

A Legal Analysis of the Enemy Property Act of Bangladesh

Samir Kalra, Esq. and Arvind Chandrakantan, M.D.

Abstract:

The designation of minority owned land as “Enemy Property” under the provisions of the Enemy Property Act (EPA), sanctioned a vast and unparalleled appropriation of land in Bangladesh, and the erstwhile East Pakistan. Initially instituted by the Government of Pakistan in 1965, the EPA encompassed a series of discriminatory property laws targeting primarily Hindus and tribal communities in the eastern portion of the country (Bangladesh). After achieving independence from Pakistan in 1971, the newly formed Republic of Bangladesh retained the inequitable provisions of the EPA through the Vested Property Act (VPA). This paper will trace the evolution of the EPA and its subsequent versions, and provide an in-depth analysis of the Act in the context of international jurisprudence and human rights law.

I. Introduction

In 1965, following the outbreak of war between India and Pakistan, the military government of Pakistan promulgated one of history’s most racist and discriminatory laws, the Enemy Property Act (EPA). Years later, the United State Commission on International Religious Freedom (USCIRF), a quasi-governmental body responsible for promoting religious freedom throughout the world, described the EPA as “one of Pakistan’s key instruments of anti-Hindu discrimination,” which was used “selectively to seize Hindu-owned property after the 1965 Indo-Pakistan War...”¹ Bangladesh, the successor state to Pakistan’s East Bengal Province, adopted the EPA after gaining independence in 1971, and each successive administration has continued this repressive law in one form or the other, often using it to “reward well-connected members of the Muslim majority community.”²

By labeling Hindus and other minorities as “enemies” of the state in the erstwhile East Pakistan and Bangladesh, the EPA and its subsequent versions, not only led to a massive appropriation of Hindu owned land, but also precipitated a drastic decline in the Hindu population. According to USCIRF, “Although Hindus are Bangladesh’s largest religious minority, their proportion of the population is declining. At the time of the partition of British India in 1947, Hindus accounted for approximately a quarter of the population of what is now Bangladesh. Yet, each subsequent census since 1971, when Bangladesh gained independence, has recorded a drop in the proportion of the Hindu population.”³

Therefore, the EPA, along with its later adaptations, has systematically violated the fundamental human rights of Hindu minorities in Pakistan and Bangladesh in contravention of established human rights treaties and conventions. Furthermore, the actions of both the Governments of Pakistan and Bangladesh have violated clearly established principles and norms of international law universally recognized by all civilized nations.

¹ Bangladesh Policy Brief, Fall 2006, United State Commission on International Religious Freedom, http://www.uscirf.gov/images/stories/PDFs/PolicyFocus_Bangladesh_Fall2006.pdf.

² *Ibid.*

³ *Ibid.*

II. Antecedents of the Enemy Property Act

The EPA had its roots in the partition of the Indian sub-continent in 1947 and the associated communal violence. With the creation of Pakistan, millions of Hindu refugees fled from both West Pakistan (comprising Punjab, North West Frontier Province, Sindh, and Balochistan) and East Pakistan, or present day Bangladesh. Following the flight of more than two million Hindus from East Pakistan (also known as East Bengal), the central government of Pakistan enacted a number of discriminatory laws aimed at appropriating properties owned by Hindus and other religious minorities.

Implemented in 1948, the East Bengal (Emergency) Requisition of Property Act (Act XIII of 1948) empowered the government to “acquire, either on a temporary or permanent basis, any property it considered needful for the administration of the state.”⁴ Although its stated purpose was to obtain land in order to accommodate government offices and public servants for the new East Bengal provincial administration, it was in fact used as an instrument to confiscate properties owned by religious minorities, especially Hindus.⁵

This Act later evolved into the East Bengal Evacuees (Administration of Immovable Property) Act in 1951. The East Bengal Evacuees Act provided for the acquisition of land owned by “evacuees,” or Hindus who left East Bengal for India due to communal violence or fear thereof. The properties they left behind were considered “abandoned,” and consequently seized by the Government for its own use, without dispensing any compensation to the “evacuees” or their families.

