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# THE MYTH AND MIRAGE OF PRIVATE OWNERSHIP OF LAND IN BANGLADESH: A HISTORICAL AND STATUTORY ANALYSIS

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**ABSTRACT**

*Land ownership in Bangladesh has long been a complicated and debated topic, stuck in unclear or confusing legal rules, historical legacies, socio-political influences, and flawed administrative practices. Despite a well-built statutory framework established through laws such as the State Acquisition and Tenancy Act (1950), the Land Reform Ordinance (1984), the Registration Act (1908), and lastly the Constitution (1972), the practical reality often renders land ownership as more mythical than material. This article examines the legal system that deals with land ownership and use in Bangladesh and critiques the distinctions between legal provisions and ground-level implementation, ultimately framing land ownership as a "myth and mirage" within the prevailing legal ecosystem. This paper examines the concept of private land ownership in Bangladesh through the lens of statutory instruments that, while formally recognizing proprietary rights, structurally undermine them through procedural, regulatory, and administrative mechanisms. Despite constitutional acknowledgment of property rights, the interplay between various statutes reveals that land ownership is a legally fragile, conditional entitlement rather than an inviolable right.*

**KEYWORDS:** *Land Laws of Bangladesh, Private Ownership of Land, Statutory Control, Adverse Possession, Acquisition, Procedural Limitations, Myth of Ownership, And Extinguishment of Rights Over Land.*

## 1. INTRODUCTION

Land as a natural property is one of the most valuable and contested resources in Bangladesh. With over 90% of rural households engaging in agriculture or land-based livelihoods, the ownership, control, and management of land have significant implications for social justice, economic development, and political stability. While the statutory framework of Bangladesh suggests clear entitlements to land ownership and tenure, real-life practices often tell a different story. Claims of ownership are frequently undermined by outdated records, overlapping titles, corruption, and bureaucratic inefficiency. The formal legality of land ownership thus appears illusory to the common citizen—a mirage rather than a reliable foundation of rights. This paper explores the legal, administrative, and socio-political dimensions of land ownership in Bangladesh and seeks to unveil the contradiction between statutory ideals and lived realities. The concept of private land ownership in Bangladesh has long been overshadowed by an overarching statutory framework that prioritizes state authority, public policy, and socio-political control over individual proprietary rights. Despite legislative reforms aimed at dismantling feudal landholding patterns and securing cultivators' interests, ownership remains a conditional entitlement, not an inviolable right. This paper critically explores the historical and statutory landscape that reveals the myth of private ownership within Bangladesh's legal system. The article critiques this paradigm through analysis of key legislation, concluding that private ownership in Bangladesh remains more illusory than absolute. Land in Bangladesh carries significant socio-economic and cultural value. However, the statutory architecture reveals a paradox stating that while the law formally recognizes private ownership, it simultaneously encodes conditions, limitations, and state supremacy. The result is a regulatory framework in which private ownership is a precarious, often illusory concept. This article evaluates the statutory schemes that contribute to this legal contradiction.

## 2. METHODOLOGY

This study employs a qualitative legal research methodology, integrating doctrinal analysis with targeted case study evaluation to interrogate the gap between the formal legal framework and the lived realities of private land ownership in Bangladesh. Central to this methodology is black-letter legal analysis, involving a detailed examination of constitutional provisions, statutory instruments, administrative regulations, and case law governing private land rights. This approach elucidates the normative structure of land ownership—particularly the legal requirements for valid title, registration processes, and the legal implications of possession versus ownership. To contextualize this doctrinal framework, the research includes a purposive selection of land dispute cases that highlight the disjunction between legal title and actual control. These cases focus on conflicts involving title deed holders and possessors, allegations of forgery or administrative malpractice, and judicial interpretations of evidentiary documents such as *khatians*[1] and title deeds. Through qualitative content analysis, these case studies reveal judicial reasoning, dispossession patterns, and structural barriers to enforcing ownership rights. The restricted access to digitized

[1] *A khatian is a land record detailing ownership, tenancy, land rights, plot specifics, usage, tax assessments, and tenancy status, prepared during cadastral or land surveys under the Survey Act, 1875 and Section 100 of the Bengal Tenancy Act, 1885 in British India.*

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land records, potential selection bias, and the challenge of generalizing across Bangladesh's diverse socio-legal contexts are few limitations of the study.

## PART I: HISTORICAL FOUNDATIONS AND THE CONSTRUCTION OF OWNERSHIP

### 3. Land Ownership in Pre-Colonial Bengal (1500 BCE- 1757)

Pre-Colonial India refers to the vast and diverse historical periods before colonial dominance—spanning from ancient civilization to regional kingdoms just before British rule began in 1757. Before British colonial rule, the ownership and control of land in Bengal followed traditional systems shaped by Islamic, Hindu, and regional customs, particularly under the Mughal Empire[2]. Land was not privately owned in the modern sense. Instead, it followed a hierarchical system of rights and responsibilities involving the state, *zamindars*[3], and cultivators. State was supreme owner under Mughal Rule. The emperor of Mughal state was regarded as the ultimate owner of all land. Land could not be privately owned in perpetuity. The emperor granted land revenue rights, not ownership. Before British colonization[4], the land ownership and revenue system in Bengal was based on traditional agrarian practices and governed largely by Mughal land revenue policies. During Mughal period the sovereign ownership was devolved upon the State and as the representative of Allah (God) the Mughals used to deal with it. Under the Mughal Empire, land was technically owned by the emperor. The emperor granted the right to collect revenue from land to officials and nobles, but not ownership of the land itself. *Zamindars* were intermediaries, responsible for collecting land revenue from peasants, ryots[5]. During that time, the actual cultivators of the land were the ryots (peasants). Ryots had customary rights to cultivate land, often passed down through generations. Ryots (cultivators) were the ones who actually worked the land. They held customary rights of cultivation, often passed down within families. Ryots paid a portion of their produce (or cash) as land revenue to the zamindars. In some cases, ryots had strong occupational rights, especially if they had long-term tenancy. In pre-colonial Bengal, land was not privately owned in the modern sense. In one word, the supreme ownership of all land was vested in the state. The system was a layered hierarchy of control, responsibility, and rights—with the state as the ultimate owner, zamindars as tax collectors, and peasants as the primary cultivators with usage rights. The British redefined this structure through the Permanent Settlement, turning zamindars into private landowners, and fundamentally altering Bengal's agrarian society.

