

RAJSHAHI UNIVERSITY LAW JOURNAL



FACULTY OF LAW
RAJSHAHI UNIVERSITY
2007

ARTICLES

- Heritage of British Colonial Press Laws and Regulations: A critical overview
- Revisiting Domestic Violence as a Gross Violation of Women's Fundamental Rights to Freedom from Torture
- Reviewing the Interpretation of the Inheritance Law with Special Reference to Kalala
- Right to Reasonable Investigation Process in Criminal Justice in Bangladesh
- General Election in Bangladesh 2001: An Evaluation
- Land Administration in Ancient Bengal
- Sexual Exploitation of Children: A Critical Analysis with Reference to Bangladeshi Law
- Ombudsman: A means of good governance in Bangladesh
- Parole: Philosophy and Operation in Bangladesh
- The Legal Regime of Management and Settlement of Khas Land in Bangladesh
- Women's Rights in Islamic Legal System vis-à-vis Conventional System
- Statutory and Traditional Approach to and Dissolution of Marriage in Hindu Law: A Comparative Study between Bangladesh and India
- Women in Islam - A Critical Analysis
- Alternative Dispute Resolution (ADR) in the Legal System of Bangladesh: Successes and Challenges
- Guardianship in Islam: A legal study
- দাপ্তরিক গোপনীয়তা আইন ও তথ্য-অধিকার

ISSN 1991-8976

Rajshahi University Law Journal

Volume 04 2007



**Faculty of Law
University of Rajshahi**

Rajshahi University Law Journal 2007

Editorial Board

Editor

Dr. Begum Asma Siddiqua

Professor, Department of Law & Justice
and
Dean, Faculty of Law, RU

Member

Dr. M. Habibur Rahman

Professor, Department of Law & Justice, RU

Dr. Muhammad Faiz-Ud-Din

Professor, Department of Law & Justice, RU

Mr. Abu Naser Md Wahid

Associate Professor, Department of Law & Justice, RU

Dr. Mohammad Abdul Hannan

Associate Professor, Department of Law & Justice, RU

Mrs. Sayeeda Anju

Assistant Professor, Department of Law & Justice, RU

Mr. Md. Sahal Uddin

Lecturer, Department of Law & Justice, RU

Rajshahi University Law Journal
Faculty of Law
University of Rajshahi

Volume 04 2007

Published by
Dean
Faculty of Law
University of Rajshahi
Rajshahi-6205
Bangladesh

© Reserved by the Publisher

Cover Design & Printed by
Text Dot Com (TDC)
Farmgate, Motihar, Rajshahi-6212

Printed at
Padma Offset Printers, Rajshahi

Subscription Rates

For Individuals : TK 100.00 US\$ 20 (without postage)
For Organisation : TK 150.00 US\$ 30 (without postage)

[Published in November 2008]

Rajshahi University Law Journal 2007

Authors' Name	Article	Page
Dr. Abul Mansur Ahmed	Heritance of British Colonial Press Laws and Regulations: A critical overview	1
Dr. Afroza Begum	Revisiting Domestic Violence as a Gross Violation of Women's Fundamental Rights to Freedom from Torture	9
Dr. Begum Asma Siddiqua	Reviewing the Interpretation of the Inheritance Law with Special Reference to Kalala	25
Dr. M. Abdul Hannan	Right to Reasonable Investigation Process in Criminal Justice in Bangladesh	37
Dr. M. Anisur Rahman	General Election in Bangladesh 2001: An Evaluation	49
Md. Abdul Alim	Land Administration in Ancient Bengal	63
Md. Abdur Rahim Mia	Sexual Exploitation of Children: A Critical Analysis with Reference to Bangladeshi Law	77
Dr. Md. Ahsan Kabir & Md. Hashibul Alam Prodhan	Ombudsman: A means of good governance in Bangladesh	95
Md. Ismail Hossain	Parole: Philosophy and Operation in Bangladesh	109
Md. Khurshid Alam & Mohammad Towhidul Islam	The Legal Regime of Management and Settlement of Khas Land in Bangladesh	119
Dr. Md. Maimul Ahsan Khan	Women's Rights in Islamic Legal System vis-à-vis Conventional System	139
Md. Sahidul Islam	Statutory and Traditional Approach to and Dissolution of Marriage in Hindu Law: A Comparative Study between Bangladesh and India	161
Md. Shahidul Islam	Women in Islam - A Critical Analysis	169
Mostafa Mahmud Naser & Mohammad Sarwar Alam	Alternative Dispute Resolution (ADR) in the Legal System of Bangladesh: Successes and Challenges	181
Dr. Muhammad Faiz-ud-Din & Md. Sahal Uddin	Guardianship in Islam: A legal study	201
মুস্তাক আহমেদ ও মো: সাহাল উদ্দীন	দাপ্তরিক গোপনীয়তা আইন ও তথ্য-অধিকার	211

The Legal Regime of Management and Settlement of *Khas* Land in Bangladesh

Md. Khurshid Alam* &
Mohammad Towhidul Islam**

1. Introduction

The issue of management and settlement of *khas* land in Bangladesh is an age-old and unsettled issue of mostly wanted agrarian reform. The way in which *khas* land is currently managed and settled remains firmly rooted in practices established during the colonial era. The British, from the beginning, gave high priority to the organization of a centrally controlled management system that was designed to maintain political control and secure a steady source of state finance. Fairly little change has taken place in the post-independence era. Attempts at re-distributive reform have been a feature of both the Pakistan and Bangladesh periods. Given high population densities and increasing fragmentation of holdings, whilst ostensibly planned to put land in the hands of the tiller and to return water bodies to those who fish them, these have mostly been circumvented by the wealthy and powerful vested groups.¹ It has always been in the hotplate but is not taking enough attention of the ruling authorities. The Constitution of the People's Republic of Bangladesh has envisioned a society free from hunger, bestowed with the right to equal access to and equitable sharing of resources paving the way to establish economic and social justice. The proper management and settlement of *khas* land will definitely go a long way to pull off the long cherished social order.