The East Bengal Evacuee Act further created the Evacuee Property Management Committee and empowered it to recover the property of an “evacuee” on the application of such “evacuee” or on the Committee’s own “motion.” This effectively gave the Committee broad powers and discretion to confiscate “evacuee” land without any oversight.⁶ Moreover, the Judiciary and court system were barred from examining any orders or actions completed under the Act, thereby eliminating the ability of an “evacuee,” their heir, or family member to legally challenge a seizure. Significantly, there were also several reported cases of properties owned by Hindu residents still living in East Bengal that were classified as “evacuee” properties and illegally seized.⁷

Subsequently, in 1964, after communal disturbances occurred between Hindus and Muslims, the Government passed the East Pakistan Disturbed Persons Rehabilitation Ordinance. While the Ordinance was proclaimed as a means to provide rehabilitation to those persons impacted by the communal riots, it essentially prohibited Hindus leaving East Bengal from transferring or selling their property without the prior approval of government authorities. And since most minorities had little access to competent government authorities, the Ordinance violated the rights of Hindus over the title in their property and the ability to freely sell or transfer their land.⁸ As a result, these Hindus were forced to abandon their property without any form of reparations.⁹

⁴ Amena A. Mohsin, “Religion, Politics and Security: The Case of Bangladesh,” *Religious Radicalism and Security in South Asia*, ch 20, Asia-Pacific Center for Security Studies, <http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismAndSecurityinSouthAsia/h20.pdf>.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

Collectively, the aforementioned laws began a dangerous process of government sanctioned land encroachment, which was accelerated in 1965 with the enactment of the EPA, and later continued in Bangladesh through the Vested Property Act.

III. Enemy Property Act of 1965

After the outbreak of war between India and Pakistan in 1965, Pakistan's military government imposed a state of emergency under the Defense of Pakistan Ordinance. The Ordinance, which authorized the use of measures to "ensure the security, public safety, interest and defense of the state," gave expansive and wide-ranging powers to the country's military rulers.¹⁰ Simultaneously, the military regime implemented the Defense of Pakistan Rules, enabling the Governor of East Pakistan to promulgate the Enemy Property (Custody and Registration) Order II on December 3, 1965.¹¹

The Enemy Property Order, commonly known as the Enemy Property Act, comprised several key components, including proclaiming India as an enemy state. Specifically, the Act declared that "all interests of the enemy (i.e., the nationals/citizens of India, those residing in the territory occupied/captured/controlled by India) in firms and companies, as well as in the lands and buildings situated in Pakistan, were to be taken over by the custodian of Enemy Property for control or management," and "the benefits arising out of trade, business, or lands and buildings were not to go to the enemy, so as to not affect the security of the state of Pakistan or impair its defense in any manner."¹²

In practice, however, the Government designated Hindus as "enemies" of the state by characterizing them as supporters of India during the War, making Hindu owned properties the clear target of the Order.¹³ On the other hand, Muslims leaving for India or those Muslims residing in Pakistan that were Indian citizens were not considered "enemies" for purposes of the EPA, thus reinforcing the Order's prejudicial intent. In addition, a circular disseminated by the Government indicated that if properties owned by Muslims were seized, they would be returned to them or their legal heirs upon their request. Conversely, any minority whose land was classified as "enemy property" would lose any legal right to ownership forever.¹⁴

Accordingly, the EPA, was used as an expedient mechanism to appropriate land belonging to Hindus that had temporarily fled to India in fear of their lives, or those that never left East Bengal, but were accused of

¹⁰ Amena A. Mohsin, "Religion, Politics and Security: The Case of Bangladesh," Religious Radicalism and Security in South Asia, ch 20, Asia-Pacific Center for Security Studies, <http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismAndSecurityinSouthAsiaCh20.pdf>.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Tariq Mahbub Khan, "Revitalization of Panam Nagar: Social Displacement and the Minority Issue," The 4th International Conference of the International Forum on Urbanism (IFoU), Amsterdam, 2009, http://newurbanquestion.ifou.org/proceedings/3%20The%20Urbanized%20Society/poster%20papers/B010_Khan_Tariq%20Mahbub_Revitalization%20of%20Panam%20Nagar.pdf.

¹⁴ Amena A. Mohsin, "Religion, Politics and Security: The Case of Bangladesh," Religious Radicalism and Security in South Asia, ch 20, Asia-Pacific Center for Security Studies, <http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismAndSecurityinSouthAsiaCh20.pdf>.

supporting India during the War and labeled as “enemies” of Pakistan.¹⁵ Therefore, the language, intent, and application of the Act were discriminatory in nature and disproportionately impacted Hindus.

