



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor (RJIF): 8.4
IJAR 2025; 11(4): 88-91
www.allresearchjournal.com
Received: 03-01-2025
Accepted: 08-02-2025

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Practice of the issue of preemption with reference to the discrete laws and judicial pronouncements in Bangladesh: A critical study

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DOI: <https://www.doi.org/10.22271/allresearch.2025.v11.i4b.12455>

Abstract

This study is concerned with the practice of the issue of preemption with reference to the discrete laws and judicial pronouncements in Bangladesh which is planned to standardize the transactions of immovable property by admitting the particular rights to co-sharers and contiguous landowners. There are four (4) types of enactments are now applied in Bangladesh, viz., 1. The Partition Act, 1893, 2. The State Acquisition and Tenancy Act (SAT Act), 3. The Non-Agricultural Tenancy Act (NAT Act), 4. Muslim laws where the goal of those laws is to thwart land disintegration and preserve shared steadiness. Nonetheless, their solicitation over and over again steers to jurisdictional deferrals, pecuniary limitations, and prospective mistreatment. This article judgmentally scans the legal outline, together with the Partition Act, SAT Act, NAT Act, Muslim laws of preemption, topical modifications, and judicial announcements, to gauge the efficacy and tests of these laws in the present-day of Bangladesh.

Keywords: Practice, preemption, discrete law, judicial pronouncement, Bangladesh perspective

Introduction

The Preemption rules in Bangladesh have long played a crucial role in regulating transactions involving immovable property, particularly in rural and semi-urban areas^[1]. The principles of preemption, namely, 1. The Partition Act, Section 2. The SAT Act, 3. NAT Act, and Muslim Laws allow a co-sharer or fellow citizen to exercise the right of first refusal to purchase a property before to its transfer to an outsider or third party [2–4]. Although the purpose of these regulations is to preserve community cohesion and prevent the fragmentation of agricultural and non-agricultural properties, their implementation frequently raises problems over fairness, judicial competency, and financial implications^[5]. This paper critically examines the implementation of preemption legislation in Bangladesh through judicial rulings, analyzing its legal foundation, significance, and potential implications for development.

Legitimate Basis of Preemption in Bangladesh

Preemption in Bangladesh is first and foremost overseen by four legal foundations

1. The Partition Act, 1893 – To authorize preemptive rights for co-sharers in jointly owned property^[6].
2. The State Acquisition and Tenancy Act, 1950 (SAT Act) – Originally grants preemptive rights to both co-sharers and neighboring landowners in agricultural land transactions; however, with the 2006 revision, only an inheriting co-sharer may assert the right of preemption^[7].
3. The Non-Agricultural Tenancy Act, 1949 (NAT Act) – This Act Oversees the preemptive rights in non-agricultural lands, predominantly appropriate in urban and semi-urban zones. A co-sharer occupant of holding by inheritance is entitled to raise question for the right of preemption of that holding is vended to a 3rd party^[8].
4. Muslim Laws of Preemption – The word of preemption under Muslim laws is regarded as “Shufa”. As per the Islamic jurisprudence, Shufa agrees to co-sharers and neighbors for placing a claim to preempt the sale of immovable property^[9].

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Brief analysis of Preemption Laws under SAT Act

The SAT Act of 1950 is one of the most significant laws governing preemption in Bangladesh ^[7]. The principle of preemption under the SAT Act is extensively implemented in Bangladesh. It delineates the specific regulations governing land transfer and grants preemptive rights only to co-sharers by inheritance.

The core provisions under the SAT Act are stated as below:

1. **When the cause of action is arisen or when the right to sue is derived:** When the disputed portion of immovable property is traded to a stranger except to one of the co-sharers by inheritance.
2. **Who is entitled to claim the right of preemption:** Following the 2006 amendment, only co-sharers by inheritance are entitled to claim the right of preemption.
3. **Duration for filing preemption case:** The preemptor must file a case within two months from the date of the service of notice about the registration of the transfer of land or from the date of knowledge of the sale if no notice is served. Furthermore, it is clearly envisaged in the law that a preemptor cannot exercise his right of preemption after expiry of 3 years from the date of the sale deed's registration.
4. **Deposit of financial value:** The preemptor must deposit the entire sale consideration along with 25% compensation and 8% interest to assert his right at the time of the application of miscellaneous case.
5. **Identity of the parties in the miscellaneous case of preemption:** The claimant is designated as the petitioner, while the opposing party is the respondent in the action. The preemption case is classified as a miscellaneous case.
6. **The nature of the verdict in the preemption case:** Upon concluding the hearing, the presiding Trial Judge is authorized to issue a judgment and order without delivering a formal decree, and such judgment and order shall be considered as a judgment.
7. **Immunities:** Preemption does not extend to land transfers resulting from inheritance, donations, waqf, or settlements. The right of preemption does not apply to homestead land.

