

LAW OF VESTED/ENEMY PROPERTY IN BANGLADESH: AN ANALYTICAL APPROACH

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ABSTRACT

In Bangladesh we have enormous lands which have been possessed as vested properties since long. The Vested Property derives from the "Enemy Property", under the provisions of the Enemy Property Act (EPA) promulgated in Pakistan following a brief war between Pakistan and India in 1965. The Laws on Vested Property in Bangladesh have long been criticized as a major violation of the rights of citizens, especially minorities, who have had property seized in the past simply on leaving the country. The EPA was directed against those perceived as enemy, and was used as an instrument for appropriating land belonging to Hindus accused of supporting India. After Bangladesh had earned independence from Pakistan, the act was converted into Vested Property Act without altering the contents of the law. Finally, Government tabled a new law i.e. The Vested Property Return Act, in 2001, fixing a 180-day time limit to prepare a list of the properly documented as vested property in order to take steps to restore falsely seized lands. But the subsequent government by the end of 2001 amended the bill replacing the 180-day deadline with an 'indefinite period'. So, the list was not completed until the amendment of the act in 2011 to restore the enlisted enemy/vested properties to the really interested persons. At present, the restoration process of the vested property is going on in compliance with the amended law. This paper will point out the evolution of the law on vested property along with its questionability and analyze its present context.

Keywords: Enemy Property, Restoration, Non-Resident.

1. INTRODUCTION

Hindus and Muslims played pawn at the hands of colonizers on the eve of independence in 1947 after thousand years of peaceful co-existence in undivided India. Being divided on the basis of the "Two-nation Theory," Hindus and Muslims of India and Pakistan suffered a lot on both sides of the borders from 1947 on^[1]. Under this background, 'Enemy Property Law' became a history of state-mediated deprivation of land rights of Hindus in Bangladesh (then Pakistan). Vested property in Bangladesh is meant to indicate the designation of the land owned by the people especially Hindu minority (who fled to India from then Pakistan during Indo-Pak war) which was known as "Enemy Property" under the provisions of the Enemy Property Act (EPA) by the Government of Pakistan in 1965^[2]. After achieving independence from Pakistan in 1971, the newly formed Republic of Bangladesh retained the provisions of the EPA through the Vested Property Act with the new designation of the enemy property as 'Vested property' vesting the property on the government. The "Vested Property Act" was

considered to be a controversial law in Bangladesh that allowed the Government to confiscate property from individuals it deemed as an "enemy of the state". Before the independence of Bangladesh, the known Enemy Property is still referred to as such in common parlance. The act is criticized as a tool for appropriating the lands of the minority population. So enactments were made in the face of the movement of minority people and direction of the Supreme Court to return the property to its real owners or legal heirs or successors in-interest in 2001, and amended in 2011. Lastly, by the passing of the release of the vested property (amendment) act, and rules in 2012 along with further amendment of the same in 2013, legal process of restoration of the vested property is going on according to the Act.

2. METHODOLOGY

The study is based on both secondary and primary sources. As secondary sources books, journals, reports, and data from various official and unofficial sources have been reviewed. For primary sources, national legislation has been analyzed and interviews were conducted with lawyers, judicial officers and concerned stake holder. As a methodology, mainly qualitative approaches have been adopted to frame the analytical reasoning on the historical evolution and justifiability of law on vested property in Bangladesh and present context of the same.

3. HISTORICAL BACKGROUND:

The control and ownership of the properties abandoned by enemy owners during the wartime vests on the Government. It has been followed all over the world [³]. During the World War-I British parliament passed the enemy trading Act, 1916 to manage the trading activities of enemies. After the War the Enemy Mission Act, 1921 was passed to control German Mission and properties thereto as enemy of state. Similarly, during the World War II, passing of the Defense of India Act, 1939 legalized the possession and control of enemy properties [⁴]. Such law started discrimination in Bangladesh (then Pakistan) with the bad application of some apparently good-looking laws, like *the East Bengal (Emergency) Requisition of Property Act, 1948*, *the East Bengal Evacuees (Administration of Immovable Property) Act, 1951*, and *the East Pakistan Disturbed Persons Rehabilitation Ordinance, 1964* [⁵]. In this sequence, EPA (present law of vested property) was enacted. The existing laws on vested property have passed through two phases - i. Pakistan Period and ii. Bangladesh period.

i. Pakistan Period:

