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THE DOCTRINE OF PRE-EMPTION AND THE CONSTITUTIONAL RIGHT TO PROPERTY: A CRITICAL APPRAISAL OF BANGLADESH'S PRE-EMPTION LAWS

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ABSTRACT: Pre-emption is a well-established mechanism in the legal system of Bangladesh. It is so well established that sometimes its various aspects go unchallenged. As a result, there is an apprehension that it is infringing the constitutional right to property of the people of Bangladesh. The evolution of pre-emption in different stages of the Bangladeshi legal system has given it such a nature that any introduction of change requires a deep understanding of its historical roots. And the historical root of it is so strong that the mechanism seems irreplaceable in Bangladesh. However, despite having a similar socio-economic context, the question regarding the reasonableness of pre-emption has been raised in India. Also, the judiciary of Bangladesh has from time to time, expressed its critical views regarding pre-emption. The vast amount of literature carries rich views regarding the mechanism of pre-emption. But there is a lack of coherence as to the ways to solve the existing problems of the mechanism of pre-emption. This article critically examines the philosophy and scope of the constitutional right to property under Article 42 of the Constitution of Bangladesh, and evaluates the doctrine of pre-emption against this constitutional standard through a doctrinal, historical, and comparative analysis. A critical comparison of the differences between the existing laws provides us with vital guidelines regarding making the existing system a better one. Again, socio-economic input of the reality as well as the real-life status of the related aspects to pre-emption provides us

solutions of the existing problem. No solution is to be adopted without criticism. And the found solutions of the problems related to pre-emption provide a sound base for future research and law reform and ensure a hopeful future for the Land Laws of Bangladesh.

KEYWORDS: Pre-emption, *Shufa*, *Hanafi,* Co-sharer, Vested Property, *Bargadar,* Pre-emptee, Preemptor.

1. INTRODUCTION

The citizens of Bangladesh have an unalienable right of owning property that is protected by the supreme law of the country. However, such a privilege is subject to legislatively imposed reasonable constraints.[1] Pre-emption is a legal process that inhibits a Bangladeshi citizen's unrestricted ability to dispose of land in his possession. As time has passed and numerous sociological and legal developments have occurred, the existing system's reasonableness has come into doubt. In today's world, pre-emption is frequently abused, and the system has become a means of harassing landowners. Consequently, the mechanism's fairness is now under dispute. If the faults of the current system of pre-emption can be identified, plausible alternatives may be proposed, the implementation of which will make the pre-emption mechanism reasonable and appropriate for the present.

1.1 Research Questions

As for this purpose, the following questions have been addressed in this research:

RQ1. Does the doctrine of pre-emption, as applied under Bangladeshi law, constitute a reasonable restriction on the constitutional right to property under Article 42, or does it amount to an unjustified infringement of that right?

RQ2. Has the doctrinal and socio-economic rationale historically underpinning pre-emption retained its validity in contemporary Bangladesh, or has it been eroded by changing land-use, ownership, and market realities?

RQ3. What legislative or judicial reforms, if any, are necessary to reconcile the pre-emption mechanism with constitutional property rights while preserving its legitimate socio-economic functions?

1.2 Aim and Implications

[1] Constitution of People's Republic of Bangladesh, art 42.

Now, based on these questions, the aim is looking for **t**he reasonableness of the existing system and viable solutions are the core concern of this research as there are ample of incidents arising everyday related to the mechanism of pre-emption. Current unreasonable form of the system causing a great suffering for the citizens. And this research will contribute to establishing the constitutional right to property of the citizens. It will focus on present infraction of right to property under the constitution of Bangladesh and it would be useful to the law-making bodies to restructure the land legislation to protect the citizens' land rights. It will show us how ancient legal provisions like pre-emption can be turned into obsolete and illegal because of a lack of reform. Also, it will provide us with solutions to mitigate the problem and with suggestions on how to implement such solutions in a better way.

1.3 Methodology

The research has been conducted following doctrinal legal methodology accompanied with historical and comparative approaches. The work has been done based on the data collected from primary legal sources, such as the Constitution of Bangladesh, the State Acquisition and Tenancy Act 1950, the relevant provisions on pre-emption under the Muslim Personal Law (Shariat) Application Act 1937, and the Non-Agricultural Tenancy Act 1949, along with reported case laws from the higher judiciary of Bangladesh and, where doctrinally relevant, colonial-era Privy Council and subcontinental precedents. As per the historical method part, the research traces preemption's historical evolution from Mughal-era application through colonial codification to its present statutory form in order to assess whether the socio-economic rationale that originally justified the doctrine still holds in contemporary Bangladesh. Again, in order to test the reasonableness of Bangladesh's current framework, the research has drawn a limited comparison with Indian arrangement of pre-emption, particularly the Indian judiciary's approach to reconciling pre-emption with the constitutional right to property under Article 300A of the Indian Constitution. This comparison is used interpretively in order to illuminate possible reform pathways rather than as a systematic comparative-law study. Again, the research has largely relied on secondary and archival materials such as statutes, law reports, and existing scholarly literature like books, journal articles, and case commentaries on pre-emption and constitutional property rights. And as a consequence of using the doctrinal approach, the research does not empirically measure the socio-economic impact of pre-emption on affected parties and its conclusions on reasonableness are drawn from case law patterns and

existing scholarship rather than original empirical evidence. This is acknowledged as a limitation.