### 4. Constructing Ownership through Empire (1757–1857)

The Battle of Plassey of 1757 saw Robert Clive's British East India Company defeat Nawab of Bengal[6], initiating British colonial dominance in Bengal and eventually India. This event marked the beginning of British political control in India. The British East India Company[7] defeated the Nawab of Bengal, gaining effective control inter alia landed property of Bengal. Some historians also include the earlier European trading presence (like the Portuguese from 1498 or the British East India Company's founding in 1600) as part of the pre-colonial European influence, but full colonial control began with political dominance in post, 1757.

### 5. Permanent Settlement of 1793: Legalizing Land Dispossession Post-1770 Famine

The Great Famine of 1770, which devastated Bengal under British colonial rule, exposed the exploitative nature of colonial land revenue policies that continue to influence land relations in Bangladesh today. The Famine[8] was also known in Bengali 1770 *Saler Durvikkho*, caused the death of around 10 million people, devastated agriculture and the economy, exposed colonial exploitation, and led to limited administrative reforms. The Permanent Settlement[9] introduced in its aftermath, institutionalized the zamindari system, granting revenue collection rights to intermediaries rather than cultivators. This entrenched a system where land was treated primarily as a source of state income, not as a livelihood asset. Peasants remained dispossessed, lacking ownership despite being the primary tillers. This colonial framework disrupted indigenous landholding patterns and created a legacy of centralized control and inequity. In postcolonial Bangladesh, land administration still reflects this historical dispossession. Ownership remains elusive for many, entangled in legal complexities, bureaucratic opacity, and socio-political manipulation. Thus, the Great Famine symbolizes more than a humanitarian crisis—it marks the beginning of a structural transformation that renders private land ownership a persistent myth within Bangladesh's legal framework.

### 6. Colonial Land Reforms, Agrarian Movements, and the 1943 Famine: A Legacy of Dispossession in Bengal (1857-1947)

Formal British Rule begins, after the *Sepoy* Mutiny of 1857, and the British Crown took direct control from the East India Company known as the beginning of the British Raj. The agrarian movements in Bengal, particularly during the early

[2] *The Mughal Empire, which ruled much of the Indian subcontinent from circa the early 16th to the mid-19th century.*
[3] *Zamindars were hereditary landholders under Mughal and British rule, responsible for collecting state revenue, holding local authority, but without absolute ownership of the land they controlled.*
[4] *British colonization (mid-18th to mid-20th century) imposed political control, restructured institutions, and altered land ownership through policies like the Permanent Settlement, which institutionalized landlordism and commercialised land.*
[5] *Ryots were tenant farmers who cultivated land and paid rent to landlords or the state during the Mughal and British colonial periods.*
[6] *Siraj ud-Daulah, the last independent Nawab of Bengal, resisted British expansion but was defeated at Plassey 23 June, 1757, marking the start of British colonial dominance in India.*
[7] *Established in 1600, the British East India Company transformed from a trading entity into a colonial authority, controlling India administratively and militarily until 1874, leading to direct British rule.*
[8] *Referring to the Bengali year 1176, the Great Bengal Famine of 1770 (Chhiyattorer Monnontor), which corresponds to 1769–1770 AD.*
[9] *Enacted by Lord Cornwallis in 1793, the Permanent Settlement fixed Bengal's land taxes and recognized zamindars as hereditary landowners responsible for revenue collection.*

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20th century, emerged as resistance against deep-rooted rural inequalities institutionalized during colonial rule. These movements, such as the *Tebhaga* Movement[10], reflected the peasantry's struggle for land rights and a fair share of produce, as tenant cultivators faced exploitation under the zamindari system entrenched by the Permanent Settlement of 1793. Despite their pivotal role in agricultural production, peasants were denied legal ownership and remained economically vulnerable.

### 7. The Bengal Tenancy Act, 1885: Legal Myth of Private Ownership of Land

The Bengal Tenancy Act, 1885 is no longer applicable in Bangladesh. It was effectively repealed, replaced, and superseded by the SAT Act[11], which was enacted to abolish the *zamindari* system and establish a direct relationship between the government and the actual cultivators. The Bengal Tenancy Act, 1885, represents a pivotal legislative milestone in the historical direction of land tenure systems in Bengal, encompassing present-day Bangladesh. This Act primarily sought to regulate the complex landlord-tenant relationships under the *zamindari* system, delineating the rights of tenants *(ryats) vis-à-vis zamindars,* thereby institutionalizing a quasi-feudal landholding structure. However, the Act simultaneously entrenched the myth of private land ownership by zamindars, a mirage that obscured the underlying state sovereignty over land. In the context of Bangladesh, the legacy of this Act reveals the illusory nature of absolute private ownership claims. Although *zamindars* wielded *de facto* control, their proprietary rights were contingent upon state recognition and rent collection obligations, reflecting a layered ownership concept rather than outright private dominion. This statutory framework perpetuated social inequities and agrarian exploitation, contributing to protracted struggles for land reforms. The post-colonial abrogation of the Bengal Tenancy Act through the SAT Act, 1950, further underscores the transient nature of private land ownership in Bangladesh. By vesting land ownership in the state and recognizing cultivators as tenants, the 1950 Act dismantled the *zamindari* methods, redefining ownership within a statutory and public domain.