Present Vested Property was known in Pakistan as 'enemy property' during 1965-1971. On 6 September 1965, Pakistan proclaimed a state of emergency by the Defence of Pakistan Ordinance at the outbreak of war with India. Simultaneously, in exercise of the powers conferred by the ordinance, the central government of Pakistan promulgated on the same day the Defence of Pakistan Rules. According to the rules, the Governor of East Pakistan passed **the Enemy Property (Custody and Registration) Order II on December 3, 1965** [⁶]. The

Enemy Property Order, commonly known as the Enemy Property Act (EPA), comprised several key components, including proclaiming India as an enemy state. Specifically, the Act declared that “all interests of the enemy (i.e., the nationals/citizens of India, those residing in the territory occupied/captured/controlled by India) in firms and companies, as well as in the lands and buildings situated in Pakistan, were to be taken over by the custodian of Enemy Property for control or management,” and “the benefits arising out of trade, business, or lands and buildings were not to go to the enemy, so as to not affect the security of the state of Pakistan or impair its defence in any manner”^[7]. Although the Indo-Pakistan War lasted only seventeen days, the Order persisted until 1969 when its inequitable provisions were continued through the Enemy Property (Continuance of Emergency Provision) Ordinance 1969^[8].

ii. Bangladesh Period:

With the emergence of Bangladesh, the law relating to the administration of enemy property continued in force by virtue of the Laws Continuance Enforcement Order 1971. The following year, the President of the country promulgated an order, namely, Bangladesh (Vesting of Property and Assets) Order, 1972, (VPO) for taking the custody of properties left by Pakistanis and Biharis who collaborated with Pakistani soldiers against Bangladesh's independence in 1971. But unfortunately, the law lumped together this new type of confiscated properties with earlier confiscated properties under the EPA ^[9]. Section 2 of VPO holds that “all properties and assets which were vested in the government of Pakistan or any officer appointed by such government or were vested in or managed by any Board constituted by or under any law or in the former government of East Pakistan shall be deemed to have been vested in the government of Bangladesh on and from 26 March 1971” ^[10]. The Order further stipulated that its provisions shall not be subjected to judicial review, preventing challenges to the Order's legality in any court of law in Bangladesh ^[11]. Subsequently, in 1974, Bangladesh Parliament formally repealed the EPO, 1965, and enacted a new law in its place called, **the Vested and Non-Resident Property (Administration) Act, 1974 (VPA)**. “an Act to provide for the Administration of certain properties vested in the Government or belonging to non-residents.” The VPA specifically vested “enemy properties” in the Government of Bangladesh, and thus became the formal successor to the EPA.

The VPA also created Management Committees throughout the country to take control of and administer “vested properties” in their respective jurisdictions, and empowered them with “all the powers, rights and liabilities of the Government in respect of such property...” Under the VPA, a “non-resident” was defined as one “who is not, or has ceased to be, a permanent resident of the territory now comprising Bangladesh or who has acquired a foreign nationality...” ^[12]. The Board of Land administration, constituted by the government as per the Board of Land Administration Act 1981 started to deal with the management and supervision of vested properties (Land and Buildings) including appeals, revisions etc in connection with lease of vested properties and release thereof, disposal of all proposals or

prayers for release of vested properties and establishment matters relating to vested properties [13].

4. LEGALITY OF THE VPA /EPA:

The legality of the Vested Property Act (earlier Enemy Property Act) has been questioned for long on various grounds-

Firstly- It is needless to say that the EPA (later Vested Property Act) is a law against the spirit of the Constitution of Bangladesh. The Act has violated the fundamental rights of a class of people guaranteed in the Constitution of Bangladesh. Because The Constitution of Bangladesh guarantees equality of all, and pledges equal protection of law as the fundamental right of all citizens (Article 27). As a fundamental right, Article 28 further holds that "the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth." Again as a fundamental right, Article 42 (1) notes that "Subject to restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer, or otherwise dispose of property." Article 13(c) guaranteed "private ownership that is ownership by individuals within such limits as may be prescribed by law".

The above-mentioned guarantees are formal aspects of justice, the interpretation and application of which leaves ample scope for legitimate and illegitimate discriminations [14]. The constitution however has provided the right to live under the rule of law and ensured the fundamental human rights. It is in contravention to the right of equality before law and entitlement of equal protection of law guaranteed by the constitution as the right and privilege of citizens are grossly violated for the said segment of citizens who cannot even seek for relief from the court as the continuance of Defense of Pakistan Rule of 1965 under different names and circulars does not permit them to do so.

