 1994 by the P.O. Order No. 15/1994-13th July. According to the P.O.:

- If any land becomes alluvion, owner of that land has not to pay revenue for the alluvion land or for whole land
- The land owner has to apply for exemption of revenue and collect receipt

c. If the diluvion land becomes alluvion again within 30 years, owner of that land or his/her heir can claim the ownership of that land. Receipt of revenue exemption has to be submitted as a proof.

- Total land of the owner cannot cross the highest ceiling. It may be noted that, highest ceiling of land was 60 bighas in 1984
- If the char is formed artificially and not naturally, government will enjoy absolute ownership of the land
- No case can be filed at the court on alluvion land after 12 months of public notice by collector regarding possession of the land
- Collector will hand over the land to the owner or his/her heir within 45 days since the preparation of the map
- If a char is emerged from river or sea, government will possess the land if there was no owner of the land ever before

Problems of existing laws

Government cannot take absolute possession of new chars. Laws seem barrier in this respect.

- There is always a chance of tampering of documents during determining ownership of char.
- Increasing trend of preparing fake deeds and documents
- Ceiling of land is not properly justified as all lands are not in one document. As a result, it has been easier for jotdars to take possession of these lands
- Jotdars have a scope to establish themselves in char owing to their claims relating inheritance

Why real owners could not get their diluvion land

- Local land offices in the respective areas do not

survey and submit report after land alluvion and diluvion

- Problems regarding identifying and redefining of newly alluvion land
- Lack of scope to preserve *dalis* (deed) and receipt of paid revenue after alluvion of land
- Lack of support from land and general administration
- Lack of proper implementation of ceiling law
- Land owners of the erosion-prone areas who are used to stay in the town usually face problems in getting possession of their land when they come back and want possession of the land after a long gap

Distribution of khas land:

Expected outcome

Bangladesh has several million acres of char land. Char land is very fertile for agricultural production. So, if these lands can be distributed among the landless poor, each and every piece of these lands will be properly utilised. Besides, it will contribute to reduce anarchism and dispute which has been existing in the char areas for centuries. In consequence of this, law and order will be established in the char areas and practice of good governance and democracy will be ensured.

Economic feasibility

If charlands are distributed among real landless poor, it will create enormous employment opportunities. Middle size peasant families can manage their food all round the year from allotted land. Moreover, it can solve the housing problem.

Social feasibility

Distribution of char lands among the landless can contribute to reduce rural-urban migration. When landless poor will possess a piece of land, her/his family status will increase in the society. His/her personal status will be recognised. S/he can actively participate in different social programmes including shalis.

Democratic and political feasibility

Local government will be strengthened in char areas. By this full utilisation of local resources will be ensured. Moreover, char based people will be able to establish their voting rights and will be able to exchange their opinion in different forum.

Feasibility in poverty alleviation

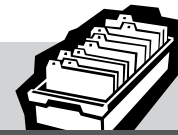
According to the gazette of Bangladesh government published on May 8, 1997, husband and wife of a real landless family will jointly receive 1.5 acres of khas land. Overall rehabilitation of 430 families i.e. 2322 persons is possible in 01 square mile. Average number of members per family in Bangladesh is 5.4. Total chars in 05 large rivers of Bangladesh are 1722.89 square kilometres, that means approximately 672 square miles. So it is possible to permanently rehabilitate 28960 families i.e. 1560384 landless poor on 672 square miles.

Conclusion

We think reconsideration of the existing alluvion and diluvion land laws (1994) and necessary in that context can contribute significantly in the development of socio-economic and political aspect of the charland. If the landless poor can establish their rights on khas land of the char areas, its impact will be revolutionary in the effort for poverty alleviation in the country.

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FACTfile



Distress and denial in Darfur

An Amnesty International delegation visited Darfur from 14-21 September 2004 to gather information, assess the human rights aspects of the crisis and press the Government of Sudan to take action.

Findings of Amnesty International visit to Darfur revealed distress, denial and disappointment. Distress of people whose lives and livelihood have been destroyed, denial of responsibility by the Sudanese government and disappointment at the slow progress to resolve this crisis, concluded Amnesty International, the first international non-governmental human rights organisation to visit Sudan and meet with senior members of the Sudanese government, since the Darfur crisis began.

In a marked departure from past practice, the mission delegates were given free and full access to Darfur.

The delegation saw several sites where villages had been burnt to the ground, or abandoned and which were now almost overgrown with vegetation. They saw camels, goats and cattle being grazed by nomads on land where previously villages of farming tribes had been situated.