Although the Indo-Pakistan War lasted only seventeen days, the Order persisted until 1969 when its inequitable provisions were continued through the Enemy Property (Continuance of Emergency Provision) Ordinance 1969 (Ordinance No. I of 1969). Consequently, the EPA remained in effect through the Bangladesh War of Independence in 1971, and was subsequently adopted by the new Government of Bangladesh as the Vested Property Act.¹⁶

IV. Vested Property Act of 1974

Bangladesh’s independence from Pakistan in 1971 was the culmination of several longstanding factors, including linguistic and cultural repression, economic marginalization, political disenfranchisement, and a quest for greater provincial autonomy. Despite constituting the majority of the population of the erstwhile Pakistan, ethnic Bengalis were dominated by the West Pakistani military and civilian elite, who sought to create a cohesive polity unified by Islam and the Urdu language. In the process, they suppressed the Bengali culture and language, which was viewed as closely linked to Hinduism and therefore, a threat to their conception of an Islamic nation. West Pakistani cultural imperialism also resulted in the economic neglect of East Pakistan and political oppression of the Bengali people.

The ensuing independence movement and rebellion in 1971 was met with a brutal genocidal campaign of violence by the Pakistani army directed against East Bengali civilians, particularly Hindus, who were regarded as a “fifth column” for India. While Bangladesh ultimately achieved independence with the assistance of India, the humanitarian impact on Hindus was calamitous. According to a statement from former US Senator Edward Kennedy on November 1, 1971:

Field reports to the US Government, countless eye-witnesses, journalistic accounts, reports of International agencies such as the World Bank and additional information available to the subcommittee document the reign of terror which grips East Bengal (East Pakistan). Hardest hit have been members of the Hindu community who have been robbed of their lands and shops, systematically slaughtered, and in some cases, painted with yellow patches marked ‘H’. All of this has been officially sanctioned, ordered and implemented under martial law from Islamabad.¹⁷

After independence, however, initial optimism that Bangladesh would pursue a secular and democratic path quickly subsided, as it gradually and steadily Islamicized by incorporating numerous Islamic norms into its institutional and legal framework. Moreover, it continued several discriminatory laws from the previous Pakistani Government, most notably the EPA, which was preserved by the Government of Bangladesh through the Laws Continuance Enforcement Order 1971.

¹⁵Tariq Mahbub Khan, “Revitalization of Panam Nagar: Social Displacement and the Minority Issue,” The 4th International Conference of the International Forum on Urbanism (IFoU), Amsterdam, 2009, http://newurbanquestion.ifou.org/proceedings/3%20The%20Urbanized%20Society/poster%20papers/B010_Khan_Tariq%20Mahbub_Revitalization%20of%20Panam%20Nagar.pdf.

¹⁶Satbir Singh Bedi, “Bangladesh Enemy Property Act: 1965 - 2010: How Long Must We Bear This Burden?” November 17, 2010, Citizen’s News, Views and Beyond, <http://cplash.com/post/Bangladesh-Enemy-Property-Act-1965-2010-How-long-must-we-bear-this-burden642.html>.

¹⁷Bertil Lintner, The Plights of Ethnic and Religious Minorities and the Rise of Islamic Extremism in Bangladesh, , February 2, 2003, Asia Pacific Media Services, http://www.asiapacificms.com/papers/pdf/ethnic_and_religious_minorities_bangladesh.pdf.

The following year, the government passed the Vesting of Property and Assets Order, 1972 (Order No. 29), whereby the Government of Bangladesh vested itself with the “enemy” properties previously seized since the 1965 War. The Order further stipulated that its provisions shall not be subjected to judicial review, preventing challenges to the Order’s legality in any court of law in Bangladesh.¹⁸ The Order also sought to combine the “abandoned” property of those ethnic Biharis who resided in Bangladesh prior to the 1971 War of Independence and East Bengali Hindus who had left for India, into one category of “enemy” property. The “vast majority” of land appropriated under the Order, however, was owned by Hindus.¹⁹

Subsequently, in 1974, the government enacted the Vested Property Act (VPA), officially known as the Vested and Non-resident Property (Administration) Act (Act XLVI of 1974), “an Act to provide for the Administration of certain properties vested in the Government or belonging to non-residents.”²⁰ The VPA specifically vested “enemy” properties in the Government of Bangladesh, and thus became the formal successor to the EPA. Significantly, since Hindus were the “enemy” for purposes of the EPA, this new Act implied that Hindus would remain the primary target of such legislation, and it was accordingly used by the government to continue appropriating Hindu owned land.²¹ In many instances, when a person left the country for any reason, whether temporarily or permanently, they were designated as an “enemy” under the VPA and their property was “vested” or seized by the state. And frequently, when one Hindu member of a family left the country, the family’s entire property was confiscated.²²

The VPA also created Management Committees throughout the country to take control of and administer “vested” properties in their respective jurisdictions, and empowered them with “all the powers, rights and liabilities of the Government in respect of such property...”²³ Once a non-resident’s property had vested in the Committee, his/her rights over the property ceased to exist, notwithstanding permission from the Committee to sell or transfer the land. Permission was not granted, however, unless a person paid to the Committee “all sums due in respect of such property.”²⁴ In effect, the Act inexplicably required a “non-resident” person to seek permission to control his own property, and obligated him to pay additional sums to the Committee in order to obtain the right to transfer his own land.