So it is evident that the de facto continuance of the law of vested property (though formally repealed in 1974) contradicts the spirit of the proclamation of Independence and at least nine articles of the constitution, and therefore, adequate immediate measures should have been taken by the law-makers and the Supreme Court of Bangladesh to recourse the prevailing undesirable situation[15].

Secondly, Research shows that the EPO and the VPO together affected one-third of the total Hindu population in Bangladesh. Hindus were driven to landlessness or marginalization as land owners by state-mediated seizure under these two laws. Approximately 1 million households lost 2.1 million acres of land [16]. Even the officially acknowledged quantity of vested property under the Ministry of Land is colossal. On July 4, 1991, it was told to Bangladesh Parliament that 827,705 acres of land were in the official list as vested property [17]. The gap between unofficial and official account of vested property indicates that the rest of the properties are not at government's custody, and perhaps has already been consolidated in private hands. At any account, Hindus of Bangladesh suffered grave and manifest injustices regarding their land rights.

Thirdly, the judiciary of Bangladesh is faced with the question of declaration of any property belonging to a Hindu minority as enemy property and to get it vested for long in the Government. On this backdrop, the pronouncements of court in various judgments are seen as follows-

- (1) Custodian of enemy property treating a property as being a vested property without lawful basis for treating it as vested property and leasing out the same to another is unauthorized and illegal^[18].
- (2) It appears from order sheet of vested Property Miscellaneous Case that even before the property in question was declared as vested property, the third party applied for lease and succeeded in obtaining a favorable report from local tahsilder. Thereafter it was apparent from the records that the Tahsilder and the interested party acted in collusion with each other in securing the impugned order and throwing the real owner out of their possession. It is our considered opinion; it would be just to award exemplary cost against the Tahsilder and Sona Meah, who are responsible for harassing a helpless widow and her son and depriving them of their lawful right to enjoy their own property^[19].
- (3) Here is another Judgment of the Appellate Division dated 14th August 2004 on '*Saju Hossain Vs Bangladesh*' ^[20] - Enemy Property (continuance of Emergency Provisions) Ordinance (1of1969) Section 2 " Since the law of enemy property itself died with the repeal Ordinance of 1969 on 23 March 1974 no further vested property case can be started thereafter on the basis of the law which is already dead." So, we need not to produce more evidences, rather looking forward the needful action from the non-party caretaker Government led by Dr. Fakhruddin Ahmed.

Moreover, the case of *Benoy Bhusan Bardhan*^[21], the case of *Rahima Khatun*^[22], make out the conclusion that when a war or conflict takes place between two states, the property of enemy can be qualified as enemy property and it can be retained as long as war or conflict continues. However, on conclusion of peace, the rightful owner is entitled to get his property back and in absence of a valid claim, the retained property could be disposed of for public interest. In no way, the properties of the co-sharers of persons who left for India either being Indians or Pakistanis, can be declared as enemy or vested properties. It will be in violation of fundamental right of equality^[23].

On November 6, 2008, the High Court division of the Supreme Court of Bangladesh issued *Rule Nisi* upon the Government on the Enemy Property (Continuance of Emergency Provision) (Repeal) Act 1974 and subsequently promulgated Arpita Sampatty Protapyan Ain 2001, circular and administrative order. The order calls upon the respondent to show cause as to why instructions issued in the contents of presidential order 29 of 1972, act 45 and 46 of 1974, ordinance No. 92, 93 of 1976, Arpita Sampatty Protapyan Ain 2001 and circulars issued by government that are in contradiction with the fundamental rights and the charter of declaration of Independence of Bangladesh, 10 April 1971, should not be declared to be *ultra vires* the constitution. The Rule Nisi also stated why the properties so far incorporated in the list as Enemy (Vested) property should not be returned to the title holder/successor/legal possession holders.

Finally, International concern increased especially the law has been highlighted by the US State Department and Amnesty International as a major human rights concern that has contributed to internal displacement, emigration and disenfranchisement. And in the face of international concern and movement of minority group The Vested Properties Return Act (2001) was enacted in parliament in an effort to repeal the previous laws and to return the confiscated (vested/ enemy) property to the real owner/ title holder/successor/legal possession holders.

5. THE RESTORATION OF VESTED PROPERTY ACT, 2001:

The VPA remained operative until 2001, when the then government declared that land previously confiscated by the government as “vested” property should be returned to their original owners, and passed the Restoration of Vested Property Act, 2001^[24]. But the successive new Government passed an amendment of the Act in 2002, which allowed the Government an unlimited time to publish the list of returnable vested properties. So, the process of restoration of vested properties was suspended till the amendment of the act in 2011 and framing of rules thereof. So, The Vested Properties Return (Amendment) Act, 2011 enabled the rightful owners to reclaim their property taken over by the government and individuals. After the amendment, the process of restoration of vested property to its real owner has been initiated.