Brief description on the laws of Preemption under the NAT Act

The NAT Act, 1949, directs preemption rights with reference to the non-agricultural lands ^[8]. This Act principally spreads over to the urban and semi-urban ranges where the land is recycled for housing, profit-making, or industrial tenancies.

The bullet points under NAT Act are labeled as under

1. **When the cause of action is arisen:** When the disputed holding is transmitted through sale to an outsider or 3rd party.
2. **Who are entitled to claim the right of preemption:** Individuals authorized to assert the right of preemption include one or more co-sharer tenants of the contested land.
3. **The limitation period for filing the case:** The limitation period for initiating the case requires the preemptor to file within four months from the date of notification or, if notice is not served, within four

months from the date of awareness regarding the transaction.

4. **Deposit of monetary worth:** The claimant in the preemption lawsuit must deposit the whole value of the contested section of non-agricultural land, along with a 5% compensation, at the time of filing the case.
5. **Range and Use:** In contrast to the SAT Act, which focuses on agricultural lands, the NAT Act protects non-agricultural tenants and landowners from unilateral division.
6. **Exemptions:** Preemptive rights do not apply in instances of voluntary transfers among family members, inheritance, lease agreements, exchanges or partitions, gifts, bequests to close relatives, or transfers to co-sharers whose interests are augmented through means other than purchase.

Basic ideologies of the preemption under Muslim laws ^[9]

1. **Cause of Action:** The transfer of immovable property through a valid sale is completed to individuals who possess no rights to assert a claim of preemption under Muslim law.
2. **Who are eligible to raise question for enjoying the right to sue for preemption:** a) Co-sharer in a property; b) Participant in Amenities; c) the owner of adjacent property and d) where a mortgage is foreclosed, the right of preemption becomes applicable.
3. **Mandatory formalities:** a) Co-sharer in a property; b) Participant in Amenities; c) the owner of adjacent property and d) where a mortgage is foreclosed, the right of preemption becomes applicable.
4. **Limitation period for claiming the right of preemption:** a) Co-sharer in a property; b) Participant in Amenities; c) the owner of adjacent property and d) where a mortgage is foreclosed, the right of preemption becomes applicable.
5. **Objectives of preemption:** a) Co-sharer in a property; b) Participant in Amenities; c) the owner of adjacent property and d) where a mortgage is foreclosed, the right of preemption becomes applicable.
6. **Deposit of pecuniary charge:** Islamic law does not mandate deposits akin to statutory regulations at the initiation of preemption cases; however, financial liabilities are established subsequent to the Court's ruling.
7. **Indemnities:** The power of preemption under Muslim laws does not continue as against gifts or hiba, inheritance, bequests, or leases.

Key points under the Partition Act 1893 ^[6]

1. **The right of preemption in dwelling houses:** The right of preemption in residential properties is addressed in Section 4 of the Act. When a share of a property of entire or undivided family is transmitted to stranger, the outsider initiates a suit for partition, any of the unbroken family can look for to purchase the outsider's share and in that context the Court is answerable in determining the value of the said share and in showing the method of its sale to the family member.
2. **State of affairs for working out this right:** a) the contested property must be dwelling place of an unbroken family; b) The share of the property has been

shifted to the alien; c) the foreigner has launched a suit for division.

3. **Aptness in partition suits:** The right of preemption is appropriate when the unfamiliar person begins the partition suit. In addition, if the co-sharer commences the partition suit and the interloper pursues distinct possession, the co-sharer at that time asks for preemption.
4. **Meaning of dwelling house:** The major part of the disputed property is recycled for domiciliary purposes.
5. **Objectives:** To conserve the veracity and confidentiality of the dwelling houses and its family members.

Contemporary Amendments and Judicial Proclamations

In current years, Bangladesh has observed amendments and judicial clarifications that have great impact on the practice of preemption laws:

Up-to-date Amendments

Vicissitudes in property laws have tried to rationalize preemption entitlements; tumbling dodges that consent for exploitation^[3]. The target of some modifications is to establish vibrant timelines for submitting claims and to avert giddy legal process.

Judicial Announcements: The Supreme Court of Bangladesh has ruled on more than a few strategic preemption issues, highlighting the necessity for an equilibrium between preserving co-sharers' rights and guaranteeing horizontal belongings interactions^[10, 11]. Remarkable cases have strengthened the principles that preemption should not be used as an implement for aggravation or monetary squeezing.