Under the VPA, a “non-resident” was defined as one “who is not, or has ceased to be, a permanent resident of the territory now comprising Bangladesh or who has acquired a foreign nationality...”²⁵ In light of the large number of Hindus who fled violence in the former East Pakistan and Bangladesh, the definition of “non-resident” was clearly directed towards Hindus.

¹⁸ Gobinda Chandra Mandal, “Rights of the Minorities: The Case of Bangladesh,” Academia.edu, http://univdhaka.academia.edu/gmandal/Papers/867908/Rights_of_the_Minorities_The_Case_of_Bangladesh.

¹⁹ Naeem Mohaimen, “Our Politics of Dispossession,” February 2009., Forum, A Monthly Publication of the Daily Star, <http://www.thedailystar.net/forum/2009/february/our.htm>.

²⁰ Black Laws of Bangladesh: Vested Property Act, 1974, Drishtipat, Voice for Human Rights in Bangladesh, <http://www.drishtipat.org/HRLaw/vestedprop.htm>.

²¹ Eugenia Valenzuela, LL.M., Persecution of Minorities and the Situation of Women in Bangladesh, Global Human rights Defence, http://ghrd.org/FilesPage/2679/persecutionofminorities_bangladesh.pdf; Bertil Lintner, The Plights of Ethnic and Religious Minorities and the Rise of Islamic Extremism in Bangladesh, , February 2, 2003, Asia Pacific Media Services, http://www.asiapacificms.com/papers/pdf/ethnic_and_religious_minorities_bangladesh.pdf.

²² Tariq Mahbub Khan, “Revitalization of Panam Nagar: Social Displacement and the Minority Issue,” The 4th International Conference of the International Forum on Urbanism (IFoU), Amsterdam, 2009, http://newurbanguestion.ifou.org/proceedings/3%20The%20Urbanized%20Society/poster%20papers/B010_Khan_Tariq%20Mahbub_Revitalization%20of%20Panam%20Nagar.pdf.

²³ Black Laws of Bangladesh: Vested Property Act, 1974, Drishtipat, Voice for Human Rights in Bangladesh, <http://www.drishtipat.org/HRLaw/vestedprop.htm>.

²⁴ *Ibid.*

²⁵ *Ibid.*

The Act further enabled the Committees to enforce, through the Sub-Divisional Magistrate or any other authorized Officer, the surrender of non-resident or vested property “found to be in the unlawful possession of any persons.”²⁶ It failed, however, to define what constituted unlawful possession, and therefore allowed the Committees to dispossess, through force if necessary, any Hindu, his legal heir, or family member who continued to reside on the property in question.²⁷

Beyond the VPA’s structural inequalities, confiscation of minority owned land frequently involved the collusion of local government officials and powerful landowners, who seized land and then filed claims indicating that the property was vested in the state.²⁸ Several government officials also personally benefited from the VPA by taking over lands previously owned by Hindus. For instance, in May 1977, the Ministry of Lands issued a circular giving local government officials, known as Tehsildars, the power to arbitrarily designate land as “enemy property.” Since the process rewarded Tehsildars for merely adding properties to the list, they were encouraged to recover as many Hindu owned properties as possible, with little regard for the fate of the evicted and landless Hindu families.²⁹

Confirming this system of appropriation in a report to the United Nations General Assembly in 2000, the United Nations Special Reporter on Religious Intolerance, Abdelfattah Amor noted that, “... groups and individuals continue to appropriate property belonging to the Hindu community and indeed to do so with the complicity of the authorities and of influential people. In a significant number of cases, Hindus are dispossessed of their property, even when they are the legal owners of such assets”³⁰

V. Restoration of Vested Property Act, 2001

The VPA remained operative until 2001, when the Awami League (a political party traditionally supported by minorities in Bangladesh) led government, declared that land previously confiscated by the government as “vested” property should be returned to their original Hindu owners, and passed the Restoration of Vested Property Act, 2001 (Act No. 16 of 2001).³¹

The new legislation, however, contained much of the same discriminatory language of the VPA and created several burdensome requirements to recovering property under the Act. For instance, it only applied to land that was considered “enemy” or “vested” prior to February 1969, and consequently disregarded large amounts of Hindu owned property seized and vested in the government after that date. Moreover, it required the land to be presently under the government’s control or possession, thereby excluding any properties that were subsequently sold or transferred by the government.³² Additionally, if the “vested” property was actively used by the government for its own purposes or leased out to an

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ “Rights of Religious Minorities,” Ain o Salish Kendra (ASK), A Legal Aid and Human Rights Organization, <http://www.askbd.org/Hr06/Minorities.htm>.