For a better understanding of the readers, it can be observed that all the headings of the research can be divided into four large segments; although no such division has been illustrated explicitly. In the first segment, the researcher introduced the problem with statement of problems, elaborated the research objectives. The researcher has also compared the existing literature on the subject matter, raised the research questions, and described the methodology that is to be followed. Also, the first segment contains the scope and limitation of the research. The second segment contains the description of the related concepts. A historical description of pre-emption is there in the second part along with the description of the statutory provisions and case laws related to the subject matter. In the third segment, the problems of the existing system of pre-emption have been identified and solutions have been provided to overcome the problems. And in the final segment, an overall conclusion has been drawn along with discussions regarding the effective implementations of the provided solutions.

1.4 Scope and Limitations

It is important to clarify the scope and limitations of this research. The research has incorporate a case-to-case instances of the pre-emption. As it is largely based on doctrinal methodology, no empirical or field data, such as interviews, surveys, or primary data collection has been used and the research is confined to doctrinal and textual analysis. Again, the research is limited to Bangladeshi context and the research result will be only applicable for Bangladesh. Furthermore, the research is mainly focused on the effects of pre-emption and does not include all the aspects related to pre-emption. And there might limitation regarding language of the research and the knowledge of the researcher. The researchers beg to pardon these limitations and to consider it as a scope of further future research on the subject matter.

2. CONCEPTUAL FRAMEWORK

At first, we must have a thorough understanding of the relevant concepts before jumping into main discussion. Pre-emption is the first significant notion related to this study. The arrangement where someone accrue a right in the land to procure before another person is called pre-emption. The term has been originated from latin *prae*, which means "before" and *emptions*, which means "purchasing." Dr. A.R. Biswas defines pre-emption as "the legal right

to purchase an item before all others."[2] In Arabic, pre-emption is referred to as *shufa*. "*Shufa*" means conjunction; in this context, it refers to the right of the owner of a property that is adjacent to another. Haq means accurate. Therefore, *haq-shufa* refers to the right to acquire a property adjacent to one's own from a new buyer. In practice, it signifies the right to displace a new purchaser and assume his position in relation to an adjacent property.[3] One has the right to prevent strangers from entering their neighborhood. Pre-emption does not attribute the action of rebuying but substituting one buyer through another because of their better right. This notion was reflected in *Bishan Singh v. Khazan Singh*, where Subba Rao, J., held that pre-emption is a right of being offered a land before it was offered to anyone else. It is known as a supplementary right to follow the sold land by the pre-emptor. And he has obligation as if he was the original purchaser.[4] Again, the right is over in case of buying the whole land not any fraction of so. As the whole mechanism is a sort of preferential arrangement, that is why the status of pre-emptor will be higher than his alternate. It is a right of an adjacent possessor to buy the property adjacent to him that is being sold. Now, co-sharer is an important idea connected to pre-emption. A person who is the owner of any portion of a given parcel of land under same land record is called co-sharer. It is held that he is owner with all the same authority of each point of the land in spite of another person having his name recorded as such manner.[5] The primary purpose of this mechanism is to prevent stranger owner from irritating co-sharers rather giving them the whole ownership to be in peace. Now, let's examine the historical evolution of pre-emption for the proper understanding of the subject matter.

3. HISTORICAL EVOLUTION OF PRE-EMPTION

Pre-emption can be traced back to ancient Roman law.[6] However, the Muslim rulers of the Indian subcontinent introduced pre-emption in this land.[7] It is significant to note that Pre-Islamic customs and later changes by the prophet and Muslim scholars comprised the whole of Muslim religious provision as we know.[8] Thus the exact origin of pre-emption is still unknown

[2] Syed Rahman, *Pre-emption Laws in Bangladesh* (1st edn, Ain-Grantha Prokashak 1984).
[3] Khalid Rashid, *Muslim Law* (4th edn, Eastern Book Company 2004) 283.
[4] *Bishan Singh v. Khazan Singh* [1958] AIR 838 (SC).
[5] Legal Nestors, 'Disputes Between Co-Sharers' (*Legal Nestors*, 12 January 2020) <https://legalnestors.com/practice-area/disputes-between-co-sharers/> accessed 27 March 2026.
[6] Md Hossain, 'Pre-emption: Bangladesh Approach ' [2015] 3(2) Sociology and Anthropology 79.
[7] *Govind Dayal v. Inayatullah* (1885) 7 AIR 779.
[8] R Feener, Muslim Cultures and Pre-Islamic Pasts: Changing Perceptions of “Heritage” (Springer 2017).

