



FOR YOUR INFORMATION

Legal Framework on the Extent of Land Ownership

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Through the State Acquisition and Tenancy Act (STA) 1950, the long standing traditional zamindari system was abolished and the ownership of the people over the land was established. Section 90 of the Act states that a person can hold a maximum of 375 bighas of land since the implementation of this Act. This '375 bighas' refers to both agricultural and non-agricultural since section 2(16) defines land as cultivated, uncultivated or covered with water at any time of the year, and includes benefits to arise of land, houses, or buildings and also things attached to the earth, or permanently fastened to anything attached to the earth. Now, if a person violates this law and owns more than 375 bighas of land, then after 375 bighas of that land, the rest of the land shall go under the authority of the government [section 90(5)].

According to article 3 of the Bangladesh Land Holding Limitation Order (BLHLO) 1972, a maximum of 100 bighas of land can be kept by a family or body. In this law, 100 bighas means both agriculture and non-agriculture land (article 2(e)). Apart from the special rights given in this Act and the exceptions mentioned, if there is an excess of 100 bighas of land, the excess quantity of land shall be surrendered to the government (article 3).

In the earlier laws, land was meant for both agriculture and non-agriculture, but the Land Reforms Ordinance 1984 only sets a limit on acquiring agricultural land. As per section 4, a person can hold agricultural land up to 60 bighas. If anyone acquires more than 60 bighas of agricultural land, the excess amount shall vest to the government (section 4(3)).

There are three types of limits in these three legislations, and it is not particularly easy to understand how much land a person can hold at present. To solve this problem, these laws have to be interpreted collectively. In the 1950 Act, the limit is set at 375 bighas of land (both agricultural and non-agricultural). In the 1972 Order, the limit was reduced to 100 bighas (both agricultural and non-agricultural), which is importantly given priority over all other laws. Therefore, it can be said that the limit of 375 bighas that was set in the 1950 Act is now reduced to 100 bighas according to the BLHLO 1972.

Then again in the LRO 1984, the maximum limit of agricultural land was fixed at 60 bighas and this Act of 1984 has also been given priority over other laws under section 3.

Therefore, a tenant or a family or a body can now keep a maximum of 100 bighas of agricultural and non-agricultural land, while out of those 100 bighas, agricultural land can be owned up to 60 bighas. But the limit of land ownership in these laws is applicable only in general cases, in case of exceptions or in certain cases, the government may relax this limit (e.g. for companies, cooperative societies, for farming etc.) mentioned in these laws.

In Bangladesh, among all others, land is one of the major reasons of discord or conflict. To control land grabbing and for better management of land, the authorities should strictly implement these laws and at the same time strong mechanisms should be used to surrender the excess amount of land to the government.

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LAW OPINION

Improving Access to and Increasing Engagement with Judgments

By clear constitutional design, the judgments of the subordinate courts do not have this sort of impact/such a wide reach or effect. But as low profile or as limited impact they may have on the entire country, their importance cannot be ignored. Only studying them, many of the most recurring challenges that citizens face in our legal system may be discernible and hence, they warrant much closer scholarly attention.

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In general, the research conducted by the legal academe in Bangladesh has not engaged with judgments as much as is the case in some other jurisdictions. However, that tradition is somewhat changing as more and more academic legal works in Bangladesh are showing a much keener interest in engagement with judgments. Even this weekly law page of *The Daily Star* would probably bear some testimony of the changing trend. However, there has been very little academic engagement in Bangladesh with the judgments of subordinate courts. This trend is a dismaying one as the study of judgments of subordinate courts may offer many insights which may not be apparent from the judgments of the Supreme Court (SC). Indeed, routine matters of life of citizens which are settled by the judiciary – bail petitions, marriage, divorce, inheritance and so many others are litigated in the subordinate courts. And very few of these cases would end up reaching the SC. And that should be the case to avoid the SC from being even more clogged by the long pile of pending cases.

By arguing that the judgments of the subordinate courts warrant much more scholarly attention, it is by no means submitted here that they hold the precedential value or the status identical to those judgment of the SC. The SC, a constitutional court of last resort, enjoys a status unlike any other in this country. The SC's power of interpretation of the laws must be viewed through a prism that

cannot apply to the judgments of subordinate courts. There are several important distinctions between the judgments of the SC and those of the subordinate courts. Firstly, constitutionally, only the judgments of the SC have precedent value. Article III of the Constitution states that "The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it." No comparable provision exists for judgments of subordinate courts in the country. The precedents of the SC have the law interpreting or in some cases, even the law-creating or law declaring effect. Some of the judgments may also have wider ramifications for the overall economic-political-social fabric of the country. By clear constitutional design, the judgments of the subordinate courts do not have this sort of impact/such a wide reach or effect. But as low profile or as limited impact they may have on the entire country, their importance cannot be ignored. Only studying them, many of the most recurring challenges that citizens face in our legal system may be discernible and hence, they warrant much closer scholarly attention.