### 8. Alluvion and Diluvion: Reassessing Legal Ownership in the Context of Riverine Change

The legal doctrine of *alluvion* and *diluvion*, rooted in the Regulation XI of 1825 enacted by the British East India Company, continues—*albeit* in revised form—to govern land changes in riverine Bangladesh. In a landscape shaped by the shifting courses of major rivers such as the Ganges, Brahmaputra, and Meghna[12], the regulation sought to address the legal consequences of erosion (*diluvion*) and accretion (*alluvion*). Under current law, particularly sec. 86 and 87 of the SAT Act, land that is gradually eroded results in the forfeiture of ownership by the landholder, while the reappearance or accretion of land may trigger conditional restitution. These rights, however, are neither absolute nor automatic. They remain contingent on state recognition, bureaucratic procedures, and specific time constraints. Moreover, newly accreted land frequently reverts to state ownership[13], underscoring the precariousness of private land rights. In addition to that if land lost by river erosion reappears after 30 years, the original holder or his legal heirs loses the right to reclaim it[14]. But in case of reformation *in situ* i.e. the reappearance of previously eroded land in its original location within 30 years, it entitles the former owner to reclaim it under section 87 of the SAT Act. This legal framework disproportionately affects vulnerable communities living in erosion-prone areas, who face dispossession without adequate recourse. The doctrines of *alluvion* and *diluvion* thus exemplify the mutable and contingent nature of land rights in Bangladesh, reinforcing the argument that private ownership is more a legal fiction than a protected reality.

### 9. Revisiting the Anti-Zamindari Ethos: Huq's Maxim in Legal Context

A.K. Fazlul Huq became a prominent figure in Bengal politics during the late 1930s, particularly after becoming the Prime Minister of Bengal in 1937 under the provincial autonomy provisions of the Government of India Act, 1935. Through his leadership of the *Krishak Praja Party(KPP)*[15] and tenure as Bengal's Prime Minister, spearheaded the anti-zamindari movement advocating for agrarian reform and peasant rights against colonial landlordism. A.K. Fazlul Huq's revolutionary maxim—*'He who tills the land, owns the land'*—served as a populist demand for agrarian justice during the anti-*zamindari* movement[16]. Though this philosophy found legislative endorsement in the SAT Act, 1950, the resulting legal regime did not actualize full ownership for cultivators. Instead, cultivators were granted occupancy rights —heritable and transferable but bounded by statutory obligations. Ownership remained under state purview, tightly regulated through ceilings, transfer restrictions, and eligibility criteria. Thus, Huq's slogan remains an aspirational standard rather than a legal reality, with cultivators enjoying occupancy rights but not unfettered dominion over land.[17]

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*[10] The Tebhaga Movement (1946–47) was a Bengal peasant uprising where sharecroppers demanded two-thirds of the harvest, opposing the exploitative colonial sharecropping system.*

*[11] The State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951) abolished zamindari system of 1793, vested land in the state, and legally recognized tenants' rights, transforming agrarian relations in East Bengal.*

*[12] The Ganges-Brahmaputra-Meghna (GBM) basin spans 1,999,000 sq km across South Asia, forming the fertile Bengal Delta that sustains regional ecology, agriculture, and livelihoods through alluvial deposits and seasonal floods.*

*[13] Section 86 and Chapter XIII of the State Acquisition and Tenancy Act, 1950*

*[14] Section 87 under Chapter XIII of the State Acquisition and Tenancy Act, 1950.*

*[15] Founded in 1936, the KPP represented peasants and smallholders, seeking the abolition of intermediary landlords and fairer land rights.*

*[16] Originating in the late 19th and early 20th centuries, the Anti-Zamindari Movement gained momentum in the 1930s–40s as a response to the exploitative zamindari system established by the Permanent Settlement of 1793.*

*[17] Ayesha Jalal, The Sole Spokesman: Jinnah, the Muslim League, and the Demand for Pakistan (Cambridge University Press 1994) 98.*

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### 10. The Floud Commission of 1938: The Conditional Promise of Land Ownership

The Floud Commission, chaired by Sir Francis Floud, laid the groundwork for dismantling Bengal's entrenched *zamindari* system by advocating for the conversion of tenants into proprietors and the elimination of intermediary rent-receiving classes[18]. Its recommendations aimed to restructure agrarian relations through state-led reforms, proposing that revenue be collected directly from *raiyats* (cultivators), thereby bypassing *zamindars* and *taluqdars*. The Commission envisioned landholding security through the legal recognition of *raiyats* as permanent occupants with regulated rents, but not as absolute owners. It endorsed state ownership of land, wherein cultivators would hold conditional use rights rather than full proprietary title. Additional proposals included landholding ceilings, redistribution of surplus land to the landless, tenancy protections, inheritance rights, and modernization of land administration through updated cadastral surveys and *khatians*. While these recommendations significantly influenced postcolonial legislation—most notably the State Acquisition and Tenancy Act (1950)—they stopped short of granting unfettered private ownership. Instead, landholding was redefined as a statutory relationship, with cultivators' rights being contingent on state regulations, ceilings, and redistributive policies. Thus, the Floud Commission's promise of agrarian empowerment translated into a state-managed tenancy regime, reinforcing the conditional and administrative nature of land rights rather than absolute ownership. As India achieved independence in 1947, these reforms laid the legal and ideological foundation for a controlled transformation of land relations, highlighting the illusory character of private ownership in the post-*zamindari* legal landscape of Bengal.