The Act was again amended in 2012 extending the time limit of publication of schedule of vested properties and application for its restoration. Following the provisions of the amended act, Government published the lists of the vested properties dividing those into Schedule ‘A’ and ‘B’.

In compliance with the provisions of the act, the persons interested, all over the country, in the scheduled properties started to file application to regain the title of the properties. It was seen that thousands of cases were filed during the time limit specified by the act.

The overburdens of cases were not possible for the few Tribunals (constituted by the new act) to dispose of the huge amount of cases within the specified period of time. It was inevitable to increase the tribunal. So amendment was made in 2013 to make the process of restoration of vested property easy and effective in consultation with the stakeholders. Moreover, Government issued various circulars lastly on 01.01.2014 to effectuate the new amendments and to save the real owners of the property from administrative harassment.

The Restoration of Vested property act, 2001 (*Orpito Sompotti Prottorpon Ain*) exists now is the culmination of several successive laws from Pakistan to Bangladesh. Chronologically, they are:

- The East Bengal (Emergency) Requisition of Property Act (XIII of 1948)
- The East Bengal Evacuees (Administration of Property) Act (VIII of 1949)
- The East Bengal Evacuees (Restoration of Possession) Act (XXII of 1951)
- The East Bengal Evacuees (Administration of Immovable Property) Act (XXIV of 1951)
- The East Bengal Prevention of Transfer of Property and Removal of Documents and Records Act of 1952

- The Pakistan (Administration of Evacuees Property) Act (XII of 1957)
- The East Pakistan Disturbed Persons (Rehabilitation) Ordinance (No 1 of 1964)
- The Defence of Pakistan Ordinance (No. XXIII of 6th September, 1965)
- The Defence of Pakistan Rules of 1965
- The Enemy Property (Custody and Registration) Order of 1965
- The East Pakistan Enemy Property (Lands and Buildings Administration and Disposal Order of 1966.
- The Enemy Property (Continuance of Emergency Provision) Ordinance No. 1 of 1969
- Bangladesh (Vesting of Property and Assets) President's Order (No. 29 of 1972).
- The Enemy Property (Continuance of Emergency Provisions) (Repeal) Act (XLV of 1974)
- The Vested and Non-Resident Property (Administration) Act (XLVI of 1974)
- The vested and Non-Resident (Administration) (Repeal) Ordinance 1976 The Ordinance, (No. XCII of 1976).
- The Ordinance No. XCIII of 1976.
- The Restoration of Vested Property Act, 2001(amended in 2011, 2012 and 2013).
- The Restoration of Vested Property rules, 2012.

6. BASIC PROVISIONS OF THE ACT:

The basic provisions of the act are pointed out below-

Object:

Object of the Restoration of Vested Property Act, as preamble says, is to enact provisions for restoration of the enlisted vested property to its rightful owners in Bangladesh or their heirs or Successor-in-interest.

Definition clause:

Section 2 of the act defines the following among others-

- a) **'Vested property'** means any property vested in the government under vested property law.
- b) **'Vested property law'** means-
 - i. Defense of Pakistan Ordinance, 1965
 - ii. Defense of Pakistan Rules, 1965
 - iii. the Enemy Property (Continuance of Emergency Provisions) ordinance, 1969
 - iv. Bangladesh Vesting of Property and Assets Order, 1972
 - v. Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974
 - vi. Vested and Non-Resident Property (Administration) Act, 1974
- g) **'Temporary lease'** means any lease for a period not exceeding 12 years in the case of non-agricultural land and 15 years in the case of agricultural land.
- m) **'Owner'** means original owner or his heirs or successor- in-interest or co-sharer in possession by lease or in any form and who is a citizen and permanent resident of Bangladesh.

q) 'Schedule' means list of the properties described in Schedule 'A' published by Gazette notification under this act.

p) **Definition of Restorable property**^[25]:

The Restorable property is defined to mean as described in clause (j) of section 2. This includes-

- i. The properties which are listed as vested properties by the Custodian under vested property law and which are under the control or possession of the government before the commencement of this Act.
- ii. 'Returnable charitable properties' such as math, debotter sampatti, graveyard, Religious and charitable properties which are enlisted as vested properties and which are under the control or possession of the Government before the commencement of this act.