to the Islamic scholars.[9] Some jurists consider pre-emption to be pre-Islamic.[10] Arabs were familiar with Jewish law and the Roman legal system at the time.[11] Therefore, some academics think that pre-emption may have its origins in Roman or Jewish law.[12] However, there is no agreement among researchers on this issue.[13] On addition, there is no reported information regarding exercise of pre-emption in the Indian subcontinent prior to the arrival of the Mughals. Only subsequent Moghul control promulgated pre-emption to all communities.[14] It was considered then that a Muslim and a person of other faith are both affected by the new arrangement.[15] As a result, the Hindus accepted pre-emption as a custom.[16] The Mughal application of pre-emption was primarily influenced by Hanafi philosophy.[17] According to Hanafi doctrine, land constitutes the majority of an immovable property.[18] On the land, all trees and structures are regarded to be mobile.[19] There are just a few cases in which a construction can be considered immovable, as we will see shortly.[20] Hanafis grants pre-emption rights to the four individuals listed below. (a) Co-owners (*shurak*), in the event that a section of jointly owned land is sold to a third party. Non-Hanafi legal experts limit application of emption as to this circumstance. (b) Those who retain a little portion of the land, such as former land co-owners who continue to jointly own a dividing wall and the land beneath it. Those who share a wall without the land beneath it cannot exercise pre-emption, as the wall is considered movable property and hence is not regarded to be part of the land. (c) Holders of a servitude (*aqq al-irtifq*) over the land sold, such as previous co-owners of land who continue to share highways or canals with the seller after the split of the land. The use of public roadways and rivers does not cause pre-emption. (d) Adjacent neighbors or lot owners who share a boundary with the for-sale property.[21] Former co-owners of the land who do not fit into the first two categories, such as co-owners of a wall, may exercise pre-emption if they meet this criterion. Although Hanafis frequently view co-owners as pre-emptors, they also grant pre-emption to

[9] Satoe Horii, 'Pre-emption and Private Land Ownership in Modern Egypt: No Revival of Islamic Legal Tradition' [2011] 18(1) Islamic Law and Society.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ausaf Malik, 'Right of Pre-Emption (Shuffa) Under Muslim Law' [2021] 11(1) Education Today.
[15] Ipleaders, 'Pre-emption under Muslim Law' (*IPleaders*, 11 May 2021) <https://blog.ipleaders.in/pre-emption-muslim-law/> accessed 25 March 2026.
[16] Ibid.
[17] Alan Guenther, Hanafi Fiqh in Mughal India: The Fatāwá-i ʻĀlamgīrī (Oxford University Press of India 2003).
[18] Feener (n 8) 182.
[19] Ibid.
[20] Ibid.
[21] Ibid.

those who are comparable to them in some way. Although the origin of pre-emption is uncertain, all legal academics agree that it was intended to prevent specific harms caused by an outsider entering a co-ownership relationship.[22] According to non-Hanafis, these are monetary or physical damages caused by division, as co-owners are more likely to end their relationship than accept an unwelcome newcomer.[23] According to Abbs' fatwas, co-owners are frequently inherited relatives. Non-Hanafis therefore restrict pre-emption to co-owners.[24] Pre-emption is designed to protect co-owners from the sale of a section of a property held in common that could lead to an adverse division.[25] Similarly, non-Hanafis restrict pre-emption to a share in anything divisible, both immovable and movable, such as a share in buildings, trees, or livestock sold separately from land held in common.[26] For Hanafis, the damages to be avoided through pre-emption include any inconvenience or misery stemming from a hostile relationship between neighbors, regardless of whether they share a common area or live in near homes.[27] Thus, co-owners are regarded as if they were nearby neighbors, in that they have equal rights to use or enjoy the property held in common and reside in close proximity.[28] Because such a scenario may be unbearable with an unwelcome "neighbor," co-owners have precedence over other categories of pre-emptors whose holdings are completely or partially segregated from bordering properties. However, Hanafis restrict the purpose of pre-emption to immovable property or a portion thereof, as the turnover of immovable property owners is less frequent, making any dispute between them all the graver. Today in Islamic law, however, the system has gained universal support and reached a level of development never before seen. The right known as "*shufa*" in Arabic is recognized by all schools of Islamic law, but with variations.[29] The codification of pre-emption as statutory provision was the result of British rule. It was a known concept in common law that became more relevant when the British were putting more emphasis on building rail connections around their empire in the nineteenth-century.[30] There was a provision in Lands Clauses Consolidation Act of 1845 that obliged the railway companies to sell the unused lands to the previous possessors.[31] Also, common law

[22] Ibid. 184.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.
[30] AP Rose, 'Pre-Emption and Its Development in Palestine' [1981] 30(2) The International and Comparative Law Quarterly 297.
[31] Ibid.

always recognised pre-emption that arouse through contract.[32] After the Independence of Pakistan, the provisions were codified under section 24 of the Non-agricultural Tenancy Act of 1949 and section 96 of the State Acquisition and Tenancy Act of 1950. Section 24 governs the pre-emption of non-agricultural land, while section 96 governs the pre-emption of agricultural land. However, it is important to draw an analysis as to why and how the personal law has incorporated pre-emption.

4. REASONS IT BECAME PART OF PERSONAL LAW

As described in the preceding section, pre-emption was historically practiced by some Muslims in various area of the Indian subcontinent.[33] If there was no mention of it in local statutes or customs, Muslims followed it.[34] In the precedent *Audh Behari Singh v. Gajadhar Jaipuria,* it was determined that Muslims introduced the law of pre-emption to India.[35] There is no trace in Hindu law of such a notion.[36] As the new parts came into the reign of the Mughals the ambit of the practice of pre-emption kept growing and the people of other faiths were also subject to it.[37] As a result, the people of Hindu faith accepted the system for the sake of practical convenience.[38] It is still part of customs in Indian regions like Bihar and Gujarat which were once reigned by the Muslims.[39] Thus, it is evident that the application of pre-emption in personal law was primarily motivated by convenience. Again, the courts of the Indian subcontinent applied pre-emption to personal law on the basis of fairness, equity, and good conscience.