²⁹ Rabindranath Trivedi, “The legacy of enemy turned vested property act,” Bangladesh, May 29, 2007, Asian Tribune, <http://www.asiantribune.com/index.php?q=node/5925>.

³⁰ Eugenia Valenzuela, LL.M., Persecution of Minorities and the Situation of Women in Bangladesh, Global Human rights Defence, http://ghrd.org/FilesPage/2679/persecutionofminorities_bangladesh.pdf

³¹ Rabindranath Trivedi, “The legacy of enemy turned vested property act,” Bangladesh, May 29, 2007, Asian Tribune, <http://www.asiantribune.com/index.php?q=node/5925>.

³² Amena A. Mohsin, “Religion, Politics and Security: The Case of Bangladesh,” Religious Radicalism and Security in South Asia, ch 20, Asia-Pacific Center for Security Studies, <http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismAndSecurityinSouthAsiaCh20.pdf>.

authorized person or agency, it would not be eligible for return under the Act and could not be challenged through the court system.³³

The Restoration Act also required the original owner or heir of the land to prove their “unbroken and permanent citizenship” and “continued residence in Bangladesh.”³⁴ Similarly, another condition obligated the claimant to “submit a claim within 90 days of publication of a list of returnable properties,” in order to reclaim seized property.³⁵ These two provisions effectively disqualified countless Hindus who had temporarily or permanently been forced to flee communal violence in the country.

The language of the statute further created a mechanism for special tribunals throughout the country, with a directive to hear claims and adjudicate cases within 180 days of being filed. Any property that was not brought before the tribunals or that could not be validated, however, would automatically revert back to the government. Moreover, there was no provision to compensate those Hindus who lost property, but were unable to file claims under the Act. The tribunal’s mandate, therefore, was extremely limited in scope and denied due process rights to victims that were unable to authenticate ownership in the manner prescribed, or whose properties were not included in the “vested” property list.³⁶

The deeply flawed Restoration Act was further diluted under the Bangladesh Nationalist Party (BNP) led coalition government in 2002. The BNP and its Islamist allies passed an amendment to the Restoration Act, allowing the government “unlimited time” to publish the “vested” property lists and enforce the return of properties.³⁷

Since the amendment in 2002, successive governments have failed to initiate the publication of detailed “vested” property lists, rendering the Restoration Act meaningless and impeding the ability of victimized Hindus to access any real form of justice.³⁸ In addition, the enactment of the Restoration Act has done little to alleviate the suffering of the Hindu community, which continues to be subjected to ongoing land encroachments by government officials from across the political spectrum.³⁹

VI. Quantitative Impact of the EPA/VPA on the Hindu Community

Professor Abul Barkat of the University of Dhaka conducted a seminal study analyzing the impact of the EPA/VPA on the Hindu community since the inception of the discriminatory laws. The study quantified the loss of both property and population, and specifically found that 1.2 million Hindu families, or 44% of all Hindu households, were affected by the EPA/VPA. Furthermore, it revealed that Hindus were displaced of more than 2 million acres of land, which encompassed 5.5% of Bangladesh’s total land

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Rabindranath Trivedi, “The legacy of enemy turned vested property act,” Bangladesh, May 29, 2007, Asian Tribune, <http://www.asiantribune.com/index.php?q=node/5925>.

³⁸ *Ibid.*

³⁹ Amena A. Mohsin, “Religion, Politics and Security: The Case of Bangladesh,” Religious Radicalism and Security in South Asia, ch 20, Asia-Pacific Center for Security Studies, <http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismAndSecurityinSouthAsiah20.pdf>.

mass, and 45% of all land owned by Hindus in the country.⁴⁰ Similarly, according to the US State Department, "Approximately 2.5 million acres of land was seized from Hindus and almost all of the 10 million Hindus in the country were affected."⁴¹

Professor Barkat's findings also demonstrated that 53% of the incidents under the EPA and 74% of the total land loss occurred between 1965 and 1971 under the auspices of Pakistan's military rulers. The rate of land appropriation initially decreased between 1972 and 1975, following Bangladesh's independence, but increased again after 1975.⁴²

