



The Daily Star



Land Crime Prevention and Remedy Act, 2023: Citizen Views

Association for Land Reform and Development (ALRD) in collaboration with The Daily Star organised a roundtable titled 'Land Crime Prevention and Remedy Act, 2023: Citizen Views' on November 25, 2023. Here we publish a summary of the discussion.

The distinctions between the terms "civil wrong," "criminal offense," "dispute," and "crime" have been muddled in the new act, rendering it more intricate. This confusion is poised to engender anarchy within our legal system. Several elements in the Act have the potential to be used for the harassment of individuals. Regrettably, this law fails to align with the principles of a democratic and human rights-oriented society. This Act does not exemplify the jurisprudential standards expected in a democratic country.



BARRISTER ASHRAF ALI
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Supreme Court (Keynote presenter)

The title, Land Crime Prevention and Remedy Act, 2023, distinctly reveals its character as a criminal law aimed at delineating a range of land-related offenses and prescribing corresponding penalties for such transgressions.

Examining the preamble of the law elucidates its underlying purpose, explicitly articulated as follows: "As it is necessary to make a coherent provision with the adoption of effective measures aimed at the prevention of land-related crimes and the provision of necessary remedies to ensure possession and due rights in government, semi-government, autonomous institutions, and citizens' own land; and whereas the expeditious resolution of land disputes is expedient and necessary; therefore, it was enacted as follows."

Two distinct issues are underscored here: the possession of land and corresponding rights, and the resolution of land disputes. It's essential to differentiate between an offense and a dispute, recognizing that not every dispute amounts to a crime. Given the focus of this law on prescribing punishments, a pertinent question arises regarding its effectiveness in resolving disputes. Upon a closer examination of the law's sections and subsections, I see a lack of adequate provisions for dispute settlement.

According to section 2(5), "deed" includes a document executed for the purpose of transferring or allotting ownership of land, a contract for sale, a receipt, a power of attorney, a design, a sketch, a map, a hand design, Khatiyan, a duplicate carbon receipt, a land development tax payment receipt, an allotment, a clearance, a no-objection certificate, an affidavit,

and any other related documents to be considered as a deed. This definition of a deed differs from that of a land ownership document, potentially leading to confusion.

Section 3 of the Act does not confer an overriding effect over other laws; instead, it will be considered an addition to existing legal provisions.

In accordance with Section 4 of the Act, the identification of land ownership serves as the cornerstone for addressing any issues related to land fraud. The Act stipulates that the responsibility of determining ownership now rests with the criminal court, whereas previously, this jurisdiction fell under the purview of the civil court. This shift has led to confusion regarding whether the case can be filed concurrently in both courts.

Section 6, dealing with measures to

There are several provisions in this law where the jurisdiction of the civil court has been restricted, and many jurisdictional matters of the civil court have been delegated to the executive magistrate or mobile court. I believe this raises a conflict of interest with our concept of the separation of the judiciary. If the separation of the judiciary is a basic structure of the constitution, we must also consider whether the act contradicts the constitution or not.

prevent crimes related to land fraud and forgery, states that the deeds must be sent to the District Commissioner if they prove to be fake. Section 39 of the Specific Relief Act also has a similar provision to nullify the deed by sending it to the Sub-registry office. According to me, if the deed has been proven to be fake, then what's the role of the DC office because the custody of the land register is under the sub-register office, and all the procedures of deed cancellation must take place there.

In subsection 2, under section 6, the case can be shifted to the relevant

criminal court if any information and deed have been subjected to land-related forgery at any level, including land transfer, survey, registration, land record update, and maintenance. A similar provision can be seen in section 195 (1) (C) of The Code of Criminal Procedure (CrPC), which states that if any competent court of law finds any deed false or fake at the end of the trial through evidence, then he will send it to the relevant court to have cognizance. This provision has been added in subsection 2, which means the power of section 195 (1) (C) of CrPC is given to the Sub-register or Tahsildar. Now the point to look into is whether the sub-register or Tahsildar has the jurisdiction to announce a deed as fake or false. Even if they do, there are no provisions for proceedings to follow, and the process of accessing the authenticity of the deed. Section 195 (2) of CrPC defines about courts - In clause B and C of subsection 1, the term court includes a civil revenue or criminal court but does not include register or sub-register under the Registration Act. The register and sub-register are being exclusively excluded in CRPC. I think if the areas of register and sub-register's judicial power, the process of accessing the authenticity of the deed, and competency in collecting evidence cannot be defined clearly there is a chance of harassment.

It is not decipherable why subsection 3 of section 6 has been added in the act. The problem in land registration if anyone doesn't have the khatian in his name is described in the relevant land registration act.

Section 7 is about the prevention of illegal encroachment. In subsection 1, the last khatian is considered the foundation of title. A khatian is not a document to ensure title, and the justification for deciding punishment based on considering the khatian as the foundation of title needs explanation. The khatian may contain incorrect information. The actual deed should be the foundation of truth. Determining the actual landowner based on the khatian, while bypassing deeds, may not be accurate.

There are several provisions in this law where the jurisdiction of the civil court has been restricted, and many jurisdictional matters of the civil court have been delegated to the executive magistrate or mobile court. I believe this raises a conflict of interest with our concept of the separation of the judiciary. If the separation of the judiciary is a basic structure of the Constitution, we must also consider whether the act contradicts the Constitution or not.



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Court of Bangladesh

The name of the law is "Land Offences Prevention and Remedies Act, 2023" ("the Act, 2023"). The law is in Bangla. Section 27(1) contemplates that in case of conflict between Bangla and English, the Bangla version will prevail. There is no English text till date.

Remarkably, there is no definition of 'offence' or 'land' in the Act, 2023. However, in our age-old laws such as Code of Criminal Procedure, 1898 (CrPC). Offence is defined in section 4(1)(o). According to definition, offence includes, "(o) 'offence' means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871". Offence is also defined in Section 40 of Penal Code, 1860 as "offence" denotes a thing made punishable by this Code."

Section 3 of the Act, 2023 contemplates the application of this Act in juxtaposition with other laws. An Act may have an 'overriding effect' upon other laws, in such laws a clause is incorporated which is, in jurisprudence, called non-obstante clause. Those start with the words- "Notwithstanding anything in any other law for the time being in force...". That kind of law takes effect in derogation of other laws.

Fortunately, this Act is not of that kind. It takes effect in addition to other laws, not in derogation of other laws. So, this Act, according to section 3, is supplemental to other existing laws, not substitutional to other laws. I think in the whole scheme of this Act, this section is positive.

The offences defined and described in sections 4, 5, 6, and 7 of the Act, 2023 have been adequately dealt with in the Penal Code, 1860. As for

example section 415 of Penal Code provides definition of 'cheating'; section 416 provides definition of 'cheating by personation'; section 417 provides punishment for cheating; section 419 provides 'punishment for cheating by personation'; and section 420 provides 'cheating and dishonestly inducing deliver of property'.

In order to decide whether any offence of these kinds has been committed by some person or not, civil right of title to land has to be adjudicated upon by a civil court of competent jurisdiction.

On such adjudication, civil court passes decree in respect of right, title and possession of land/property, and arrived at findings of commission of fraud, forgery, impersonation, etc. on the basis of which the offender is proceeded against complying section

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195(1)(b) & (c), CrPC.

Offences created in sections 4 and 5 are punishable offences under several sections of the Penal Code. Commission of these offences by a person can be established only through adjudication in a civil court, that's why section 195(1)(b) & (c) is there.

So, these provisions of the new Act provide punishment before adjudication as to right/title to the property, and of possession thereof, and for that matter, as to commission of offence, if may be.