5. THE PHILOSOPHY AND SCOPE OF CONSTITUTIONAL RIGHT TO PROPERTY IN BANGLADESH

The right to property has been guaranteed in Article 42 of the Constitution of the People's Republic of Bangladesh.[40] Article 42 splits into two distinct guarantees. The opening clause entitles every citizen, subject to whatever restrictions the law imposes, to acquire, hold, transfer, or dispose of property, and bars compulsory acquisition, nationalisation, or requisition

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[32] Ibid.
[33] Malik (n 14).
[34] Ibid.
[35] *Audh Behari Singh v. Gajadhar Jaipuria (*1954) AIR 417 (SC).
[36] Ibid.
[37] iPleader (n 15).
[38] Ibid.
[39] Ibid.
[40] Constitution (n 1) .

except under legal authority.[41] The clause that follows attaches a condition to this guarantee. The condition is that acquisition or nationalisation is lawful only where the enabling statute itself builds in compensation. The compensation can be of a fixed sum or by laying down the method for calculating and paying it.[42] Taken as a whole, these two clauses fall short of an unqualified property guarantee. What they create instead is a right that exists only within the bounds the law sets for it, and that the State may lawfully extinguish so long as it acts under legal authority and provides a compensatory mechanism. This matters for the present study because pre-emption legislation draws its justification from exactly this "restrictions imposed by law" language, using it to override a purchaser's title in favour of a pre-emptor who is, notably, a private actor rather than the State. The constitutional philosophy behind this differs sharply from liberal traditions in which property is treated as a pre-political entitlement the State merely recognises. Bangladesh's Constitution instead folds property into a broader project of redistribution and welfare. It commits the country to a socialist order achieved by democratic means, and correspondingly recognises three modes of ownership: a) state, b) cooperative, and c) private. Among these the private ownership survives only to the extent the law permits.[43] Read in isolation, Article 42 misses this context and thus it needs to be understood alongside the Fundamental Principles of State Policy in Part II. The Fundamental Principles of State Policy State toward preventing wealth concentration and securing a more equitable distribution of resources. One consequence follows directly from this design. Because private property answers to the State's redistributive goals rather than standing apart from them, Bangladeshi courts have long treated the property right as among the more easily restricted fundamental rights. Article 47 reinforces this by insulating acquisition, nationalisation, and requisition legislation from Part III challenges altogether. Taken together, these provisions leave Article 42 nominally a fundamental right but one with comparatively little practical power to resist legislative encroachment.

Even so, courts have not treated Article 42 as a dead letter. In *A. Rouf Chowdhury v Bangladesh*, the High Court Division found that property held under a validly approved construction plan carried constitutional protection, and that the petitioners retained a

[41] Ibid. (n 1) art 42(1).
[42] Ibid. (n 1) art 42(2).
[43] Mohammad Towhidul Islam and Nurun Nahar Urmi, 'Realizing the Right to Property under the Constitution of Bangladesh: Myths and Realities' in Matthias Vanhullebusch, Steve Foster and Ben Stanford (eds), *The Asian Yearbook of Human Rights and Humanitarian Law*, vol 8 (Brill | Nijhoff 2025) ch 9.

constitutionally guaranteed right to hold and enjoy it despite later regulatory intervention.[44] *Chairman, Bangladesh Steel Mills Corporation v Masood Reza* likewise saw the Appellate Division treat the Article 42(2) compensation guarantee as generating real, enforceable claims once acquisition legislation comes into force, not as a merely aspirational promise.[45] That said, the courts' general posture has been to defer to statutory restriction: where a statute restricting or extinguishing property rights meets the "authority of law" requirement, the restriction is upheld, whether the party exercising the resulting power is the State or, as with pre-emption, a private party acting under statutory authorisation. It is rather a deference not any judicial resistance to property rights generally. And it opens the doctrinal space in which pre-emption statutes currently sit.

Two implications follow for this article. First, since Article 42(1) already builds in the possibility of legal restriction, a pre-emption statute cannot be said to breach Article 42 simply by limiting what a purchaser may do with acquired property. And the text itself contemplates that kind of limitation. The real constitutional question, then, is not whether restriction is permitted at all, but whether a particular restriction is reasonable and proportionate, judged against the due process and equal protection guarantees in Articles 27, 31, and 32, read together with Article 42. Second, because pre-emption works by substituting one private purchaser for another rather than by the State taking the property for itself, it may sit entirely outside the compensation guarantee in Article 42(2), which by its terms addresses only acquisition, nationalisation, or requisition carried out by or on behalf of the State. Whether pre-emption should instead be tested against the reasonableness standard implicit in Article 42(1) rather than the compensation standard in 42(2) is the question taken up in the subsequent parts of this research.