In addition, Barkat examined the pattern and type of land deprivation experienced by the Hindu minority and classified it into four categories: "forced occupation, leasing-out by the government of the said property to third party, nominal occupation but legal alienation and the extreme feeling of insecurity regarding loss of property."⁴³

After the Restoration of Vested Property Act passed in 2001, research has further revealed that new incidents of land encroachments have continued unabated, and were especially high between 2001 and 2006 when the BNP was in power. For instance, since the VPA was abolished in 2001, nearly 200,000 Hindu families have been deprived of approximately 122,000 bighas of land (1 bigha is the equivalent of 1600 square yards). And 8% of the total incidents of land encroachment took place between 2001 and 2006 after the Restoration Act was enacted.⁴⁴

The EPA/VPA's socio-economic impact on Hindus, however, transcends the pure loss of land, and has resulted in the widespread economic marginalization and disenfranchisement of the community. It has also led to several mass migrations from Bangladesh and an immense loss in total population. For instance, in 1961, the Hindu population of the former East Pakistan was 18.4%, while Hindus currently comprise only 9.1% of Bangladesh's population.⁴⁵ If this current trend persists, the future survival of Hindus in Bangladesh is questionable.

VII. Application of International Law to the EPA/VPA

The intent, language, and application of the property laws encompassed by the Enemy Property and Vested Property Acts were in clear violation of fundamental human rights norms and universal legal standards as established under international jurisprudence. International jurisprudence contains multiple sources of law that govern the behavior of nation states and their relationships with individuals. These

⁴⁰"Rights of Religious Minorities," Ain o Salish Kendra (ASK), A Legal Aid and Human Rights Organization, <http://www.askbd.org/Hr06/Minorities.htm>; Bangladesh Policy Brief, Fall 2006, United State Commission on International Religious Freedom, http://www.uscirf.gov/images/stories/PDFs/PolicyFocus_Bangladesh_Fall2006.pdf.

⁴¹Bertil Lintner, The Plights of Ethnic and Religious Minorities and the Rise of Islamic Extremism in Bangladesh, February 2, 2003, Asia Pacific Media Services, http://www.asiapacificms.com/papers/pdf/ethnic_and_religious_minorities_bangladesh.pdf.

⁴²"Rights of Religious Minorities," Ain o Salish Kendra (ASK), A Legal Aid and Human Rights Organization, <http://www.askbd.org/Hr06/Minorities.htm>; Bangladesh Policy Brief, Fall 2006, United State Commission on International Religious Freedom, http://www.uscirf.gov/images/stories/PDFs/PolicyFocus_Bangladesh_Fall2006.pdf.

⁴³Rabindranath Trivedi, "The legacy of enemy turned vested property act," Bangladesh, May 29, 2007, Asian Tribune, <http://www.asiantribune.com/index.php?q=node/5925>.

⁴⁴"Rights of Religious Minorities," Ain o Salish Kendra (ASK), A Legal Aid and Human Rights Organization, <http://www.askbd.org/Hr06/Minorities.htm>; Rabindranath Trivedi, "The legacy of enemy turned vested property act," Bangladesh, May 29, 2007, Asian Tribune, <http://www.asiantribune.com/index.php?q=node/5925>.

⁴⁵"Rights of Religious Minorities," Ain o Salish Kendra (ASK), A Legal Aid and Human Rights Organization, <http://www.askbd.org/Hr06/Minorities.htm>; Bangladesh Policy Brief, Fall 2006, United State Commission on International Religious Freedom, http://www.uscirf.gov/images/stories/PDFs/PolicyFocus_Bangladesh_Fall2006.pdf.

include international conventions and treaties, customary international law, general principles of law recognized by civilized nations, and the judicial decisions of individual nations as a subsidiary source of law.⁴⁶

Although not legally binding, the UN Declaration of Human Rights provides a basic expression of human rights norms that have been incorporated into international conventions and treaties, and reflects a global paradigm applicable to all countries. According to the Declaration, human rights are “inalienable rights of all members of the human family,” and should be applied equally to all persons.⁴⁷ In particular, Article 2 states that all people are entitled to human rights and freedoms “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” while Article 7 provides for equal protection before the law, and Article 18 protects the individual’s freedom of thought, conscience, and religion.⁴⁸ By specifically targeting Hindus under the EPA/VPA, the actions of successive Pakistani and Bangladeshi administrations have infringed the freedom of religion and equal protection under the law, as enshrined in these articles.