They heard first hand accounts of atrocities from displaced persons in camps and villages in western Darfur and in Nyala in southern Darfur. Two women described how, in February 2004, their village near Nuri in western Darfur was attacked by armed militia and bombed, leaving some 130 people dead. One of the women said that so many men had been killed that it was left to the women to bury the dead and she and another woman had buried seven men. The women placed the bodies they could not bury that evening in a shelter, but they said that the Janjawid returned in the night and burnt the shelter and the bodies.

The delegates visited displaced people from nomadic tribes now in Musai camp near Nyala, where they heard "mirror image" accounts of killings and rapes said to have been committed by the insurgents. Amnesty International condemns strongly all violations of international humanitarian law committed by armed political groups.

Amnesty International acknowledged the government's efforts to increase the number of police in Darfur by redeployment from other parts of Sudan. However, often they are not properly equipped. Furthermore, the delegation heard from displaced persons that police did not investigate their complaints and that some of Janjawid had been absorbed apparently into the police and government militia.

"Because of rampant insecurity and the failure to address past abuses, those who have suffered say they do not trust the government. They say they don't feel safe in the camps, they say they are filled with fear outside. Every person we spoke to in the camps was adamant that they do not feel safe enough to return to their villages," said Samkelo Mokhele, Chair of AI South Africa, and a delegate on the mission.

"In this situation the only solution is a massive increase in monitors. An international presence in every district is what is needed now to build the confidence of the people and improve security."

Amnesty International welcomes the proposed increase of AU monitors. "But it is not just an issue of numbers but also of ensuring that the mandate and capacity of the AU monitors are strengthened to enable them to meet the expectations. The UN human rights observers must also be dramatically increased and properly resourced to carry out their responsibilities."

"Indicators and benchmarks to judge progress on protection of human rights must be qualitative and not quantitative -- it is not a question of numbers of monitors and observers but of their impact on the protection of civilians; it is not a question of simply having more policemen, but of them having the ability and willingness to protect people," said Ms Khan.

"Restoring security is essential to enable people to return home voluntarily and in safety and dignity. The significance of establishing these conditions cannot be too heavily underscored. Otherwise there is a risk that ethnic cleansing might lead to ethnic re-engineering," cautioned Ms Khan, pointing out that prolonged displacement could upset the demographic balance in the region.

The Amnesty International delegation found that the "safe areas" designated by the Government of Sudan do not provide real safety to those living there, imply that those living elsewhere can be attacked with impunity, and is a disincentive for restoring security elsewhere.

"The UN must persuade the Government of Sudan to abandon this concept and instead put its weight behind the already agreed Plan of Action to enhance safety throughout Darfur by stopping violations of human rights and international humanitarian law, respecting the ceasefire, disarming and disbanding the militia, and ending impunity."

Amnesty International welcomes the request by the UN Security Council for the rapid establishment of an independent International Commission of Inquiry, which has been one of Amnesty International's key recommendations for some months, to investigate war crimes and crimes against humanity and establish whether genocide has taken place.

The delegation concluded that the humanitarian situation in Darfur remains extremely precarious, despite full and free humanitarian access. "The region does not have the infrastructure to allow a humanitarian operation of this scale to be run for a long period of time. If displacement continues, access is lost, international assistance and attention drops, there is still a possibility that the crisis could turn into a catastrophe."

Sources: Amnesty International.

HUMAN RIGHTS advocacy



Freedom of Religion: religious minority in Bangladesh

BARRISTER HARUN UR RASHID

FREEDOM of religion is a corner stone of the Bangladesh Constitution of 1972. Although the original article was amended in 1988, Article 2A of the Constitution states that "The state religion of the Republic is Islam, but other religions may be practised in peace and harmony in the Republic".

Two words, such as "peace" and "harmony" need close attention. In this context, peace means absence of violence and harmony connotes absence from strife. It is obvious that practice of religion by all people belonging to various religious groups within Bangladesh have the "constitutional right" to follow their religion peacefully and harmoniously.

Constitutional right is a right given to a person by the fundamental law of the country. In other words, the right of freedom of religion in peaceful atmosphere is not provided by an ordinary law. Accordingly, there is a constitutional obligation of the authority of the Republic of Bangladesh to ensure such right for every group of religions in the country.

Freedom of Religion is a fundamental feature of human life

To practise religion in peaceful environment is considered to be one of the fundamental elements of life of human beings. Human beings do not live only for material necessities. There is a strong need for spiritual nourishment for every human being.