6. LEGAL CONCEPTS RELATED TO PRE-EMPTION

The pre-emption statute dates back to Roman law. In a purchase agreement, the Romans utilized their pre-emption right. In the Indian subcontinent, it was initially applied during the reign of the Mughal emperors, whose law had its origins in Islamic law. Constitution has ensured that Bangladeshi citizens have a fundamental right to own property. (1) "Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer, or

[44] *A Rouf Chowdhury v Bangladesh* (2000) 8 BLT (HCD) 277.
[45] *Chairman, Bangladesh Steel Mills Corporation v Md Masood Reza* (1978) 30 DLR (AD) 169.

otherwise dispose of property, and no property shall be compulsorily acquired, nationalized, or requisitioned except with the authority of law." (2) "A law enacted pursuant to paragraph (1) shall provide for the acquisition, nationalization, or requisition with compensation and shall either fix the amount of compensation or specify the principles on which and the manner in which the compensation is to be assessed and paid, but such a law shall not be challenged in court on the basis that any provision regarding such compensation is inadequate."[46] Thus, the sections of the Constitution pertaining to property rights provide citizens with the fundamental right to own, acquire, hold, transfer, or otherwise dispose of property. However, pre-emption right has restricted the application of the constitutional provision. As the constitution is the protector of people's rights and the highest law in Bangladesh, it appears from a comprehensive analysis of the various legal aspects and case laws that the law of pre-emption, in particular Shafi-I-Jar, exceeds the authority granted by Articles 28, 31, and 42 of the Constitution of Bangladesh. Regarding pre-emption, Bangladesh has three legal approaches: one under the Muslim Law and two under two current laws: section 24 of the Non-agricultural Tenancy Act of 1949 and section 96 of the State Acquisition and Tenancy Act of 1950. The pre-emption of non-agricultural land is covered by section 24, whereas agricultural land is covered by section 96. The pre-emption procedure will now be detailed.

6.1 Process of Pre-emption

As previously discussed, there are three sources of the pre-emption right in Bangladesh: a) Muslim law, b) local custom, and c) statutes. State Acquisition and Tenancy Act of 1950, Non-Agricultural Tenancy Act of 1949, Partition Act of 1893, Land Reforms Act of 2023, and Vested Property Return Act of 2001 are the statutory provision dealing with pre-emption.

Muslim Personal Law

In Bangladesh, Muslim law serves as the starting point for pre-emption. It is approved between two Muslims. It does not involve the other faiths. The right can be exercised in the following way of: a) *Shafi-e sharik* or a co-sharer in the property, b) Shafi-e khalit or a participant in immunities and appendages (a person with a right of easement, and c) *Shafi-e khalit* or a participant in immunities and appendages.

Now the right would only accrue if all the required actions are done within procedural time. These actions are sort of ceremonies and are known as the three requirements. Firstly, The

[46] Constitution (n 1).

Original Question (talab-e mowasibat): upon getting the notification regarding the property being sold, pre-emptor must ensure his intention to buy. There is no requirement of witness. Mere verbal expression is enough. But he cannot delay the process apprehending the original price to be lower than the asked one. Secondly, comes Second Demand (talab-e ishhad): Pre-emptor is mandated to submit his second demand as soon as possible. He is required to mention his previous demand in this. The task must be done in presence of the buyer. There must be two witness present and then the pre-emptor would accept him as the pre-emptor, and it is known as *talab-e taqrir*. However, when the pre-emptor is not personally present the second demand is to be made through agent or in letter. And in case of numerous purchasers, each of them is responsible to made demand. There is no requirement to enter into premise for demand. It is enough to reach near the abode and ask for pre-emption by touching walls to be enough for meeting the legal requirements. Thirdly, the third demand is actually an action of law. However, it does not become a must and is known as talab-e tamlik or talab-e khusumat (the demand of possession, or the demand where there is a dispute). The limitation period is one year from the buyer takes possession or the registration date if such property is incorporeal. Complete statement of claim must be presented to the court and the claim must be of the whole property. The position of pre-emptor is replaced with previous purchaser by the court and then possession all the profits of the land go to the pre-emptor.

State Acquisition and Tenancy Act 1950

The time limit to apply in the court is 4 months after getting the notification if it falls within section 89 or within 4 months of knowing about the sell. It is mandatory to make all the co-sharer a party of the application of pre-emption. The applicant must submit the whole value of the property with 10% compensation. If all the particulars are received appropriately then the court will notify the seller and all the other parties regarding the application and to be present at the fixed date. Also, the court evaluates the amount that was actually exchanged and any other particulars that has been paid during such transfer. The transferee is to only receive the money mentioned in the deed. If by two months period, the applicant or applicants fulfil all the requirements then they will be granted the pre-emption. However, one's right to claim pre-emption under Muslim law is not abrogated by the provision of SAT Act.

Partition act 1893

If the co-sharer is from a joint family, then an application can be made to the court regarding pre-emption of the property. If the subject matter is a dwelling house, then in case of a

nonfamily number acquiring the house would result in the pre-emption of the share of non-family member by a family member. The court would instruct regarding the valuation of such share and made such instructions as necessary. If there are multiple family members, then the court would sale to the one who offering a price that is higher to the court's price.

Restoration of Vested Properties Act 2001

Only two classes of people are allowed pre-emption under Restoration of Vested Properties Act of 2001. The first class is comprised of those people who are co-sharer of the property through inheritance. And the second class is comprised of people ii) If no such Co-shareholder exists, the person who has consistently leased the sold property for at least 10 years. If the sold property is agricultural land, the Land Reform Act of 2023 will apply.