Furthermore, under Article 8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁴⁹ The provisions of the VPA, however, systematically deprived Hindus of due process and the “right to an effective remedy” in contravention of this article. For example, the VPA authorized Management Committees to take control of properties on their own motion or upon the direction of the Government, without providing access to a fair hearing by a neutral adjudicator on a person’s rights in a seized property. Instead, the Act only afforded a quasi-hearing before a biased and prejudicial Management Committee that was primarily responsible for appropriating Hindu owned land.

Additionally, the VPA failed to accommodate the interests of non-residents forced to leave the country, who were unable to effectively enforce their rights under the Act. The VPA also barred any lawsuits or legal proceedings challenging the actions of the Government or a Committee for anything done in “good faith,” essentially preventing victimized Hindus from seeking legal redress through the judicial system.

And finally, the discriminatory classification of Hindus as “enemies” of the state and the confiscation of their land was a blatant violation of Article 17 of the UN Declaration, which provides in part that no person shall be arbitrarily deprived of his property.

Beyond the UN Declaration of Human Rights, the Geneva Convention establishes rules by which nation states must act in times of war. Article 13 of the Convention asserts that populations of countries in conflict should be protected “without any adverse distinction based, in particular, on race, nationality, religion or political opinion.”⁵⁰ When applied to the conduct of Pakistan during the Indo-Pakistan War of 1965, the implementation of wartime regulations and property laws that selectively targeted Hindus, solely on the basis of religion, was contrary to the stipulations of Article 13.

In contrast to the generally accepted principles in the UN Declaration of Human Rights and the Geneva Convention described above, international treaties require a state to formally accede to the provisions of

⁴⁶ Summary of Customary International Law and Jus Cogens as Pertains to Juvenile Offenders, 2003/2004, The International Justice Project, <http://www.internationaljusticeproject.org/ivJusCogens.cfm>.

⁴⁷ Legal Information Institute, Cornell University Law School, http://www.law.cornell.edu/wex/international_law.

⁴⁸ The Universal Declaration of Human Rights, The United Nations, <http://www.un.org/en/documents/udhr/#atop>.

⁴⁹ Ibid.

⁵⁰ Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part), Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/law/civilianpersons.htm>.

a particular treaty. Once a state has signed an international instrument, however, it binds itself “in good faith to ensure that nothing is done which would defeat the object and purpose of the treaty...”⁵¹

The International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) comprise the major human rights treaties that prohibit discrimination based on religion, race, nationality, sex, colour, language, or political affiliation.⁵²

Under Article 2 of the ICCPR, all states party to the convention must respect the rights of any individuals residing in their territory without distinction based on race, religion, sex, or any other category, while Article 26 guarantees equal protection under the law without discrimination.⁵³ Following Bangladesh’s accession to the ICCPR on September 6, 2000, it was in immediate violation of Articles 2 and 26 through the continued appropriation of Hindu owned land under both the VPA and the Restoration of Vested Property Act.⁵⁴

Additionally, Section 3(a) of Article 2 requires a state party to provide a remedy in the event an individual’s rights or freedoms have been violated under the ICCPR.⁵⁵ Bangladesh has failed to abide by its obligations under this section, however, and the Restoration of Vested Property Act continues to place burdensome restrictions on the ability of Hindus to obtain legal relief for the deprivation of their properties. On the other hand, since Pakistan became a signatory on April 17, 2008, long after the EPA’s implementation, it was not technically bound by the ICCPR’s provisions.⁵⁶ Notwithstanding this exclusion, Pakistan remained legally bound by other treaties and conventions, including the ICERD.

According to Article 2 of the ICERD, states, including public institutions and authorities, are prohibited from engaging in any acts of racial discrimination. It further requires them to review, and if necessary “amend, rescind, or nullify” any government policies or laws that perpetuate racial discrimination against any individuals or groups.⁵⁷ Ironically, Pakistan became a signatory to this treaty on September 19, 1966, shortly after promulgating the Enemy Property Act in 1965.⁵⁸ The EPA’s discriminatory policies towards Bengali Hindus in the former East Pakistan, and the failure to rescind or nullify the law breached the Pakistani regime’s duties as defined in Article 2 of this Convention. It was also in violation of the ICERD’s protections of the the right to own and inherit property, the right to housing, and the right to freedom of thought, conscience, and religion.⁵⁹

⁵¹ Summary of Customary International Law and Jus Cogens as Pertains to Juvenile Offenders, 2003/2004, The International Justice Project, <http://www.internationaljusticeproject.org/juvJusCogens.cfm>.

⁵² International Law, Office of the High Commissioner on Human Rights, <http://www2.ohchr.org/english/law/index.htm>.

⁵³ International Covenant on Civil and Political Rights, Office of the High Commissioner on Human Rights, <http://www2.ohchr.org/english/law/ccpr.htm>.