Return of Restorable properties to their owners and its Effects:

Section 5 provides that subject to the provisions of this Act, all the Restorable properties listed in schedule shall be returned to their real owners through the intervention of the Tribunal constituted to this end. All the rights, titles, interests and liabilities of the government on the properties so returned shall be extinguished thereby.

Proviso: If there is any construction or immovable property constructed by the government or the possessor permitted by the government, such immovables may be taken away by them. It also enumerates that if any such property was previously acquired, the owner shall be entitled to the compensation money as deposited following the provisions of this act.

Publication of Schedule of Restorable Properties:

Section 9 makes it obligatory upon the government to publish the district-wise list of Restorable properties as described in schedule 'A' within 300 days after the commencement of the Return of Vested Properties (Amendment) Act, 2011 through gazette notification²⁶. The list would include the detailed description of the *mowza*-wise restorable properties. The time limit may be extended on specific ground. And With the publication of the list the Government will put up advertisement in the radio, television, and other media and supply sufficient number of copies of the list to the Offices of the Deputy Commissioners (DCs), so that any person who is interested can collect it by paying a fixed price.

It is provided in section 9 (6) that the properties not included in the schedule published shall not be considered as vested property and Government shall not have any title, rights, interests or liabilities on such as vested property.

Prohibition of inclusion of certain properties:

Section 6 prohibits certain properties to be included in the schedule of Restorable properties, such as-

- i. Property finally declared by the competent court as non-vested property before the commencement of this Act;

- ii. Property released by the custodians from the list before the commencement of this Act,
- iii. Property leased permanently or transferred by the government to any statutory authority or any organization, and
- iv. Those which are industrial or commercial establishments and all assets of those organizations or establishments and those handed over by those organizations or establishments;
- v. Those which are shares or securities of some companies;
- vi. Property acquired for public purpose.

Proviso-real owners shall be entitled to compensation money of the Restorable properties if deposited in public treasury and such owners are citizen and permanent resident of Bangladesh.

Prohibition of new suits etc.:

After commencement of this Act, as laid down in section 7, No one can file any suit in any court claiming any property not to be enlisted as returnable property nor can claim for release to the custodian nor can apply for mutation on his own favours. Any such claim shall be rejected by the court or custodian or revenue officer.

Prohibition on Transfer of restorable properties:

Section 8 provides that after commencement of this act, until the release/return is completed under section 11 (5), no person shall transfer the restorable property by way of sale, mortgagee, gift or in any form what so ever and any such transfer shall be null and void.

Formation of Tribunal:

Sections 16 of this Act deals with the establishment and formation of the vested Property Return Tribunal. It provides that the Government, by gazette notification, will set up one vested property return Tribunal and, if necessary, one or more than one additional Tribunal in each district.

The Tribunal shall be composed of by a judicial officer with the rank of **Joint District judge or Senior Assistant Judge**. The territorial jurisdiction of the tribunal will be specified by gazette notification.

The tribunal shall dispose of the applications filed under this act following the provisions of the same not otherwise. If more than one application is filed for the same property they may be disposed of by joint hearing and single judgment (section 17).²⁷

Who is entitled to apply for release?

According to section 10 read with section 2 (m), the following are entitled to apply to the Tribunal for the release of restorable properties if he/they is/are citizen and permanent resident of Bangladesh-

1. Original owner or
2. His heirs or
3. Their/his successor- in-interest or

4. Co-sharer in possession by lease or in any form or
5. If any property, as mentioned in section 6, is included in the list of returnable vested property, the **concerned stakeholder** may apply to the Tribunal for release of that property from the list within the specified time limit.
6. According to Section 15 (1) If any returnable public welfare property is a *debottar* property or a *mauth* or a cremation or a graveyard or a charitable institution or a trust created with the aim of doing public welfare by any private initiative or a religious institution, **the sebayat, mohanta or the managing committee or, if there has been no such committee, any local citizen** of the concerned community may apply to the Deputy Commissioner for return of such property within prescribed period. And the Deputy Commissioner shall take further steps and dispose of the application according to section 15 of the Return of Vested Properties Act, 2001.

Procedure for Release of Restorable properties:

Section 10 of the Act deals with the procedure of the restoration of the 'A' Schedule property to their Rightful owners as follows-

-The owner or other concerned persons of the restorable properties have to apply to the Tribunal with all the necessary documents for the restoration of such property within 300 days from the date of notification in the Official Gazette.

-The time limit for the application was extended till 31 December, 2013 with the amendment in 2013.

-After application has been filed, the tribunal will order within 30 days whether the application is admissible or not.