Momentous Case Laws on Preemption

Several landmark cases have designed the clarification and application of preemption laws in Bangladesh:

1. It is settled principle of law as cited in *Abdur Rashid's Heirs vs. Nurul Amin* (2022) and in the case of *Abdul Baten vs. Abdul Latif Sheikh*, 45 DLR (AD), Page-126 that earlier accrued the right of preemption always rests unharmed notwithstanding subsequent handover to another co-sharer.
2. This established judicial principles of law as enunciated in the case of *Arif Miah vs. Rabeya Akhter Khanom and others* (2017) that the Supreme of Bangladesh has given remarks in this case the prominence on the procedural facets of initiating for preemption case and observing the statutory timelines.
3. It is thought in the case of *Aleya Begum and others* (2016) reported in 8 SCOB (2016) (HCD), Page-147 that the High Court Division of the Supreme Court of Bangladesh opined that during pendency of a case or subjects of partition and preemption, the Court can give importance on the noteworthy intuitions into the application of preemption rights amongst co-sharers.
4. It is firmed principles of law as envisaged in the case of *Abdul Mannan vs. Sheikh Gias Uddin* (1996) that this case strengthened that a preemptor has to launch his claim in virtuous trust and not preserve it as an apparatus to impede assets dealings.
5. It is apprehended in the case of *Haji Abdul Baset vs. Md. Abdul Hakim* (2021) that the Supreme Court presented rulings that the preemption under Muslim

laws must be worked out obeying the stern amenableness with the settings of Shufa.

6. It is whispered in the case of *S.M. Bashiruddin vs. Zahurul Islam Chowdhury and another*, 35 DLR (AD) that the Supreme Court spooks out that the matter of preemption under SAT Act and NAT Act is indorsed only when the disputed land is transmitted to 3rd party or stranger.
7. It is uttered in the case of *Abdus Sobhan Sheikh vs. Kazt Moidana Jahedullah and others*, 5 MLR (2000) (HCD), Page-140 that the Court concerned can permit the applicant to deposit the balance reimbursement afterwards modification or amendment.
8. It is declared in the case of *Abdur Rashid vs. Momtaz Ali Karikar*, 44 DLR (AD) 270 that the Supreme Court gave explanation in this case on the topic of Muktipatra or instrument of release and its effect on the right of preemption.
9. This is judicial principle as clarified in the case of *Fazaruddin vs. Majuddin*, 44 DLR (AD) 62 that the right of preemption cannot be taken away on sheer voiced pledge if not other proofs obviously designate consent or relinquishment.
10. It is proclaimed by the Apex Court of the state in the case of *Inu Mia and others vs. Mokhlesur Rahman and others*, 45 DLR (AD) Page-171 that for the duration of pendency of the preemption case, the heirs of the parties concerned may be replaced.

These cases illuminate the embryonic nature of preemption laws in Bangladesh and their influence on material goods rights and judicial analysis.

Challenges in the Putting into practice of Preemption Laws

Regardless of their objects, preemption laws in Bangladesh tackle numerous challenges

1. **Judicial Logjams and Deferred Measures:** Preemption issues consistently require years to resolve due to an overburdened judiciary and complex practicalities. This deferment indicates the path to financial difficulties for both bargain hunters and preemptors^[12, 13].
2. **Misapplication of Preemption Privileges:** In specific instances, preemption laws are subordinated to personal success. Numerous applicants invoke the legislation to obstruct transactions or impose monetary restitution from the buyer instead of actively seeking to maintain ownership^[14, 15].
3. **Skirmish amid Monetary Advancement and Lawful Limitations:** Restricting the transfer of assets can hinder transactions in real estate, particularly in rural areas. Financiers and innovators frequently encounter legal disputes while acquiring land for commercial or industrial purposes^[16].
4. **Indistinctness in Lawful Elucidation:** Courts frequently grapple with obscure terminology in preemption statutes, resulting in inconsistent rulings^[15].

Endorsements for Improvement

To approach these challenges, the succeeding reforms should be deliberated

- **Rationalization Court Processes:** Expedited mechanisms should be implemented to more effectively adjudicate preemption issues^[17].

- **Expounding Permitted Vagueness:** Parliamentary reforms must delineate essential phrases with more precision to prevent misinterpretation ^[18].
- **Thwarting Exploitation of Preemption Rights:** A more rigorous assessment is necessary to ensure that preemption rights are established with due diligence ^[19].
- **Harmonizing Financial and Societal Benefits:** Strategies must be evaluated to accelerate property transfers while safeguarding the rights of legitimate preemptors ^[20, 21].

Conclusion

It has been elucidated to us, via the aforementioned facts and circumstances, that certain matters are significantly pertinent to the practice of preemption about the laws and judicial rulings in Bangladesh and in their specific situations. The right of preemption is applied in a precise sense under the SAT Act and NAT Act, although it is utilized in a broader sense under Muslim laws. The statutory and personal laws concerning preemption are continually enhanced by the interpretations of the Supreme Court of Bangladesh, which serves as the custodian of the constitution and legal framework. Currently, preemption is strongly discouraged. Although preemption laws in Bangladesh serve important societal purposes, their implementation presents some problems. Judicial deficiencies, legal ambiguities, and commercial limitations hinder their efficacy. An effective strategy-requiring both legal reinforcement and financial sustainability-is essential for a more equitable and functional prevention framework in the state. Compliance with the state's laws by its citizens reduces civil wrongs and legal disputes, so transforming the nation into a peaceful environment for its inhabitants.

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