Land Reforms Act, 2023

The Act gave the *Bargadar* right to pre-emption over the barga property. The owner of the property is required to notify the *Bargadar* his intention to sell the property. However, he is not obliged to do so if he is selling the property to his family. The *Bargadar* is obliged to express his intention within fifteen days. His intention must be communicated through writing. If *Bargadar* decides to buy the property, then he is entitled to negotiate the price and buy the land as per the price agreed upon between them. If the the owner is not communicated regarding the decision on *Bargadar*'s part within the limited time or if he is not at consent regarding the price of the land, then the owner is entitled sell the land to others. But the land cannot be sold below or the same price as was offered by the *Bargadar*. However, in case of ownership change the Barga contract and all its terms remains valid as before.

6.2 Comparison Between The Statutory Provisions

There are significant contrasts between the statutory provisions of pre-emption. SAT Act deals the pre-emption right of co-tenant and owner of nearby property, whereas co-sharer in a united property of dwelling is the subject matter of Partition Act. A person belonging to united family can exercise pre-emption against a stranger in the property under Partition Act. The intention of SAT act seems to maintain integrity and discouraging further divide of lands. Whereas Partition Act ensures the peaceful enjoyment of dwelling by an undivided family. On the other hand, the application is submitted actively by co-sharer in the court under SAT Act. Whereas it is an obligation of the owner to notify the *Bargadar* regarding Barga property in writing. So, law is made with such intentions to save the right of vulnerable *Bargadar*s in Barga property.

Again, SAT act requires the claimants to submit the money with the application whereas a *Bargadar* is not required to submit the money during his expression of interest. The limitation period is higher for co-sharer tenant under section 96 of SAT Act whereas the *Bargadar* gets only 15 working days to express their interest to buy. Co-sharer through inheritance excludes the right of the others in case of pre-emption but a *Bargadar* loses his right if the property is sold to the family of the owner. Although there is no right to second appeal under SAT Act but a *Bargadar* is entitled with second appeal under LRA. Again, the Restoration of Vested Properties Act of 2001 is applicable for the sale of lands by the governmental authority that has no owners. In this instance the individuals who are enjoying the property by way of rent for 10 years are entitled to pre-empt so. However, if the land in subject matter is an agricultural land then the Land Reform Act of 2023 (hereinafter 'LRA') and its regulations are applicable. The Restoration of Vested Properties Act does not incorporate the procedural rules and the rule is dependent upon other statutes like SAT Act or LRA. So, it is clear that the legal provision varies from each other in a wide range.

6.3 Case Analysis of Pre-Emption Laws

Numerous rulings highlight the unjust and negative characteristics of pre-emption. In *Younusco Textiles Ltd v. Jamuna Knitting 12 BLC 202*, the High Court Division ordered the pre-emptor to relinquish possession of the property to the pre-emptee. According to this ruling, Shafi-I-Jar is illegal, while the appeals court disagrees with the decision.[47] Pre-emption is the right to buy property before to others, depending on proximity. The Constitution of the People's Republic of Bangladesh provides the right to land as a fundamental right under the form of "right to property." In *Haji Tajamal Ali vs. Abdus Sattar 34 DLR (AD) 217*, the pre-emption of all land comprising a single compact block was again upheld. Nonetheless, it looks to be a technique that might cause economic hardship for certain people and violate the equal right to buy property of all neighboring landowners.[48] In *Raji Wahab Ali v. Kadam Ali, 14 DLR 204*, it was decided that infected landowners were required to join co-sharers in a pre-emption lawsuit.[49] Co-sharers were not needed to invite or inform infected landowners of the in-situ pre-emption. Thus, it seems that the present legislation is inconsistent. In addition, it was established in *Abdul Khalek v. Jadav Chandra Mali 20 DLR 562* that pre-emption cannot be invoked inside

[47] *Younusco Textiles Ltd v Jamuna Knitting* 12 BLC 202 (HCD).
[48] *Haji Tajamal Ali vs Abdus Sattar* 34 DLR 217 (AD).
[49] *Raji Wahab Ali vs Kadam Ali* 14 DLR 204.

a municipality.[50] There seems to be bias between rural and urban land. In *Abdul Hashem v. Faridunnesa Bibi et al*., it was established that minor procedural faults are to be dismissed if a party is successful in demonstrating a pre-emption defense; nonetheless, such a notion appears problematic for the maintenance of justice.[51] Therefore, the total pre-emption apparatus seems problematic from numerous aspects. However, choices in India, a nation with a similar socioeconomic base, are dominated by the same challenges. It was found in *Govind Dayal v. Inayatullah (1885), 7 AIR 779*, that "the law of pre-emption was not a component of Muslim personal law." In *Digambar Singh v. Ahmad (1914) PC 14*, it was ruled that "before to the establishment of Moghul Rule in India, the law of pre-emption did not exist."[52] The law of pre-emption was established and made applicable to all communities for the first-time during Moghul rule. The pre-emption law violates Article 19(1)(f) of the Indian Constitution, which safeguards the basic freedom to acquire and dispose of property. According to Article 19(1)(f) of the Indian Constitution, all Indian citizens enjoy the basic right to acquire, own, and dispose of property. In *Bhau Ram v. Baij Nath Singh (1962)*, the Supreme Court found that vicinage pre-emption, which limits the freedom to dispose of land and is not in the public interest, placed an unjustified restriction.[53] In addition, Article 15 of the Indian Constitution prohibits the segregation of society based on caste and religion. Article 42(1) of the Bangladeshi Constitution has a similar clause; hence pre-emption should be found unconstitutional in Bangladesh using the same argument. Under the new section 96 of the SAT Act, a co-tenant of a property obtained via inheritance is the only one eligible to apply; nonetheless, this provision discriminates against co-tenants of holdings acquired through purchase. The Bangladeshi constitution says in Article 42 that limitations must be fair. This violates the requisite. Again, in *Atma Prakash v. State of Haryana (1986)*, it was determined that pre-emption on the basis of consanguinity exceeded its power. The court ruled that the historical arguments for Pre-emption, such as maintaining the integrity of rural culture, the unity of family life, and the agnatic theory of succession, no longer apply.[54] The same holds true for the present socioeconomic climate in Bangladesh. Nonetheless, case law and publications sustain the existing structure. According to the *Hedaya*, Muslims and non-Muslims are on an equal footing in all cases concerning the pre-emption principle since they are equally affected by its