## PART II: POST-COLONIAL CONTINUITIES AND LEGAL REFORMS

### 11. Pakistan Period (1947-1971): Colonial Legacy and the Zamindari System

The period of Pakistan's rule over East Pakistan (present-day Bangladesh) from 1947 to 1971 was marked by the persistence of deeply entrenched colonial-era land ownership structures, reflecting the enduring legacy of British policies[19]. Despite the formal end of British rule[20], the *zamindari* system—characterized by hereditary landlords *(zamindars*) who held vast estates and extracted rent from tenant cultivators—remained the dominant framework governing agrarian relations. This system perpetuated severe socio-economic disparities, fostering widespread tenant insecurity exploitative rent practices, and chronic rural poverty. The *zamindars'* legal recognition as landowners under colonial law reinforced their control, while actual cultivators remained largely deprived of proprietary rights, relegated instead to precarious tenancy with limited security and no real claim to the land they tilled. Government efforts during this period to reform land tenure were limited and largely ineffective, as the colonial legal and administrative structures continued to prioritize state and *zamindari* interests over those of the peasantry. Although some tenancy laws and land reform initiatives were introduced, they frequently fell short of dismantling the entrenched hierarchical system. The failure to meaningfully redistribute land or grant cultivators secure ownership underscored the myth of private ownership prevalent in East Pakistan, where the notion of absolute land ownership remained illusory for the majority of cultivators. This continuity of colonial-era land tenure arrangements laid the groundwork for agrarian unrest and socio-political movements demanding land rights, ultimately shaping the trajectory of Bangladesh's post-independence land reforms.

### 12. Post-Colonial Reforms after 1971: Statutory Framework Governing Land Ownership

The post-1971 period in Bangladesh marked a critical juncture in the country's struggle to rectify the deeply rooted inequalities inherited from colonial and Pakistan-era land tenure systems[21]. Although land ownership concentration had somewhat diminished compared to the British period, the agrarian structure remained highly unequal, with large tracts still controlled by a small landed elite[22]. The incomplete implementation of earlier land reforms perpetuated rural inequities and tenant vulnerabilities, fueling widespread demands for more comprehensive and radical agrarian reform. Successive post-independence governments sought to address these challenges through legislative and policy measures aimed at democratizing land ownership, including land ceiling laws, tenancy reforms, and redistribution programs. However, the statutory framework often reflected tensions between protecting property rights and promoting social justice, leading to uneven outcomes. The persistence of elite interests, administrative challenges, and political considerations constrained the full realization of equitable land distribution, highlighting the complex interplay between historical legacies and contemporary reform efforts in Bangladesh's agrarian landscape.

### 13. Statutory Reform without Redistribution: The Persistence of Land Inequality

The State Acquisition and Tenancy Act of 1950 was introduced to abolish the *zamindari* system and promote equitable land ownership. It vested land rights in the state, eliminated intermediaries, and legally recognized tenants as direct cultivators (raiyats). The Act imposed ceilings on land ownership and promised security of tenure to tenants and sharecroppers (*bargadars)*. Despite its reformist language, the Act failed to dismantle structural inequalities. Traditional elites retained control through legal loopholes and informal transfers. Many cultivators remained without formal documentation,

[18] *In 1938 Bengal, intermediary rent-receiving classes – such as zamindars, taluqdars, jotedars, and ijaradars – exercised economic control over cultivators, extracting rent while occupying hierarchical positions between the peasantry and the colonial state.*
[19] *The Permanent Settlement of 1793, formally known as Regulation I of 1793 enacted by the British East India Company in Bengal.*
[20] *The formal end of British rule in the Indian subcontinent occurred on August 15, 1947, with India and Pakistan gaining independence.*
[21] *Landlord-centric, rooted in the Permanent Settlement of 1793, perpetuating zamindari dominance, tenant insecurity, and unequal land distribution.*
[22] *Joya Chatterji, The Spoils of Partition: Bengal and India, 1947–1967 (Cambridge University Press, 2007.*

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leaving them vulnerable to dispossession. The promise of private ownership existed more in theory than in practice. Land inequality persisted as large landowners circumvented ceilings, and landless peasants continued in insecure tenancies. The reforms enabled urban elites and absentee landlords to acquire rural land, further marginalizing actual cultivators. Indigenous and tribal communities, notably in the Chittagong Hill Tracts, were excluded from formal land frameworks, deepening historical dispossession.[23] The unification of tenancy laws under the 1950 Act—replacing earlier legislations[24]—centralized control under the state without democratizing ownership. While older laws lingered formally, they lost practical relevance. Ultimately, the reforms reproduced the illusion of private ownership while entrenching state authority and elite interests, making ownership a legal fiction for the rural majority.

### 14. The Vested Property Act: Legalized Dispossession and the Myth of Ownership

State-led mechanisms such as the Vested Property Act eroded land rights by dispossessing individuals under the pretext of national security, disproportionately affecting minorities.[25] The Vested Property Act[26], a continuation of Pakistan's Enemy Property Act (1965), exemplifies the state's power to nullify private ownership through politicized law. Initially used to confiscate assets of so-called 'enemies', it disproportionately targeted Hindu minorities with perceived ties to India. After independence, Bangladesh rebranded the law via Order No. 29 (1972) and the Vested and Non-Resident Property Act (1974), continuing dispossession under a new name. Though framed as 'custodial', the state exercised full control, often leasing or selling properties without due process. Despite the Vested Property Return Act (2001) and 2011 Rules, restitution efforts remain largely ineffective due to bureaucratic delays, administrative resistance, and manipulated land records. Prof. Abul Barkat estimates over 1.2 million Hindu families lost up to 2.6 million acres, affecting 40% of the community.[27] The law exposes how, in practice, private land ownership in Bangladesh remains conditional, insecure, and subject to arbitrary state control.