-If the application is admitted, the concerned deputy commissioner on behalf of the Government will be notified.

-After hearing both the parties, applicant or government side, the Tribunal shall pronounce its judgment within 300 days after submission of the application which may be extended for 90 days on reasonable grounds. Government may, by gazette notification, extend the time for any period considering number of cases and territorial jurisdiction.

The Tribunal shall, on making the decision, take the following issues into consideration-

- i. Claim of applicant and statement of the state;
- ii. Whether the applicant is the owner of such property;
- iii. Whether he is a citizen and permanent resident of Bangladesh under the Bangladesh Citizenship (Temporary Provisions) Order, 1972;
- iv. Whether the application is made within the prescribed time;
- v. Whether all the documents have been filed;
- vi. Summary of evidences;

-The judgment shall be written containing order of release of Restorable property and compensation applied for.

-The Tribunal shall on such judgment pass a decree within 7 days.

-Section 11 lays down the procedure for the execution of the decree.

Finally, Section 15 deals with the procedure of the restoration of the charitable properties. For this purpose the application must be made to Deputy Commissioner within prescribed time limit. Any person aggrieved by the decision may file an appeal to the government.

Appellate Tribunal:

Section 19 deals with composition of the Appellate Tribunal. It says that the Government, by gazette notification, will set up one vested property return appellate Tribunal and, if necessary, one or more than one additional appellate Tribunal in each district.

The Appellate Tribunal shall be composed of by the District Judge and the additional appellate Tribunal shall be formed by the Additional District Judge.

Any person or government, aggrieved by the decision of the Tribunal, may file an appeal to the Appellate Tribunal within 45 days of judgment. It is important to note that so long as the properties have not been restored, such properties will remain under the Deputy Commissioner and he may grant lease in accordance with the provision of section 14.

Abatement of Suits:

Section 13 says that after the Act has come into force, any suit or proceeding relating to the title or release of Restorable properties pending before any court, or any Custodian for release shall be deemed abated and such proceeding will lose its effect. Thus after the Commencement of this act, no suit can be instituted or continued in any court whatsoever.

It has been held in '*Monowara Begum vs Government of Bangladesh*, 65 DLR (2013) p 476.', that 'Since the property enlisted in the gazette of the vested property this court should not dispose of the rule on merit. But since the petitioner already filed application before the tribunal, tribunal is directed to dispose of the case afresh considering the evidence on record if present before it by the parties'.

Unclaimed vested properties:

Section 26 stipulates that if the prescribed time is passed and no application is made, or if the property has not been restored by the court, such property shall vest in the government as *khas* land.

Section 27 confers the right of pre-emption in respect of the unclaimed vested property. It says that any co-sharer by inheritance or possessor by lease may pre-empt any unclaimed vested property. The provisions of the Land Reforms Ordinance, 1984 must be complied with if the land is agricultural.

Repeal of 'B' Schedule:

Section 28A was inserted by the amendment of the act in 2013. It repealed the Schedule 'B' of the vested property. The section further provided that after the commencement of the amendment of 2013, the property enlisted in schedule 'B' shall be deemed to never have been enlisted as vested property. All the decisions and pending proceedings before any tribunal,

appellate tribunal, district committee, divisional committee or central committee shall be deemed abated.

Thereby with the amendment of the act in 2013, the committees formed under the (amendment) act, 2011 have also been abolished.

7. BRIEF OBSERVATION ON THE ACT:

Although the new legislation has been enacted to restore the confiscated properties in the name of enemy property to its real owners the act, however, contained much of the same discriminatory language of the earlier enactments and created several burdensome requirements to recovering property under the Act Which are pointed out as follow-

- The main demerit of this law, however, is that it makes restorable only those vested/enemy properties that are in the government's possession and control [28]. Besides, It excludes from its agenda of restoration properties that were already removed from the list of vested property earlier, or have been already transferred or leased by the government to some individual or statutory authority or organization, or which is currently a part of share or security of any company, or which is acquired by the government in public interest etc. Indeed, there is good reason to believe that these exclusions made the Act hollow and merely symbolic.
- If the "vested" property was actively used by the government for its own purposes or leased out to an authorized person or agency, it would not be eligible for return under the Act and could not be challenged through the court system.
- The Act also required the original owner or heir of the land to prove their "unbroken and permanent citizenship" and "continued residence in Bangladesh." Similarly, another condition obligated the claimant to "submit a claim within specified days of publication of a list of returnable properties," in order to reclaim seized property. These two provisions effectively disqualified countless Hindus who had temporarily or permanently been forced to flee communal violence in the country.
- The Act further created a mechanism for special tribunals throughout the country, with a directive to hear claims and adjudicate cases within specified time of being filed. Any property that was not brought before the tribunals or that could not be validated, however, would automatically revert back to the government. Moreover, there was no provision to compensate those Hindus who lost property, but were unable to file claims under the Act.
- The tribunal's mandate, therefore, was extremely limited in scope and denied due process rights to victims that were unable to authenticate ownership in the manner prescribed, or whose properties were not included in the restorable property list.