[50] *Abdul Khalek vs Jadav Chandra Mali* 20 DLR 562.
[51] *Govind Dayal (n 7)*.
[52] *Digambar Singh v. Ahmad* (1914) PC 14.
[53] *Bhau Ram v. Baij Nath Singh* (1962) SCR 358 (SC).
[54] *Atma Prakash v. State of Haryana* (1986) SCR 399 (SC).

underlying concepts and concerned with its operation. As a consequence, pre-emption became an acceptable practice among Hindus. Mahmood J. defined pre-emption in the case of *Govind Dayal v. Inaytullah (1885)* as "a right which the owner of certain immovable property possesses, as such, for the quiet enjoyment of that immovable property, to obtain, in substitution for the buyer, proprietary possession of certain other immovable property, not his own, on the same terms under which such latter immovable property is sold to another person."[55] According to *Syed Sayeeduddin Ahmed v. Haji Inunus Mia*, the goal of pre-emption in Islamic law is to avoid the unease that may result from the admission of an unpleasant stranger as a business partner or near neighbor. It is based on the notion of utility and tries to avoid potential discomfort from an unpleasant neighbor.[56] Consequently, it is obvious that the logic of pre-emption is a contentious subject, since there are several texts and case laws both in support of and against the current pre-emption mechanism**.**

7. ANALYSIS OF THE LAWS AND PRECEDENTS

The SAT Act was the first to include such protections, notwithstanding the presence of pre-emption rights in other acts. Because the SAT Act provides explicit, descriptive, and procedural language about pre-emption. In relation to sections 88 and 90, section 96 outlines the pre-emption right. The Bengal Tenancy Act of 1885 first substantially integrated the pre-emption right. The procedure under SAT Act Section 96 resembles a lawsuit. Upon successful application to the court, the party receives all the entitlement regarding the property and such determination by the court is final. But the other statute is unclear about the manner and procedures of pre-emption. The Partition Act recognizes the authority to pre-empt by a co-occupant in a home. The LRA enables *Bargadars* to be able to purchase the land in the event of sell before other buyers. And if the owner is missing then the co-sharer are entitled to apply for pre-emption under the Restoration of Vested Properties Act if it is being sold by the governmental authority. Again, to the person who had leased the sold property for at least 10 years previous to its sale or lease by a government organization with no owner. The previous reasoning leads us to infer that legislation other than the State Acquisition and Tenancy Act provide the pre-emption right solely to particular persons, while the State Acquisition and Tenancy Act gives both the pre-emption right and the procedures for exercising it. This part is

[55] *Govind Dayal (n 7)*.
[56] *Syed Sayeeduddin Ahmed v. Haji Inunus Mia* (1950) 12 DLR 93.

connected to Sections 89 and 90. Part 96 of the SAT Act details the time limit as well as who is eligible and how to apply for this benefit.

Now, in the part that follows, the basic problems with the current procedure will be highlighted.

8. PROBLEMS IDENTIFIED

Upon close inspection certain problems can be found in the existing system. The first problem that can be identified is that pre-emption seems like a mechanism that curtails the owner's convenience regarding selecting buyer.[57] There may be situations in which the owner's relationship with the co-owner or nearby landowner is strained. But he is bound to sell to such owner because of pre-emption. It can be regarded as a psychological coercion on the seller. Secondly, there are scenarios where the co-sharer or adjacent owner files false claim of pre-emption just to make the seller suffer. Furthermore, the provision of asking the *Bargadar* in writing is mostly a formal one. Till date in Bangladesh most of the *Bargadar* are illiterate.[58]In case of Agricultural land under SAT Act, only co-sharer by tenant has pre-emption right. But in NAT Act co-sharer tenant by purchase, co-sharer tenant by succession and adjacent property holder, all have a right to pre-emption. So, there seems to be a discrimination in this regard. So, there are possibilities of misusing the process. Incidents of force denial to purchase from *Bargadar*s' part are very common in Bangladesh. As the landowners are usually politically powerful and affluent persons, they easily disregard the bargardars' consent. Again, the time limit is 2 months for agricultural land but 4 months for non-agricultural land. This also seems discriminatory for the pre-emptor of agricultural land. Furthermore, the 15 days' time limitation for *Bargadar* is not just. Although, the 15 days limit is put excluding the weekly holidays, yet it is only 19 days limit in combined. As *Bargadar*s are generally of peasant class, they might not have the money to buy the property ready. So, taking such a big decision need more time for their part. Moreover, one needs to buy the entire block for pre-emption. But it is an approach that often causes economic hardship for some persons and vitiate equal right to achieve land of all the adjacent landowners. Again, the existing pre-emption mechanism requires the contagious landowners to make the co-sharers party of pre-emption suit. But co-sharers are not required to make the contagious landowners party or to notify them of the in-situ pre-emption. So, the existing system is not ensuring equal rights for all. Most importantly,

[57] Bhau Ram (n 53).