2. Meaning of '*Khas* Land'

The term '*Khas*' derives from Arabic meaning exclusive, special, definite or personal etc.² During the medieval period in Bengal commonly referred to in history as Muslim period '*Khas* land' or 'land in *khas* possession' was meant land under the direct control and management of the government and from which the land revenue collected was deposited directly in the government treasury.³ Here no intermediary was placed

* Associate Professor, Department of Law, Dhaka University.

** Associate Professor, Department of Law, Dhaka University.

¹ Care Rural Livelihoods Programme, 'Land Policy and Administration in Bangladesh: A Literature Review', (2003), see for details, <http://www.carebd.org/>, last accessed on 15/06/2007.

² Islam, Kabeedul, *Glossary of Land and Land Revenue Affairs*, (in Bengali), Mowla Brothers, Dhaka, (2003), p. 43.

³ Rahman, G. S., *Law Dictionary*, (in Bengali), Kamrul Book House, Dhaka, (Reprint: 2003), p. 217.

between the State and the tiller of the soil (*raiya*).⁴ Besides, the land enjoyed and possessed by the intermediary *zaminder* (landlord) was known as *khas mahal* and for which no land revenue was payable.⁵

Given the circumstances the State Acquisition and Tenancy Act, 1950 (the SAT Act 1950)⁶ was enacted. It has been the parent law regarding the land tenure system in Bengal legislated during the modern period, more specifically early Pakistan period.⁷ In this enactment the term '*Khas land*' was taken to mean and include land under the direct control and management of the government or land in *khas* possession of any person through a lease not in perpetuity.⁸

This definition has, all the way through, assumed extensive meaning. Now-a-days '*Khas land*' refers to land which has not been settled and which remains in the *khas* possession of the Government by way of vesting in it by operation of law (e.g. the SAT Act 1950) and act of the parties (voluntary leaving).⁹

3. *Khas Land Register*

Khas land gets recorded in the *Khatiya* No. 1 in the name of the Collector in the Register VIII. But all lands recorded in the Register VIII are not capable of settlement. This Register is preserved in the Bangladesh Form No. 1072 in 4 parts, namely,

1. All the particulars of *khas* property in which the public has got the right of use e.g. roads, ponds, bridge, wells etc;
2. All the particulars of *khas* property which is cultivable or capable of settlement as *saira*;
3. All the particulars of property which the Government has purchased or acquired or got control because of its being either abandoned or vested through the operation of enemy property law or voluntary leaving or having no intestate or being untaxed for a statutory time;

⁴ Ibid.

⁵ Ibid.

⁶ Act XXVIII of 1951.

⁷ For details see, Islam, M. T., 'Development of Land Laws and Land Administration in Bangladesh from Ancient Period to Modern Times', in the *Dhaka University Studies, Part F*, Vol. XVI(2), (2005), pp 215-244.

⁸ Section 2(15) of the State Acquisition and Tenancy Act runs as follows: '*Khas land*' or '*land in khas possession*', in relation to any person, includes any land let out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity.

Rahman, M. H. and Anisuzzaman, M., (ed.) *Ain Sabdakos*, Anyaprokash, (in Bengali), Dhaka, 2006, p. 587.

4. All the particulars of *khas* property gained by diluvion or alluvion.¹⁰

4. Vesting of Land in Government by Operation of Law

Land can get vested in the government by operation of the following laws, namely,

1. The State Acquisition and Tenancy Act 1950;
2. The Acquisition and Requisition of Immovable Property Ordinance 1982;
3. The Abandoned Property (Control, Management and Disposal) Order 1972;
4. The Bangladesh Land Holding Limitation Order 1972;
5. The Enemy (Vested) Property Laws i.e.
 - I. The Enemy Property Continuance of Emergency Provisions) (Repeal) Act 1974,
 - II. The Vested and Non-Resident Property (Administration) Act 1974 and
 - III. The Arpito Sompotti Protarpon Ain 2001 (the Restoration of Vested Properties Act 2001).

4. 1. The State Acquisition and Tenancy Act 1950

When the SAT 1950 says that land can get vested in the government under any of its provisions, it has envisioned a wide scope of qualifying land as *Khas* land.¹¹ Over the years the following sections of the SAT Act 1950 have proved to be worthy for turning the land as *khas* land:

1. Section 3 and 20;
2. Sections 86 and 87;
3. Sections 75A, 93 and 81A (2);
4. Sections 90, 91 and 92;
5. Section 97.

4. 1. 1. Sections 3 and 20

At the time of acquisition of rent receiving interests i.e. acquisitions of zamindari, the following interests were acquired as *khas* land:

1. Lands held in *khas* possession by rent-receivers, cultivating *raiya*s, cultivating under-*raiya*s and non-agricultural tenants in excess of the retainable area, i.e., 375 standard *bighas* or an area determined by calculating at the rate of 10 standard *bighas* for each member of the family, whichever is greater.
2. Any land or building in a hat or *bazar*

¹⁰ The Government Estate Manual 1958 (G. E. Manual 1958).