## PART III: LEGAL FRAMEWORK AND THE STATUTORY ILLUSION

### 15. Constitutional Basis: Rights Are Conditional

The Constitution of Bangladesh (1972) serves as the fundamental legal framework governing property and land rights. Although it formally recognizes the right to private ownership, a critical analysis of Articles 13, 42, 143, and 36 reveals that land ownership in Bangladesh is heavily conditioned by state authority and broader public interest considerations.[28] The constitutional narrative, while outwardly supportive of individual rights, simultaneously embeds mechanisms that prioritize collective control and socio-economic regulation, thereby rendering private ownership both contingent and constrained. Article 13 outlines the forms of ownership permissible under the Constitution—state, cooperative, and individual—reflecting the influence of early socialist ideology[29]. However, this recognition does not confer unqualified rights; instead, all forms of ownership are subordinated to state regulation in the public interest. As such, even private landholding exists within a framework of legal oversight, often justified by redistributive or developmental imperatives. This provision situates private ownership within a broader scheme of resource management geared toward social equity rather than market autonomy. Article 42 ostensibly guarantees the right of citizens to acquire, hold, and transfer property.[30] Yet this right is explicitly subject to 'reasonable restrictions'[31] imposed by law in the public interest, including compulsory acquisition with compensation. In practice, the expansive interpretation of 'public purpose'[32] has enabled the state to appropriate private land for industrial, infrastructural, and commercial development, often to the detriment of landowners with limited bargaining power. Article 42 of the Constitution underscores that land ownership in Bangladesh is not an absolute right but a conditional privilege, subordinate to state authority and public interest. While the Constitution nominally guarantees the right to property, it simultaneously empowers the state to override this right through legislation for purposes such as land reform, nationalization, or development. Although compensation is required in cases of acquisition, the law explicitly bars judicial scrutiny of its adequacy, rendering constitutional protection hollow. In this context, the concept of private land ownership emerges more as a legal fiction—a myth and mirage shaped by shifting state priorities.[33] Article 143 further entrenches the dominance of the state by vesting ownership of natural resources and *khas* land in the Republic.[34] This grants the government sweeping control over large areas of land, particularly where private or customary claims lack formal recognition. Furthermore, by vesting absolute control over natural resources in the State—subject only to legislative discretion—the clause reinforces the idea that ownership, within this legal framework, is less a tangible right and more a contingent, state-sanctioned mirage. Although Article 36 of the Constitution of Bangladesh guarantees freedom of movement

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[23] *Anaya, S. James, Indigenous Peoples in International Law (2nd edn, Oxford University Press 2004).*

[24] *The Bengal Tenancy Act, 1885 and The Sylhet Tenancy Act, 1936*

[25] *A. R. Chowdhury, The Vested Property Act and Minority Land Rights in Bangladesh, Journal of South Asian Studies 29, no. 2 (2014): 223–245.*

[26] *The Vested Property Act, initially the Enemy Property Act of 1965, enabled the government to seize property from "enemies," mainly targeting Hindus, resulting in widespread dispossession and enduring land insecurity in Bangladesh.*

[27] *Barkat, A., Zaman, S., & Raihan, S. (2001).* Political Economy of the Vested Property Act in Rural Bangladesh.

[28] The Constitution of the People's Republic of Bangladesh, 1972 *(as modified up to 17 May 2018). Dhaka: Ministry of Law, Justice and Parliamentary Affairs.*

[29] *Khan, M. M. (2009). Governance in Bangladesh: Challenges and Prospects. Dhaka: University Press Limited.*

[30] *Ibid.*

[31] *Kazi Mukhlesur Rahman v. Bangladesh, 26 DLR (SC) 44 (1974).*

[32] *Bangladesh v. Syed Ashraful Alam, 1 BLD (AD) 55 (1976).*

[33] *Mohammad Towhidul Islam,* Land Law: Texts, Cases & Materials *(Mullick Brothers 2020).*

[34] *Constitution of the People's Republic of Bangladesh. (1972).* Article 143. *Retrieved from https://bdlaws.minlaw.gov.bd/act-367.html. accessed on November 10, 2024.*

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and residence, this right is limited by concerns such as national security and public order. In areas like the Chittagong Hill Tracts[35], these restrictions have curtailed land access for indigenous and marginalized groups.[36] Despite constitutional recognition of property rights, land ownership in Bangladesh remains a conditional and regulated privilege, shaped by legislative and administrative discretion. The gap between constitutional assurances and on-the-ground realities exposes private land ownership not as an absolute right, but as a controlled and contingent construct—often more symbolic than substantive in practice.

### 16. Statutory Ceilings: The Conditional Nature of Land Ownership

Bangladesh's legal framework imposes strict statutory ceilings on private landholding, reinforcing the notion that land ownership is neither absolute nor inviolable. The limitation on individual land holdings to 375 standard *bighas* with excess land automatically vested in the state.[37] This ceiling was reduced under the Bangladesh Land Holding (Limitation) Order, 1972 to 100 *bighas*, and further curtailed by the Land Reforms Ordinance, 1984, capping holdings at 60 *bighas* of agricultural land. Surplus land is subject to compulsory acquisition, often with minimal or no compensation, except in limited cases of inheritance. These progressive restrictions reveal that private land ownership exists conditionally, subject to shifting statutory limits and state appropriation.[38] Rather than safeguarding land as a private right, the legal regime reasserts state dominance, rendering ownership revocable and incomplete—a clear reflection of how, within Bangladesh's legal system, private landholding remains a regulated privilege rather than a protected right.

### 17. Ownership and Possession as Dual Pillars of Land Entitlement in Bangladesh

Legal ownership in jurisprudential point of view refers to the right recognized and protected by law to possess, use, and transfer property. This includes both tangible assets, such as land and buildings, and intangible ones, like intellectual property or stocks. Land ownership, more specifically, involves the legal right to control, occupy, and benefit from a piece of land. While it may seem absolute, in practice, land ownership is limited by laws concerning zoning, environmental regulations, taxation, and resource management. Unlike other forms of property, land[39] is deeply tied to natural resources—such as water, forests, and minerals—which are often regulated by the state. Thus, the meaning of land ownership differs across countries depending on legal and socio-economic contexts.