[58] Mohammad Asadullah and Sanzidur Rahman, 'Farm Productivity and Efficiency in Rural Bangladesh: The Role of Education Revisited' [2006] 41(1) Applied Economics 21.

in *Bhau Ram v. Baij Nath Singh (1962)* case Supreme Court of India has pointed out if pre-emption is still a mechanism that ensures quiet and peaceful enjoyment in the changed socio-economic situation of the country or if it bears more trouble than good.[59] The similar question can be raised in Bangladesh. The fact that pre-emption is not there in certain metropolitan areas is of certain significance here. Because of economic development and societal changes, the difference between village and towns are rapidly decreasing in Bangladesh. Now the Bangladeshi villages are more like small towns.[60] The demands of the people of such villages have changed. The villages are now divided into 2 parts; in one part the people live in their houses and the other part is where there are lands for cultivation. But in *Chittaranjan Saha vs Md Mortaa Mollah and Ors* it was held that in case of village homestead property, the property will be counted as agricultural land.[61] But in metropolitan areas, such properties are excluded from the ambit of pre-emption as non-agricultural property. That's why the existing law that has no such division regarding the current nature of village land is problematic. As a result, the age-old provision of pre-emption is causing more trouble than good in the Bangladeshi society, Now, we shall discuss some ways to make the mechanism better.

9. RECOMMENDATIONS

As pre-emption is an important matter in the day-to-day life of the people of the land, the identified problems must be solved by taking certain measures. One of such measures might be, empowering the seller with the power to select buyer among a list of co-sharers rather than giving all the co-sharer chance to buy the land. It would further prevent any future divisions of land regarding ownership. Again, it would ensure the seller's dignity by not coercing him to sell to a person with whom his relationship is the opposite of friendship. Furthermore, punishment should be introduced for any false claim regarding pre-emption. Such punishment could be of the nature of punitive damages to the seller as well as short term imprisonment. Also, the provision that requires the *Bargadar* the consent in writing must introduce some sort of safeguard to protect the illiterate *Bargadars*. Presence of the government official could be made mandatory in such situations so that it could be ensured that such consent not to pre-empt was given free of any influence. In case of Agricultural land under SAT Act, only co-sharer by

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[59] Bhau Ram (n 53).

[60] Shihab Sarkar, 'The changing face of Bangladesh villages' (*The Financial Express*, 22 February 2018) <https://thefinancialexpress.com.bd/views/the-changing-face-of-bangladesh-villages-1519312249> accessed 26 March 2026.

[61] *Chittaranjan Saha vs Md Mortaa Mollah and Ors* 13 ADC 832.

tenant has pre-emption right but NAT Act enables co-sharer tenant by purchase, co-sharer tenant by succession and adjacent property holder with a right to pre-emption. This discrimination must be removed through empowering other types of co-sharers as well as adjacent tenant giving right to pre-emption for agricultural land. Again, the time limit discrimination between agricultural land pre-emption and non-agricultural land pre-emption must be removed. And the general time limit could be made 4 months for all sorts of land. The time limit regarding the *Bargadar*s' right to pre-emption is also inadequate. Where the SAT Act gives the co-sharer gives 4 months, the LRA gives the *Bargadar*s only 19 days including the holidays. This time should be extended in a reasonable manner and the *Bargadar* and the co-sharers should be brought to equal footing. Moreover, equal instance must be taken regarding making the seller obliged to notify the contagious landowner also regarding pre-emption and such contagious landowner should be awarded equal right to pre-emption so that equity in ensured regarding mutual rights. The law must be amended considering the changed societal reality of the country. Pre-emption right should be further limited only to farmlands and all the other parts of villages must be out of the ambit of this mechanism. Especially village homestead properties should be excluded from the ambit of pre-emption. Again, the legislations related to pre-emption are incorporated in multiple laws. A single law incorporating all the legal provisions related to pre-emption could make the mechanism more efficient by providing the general public, lawyers and judges with a time saving source to look for the law.

10.CONCLUSION

Pre-emption is a concept intended to minimize the division of land to increase productivity and economic development. But the existing system of pre-emption needs revision from the part of legislature as well as judiciary of Bangladesh. It is true that no one approach can be regarded as the approach for any legal development. But it is necessary to provide logical inputs regarding any certain subject matter so that the criticism and learning of the provided input can further the path of some major development. As the society of Bangladesh is rapidly changing the law needs to be changed too following social demand but maintaining the logic and reasonableness to provide justice. We hope that the legislature and judiciary would be able to apprehend the problems identified in this research and would be able to find effective solutions from the pathways presented here. And effective legal reforms would be introduced by them to make the pre-emption mechanism a better and efficient one to lessen the existing burden of cases upon judiciary as well to minimize the suffering of the general public.