¹¹ Section 76 of the SAT Act 1950 enumerates: ... any land which vests in the Government under any of the provisions of the SAT Act 1950 shall be absolutely at the disposal of the Government

3. Any fishery other than a tank constructed solely by process of excavation
4. Any land consisting of a forest
5. Any land actually in use for a ferry.¹²

4. 1. 2. Sections 86 and 87

Section 86 speaks of Diluvion (*Sikasti*) meaning gradual erosion or submersion of land either by a river or sea and states that if the diluvated land reappears in the same place within 30 years and the former owner relinquishes his interest and can not identify that the land reappears in the same place, then the land reappeared will vest in the government as *khas* land.¹³

If the diluvated land reappeared before 13 July 1994, the Government could claim such land by the State Acquisition and Tenancy (Fourth Amendment) Order, 1972 (President's Order 135 of 1972).¹⁴

Section 87 incorporates alluvion (*Paisti*) meaning gaining of land by gradual accretion from recess of a river or of the sea¹⁵ and enumerates that if any land is so gained, it shall vest absolutely in the Government.¹⁶

The present Section specifies that all lands so gained whether before or after the 28 June 1972 shall vest absolutely in the Government.¹⁷

¹² Chowdhury, O. H., *the State Acquisition and Tenancy Act*, Dhaka Law Reports, Dhaka, 3rd Edition, (2001), pp 26-27.

¹³ The original section got amended four times since its inception,

1. In 1972 by the State Acquisition and Tenancy (Fourth Amendment) Order, 1972 (President's Order 135 of 1972), which contained that the land reappeared in the same place, would vest in the Government.
2. In 1991 by the State Acquisition and Tenancy (Amendment) Ordinance, 1991 (Ordinance 3 of 1991), which contained that the land reappeared in the same place within 20 years would return to the original owner or his successor-in-interest.
3. In 1991 by the State Acquisition and Tenancy (Amendment) Ordinance, 1991 (Ordinance 25 of 1991), which contained that the land reappeared in the same place would vest in the Government.
4. In 1994 by Act XV of 1994, which contained that the land reappeared in the same place within 30 years would return to the original owner or his successor-in-interest through the intervention of the Collector.

¹⁴ *Kajemuddin Miah (Md) v. Bangladesh & Others* 52 DLR 240.

¹⁵ Ministry of Land, *Land Administration Manual*, Vol. 1, Dhaka, (2003), pp 240, 241, 243 & 381.

¹⁶ Hossain, T., *Land Rights in Bangladesh*, University Press Limited, Dhaka, (1995), p. 41.

¹⁷ *Abdul Mannan v. Kulada Mowali* 31 DLR (AD) 196.

4. 1. 3. Sections 75A, 93 and 81A (2)

Given the rationale that the object of the SAT Act 1950 is to create only one class of *raiyyat*, place the *raiyyats* directly under the Government and make them obliged to pay rent to the Government, sections 75A, 93 and 81A (2) of the SAT Act 1950 inserted the provisions regarding prohibition of subletting meaning sub-lease¹⁸ and states that any sub-letting made in contravention of these sections shall be null and void and the land so sub-let shall be forfeited to the Government as *khas* land.

4. 1. 4. Sections 90, 91 and 92

Section 90 contains that if anyone purchases land in excess of 375 *bighas*¹⁹ or any agricultural land is sold to a person not a *bona fide* cultivator, then such transfer shall be void and the lands comprised in the holding or tenancy or share or portion thereof so transferred shall vest absolutely in the government as *khas* lands.

Section 91 encloses that when any area of land which has developed on a person by inheritance adds to the total area of land already in his possession exceeds 375 *bighas*, the government shall acquire the land in excess as *khas* lands.

Section 92 holds that when a *raiyyat* dies intestate²⁰ or surrenders his land or voluntarily fails to pay rent or does not cultivate, the land concerned will be extinguished in favour of the government as *khas* land.

4. 1. 5. Section 97

When an aboriginal transfers his land to a non-aboriginal, the Revenue Officer may eject the transferee and declare the land vested in the government as *khas* land.

4.2. The Acquisition and Requisition of Immovable Property Ordinance 1982

All the development works directly or indirectly depends on the use of land and the government, semi-government or non-government private agencies or departments carry out all of these works. For these development activities lands or buildings are taken over by the government, semi-government or non-government private agencies or departments with due compliance of certain process or rules. This process is called acquisition of land.

¹⁸ The term 'sub-letting' means giving part of (a contract, e.g. for building a factory) to somebody else (on rent). It is synonymous to sub-lease. There is often a covenant in a lease, prohibiting sub-letting. If a lessee sub-lets in breach of the covenant, the lessor has got the right of forfeiture of the lease. Sub-letting of a house is dealt with under the Premises Rent Control Act 1991 and as such sub-letting of a house is different from sub-letting of land. *Government of East Pakistan v. Md. Hossain* 16 DLR (SC) 667.

¹⁹ *Sultan Ahmed & others v. Muhammad Islam & others* 4 BLD 183.

²⁰ *Geeta Rani v. Bangladesh* 36 DLR (AD) 225.

Requisition means taking over lands or buildings by the government, semi-government or non-government private agencies or departments temporarily. Though the taking over takes place for the time being, it is a way forward for acquisition. Normally huge quantity of lands or buildings is requisitioned at the first instance with the aim of acquisition as it involves fewer formalities.