### 18. Legally Recognized Mechanism of Acquiring Land Ownership in Bangladesh

In Bangladesh, private land ownership may be acquired through several legally recognized means.[40] The most common is by sale, governed by Section 54 of the Transfer of Property Act, 1882, which defines sale as the transfer of ownership for a price, paid or promised. Such transfers require written and registered documentation[41] under the Registration Act, 1908. Similarly, exchange, under Section 118, and gifts, under Section 122, also allow land ownership transfer, provided they are executed through registered deeds and proper attestation. Under Muslim law, the concept of *heba* permits gratuitous transfer of immovable property to close relatives, also requiring registration[42] and witness attestation. Ownership may also be acquired through wills, governed by the Succession Act, 1925. Valid wills must be in writing, signed by the testator, and attested by two witnesses. Inheritance, based on personal religious laws, remains the most prevalent mode of land acquisition. Muslims follow Islamic succession principles, while Hindus, Buddhists, and others adhere to their respective customs. The Succession Act applies to individuals outside these groups. Adverse possession, or acquisitive prescription, allows individuals to claim ownership after twelve years of uninterrupted, hostile possession.[43] Despite these statutory provisions, the notion of private ownership is undermined by administrative inefficiencies, historical ambiguities, and fraudulent practices.

### 19. Non-Agricultural Tenancy Act, 1949: Undermining the Notion of Private Ownership

The Non-Agricultural Tenancy Act, 1949 (NATA) exposes the fragility of private land ownership in Bangladesh by legally empowering long-term tenants with strong possessory rights, while restricting landlords' ability to reclaim their property. Though the Act does not confer ownership, tenants who occupy land for extended periods—often supported by rent receipts—are treated as *de facto* owners[44]. This legal ambiguity, compounded by outdated records, manipulation of documents, and administrative inefficiencies, obstructs landowners from asserting their rights. Tenancy under this framework is not a step toward ownership but a form of controlled occupancy—

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[35] *It comprises Rangamati, Khagrachari, and Bandarban, a geopolitically sensitive region in southeastern Bangladesh, home to diverse indigenous Jumma communities with distinct ethnic, linguistic, religious, and cultural identities, differing markedly from the national mainstream.*

[36] *Land remains central to conflict in the CHT, where denied indigenous rights, state-sponsored settlements, and incomplete Peace Accord (1997) implementation fuel alienation and marginalization.*

[37] *State Acquisition and Tenancy Act, 1950, Section-90, Act No. XX of 1950 (Bangladesh).*

[38] State Acquisition and Tenancy Act, 1950, *sec. 90; Mohammad Towhidul Islam,* Land Law: Texts, Cases & Materials *(Mullick Brothers 2020).*

[39] *State Acquisition and Tenancy Act 1950 (East Bengal Act XXVIII of 1951), s 2(16) and s 2(16a).*

[40] *Transfer of Property Act, 1882, modes of transfer of property – including sale (Section 54), mortgage (Section 58), lease (Section 105), exchange (Section 118), gift (Section 122), and transfer of actionable claims (Sec. 130).*

[41] *The Registration Act, 1908 (Act No. XVI of 1908), s 17.*

[42] *Voluntary & unconditional gift under Muslim law requiring declaration, acceptance, and delivery of possession, for immovable property, must comply with Section 17(1)(a) of the Registration Act, 1908 – to be legally enforceable.*

[43] *Article 144 of the First Schedule to the Limitation Act, 1908.*

[44] *In the context of NAT Act, 1949, typically referring to individuals who possess or control land in practice, even if they do not hold formal legal title or ownership documents.*

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reinforcing the view that private land ownership in Bangladesh is more mythic than materially secure. NAT exemplifies how statutory law itself contributes to the fragmentation of ownership rights, creating space for possession-based claims to rival formal legal ownership— thus making private land ownership appear as a 'myth and mirage' within the legal framework of Bangladesh.

### 20. The SAT Act, 1950: Ownership Land through Statutory Prism

The State Acquisition and Tenancy Act, 1950 (SAT Act) marked a foundational shift in Bangladesh's land regime, effectively dismantling the *zamindari* system and vesting intermediary interests in the state. Under this statutory framework, land ownership is not an indefeasible private right but a revocable legal entitlement contingent upon compliance with state-imposed conditions. Sections 3, 4, and 20 abolished rent-receiving interests[45], while Section 95A authorizes the state to reclaim excess land beyond statutory ceilings. The Act permits extinguishment of possessory claims under Section 87 for failure to reassert rights post-dispossession, reaffirming that landholding is vulnerable to statutory extinction. Cultivators' rights—whether as *raiyats* or *bargadars*—are similarly conditional, grounded in rent payment, official registration, and lawful use. Land rights may be nullified for abandonment, unauthorized transfers, misuse, or breach of lease terms, reinforcing the premise that ownership exists at the discretion of the state. A raiyat's interest is extinguished upon death without legal heir, voluntary surrender with notice, abandonment and non-cultivation for three years, or inheritance by a non-cultivator who fails to cultivate the land for five years without sufficient cause.[46] Thus, the SAT Act constructs ownership as a statutory concession rather than an inherent private domain, rendering the concept of absolute private land ownership in Bangladesh more mythical than real.

### 21. Transfer of Property Act, 1882: Legal Ownership as a Symbolic Construct

The Transfer of Property Act, 1882 (TPA) provides the statutory foundation for private land ownership in Bangladesh, governing the lawful transfer of immovable property through sale, lease, mortgage, exchange, and gift. It outlines the rights and obligations of parties and mandates formalities such as registration and notice. However, the Act's theoretical clarity is frequently undermined in practice. Despite its emphasis on legal title through registered instruments, the reality in Bangladesh reveals a dominance of possession over ownership.[47] Long-term occupiers, oral agreements, and informal transfers often displace formal title holders—particularly in rural and peri-urban areas.

### 22. Limitation Act, 1908: Ownership through Procedural Fiction

Under the Limitation Act, 1908 rights over land can be extinguished primarily through the operation of limitation periods**.** The Act does not directly extinguish rights but provides that after the lapse of a specified limitation period, the legal remedy to enforce a right is barred, and in some cases, the underlying right itself is extinguished, particularly in cases involving possession of immovable property. The Limitation Act, 1908, though procedural, shapes land disputes substantially. Under Articles 142 and 144, if a dispossessed owner fails to initiate recovery within 12 years, the adverse possessor may acquire rights, not inherently, but through court recognition.[48] Section 27 extinguishes the original owner's right after the limitation period, but does not affirmatively vest ownership in the possessor. This creates a legal void between possession and title, revealing that ownership here is a consequence of procedural failure, not substantive right. Under the Limitation Act, 1908, land rights can be extinguished if not enforced within specified limitation periods—most notably through adverse possession or failure to initiate legal proceedings in time. The law thereby emphasizes the principle *vigilantibus non dormientibus jura subveniunt*[49]—the law aids the vigilant, not those who sleep on their rights.