- The deeply flawed Restoration Act was further diluted under rendering the Restoration Act meaningless and impeding the ability of victimized Hindus to access to any real form of justice. In addition, the enactment of the Restoration Act has done little to alleviate the suffering of the Hindu community, which continues to be subjected to ongoing land encroachments by government officials from across the political spectrum^[29].

The good side of this law is that it includes, within its ambit of “restoration process”, the property confiscated as vested property. The main merit, of course, is the realization and virtual acknowledgment that what was done to the Hindu community under these two laws was unjust, uncivilized, and inhuman. Although it is impossible to fully rectify all the damage caused by these discriminatory laws, the Government of Bangladesh must initiate concrete steps to return “vested” properties to their rightful owners without placing burdensome requirements on claimants. Where it is not possible or practical to physically return properties, the Government should provide compensation at fair market value of the land. And finally, any prejudicial or inequitable provisions must be entirely removed from all legislation relevant to the issue of “vested” property ^[30].

8. CONCLUDING REMARK:

The birth of Bangladesh as an independent country was a triumph of justice over manifest injustices. Therefore, the Constitution of Bangladesh starts with pledges to establish a socially, economically, and politically just society for all of its citizens. But these laudatory pledges have not been fulfilled in Bangladesh on many occasions for example, in the above discussion, we found that an important segment of citizens have been persistently deprived of their land rights in spite of Constitutional guarantees in their favour. Justice requires actual realization of every one’s rights in practice; mere promises or guarantees in laws and the constitution are not enough. Still there are debates going on about the purpose and outcome of the newly passed ‘Vested Property Release (Amendment) Act 2011’. Although all the legal arrangements have been done the benefit of the law is still far cry. Most of the cases have not reached the trial stage yet. In the face of continuous objections regarding administrative harassment in taking steps i.e. Mutation etc in respect of repealed schedule ‘B’ of the restorable property by the amendment of the act in 2013, lastly Government issued a circular on 01.01.2014 directing the land administration to accelerate the benefits thereof ^[31]. However, the real issue now is that although the law is made in 2001, a little progress has been made so far to accomplish the restoration process. So, despite the shortcomings of the Act, if the government from now on shows its commitment to the cause of justice and takes concrete steps without politicization of the issue, we can build more just and equal society ^[32]. The near future shall determine how far the restoration of vested property act is successful to serve its purpose.