When the Government, the Divisional Commissioner or the Deputy Commissioner makes a decision about the acquisition or requisition of the property, such decision made therein shall be conclusive evidence that the property is needed for a public purpose or in the public interest.²¹ Section 44 ousts the jurisdiction of the Civil Court to enquire into the decision of the Government or the Divisional Commissioner or the Deputy Commissioner regarding acquisition or requisition.²²

When a property is acquired for a purpose and afterwards the property is not used, the government is not bound to return the property to the person from whom property was taken over; rather the property is kept under the authority of the government as *khas* land.²³

4.3. The Abandoned Property (Control, Management and Disposal) Order 1972

The Abandoned Property (Control, Management and Disposal) Order 1972²⁴ is the offspring of the war of liberation. Unless the property answers the following description it can not be declared as an abandoned property:

1. Any property whose owner is not present in Bangladesh
2. Any property whose owner's whereabouts are not known
3. Any property whose owner has ceased to occupy, supervise or manage in person is property
4. Any property whose owner is a citizen of country which is at war with Bangladesh
5. Any property taken over under the Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order 1972.²⁵

But if any property whose owner is residing outside Bangladesh for any purpose which in the opinion of the Government is not detrimental to the interest of Bangladesh or

²¹ *Zahed Hossain Mia v. Deputy Commissioner* 50 DLR (AD) 15.

²² *Ali Jan Khan v. Bangladesh* 37 DLR (AD) 161.

²³ *Abul Bashar & others v. Government of Bangladesh & others* 50 DLR (AD) 11.

²⁴ President's Order 16 of 1972.

²⁵ Article 2 of the Abandoned Property (Control, Management and Disposal) Order 1972.

any property which is in possession or under the control of the Government under any law of the land does not come within the purview of the abandoned property.²⁶

4.4. The Bangladesh Land Holding Limitation Order 1972

If anybody retains more than 100 *bighas* of land after the commencement of this Order or where a family or body has submitted the property statement under Article 7 of the Bangladesh Land Holding Limitation Order 1972²⁷ after the date of such submission of such statement otherwise than by inheritance shall stand forfeited to the Government as *khas* land.²⁸

4.5. The Enemy (Vested) Property Laws

To control the trading with the enemy and control the enemy firm and administration of the property belonging to the enemies²⁹ created as a result of the war of attrition, the Enemy Property (Continuance of Emergency Provisions) Ordinance 1969 was promulgated in Pakistan.³⁰

On and from the date of the operation of the Enemy Property (Continuance of Emergency Provisions) Ordinance (Ordinance I of 1969), it has been the law relating to enemy property and it has been continuing its operation till the emergence of Bangladesh.

After the emergence of Bangladesh and execution of Friendship Treaty between India and Bangladesh, the People's Republic of Bangladesh have become interested to pass order of vesting in the Custodian of enemy property or Assistant Custodian of enemy property as appointed by the Government of Pakistan and the then Government of East

²⁶ Ibid.

²⁷ President's Order 98 of 1972.

²⁸ Article 12 of the Bangladesh Land Holding Limitation Order 1972.

²⁹ Rule 161 of the Defence of Pakistan Rules framed under Section 3 of the Defence of Pakistan Ordinance 1965 defines the expression 'enemy' as

- (a) any State or Sovereign of a State at war with Pakistan, or
- (b) any individual resident in enemy territory, or
- (c) any body of persons constituted or incorporated in enemy territory in or under the laws of, state of war with Pakistan, or
- (d) any other person or body of persons declared by the Central Government, to be an enemy, or
- (e) any body of persons whether incorporated or not carrying on business in any place, if and so long as the body is controlled by a person who under this rule is an enemy, or
- (f) as respect by business carried on in enemy territory, an individual or body of persons whether incorporated or not carrying on that business.

³⁰ Ordinance I of 1969.

Pakistan, in view of the provisions of Section 2(I) of the Bangladesh Vesting of Property and Assets Order 1972.³¹

4.5.1. The Enemy Property Continuance of Emergency Provisions) (Repeal) Act 1974

The Enemy Property (Continuance of Emergency Provisions) Ordinance (Ordinance I of 1969), which carried the contents of the Defence of Pakistan Ordinance (Ordinance XXIII of 1965) and the Defence of Pakistan Rules, was replaced on 23 March 1974 by promulgation of the Enemy Property (Continuance of Emergency Provisions) (Repeal) Ordinance (Ordinance IV of 1974). By the declaration of the aforesaid Ordinance, all enemy properties shall vest in the Government and such property will no longer be known as enemy property but as the vested property. This Ordinance IV of 1974 has become the Act of Parliament as the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act 1974.³²

On 27 November 1976, the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act (Act XLV of 1974) was amended by the Enemy Property (Continuance of Emergency Provisions) (Repeal) (Amendment) Ordinance (Ordinance XCIII of 1976) under which the Government has become absolute administrator, controller and the Government has got power of administration, control, management and disposal of the vested property by way of transfer or otherwise.

4.5.2. The Vested and Non-Resident Property (Administration) Act 1974

On 23 March 1974 along with the Ordinance IV of 1974, another Ordinance named as the Vested and Non-Resident Property (Administration) Ordinance (Ordinance V of 1974) was promulgated for the administration and management of the properties vested in the Government or belonging to non-residents. This Ordinance V of 1974 has become the Act of Parliament as the Vested and Non-Resident Property (Administration) Act (Act XLVI of 1974).

On 27 November 1976, the Vested and Non-Resident Property (Administration) Act (Act XLVI of 1974) was repealed by the Vested and Non-Resident Property (Administration) (Repeal) Ordinance (Ordinance XCII of 1976).

4.5.3. The Arpito Sompotti Protarpon Ain 2001

The Arpito Sompotti Protarpon Ain 2001 requires the Government to prepare a list of the restorable properties and to release the restorable properties to the rightful owners.