**Footnote Reference**
**Adverse Possession (Article, 142, 144, Schedule I)**

### 23. Specific Relief Act, 1877: Protection of Possession over Ownership

The Specific Relief Act, 1877, particularly Sections 8 and 9, prioritizes lawful possession over legal ownership, allowing dispossessed individuals to reclaim land even without title. This emphasizes procedural order rather than substantive ownership rights. While the Act provides remedies such as specific performance and injunctive relief, its effectiveness in securing private ownership is undermined by forged documents**,** conflicting land records, and prolonged litigation. Moreover, judicial reliance on unreliable documentary evidence further complicates the enforcement of ownership. Thus, despite its role as a remedial tool, the Act fails to guarantee real control over land. It exemplifies how statutory remedies fall short in protecting ownership, reinforcing the view that private land ownership in Bangladesh remains more illusory than enforceable.

### 24. Land Reforms Ordinance, 1984: Ownership Reconstructed by Policy

This Ordinance imposes ownership ceilings (Section 4), prohibits absentee landlordism (Section 5), and mandates cultivation by owners. It redefines ownership as user-based and conditional, subordinated to agrarian equity. Surplus land can be acquired without owner consent, and evasive transactions are nullified. The result is a system where title exists, but within narrow policy-defined parameters.

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[45] *Sections 3, 4, and 20 of the SAT Act, 1950 abolished rent-receiving interests, vested land in the State, and secured rights for actual cultivators, effectively ending zamindari.*

[46] *State Acquisition and Tenancy Act (1950), Section 92.*

[47] *Transfer of Property Act, 1882, Section 54–55.*

[48] Binapani Kandu v. Chairman, Vested and Non-Resident Property, *14 BLC (AD) 101.*

[49] *The law favors those who promptly assert their rights, barring claims from those who delay, thereby underpinning limitation laws and justifying adverse possession when owners neglect enforcement.*

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### 25. Acquisition and Requisition of Immovable Property Act, 2017: Eminent Domain and the Erosion of Ownership

The 2017 Act enables the government to acquire private land for public purposes. Section 4 empowers the state to acquire land, vesting it automatically and absolutely, overriding all private claims. While Section 9 provides for compensation, ownership is terminated without recourse once the acquisition notice is issued. Requisition under Section 21 may convert into permanent acquisition, exemplifying the absolute nature of state power and the revocability of private land rights. The Acquisition and Requisition of Immovable Property Ordinance, 1982 grants the state expansive authority to forcibly acquire private land for purposes deemed "public" by Parliament. Crucially, the terms of compensation are non-justiciable, meaning affected individuals have no legal recourse to challenge the adequacy of compensation. This framework underscores the subordinate status of private land rights within Bangladesh's legal order. By placing compensation beyond judicial review, the law institutionalizes a state-centric model of ownership, where landholders can be dispossessed at will, without meaningful procedural safeguards. The Appellate Division of the Supreme Court of Bangladesh held that upon valid acquisition of land by the State in accordance with prescribed legal formalities, the prior owner or their heirs are divested of any right to reclaim the property, irrespective of whether the land is subsequently utilized for its intended purpose.[50] As such, private ownership operates more as a conditional allowance than a legally protected right, reinforcing the view that in Bangladesh, it remains a legal mirage rather than a substantive reality.

## PART IV: MARGINALIZED VOICES AND CONTEMPORARY CHALLENGES

### 26. Customary Tenure and the Fiction of Ownership: Beyond the Statutory Framework

In Bangladesh, customary ownership rights of private individuals over land are rooted in a complex interplay of statutory law and traditional practices. While formal land ownership is governed by statutes, customary rights often persist, particularly in rural and indigenous communities. These rights include inheritance-based possession, long-term occupation, and communal recognition of tenure, which may not always be formally documented. Customary tenure systems often confer *de facto* ownership, recognized locally but lacking legal enforceability in formal courts. Among indigenous groups, such as the *Chakma* or *Marma* in the Chittagong Hill Tracts, customary landholding is regulated by traditional norms and local leadership, despite limited state recognition.[51] These pluralistic land rights reflect both historical continuity and socio-cultural norms, but they often face marginalization under formal legal frameworks, leading to conflicts over land use, tenure security, and dispossession. Addressing these issues requires harmonizing statutory and customary land regimes.

### 27. Indigenous and Coastal Land Issues: Indigenous Communities

In Bangladesh, the illusion of private land ownership is starkly evident in marginalized regions like the Chittagong Hill Tracts (CHT), where customary indigenous land rights lack recognition under formal laws. Large-scale acquisitions for tourism or agribusiness often displace indigenous communities, bypassing traditional governance and offering minimal legal recourse. Similarly, char and coastal dwellers face eviction without compensation due to the absence of a clear legal framework, as riverine lands remain volatile and unprotected. Administrative challenges—including fragmented responsibilities, undertrained officials, and limited enforcement capacity—undermine policy reforms like the National Land Use Policy, 2001 and digital initiatives.[52] Rwanda's land tenure reform[53] and Vietnam's Land Law of 1993 exemplify effective land reforms that enhance tenure security, empower marginalized groups, and boost agricultural productivity. These countries offer valuable lessons in securing equitable land access and fostering sustainable rural development through legal recognition and protection of land rights.