REFERENCES

- [¹] Amena A Mohsin, "Religion, Politics and Security: the Case of Bangladesh," in (Satu P. Limaye et al. ed.) *Religious Radicalism and Security in South Asia* (Honolulu, Hawaii, Asia Pacific Center for Security Studies, 2004, p. 467.
- [²] Samir Kalra, Esq. and Arvind Chandrakantan, M.D. *A Legal Analysis of the Enemy Property Act of Bangladesh*, available at www.hafsite.org/sites/default/files/Legal_Analysis_Enemy_Property_Act_Bangladesh.pdf accessed on 01.01.15 and see also Hasan, Mohammad Iqbal, *A Text Book on Land Law, Sui Juris*, Chittagong, 2015, pp406-426.
- [³] Preface to Siddique, Abu Bakar, *Laws on Abandoned Property (in Bangla)*, Kamrul Book House, Dhaka, 2004.
- [⁴] Sorkar, Janendro Nath, *Orpitho Sompotti Prottorpon Ain o Bidhimala (in Bangla)*, 2012, Kamrul Book House, Dhaka, 2012, p 11.
- [⁵] Abul Barakat and Shafiquzzaman, *Political Economy of the Vested Property Act in Rural Bangladesh* (Dhaka: Association for Land Reforms and Development, 1997), pp. 31-35.
- [⁶] Ahmed, Shamsud-Din, 'vested property', *Banglapedia: National Encyclopaedia of Bangladesh*. Asiatic society of Bangladesh, Dhaka, 2004. Also available at www.banglapedia.org/HT/K_0281.htm -accessed on 01.01.15.
- [⁷] Amena A. Mohsin, "Religion, Politics and Security: The Case of Bangladesh," *Religious Radicalism and Security in South Asia*, ch 20, Asia-Pacific Center for Security Studies, quoted by op.cit. Samir Kalra.
- [⁸] Satbir Singh Bedi, "Bangladesh Enemy Property Act: 1965 - 2010: How Long Must We Bear This Burden?" November 17, 2010, *Citizen's News, Views and Beyond* quoted by op.cit. Samir Kalra.
- [⁹] Uddin, Mohammad Moin, *Land Rights of Women and Hindus in Bangladesh: Defending the "Justice Claim"*, *The Chittagong University Journal of Law*, Vol. XVI, 2011 ,pp1-31.
- [¹⁰] Ahmed, Shamsud-Din, 'vested property', *Banglapedia: National Encyclopaedia of Bangladesh*. Asiatic society of Bangladesh, Dhaka, 2004. Also available at www.banglapedia.org/HT/K_0281.htm -accessed on 01.01.15.
- [¹¹] Gobinda Chandra Mandal, "Rights of the Minorities: The Case of Bangladesh," *Academia.edu*, quoted by op.cit. Samir Kalra, Esq. and Arvind Chandrakantan, M.D.
- [¹²] *Black Laws of Bangladesh: Vested Property Act, 1974*, Drishtipat, Voice for Human Rights in Bangladesh quoted by op.cit. Samir Kalra,
- [¹³] Ahmed, Shamsud-Din, 'vested property', *Banglapedia: National Encyclopaedia of Bangladesh*. Asiatic society of Bangladesh, Dhaka, 2004. Also available at www.banglapedia.org/HT/K_0281.htm -accessed on 01.01.15.
- [¹⁴] Supra note 9.
- [¹⁵] Rabindra Ghosh, *Enemy Property Act (Vested Property) in Bangladesh*, available at hrbmdfw.org/blogs/bangladesh/archive/2005/12/31/49.aspx-accessed on 02.01.2015.
- [¹⁶] Abul Barakat, *Poverty and Access to Land in South Asia: Bangladesh Country Study*, prepared for the National Resource Institute, University of Greenwich, UK, 2004, p03.

[¹⁷] *State of Human Rights* (Dhaka: Coordinating Council for Human Rights in Bangladesh, 1992) quoted by op.cit. Uddin, Mohammad Moin, p.29.

[¹⁸] 31 D L R (HR) 359

[¹⁹] 31 D L R (HR) 343

[²⁰] 58DLR (AD)(2006)

[²¹] 30 DLR (SC) 139

[²²] 40 DLR (AD), 23

[²³] Islam, Dr. Mohammad Towhidul, Lectures on land law, Northern University Bangladesh, pp 197-199.

[²⁴] Rabindranath Trivedi, "*The legacy of enemy turned vested property act,*" Bangladesh, May 29, 2007, Asian Tribune, at www.asiantribune.com/index, accessed on 05.01.2015.

[²⁵] It is notable that according to the Restoration of Vested Property (amendment) Act, 2011 'Vested properties' was divided into two classes in consideration of possession or control of the government, namely-

i. 'A' Schedule property as defined above which are under the possession or control of the government and

ii. 'B' Schedule property means the properties which have been listed as vested properties but are not under the possession or control of the government rather those properties are in possession other than the government.

But the Amendment of the Act in 2013 repealed the 'B' schedule and 'A' schedule property is named as Restorable property.

[²⁶] It is noted that Gazette containing 'A' schedule was published April 15 2012.

[²⁷] It is notable that the vested Property Return Tribunal and additional Tribunal were composed of consecutively by the District Judge and the additional District Judge under the Vested Properties Return (amendment) Act (2011). But due to overburden of cases the jurisdiction of the Tribunal was extended to the rank of joint District Judge or senior Assistant judge for speedy trial of the vested property return cases by the amendment of the act in 2013.

[²⁸] *Op.cit.* Uddin, Mohammad Moin, pp.1-31.

[²⁹] Amena A. Mohsin, "Religion, Politics and Security: The Case of Bangladesh," *Religious Radicalism and Security in South Asia*, ch 20, Asia-Pacific Center for Security Studies, <http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismandSecurityinSouthAsiach20.pdf>.

[³⁰] *Op.cit.* Samir Kalra.

[³¹] Hasan, Mohammad Iqbal, A Text Book on Land Law, Sui Juris, Chittagong, 2015, p 426.

[³²] *Supra* note 9.

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