³¹ Order 29 of 1972.

³² Act XLV of 1974.

In absence of the rightful owners the Government is authorised the properties in its *Khas* possession as *khas* land.³³

5. Vesting of Land in Government by Act of the Parties

By operation of the Bangladesh Land Holding Limitation Order 1972 and the Land Reform Ordinance 1984 if the total land of a person exceeds 100 *bighas* of which 60 *bighas* is the ceiling for the agricultural land, the person can voluntarily abandon the excessive land to the government.³⁴

6. Section 76 of the SAT Act 1950 and Its Interpretation

A close look at the section finds that if any land vests in the Government under any of the provisions of the SAT Act 1950, it shall be absolutely at the disposal of the Government. It means that the Government shall be competent

1. to make settlement of such land or
2. to use or
3. otherwise deal with such land in accordance with such rules as it thinks fit.

So far the government has not framed any rules enabling it to deal with the *khas* land or use it or make settlement of such land. The government has made two policies to this end in view, namely,

1. The Agricultural *Khas* Lands Management and Settlement Policy 1997
2. The Non-Agricultural *Khas* Lands Management and Settlement Policy 1995.

In absence of any specific law, rule or precedent these two policies weigh much in the management and settlement of *khas* land. Regarding the weight of the policies or guidelines the Appellate Division of the Supreme Court of Bangladesh opines:

‘In the absence of rules framed, the Government must follow some standards or guidelines and must not act arbitrarily.’³⁵

7. The Agricultural *Khas* Lands Management and Settlement Policy 1997

The Agricultural *Khas* Lands Management and Settlement Policy 1997 was promulgated on 16 April 1997 and came into force on and from the date of its publication in the Bangladesh Gazette i.e. 12 May 1997.

³³ Sections 9 & 15 of the the Arpito Sompotti Protarpon Ain 2001.

³⁴ Article 3 of the Bangladesh Land Holding Limitation Order 1972 and Section 4 of the Land Reform Ordinance 1984.

³⁵ SMS Samity v. Bangladesh 39 DLR (AD) 85.

7. 1. Agricultural *Khas* Lands

In accordance with the Agricultural *Khas* Lands Management and Settlement Policy 1997 the expression 'Agricultural *Khas* Lands' means lands other than those defined as 'Non-Agricultural *Khas* Lands' in the Non-Agricultural *Khas* Lands Management and Settlement Policy 1995 published in the Bangladesh Gazette on 8 March 1995. It means all cultivable *khas* lands situated outside the Metropolitan areas, Municipality areas and *Upazilla* headquarter areas.

7. 2. Preference List for Settlement

We are already conscious that persons who have got less than 60 standard *bighas* of land are eligible for getting settlement of *khas* lands but preference will be given to persons who have less than three acres of land and who are bona fide cultivators. Here in the Policy of 1997 it is said that preference will be given to the landless families who have not got any land at all and but got 10 decimals or less of homestead but the families depend on agriculture working either as an agricultural labourer or a *bargachasi*. Again, there is another preference list in the Policy of 1997. They are as follows:

- a. Poor family of a freedom fighter;
- b. Family losing all lands due to the recess of river;
- c. Family of a poor widow or a lady left by husband or a poor family having no support;
- d. Family having no agricultural land and but having 10 decimals or less of homestead;
- e. Family losing all lands due to acquisition of land.³⁶

7. 3. Committees with the Work of Management and Settlement of *Khas* Agricultural Lands

There are three tier committees entrusted with the work of management and settlement of settlement of *khas* agricultural lands, namely,

- a. National Executive Committee for the management of agricultural *khas* lands
- b. District Committee for the management and settlement of agricultural *khas* lands
- c. *Upazilla* Committee for the management and settlement of agricultural *khas* lands

³⁶ For details see, Agricultural *Khas* Lands Management and Settlement Policy 1997.

7.3.1. National Executive Committee

National Executive Committee for the management of agricultural *khas* lands: This committee consists of 25 members, namely,

1. Minister, MOL as Chairman
2. MPs (6)
8. Secretary, MOL
9. Secretary, MOA
10. Secretary, MOEF
11. Secretary, MOH
12. Secretary, MOLJP
13. Chairman, Land Appeal Board
14. Chairman, Land Reform Board
15. Divisional Commissioners (6)
16. Representative of Development Agencies
17. Representatives of national agricultural associations (2)
18. Director-General, Land Record and Survey
19. Joint Secretary, MOL as Member-Secretary

The National Executive Committee for the management of agricultural *khas* land has been burdened with the following functions:

1. This committee will act as national policymaking body on the management and settlement of agricultural *khas* lands.
2. It will evaluate the progress of the national management and settlement of agricultural *khas* lands.
3. It will formulate solutions to the problems arising out of identification and settlement of agricultural *khas* lands in different areas.
4. It will meet at least once in every three months.³⁷

7.3.2. District Committee

District Committee for the management and settlement of agricultural *khas* lands: This committee consists of 11 members with an MP as an advisor, namely,

1. Deputy Commissioner as Chairman
2. SP
3. ADC (Revenue)

³⁷ For details see, Agricultural *Khas* Lands Management and Settlement Policy 1997.