### 28. Women's Land Rights in Bangladesh: Legal Entitlements without Control

Women's land ownership in Bangladesh exemplifies the gap between legal entitlement and practical access, reinforcing the notion that private ownership is largely illusory. Although statutory laws do not explicitly bar women from owning land, personal law regimes—Muslim and Hindu—create systemic inequities. Muslim women inherit half the share of male heirs[54], while Hindu women, under the Dayabhaga system[55], often face near-total exclusion. The Hindu Women's Rights to Property Act, 1937 granted only usufructuary rights, with no power of alienation. Despite Islamic law prescribing clear shares, social coercion, lack of enforcement, and customary practices frequently prevent women from claiming their inheritance. Furthermore, illiteracy, legal unawareness, and stigma dissuade women from asserting their rights. The result is a gendered illusion of ownership—where rights exist in legal texts but not in real possession or control—making women's land rights in Bangladesh a vivid illustration of the myth of private ownership.

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[50] *Abul Basher (deceased) & Ors. v. Bangladesh & Ors., 50 DLR (AD) 11.*

[51] *Rasul, G., & Thapa, G. (2003).* Shifting cultivation in the mountains of South and Southeast Asia: Regional patterns and factors influencing the change. *Land Use Policy, 20(4), 231-242.*

[52] *National Land Use Policy, 2001, Ministry of Land, Government of the People's Republic of Bangladesh, available at the Ministry's official portal, accessed on 18 January, 2025.*

[53] *USAID. (2020).* Rwanda Land Tenure Regularization Program: Impact and Lessons Learned. *Available at: https://www.land-links.org/country-profile/rwanda/, visited 12 Dec, 2024.*

[54] "*Allah commands you regarding your children: for the male, what is equal to the share of two females...*" *(Quran 4:11, Sahih International),* Surah An-Nisa (4:11).

[55] Established through the writings of jurist Jimutavahana (circa 1100–1200 CE), the Dayabhaga system in Bengal granted Hindu women more direct and favorable inheritance rights than the Mitakshara system's limited coparcenary framework.

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### 29. The Mirage of Statutory Certainty

The evolution of land record management in Bangladesh unfolds across four key phases of Record of Rights (RoR) surveys: the Cadastral Survey (CS) in the early 1900s, State Acquisition (SA) in the 1950s, Provisional Settlement (RS) from the 1960s to 1990s, and Bengal Settlement (BS) from the 2000s onward. This progression must be understood within the broader historical and legal complexities surrounding private land ownership. The study challenges the assumption that land ownership has been historically clear and absolute. Instead, it reveals how colonial policies, postcolonial reforms, and statutory ambiguities have continuously reshaped land rights. The early Cadastral Survey under British rule was more than bureaucratic documentation; it imposed a formal system over customary and communal landholding, embedding contested notions of ownership. The SA phase, following *zamindari* abolition, aimed to redistribute land but introduced legal uncertainties, making ownership fluid. Revisional Settlements sought to correct earlier records but often favored certain claimants, perpetuating ownership ambiguities. The contemporary Bengal Settlement emphasizes digitization and transparency but cannot erase historical disputes and legal complexities. Thus, Bangladesh's land administration reflects an ongoing negotiation between evolving legal frameworks and entrenched social realities, underscoring that land record modernization is as much about addressing deep-rooted tensions as technological advancement. Digitalization remains incomplete, and rural populations frequently lack access to or understanding of legal documents, relying instead on intermediaries and corrupt officials. Registration rarely results in automatic mutation, leading to discrepancies that fuel extensive litigation—over 70% of civil cases. Land offices are plagued by corruption, enabling elites to manipulate records and dispossess the vulnerable, particularly women and minorities. Although courts occasionally uphold land rights, delays, forged documents, and legal complexity render judicial remedies largely ineffective for ordinary citizens.

## PART V: REFORM AND THE WAY FORWARD

### 30. Recommendations:

To address the enduring myth of private land ownership in Bangladesh, comprehensive reforms are essential. All historical survey records must be integrated into a unified, citizen-accessible digital platform to resolve contradictory claims. Strengthening institutional capacity through training and incentivizing land officials can enhance transparency and service delivery. Legal frameworks rooted in colonial legacies must be modernized to ensure equity and gender justice. Widespread legal literacy campaigns, especially targeting women and marginalized groups, are critical to empower rightful claimants. Establishing independent land ombudsmen and anti-corruption mechanisms can improve accountability. Without such transformative measures, land ownership will remain a statutory illusion—enshrined in law but denied in practice. Bangladesh must draw on global best practices in transparency, community participation, and technology-driven governance.

### 31. Conclusion: From Myth to Meaningful Reform

In Bangladesh, land ownership remains a paradox: heavily legislated yet poorly enforced; constitutionally protected yet practically elusive. For millions, especially the rural poor, women, and indigenous groups, legal ownership is more a myth—rooted in hopes—and a mirage—visible yet unreachable. Joseph Comby in *La Gestation de la Propriété* stated that absolute ownership of land is a myth, even in countries that invented the concept of absolute ownership rights, as they themselves cannot fully apply this concept to the ground.[56] The legal architecture governing land in Bangladesh systematically undermines the notion of private ownership. Statutes such as the SAT Act and NAT Act frame ownership not as a natural right, but as a state-regulated entitlement subject to procedural compliance, statutory limitations, and public policy imperatives. From the expropriations under the Vested Property laws to the occupational constraints embedded in tenancy legislation, the myth of private ownership persists in public imagination but crumbles under legal scrutiny. Ultimately, land rights in Bangladesh are constructed not around autonomy but around state-sanctioned occupancy, making private ownership a legal mirage—seen but seldom realized in practice. Private land ownership in Bangladesh is not an entrenched right but a legal construct, heavily mediated by state discretion and statutory conditions. The combined effect of procedural laws, acquisition regimes, criminal sanctions, and gendered limitations points to a model where ownership is conditional, revocable, and symbolic. Despite the constitutional promise of property rights, statutory instruments systematically deconstruct this right, making private land ownership a myth sustained by legal formalities but contradicted by administrative realities.

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