There are many worlds, astronomical, physical and spiritual worlds. There are also visible and invisible worlds. For instance, we cannot ordinarily see a germ or bacteria with our naked eyes but we are able to see it with a microscope. This means that what is not ordinarily visible does not mean that it has no existence.

In the same way, most of human beings believe that there exists a Divine Power and that obedience or complete submission of human beings to a Divine Power is an acknowledgement of the presence of All-Sufficient Transcendental Power, in whatever name one calls it.

The respect for freedom of religion is the foundation of justice, peace and freedom in civilised society. This right is an inalienable right and cannot be derogated or diminished under any circumstances. Therefore the non-derogable right of freedom of religion must be considered as one of those rights that must be guaranteed to all persons within a State, including in Bangladesh.

Islamic Injunctions

Freedom of religion is a core of Islamic faith. It does not believe in coercion to

change one's religion or faith. The extracts from Surah Kafirun (Surah 109) of the Holy Qu'ran are very relevant to the issue that are as follows: " I worship not that which you worship,

Nor will you worship that I which I worship.... To you be your Way and to me mine."

It is very clear from this holy verse that Islam guarantees freedom of religion. It does not believe in forced conversion or in restrictions in professing one's faith or religion.

The Divine Power is eternal and one but human approach to understanding the Divine Power is varied. Different religions delineate different ways and means of understanding and appreciating the Power. But all enlightened scholars have come to an agreed view that the Divine Power cannot countenance discord and violence among His votaries and the Divine Power is the only judge (and not mortal human beings) over approaches as a means of understanding Him.

International legal instruments

Let us now examine some of the principal legal instruments with respect to freedom of religion.

The 1948 UN Universal Declaration of Human Rights in its Article 18 states " Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".

The Article underscores that freedom of religion includes practice of religion in public together with others. That means that it is not a private right, to be practised only in indoors. It is a right to be expressed in public and in community with others.

The UN Universal Declaration, according to many legal experts, constitutes a Charter of Mankind and has become a part of customary international law. This implies that all States are bound by it.

The 1966 UN International Covenant on Civil and Political Rights not only repeats in its Article 18 the same provision as that of the Declaration but also explains the right further. In Article 18(2) of the Covenant, it provides that "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." Here the word "coercion" is significant. The dictionary meaning of "coercion" is act of compelling or restraining by force without regard to individual wishes or desires. This implies that no amount of threat or force is to be applied in restraining an individual to practise his/her religion. It is noted that the Covenant on Civil and Political Rights provides for immediate protection by requiring States to "respect and ensure all individuals within its territory" (Article 2 of the Covenant).

Furthermore, the UN General Assembly on 25 November 1981 adopted a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Declaration in its preamble, among others, emphasises that "Religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed."

In Article 2(2) of the UN Declaration it provides that " No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice."

UN Commission on Human Rights: Bangladesh's role

It is noted that the UN Commission on Human Rights, set up in 1946 by the UN Economic and Social Council, deals with human rights issues. It has currently 53 members. Bangladesh has been elected to the Commission as one of its members on regular basis and this demonstrates that international community has confidence and trust on Bangladesh on protection of human rights.

The Commission on Human Rights in 1947, at its first session, established the Sub-Commission on Prevention of Discrimination and Protection of Minorities with 26 experts, elected for four years. Bangladesh legal experts were elected to this body to look into any violation of human rights in respect to minorities. It has been a great honour for Bangladesh experts to serve in the Sub-Committee of the UN. This also shows that international community has reposed full confidence on Bangladesh and on its legal experts on protection of minorities, whether it is religious, ethnic or otherwise.

Conclusion

Given the discussion in the above paragraphs with respect to guaranteeing freedom of religion in an atmosphere of peace and the important role of Bangladesh in the UN Commission on Human Rights, it is sad to note that some religious minorities, in particular Ahmadiyya and Hindus, have become victims of violence of certain element of fanatic forces within the country. In my view, Islam totally rejects such violence. It seems to be a serious misunderstanding and misinterpretation of Islam.

The violence against some religion of minorities cannot but have adverse impact on the image of Bangladesh that is perceived as a moderate, tolerant Muslim majority country. Image of a country, like reputation, is an intangible thing and it takes a long time to acquire a good image but can be lost immediately.

Our overwhelming majority of people believe in the freedom of religion, the Constitution proclaims it and the government, irrespective of parties,



believes publicly in the freedom of religion. Therefore, there should not be any violence or coercion or compulsion in thwarting freedom of religion in Bangladesh. The government has a solemn responsibility to guarantee freedom of religion to all groups of people in Bangladesh, professing different religions.

The author is former Bangladesh Ambassador to the UN, Geneva.