4. Forest Officer
5. DAO
6. DSWO
7. UNO (Sadar/Kotwali)
8. Representatives of District Agricultural Associations
9. Representative of District Co-operative Societies
10. Representative of District Freedom Fighters Associations
11. Revenue Deputy Collector as Member-Secretary

District Committee for the management and settlement of agricultural *khas* lands has been entrusted with the following works:

1. Publicity of implementation of settlement policy for the agricultural *khas* lands
2. Evaluation, authorisation and supervision of the works of the *Upazilla* Committee for the management and settlement of agricultural *khas* lands
3. Inspection of irregularities of the settlement of *khas* lands and taking necessary action
4. Meeting at least once each month and forwarding progress report to the MOL

7.3.3. *Upazilla* Committee

Upazilla Committee for the management and settlement of agricultural *khas* lands: This committee consists of 15 members with an MP and the *Upazilla* Chairman as advisors, namely,

1. UNO (Chairman)
2. UAO
3. OC
4. UCO
5. Range Officers
6. USWO
7. Chairman, UCCA
8. UP Chairman (*Sadar*)
9. Representative of Cooperative Societies for the poor
10. Representative of Agricultural Associations
11. Distinguished person
12. Principal/Headmaster
13. Representative of *Upazilla* Freedom Fighters Associations

14. Women Representative

15. AC (Land) Member-Secretary

Upazilla Committee for the management and settlement of agricultural *khas* lands has been the authority of

1. Identification and recovery
2. Separation of recovered *khas* lands into plots
3. Publicity of the Government policy of settlement
4. Call for application from the landless and acceptance of the application through AC (Land)
5. Sorting of applications and preparing preference list
6. Recommendation for settlement of plots
7. Ensuring possession
8. Supervision for the use of the settled lands and recommendation for violation to the DC

7.4. Identification of *Khas* Land

Upazilla Committee within 30 days of its formation identifies *khas* lands capable of settlements, publishes lists and makes widespread publicity. Objections can be made to the Committee within 30 from the date of publication of list and objections will be heard and disposed of within 15 days on examining all documents and publishes new list if necessary.

Appeals can be made to the District Committee within 15 days against the decision of the *Upazilla* Committee. Appeals will be heard and be disposed of within 15 days on examining all documents.

Further appeals can be made to the National Committee within 30 days against the decision of the District Committee. Appeals will be heard and be disposed of within 60 days on examining all documents and its decision will be final.³⁸

7.5. Application Procedure

Applications are called with one month from the date of final publication of the list of identified *khas* lands.

Landless applicant got to apply to the Member-Secretary i.e. A C (Land) in the prescribed application form provided by the Government along with

1. Two photographs attested by the Union Parishad (UP) Chairman concerned
2. Permanent and present address.

³⁸ For details see, Agricultural *Khas* Lands Management and Settlement Policy 1997.

3. Citizenship Certificate provided by the UP Chairman concerned

In making settlement the following formalities require to be complied with:

1. The Member-Secretary i.e. A C (Land) will sort out the applications by union wise.
2. The *Upazilla* Committee will meet in each UP and make the applicant present and interrogate and examine him and thus sort out the application primarily.
3. The *Upazilla* Committee, if feels necessary can personally inspect and verify the authenticity of the application and will select the landless family.
4. Sorting out applications and settlement are made within one month from the date of receipt of applications.
5. On sorting out applications and making settlement, AC (Land) prepares proposal for settlement case record and submits it to the UNO within 21 days.
6. On receiving proposal the UNO forwards it to the DC within 21 days.
7. On receiving proposal the DC forwards it to the District Committee within 30 days and after getting decision of the Committee, the DC approves it and returns to the AC (Land).
8. On getting the approved proposal the AC (Land) must execute *kabuliyat* in favour of the receiver within 15 days for TK 1 as salami, gets the land registered and opens a *khatiyon* in the name of the receiver.
9. On the execution of *kabuliyat* the receiver gets into the possession within 15 days.
10. A family can get highest one acre of land excepting one and half in case of a person in the coastal areas.
11. *Khas* lands will be provided with in the name of the husband and wife jointly.
12. It has not to be transferred except by inheritance and in violation it will vest in the Government again.
13. *Khas* lands of one *mouza* will be provided to persons of that *mouza* and in excess, it will be provided to the next *mouza* and then to the next *Upazilla* but the decision has to be taken by the District Committee.
14. In the case of alluvion, until the *Diara* Survey takes place the DC will ensure the accuracy and authenticity of the sketch map and make settlement of the *khas* lands provisionally and after *Diara* Survey settlement has taken place, cases need to be adjusted.³⁹

³⁹ For details see, Agricultural *Khas* Lands Management and Settlement Policy 1997.

8. The Non-Agricultural *Khas* Lands Management and Settlement Policy 1995

The Non-Agricultural *Khas* Lands Management and Settlement Policy 1995 was promulgated on 7 March 1995 and came into force on and from the date of its publication in the Bangladesh Gazette i.e. 8 March 1995.

8.1. Non-Agricultural *Khas* Lands

In accordance with the Non-Agricultural *Khas* Lands Management and Settlement Policy 1995 the expression 'Non-Agricultural *Khas* Lands' means *khas* lands cultivable or uncultivable situated in the Metropolitan areas, Municipality areas and *Upazilla* headquarter areas and also uncultivable lands situated outside the Metropolitan areas, Municipality areas and *Upazilla* headquarter areas. Non-agricultural *khas* land includes forest and urban areas as well.

8.2. Application Procedure

All applications has to be filed to the Deputy Commissioner along with necessary permits from the concerned authority and he will forward the applications to the higher authority i.e. Divisional Commissioner on furnishing necessary works like attaching a tracing map, identifying the lands applied in it, minutes of his examination of the documents etc. within 30 days from the receipt of the applications. Here the DC got to look into the applications and make proposal for settlement of land by making a file in the name of the applicants.