⁵⁴ United Nations Treaty Collection, Chapter IV Human Rights, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁵⁵ International Covenant on Civil and Political Rights, Office of the High Commissioner on Human Rights, <http://www2.ohchr.org/english/law/ccpr.htm>.

⁵⁶ United Nations Treaty Collection, Chapter IV Human Rights, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁵⁷ International Convention on the Elimination of All Forms of Racial Discrimination, Office of the High Commissioner on Human Rights, <http://www2.ohchr.org/english/law/cerd.htm>

⁵⁸ United Nations Treaty Collection, Chapter IV Human Rights, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁵⁹ International Convention on the Elimination of All Forms of Racial Discrimination, Office of the High Commissioner on Human Rights, <http://www2.ohchr.org/english/law/cerd.htm>

Furthermore, Bangladesh formalized its accession to ICERD on June 11, 1979 and continues to be bound by its prohibitions on acts of racial discrimination.⁶⁰ Consequently, Bangladesh's persistent failure to rescind all remnants of the VPA and fully restore confiscated properties to their rightful owners is an ongoing violation of the ICERD.

In addition to treaties and conventions, custom is firmly recognized as a source of law in the Statute of the International Court of Justice, and reflects "generally accepted state practice."⁶¹ As a result, regardless of whether a country is a signatory to a particular convention or treaty, it remains bound by generally accepted norms and principles of law. The principles enunciated in a specific convention are indicative of a broader legal standard that is recognized under customary international law. Customary international law has been codified in the Vienna Convention on the Law of Treaties, and has equivalent authority over the actions of states as compared to conventions and treaties.⁶²

Similarly, under Article 53 of the Vienna Convention, the concept of jus cogens applies to the actions of nation states. Jus cogens is defined as "a norm accepted and recognized by the international community of States as a whole, as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."⁶³ Furthermore, according to the Restatement (Third) of the Foreign Relations Law, a norm of international law is established "where there is acceptance and recognition by a "large majority" of states, even if over dissent by "a very small number of states."⁶⁴

The right to property, equal protection under the law, and freedom of religion are some of these basic norms and principles that are widely recognized and accepted as state practice by most civilized nations around the world. Moreover, almost all countries have constitutional protections for minorities and prohibit discrimination based on religion or race. Therefore, as demonstrated above, the prejudicial intentions, inequitable provisions, and discriminatory application of the EPA and VPA have clearly violated the legal standards created by the international community. Accordingly, the systematic use of the EPA and VPA by the Governments of Pakistan and Bangladesh to suppress the rights and religious freedom of Hindus contravened their obligations under customary international law and jus cogens.

VIII. Conclusion

Since their inception, the Enemy and Vested Property Acts have served as effective instruments to cleanse Hindu minorities from their homeland in East Bengal. They have systematically appropriated land through a complex legal framework, relying on the collusion of government officials and the use of violence and intimidation. The Acts have also institutionalized discrimination against minorities and created another mechanism for depriving non-Muslims of their basic fundamental human rights.

According to former Bangladesh Chief Justice Syed Kamal Uddin Hossain: "The laws on abandoned property, non-resident's property and the like although enacted as temporary laws to meet peculiar and

⁶⁰United Nations Treaty Collection, Chapter IV Human Rights,

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁶¹Summary of Customary International Law and Jus Cogens as Pertains to Juvenile Offenders, 2003/2004, The International Justice Project, <http://www.internationaljusticeproject.org/juvJusCogens.cfm>.

⁶²Legal Information Institute, Cornell University Law School, http://www.law.cornell.edu/wex/international_law.

⁶³Summary of Customary International Law and Jus Cogens as Pertains to Juvenile Offenders, 2003/2004, The International Justice Project, <http://www.internationaljusticeproject.org/juvJusCogens.cfm>.

⁶⁴*Ibid.*

emergency situations had been continuing for indefinite time in one form or another causing untold sufferings to honest citizens..."⁶⁵

Although it is impossible to fully rectify all the damage caused by these discriminatory laws, the Government of Bangladesh must initiate concrete steps to return "vested" properties to their rightful owners without placing burdensome requirements on claimants. Where it is not possible or practical to physically return properties, the Government should provide compensation at fair market value of the land. And finally, any prejudicial or inequitable provisions must be entirely removed from all legislation relevant to the issue of "vested" property.

⁶⁵Rabindranath Trivedi, The legacy of enemy turned vested property act in Bangladesh, May 29, 2007, Asian Tribune, <http://www.asiantribune.com/index.php?q=node/5925>.