Possibly, another less talked about area which would go a long way in facilitating greater accessibility of judgments (SC and the subordinate judiciary alike) is that of the publishing of the judgments on the respective websites of the courts. While some of the judgments of the SC are now posted on its website, they are still only a small fraction of

the judgments of the SC. Indeed, presumably, unlike in the good old days, these days, most judgments are possibly written by using electronic devices, not the type-writers. Hence, even in logistical terms, there may not be too many hurdles in posting judgments online. As the Government is championing the cause of access to information, it would only be fitting that the judgments of the SC as well lower courts are posted on the respective websites of our courts. If resource and logistical concerns are lurking around, the Government should address them.

Some may raise the issue of privacy which may be a relevant concern in some cases. However, the point remains that the accessibility of the judgments has little to do with the privacy of the parties. Ensuring the anonymity of the parties in the judgment of some sensitive cases are an important issue and this author has argued for more attention to that issue in a prior essay in this page, and need not repeat the same here (for reference see, Md. Rizwanul Islam, 'Protection of the identity of victims in judgements', *The Daily Star* (Law & Our Rights), 29 Oct 2019). But in no case should any such concern stand in the way of easier, open access to the judgments of the courts, which are ultimately public documents. When they are accessible, it is probable that they would be engaged with more closely.

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LAW VISION

RENEWABLE ENERGY BUSINESS

A Promising Sector in Bangladesh

Recently, the government has given the highest priority to the improvement of the energy business. In this context, the government has shifted its concentration from commercial sources of energy i.e., fossil fuel, to renewable energy, in order to speed up the use of renewable energy (RE) sources such as solar, wind, biomass, biogas, biofuels, hydro, geothermal, tidal wave, etc. Therefore, Bangladesh adopted Renewable Energy Policy 2008 to offer lower operating costs and show its commitment to the direction of climate change improvement by encouraging more production of RE in the country. Besides, this policy offers to provide subsidies and tax incentives to attract more investment in this sector. Strong legal and policy frameworks, institutional capacity, technological development, financial strength, and skilled human resources are required to ensure an appropriate business environment in this sector.

It is pertinent to mention here that Bangladesh has limited scale power to run the current huge-scale development



projects in accordance with the national development scheme. Production expenses of renewables in Bangladesh are usually higher compared to the cost of fossil fuels. In the 7th Five Year Plan, the government set targets for developing RE resources to

meet 10% of the total power demand by 2020 but it achieved only around 3% of the total energy. The government has also set the ambitious target of 20% of total power demand by 2025 in the 8th Five-year plan. To achieve the target, there are legal,

technological, institutional, and economic challenges with regard to renewables in Bangladesh, such as excessive cost to set up RE plants, and grid constraints (overcapacity in some regions). The government is working hard to mitigate the challenges through effective institutional coordination and comprehensive policy initiatives on and about economic, social, and environmental sustainability in the RE business context.

In the recent world, the overall CO2 emissions soared from 22.7 bn tons to 30.0 bn tons due to the economic growth of developing countries. While the ratio of emissions from developed countries (U.S., EU, and Japan) dropped from about 50% to 30%, emissions from newly emerging countries have an apparent tendency to rise. To reduce global emissions, it is necessary to reduce emissions from emerging countries such as China, India, and Bangladesh whose energy demand is significantly rising. The Renewable Energy Policy aspires Bangladesh's transformation into a green country and latches onto the

prospects of practical improvement to keep its international promises to promote a green environment.

It is encouraging to note that the government shall continue to seriously emphasise economic growth, social inclusion, and environmental sustainability in both domestic and foreign investment in this sector to shape the energy improvement pathway of the country for at least the next two decades. It will help to create investors' confidence to invest in the RE sector.

It is hoped that the Government of Bangladesh has introduced policy support and attractive incentives in RE sectors to create an investment-friendly environment for improving more stable sources of RE and establishing an effective regulatory platform for the country's energy development.

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