On receiving the files from the DC, the Divisional Commissioner disposes of the file within 15 days and informs the Land Reform Board of his decision. Then it will be sent to the Ministry of Land and it will complete the necessities within 30 days from the date of sending the file by the DC.

When the DC receives the file passed by the Ministry of Land, he will open a separate *khatian* in the name of the receiver, gets it registered and ensures the possession to the receiver. In the *khatian* name of the DC on behalf of the Government will be written and under his name, the name of the receiver will printed. Besides, it will contain all the particulars like duration of the settlement, date of settlement and the expiry of the settlement, terms and conditions of the settlement, amount of land development tax payable and amount of other taxes etc.

8.3. Settlement to the Government Departments or Agencies

The settlement of non-agricultural *khas* lands can be made to the Government departments or agencies if they apply and pay the appropriate consideration money i.e.

1. In the case of metropolitans like Dhaka and Chittagong, it is thrice the average price of last twelve years' sales and purchases of lands contained in the documents in those areas/*mouzas*;

2. In the case of Khulna, Sylhet, Rajshahi, Barisal, Narayangonj, Savar, Gazipur, Tongi municipalities, it is twice the average price of last twelve years' sales and purchases of lands contained in the documents in those areas/*mouzas*;
3. In the case of other municipalities or areas, it is one and half of the average price of last twelve years' sales and purchases of lands contained in the documents in those areas / *mouzas*.⁴⁰

8.4. Settlement to Others

1. The settlement of *khas* lands can be made to the religious places or educational institutions @ 10% of the price fixed for the land.
2. The long term settlement of *khas* lands can be made to the people who are affected by natural calamities and rehabilitated in some *khas* lands which the Government does not need and it can amount to highest 5 decimals per family with the exception in the areas of metropolitans like Dhaka and Chittagong and the municipality of Narayangonj.
3. The settlement of *khas* lands can be made to the distinguished educationists, poets, laureates, intellectuals etc. and it can amount to highest 5 decimals in the metropolitan areas and outside the metropolitan areas it can amount to highest 8 decimals.
4. The settlement of *khas* lands can be made to the expatriates' registered co-operative societies for erecting multi-storeyed buildings and it can amount to highest 10 acres in the metropolitan areas and outside the metropolitan areas it can amount to highest 3 acres and it has to be paid out by foreign currencies.
5. The settlement of *khas* lands can be made at the rate of market price to the persons who have collected $\frac{3}{4}$ lands himself for the establishment of industry and it can amount to the rest $\frac{1}{4}$.
6. The settlement of *khas* lands can be made at the rate of market price to the persons who have paid the lease money for twelve on one year basis lease and it can amount to the highest 5 decimals.
7. The settlement of *khas* lands can be made at the rate of market price to the persons whose land has been acquired and it can amount to highest 8 decimals in the metropolitan areas, 16 decimals in district and *upazilla* headquarters and outside the metropolitan areas it can amount to highest 32 decimals.
8. The settlement of *khas* lands can be made to establish poultry farms or dairies either in the metropolitan areas or outside the district and for the poultry farms

for ten years primarily and it can amount to highest 20 acres and for dairies 5 acres. On satisfaction during first 5 years it can be extended for long.

9. The settlement of *khas* lands like ponds can be made to establish fishery farms using scientific mechanism and the pond may be of 20 acres for individuals and 50 acres for public limited companies.
10. The settlement of *khas* lands can be made to the foreign investors for setting up industries, hotels and motels. But the hotels or motels must be of lowest one star and they are to be erected within 3 years.
11. If there is any *khas* land beside or in front of any industry and if it is settled to somebody else it will create to problems to the existing industry then the settlement of that *khas* land can be made to that industry.
12. The settlement of *khas* lands can be made to any cooperative societies of 30 or more officials who have been working or worked in Government or non-government offices for 20 years and the *khas* if settled, they have to be used for erecting multi-storeyed buildings.
13. The settlement of *khas* lands can be made to any Government officials on humane grounds and on satisfaction from the declaration that they have not got any land and there is no possibility of having any land. But if more than one applies, they can be allowed to get 3 *kathas* of land.⁴¹

8.5. Legality of Settlement

1. **Can Civil Court Entertain Suit?** Section 76(2) has ousted the Civil Court's jurisdiction to entertain any application or suit concerning any matter relating to the settlement, by any officer of the Government, of any land under Sub-section (1).
2. **What does 'Family' Mean?** If a nephew resides with a person and ploughs land and it is corroborated by evidence, then the person is entitled to get settlement as his family member being a *bona fide* cultivator.⁴²
3. **Is the Government Servant Entitled to Settlement?** Normally no Government servant is entitled to settlement.⁴³ If any violation takes place, the Government can show cause him and on dissatisfaction can cancel settlement.⁴⁴

⁴¹ For details see, Non-Agricultural *Khas* Lands Management and Settlement Policy 1995.

⁴² 4 BLD (AD) 61.

⁴³ 6 BLD (AD) 69.

⁴⁴ 8 BLC (AD) 137.

4. **Can a Person Repudiate the Lease?** If a person has got lease under Section 76 but he could not enjoy the lease property for circumstances beyond his control, he can repudiate the lease as void and sue the Government for rent money or compensation.⁴⁵
5. **Can the Order of Settlement be challenged?** Suit filed by the tenants challenging order of cancellation of their settlement by the Commissioner is not barred.⁴⁶

8.6. Government's Discretion Regarding Settlement

1. Lands held by the Government under the provision of Section 76 which the Government can settle at its discretion with any person even though no rule has been framed regarding the disposal of land by the Government. No suit shall lie disputing settlement of land by the Government. If during the settlement somebody has been given preference without making any enquiry into the application, it will not render the application null and void.⁴⁷
2. Has the Government got authority to make settlement of fishery? The Government has got the authority to make settlement of fishery, as it is not retainable and thus vests absolutely in the Government and the Government is competent to make settlement of fishery.⁴⁸
3. Government is the highest authority to pass any order as to the settlement and the Civil Court can not interfere with the same unless the same is *mala fide* and *coram non-judice*.⁴⁹
4. Besides the government is authorised on purely temporary basis to make settlement of the *Khas* water bodies which are regarded as a sub-set of the more general category of *khas* land and are themselves further sub-divided in various ways:
 1. Management of *Sairat Mahal*
 2. Management of *Balu Mahal*
 3. Management of *Jal Mahal*
 4. Management of *Hat Bazar*
 5. Management of Ferries etc.⁵⁰

⁴⁵ *Bangladesh v. Haji Mozaffaruddin* 40 DLR 283.

⁴⁶ *Abdul Majid v. Province of East Pakistan* 23 DLR 203.

⁴⁷ *Mokbul Ahmed v. Bazal Ahmed* 36 DLR 232.

⁴⁸ 7 BLD (AD) 106.

⁴⁹ 24 BCR (AD) 25.

9. Problems Regarding Management and Settlement

Management and settlement of khas land in Bangladesh suffers two-fold problems: procedural and operational.

(a) Procedural Problems

Procedural problems stems from identification and survey. In most cases *khas* land is not properly surveyed or not surveyed at all until the grabbing is well on the track. Again, error in identification or non-identification causes frequently hazy situations as to whether the land in *khas* or not. With these defects in account, influential persons occupy the land illegally using the police, *Tahsildar*, Assistant Commissioner (Land) and Union *Parisad* (Municipal Council) Chairman by paying them a share of the produce or something else and manage the surveyor or *Tahsildar* to falsely record it in their own names.⁵¹

(b) Operational Problems

Operational problems come out of the operation of Agricultural and Non-agricultural *Khas* Lands Management and Settlement Policies. Those responsible for calling up applications to distribute and settle *khas* lands, only pass word to contacts, friends and relations or sometimes publish such notification when it is too late.⁵² As a result, the eligible and potentially interested parties do not find out the tactics at all.⁵³ Since most of the cultivators or farmers interested in getting settlement of *khas* land are poor and illiterate, they rely on others in filling in the settlement application forms and the latter sometimes take advantage of the situation. Further, some vested quarter may exploit such applicants by pledging them to get the settlement done. A recent study conducted by the Transparency International Bangladesh shows that the *Tahsildar* demands a fee for providing and completing or accepting the forms.⁵⁴ Moreover, land owners who are not eligible at all because of their having larger quantity of land, make applications to get settlement in their favor and their applications are often accepted, since they are powerful and pay handsome money for the deal.⁵⁵

⁵⁰ Care Rural Livelihoods Programme, 'Land Policy and Administration in Bangladesh: A Literature Review', (2003), see for details, <http://www.carebd.org/>, last accessed on 15/06/2007.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ See for details, http://www.ti-bangladesh.org/index.php?page_id=290, last accessed on 15-06-2007

⁵⁵ Care Rural Livelihoods Programme, 'Land Policy and Administration in Bangladesh: A Literature Review', (2003), see for details, <http://www.carebd.org/>, last accessed on 15/06/2007.

9. Necessity of Proper Management and Settlement of Khas Land

If the landless poor people get access to *khas* land through the proper operation of Agricultural and Non-agricultural *Khas* Lands Management and Settlement Policies along with other agrarian laws, they will feel fortunate in having the most resourceful wealth and concentrate on its optimum utilization. If they live by agriculture, it will absolutely boom up agricultural production which can help them in managing their food throughout the year. Food security will definitely help to improve law and order situation and practice of good governance and democracy.⁵⁶ Proper management and settlement of *khas* land can create enormous employment opportunities which can ease disorder and reduce clashes arising out of poverty at the rural areas. Furthermore, it can solve the housing problem contributing to reduce rural-urban migration. Again, if the landless are empowered with the settlement of *khas* land, they will be conscious of their rights and will be able to lead their lives in meaningful ways.⁵⁷ A hodgepodge land use is the everyday practice in Bangladesh. There is no comprehensive land use and distribution plan. Uncoordinated land use can have a negative impact on both the quality of life and the economic vitality of the country.

11. Conclusion

The foregoing discussions reveal that the proper management and settlement of *khas* land is a necessity for the welfare of the state in general and of the citizens in particular. For poverty alleviation is largely dependent on the smooth management and settlement of *khas* land. The proper management and settlement of *khas* land depends mostly on its identification and the task of identification would be easier if the work of land administration is disciplined, adequately manned and coordinated by the people having expertise in land related issues, and if the information as to the problems of identification is widely circulated. Penal provisions may be introduced in the agrarian legislations for land grabbing or eradicating existing corruption in the land administration dealing with management and settlement of *khas* land.⁵⁸ One stop service could be introduced as well, for resolving disputes arising out of management and settlement of *khas* land. It is a solace that measures are in place promising the landless access to government *khas* land. This will go a long way for the cause of health, safety, sustainable environment, good morals and general welfare of the poor people, leading the nation to a journey where they will have assurance of economic and social justice.

⁵⁶ Islam (2005), p. 246

⁵⁷ Barkat, A., et al, *Political Economy of Khas Land in Bangladesh*, ALRD, Dhaka, (2001), pp 225-229.

⁵⁸ Ibid