

ENCLAVE EXCHANGE BETWEEN BANGLADESH AND INDIA: AN EVALUATION OF THE IMPLEMENTATION PHASE OF THE LAND BOUNDARY AGREEMENT (LBA)

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Abstract

Bangladesh-India Land border disputes, which started in the mid-twentieth century, is on the verge to be finished by the first quarter of the twenty-first century as the implementation process of the Land Boundary Agreement (LBA) of 1974 and its related "Protocol 2011" has started from the midnight of 31 July 2015. These agreements enabled both the countries to exchange the most critical enclaves of the world between them. This process is a 'role model' on settling long-standing disputes over enclaves between two neighbouring countries having one of the most porous borders of the world. Hence, it is imperative to comprehend the key issues of the LBA, why it took so long time (41 years) to start the implementation process, what were the contentious issues and impediments and how those contentious issues and impediments were mitigated. This study explores that Indian domestic politics, Indian constitution's amendment, fear of losing land and fear of an influx of population from Bangladesh to India were the major issues that held back the implementation of the LBA. This descriptive study describes all these issues and sheds light on the implementation phase by incorporating major challenges and future directions. This study revealed that land distribution among the former enclave dwellers, demarcation of the Muhuri River area, ensuring permanent source of income are the major challenges in the implementation phase. This study further discovered that the promises of the LBA are still not fulfilled completely in both the countries. In spite of that, former enclave dwellers of Bangladesh are more satisfied than their counterparts living in the India, following four years of the enclave exchange.

Keywords: Bangladesh-India Relations, Land Boundary Agreement, India-Bangladesh Border

INTRODUCTION

Dispute over enclaves and land border issues between these two South Asian neighbouring countries is a well-known long-standing dispute in the history of the dispute over porous borders. This dispute achieved a high momentum to come to an end due to the implementation process of LBA (1974), which commenced from the first hour of August 2015. This land border dispute has a legacy of British Colonial rule in the Indian Sub-continent. The indecisive border line of 1947 created by Sir Radcliffe during the partition of India and Pakistan

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(Bangladesh was the eastern part of Pakistan, hence, the country was known as East Pakistan until the liberation war of 1971) has initiated the enclave problems and other land border dispute between India and Bangladesh. There was a discrepancy between the line drawn by Sir Radcliffe and the descriptions of the area written by him.¹ For instance, Southern Berubari union no. 12 fell within India, according to the line drawn by Sir Radcliffe but belonged to East Pakistan according to the description he wrote. Although in such cases, the written description was supposed to prevail over the line that was drawn, however, the non-Muslim population of the union opposed the handover of the area to Pakistan.² To solve the border dispute, Pakistan and India took initiative in 1950s. After the independence of Bangladesh in 1971, Bangladesh and India took the further initiative, as a result LBA was signed in 1974 but it was not ratified by India at that time. Finally, in 2015, India ratified the agreement, hence the land border dispute came at the final stage to the end after 68 years.

During this period, this border dispute caused serious border clashes between the border forces of both the countries. For example, in April 2000, when few members of Border Security Force (BSF) from India entered into the Boraibari area (which was in adverse possession of Bangladesh) to take the control of the area forcefully from the control of Bangladesh, then it created a serious clash. The Boraibari border clash on 18 April 2000, left three Bangladesh Rifles (the then BDR, now Border Guard Bangladesh or BGB) and 16 BSF men dead in the worst border fracas in the history of Bangladesh-India Relation.³

Given this backdrop, this paper's main objectives are three folds. First one is to realise the contentious issues and impediments that lingered the implementation process for more than six decades and how both the countries resolved those contentious issues and impediments. Second key objective is to shed light on the implementation process of the 1974's LBA. In line with these, another objective is to evaluate the present situation of the implementation phase of the LBA, so as to evaluate how much promise were fulfilled by the two countries. For these purposes, this paper first discusses the historical background of the enclaves and other border disputes starting prior to 1947 to 2015, then it describes the key issues of the LBA like enclave exchange, adversely possessed land and un-demarcated border areas before exploring the impediments or the contentious issues that hanged back the implementation of the LBA and consequently it discusses how those contentious issues and impediments were

¹ AJM Shafiul Alam Bhuiyan, "Bangladesh-India Land Boundary Agreement ratification: Why now?," May 17, 2015, < at <http://en.ntvbd.com/comment/4466/Bangladesh-India-Land-Boundary-Agreement-ratification:-Why-now?>> (accessed July16, 2015)

² *ibid.*

³ Abdus Salam Chowdhury, "Bangladesh-India Land Border Issues and Management", *NDC journal*, Vol. 2, No. 1, June 2003.

mitigated. While shading lights on the implementation phase, this study discusses different aspects of the implementation process like the agreement on modalities for enclave exchange, choice of nationality, arrangement for safe journey for enclave dwellers to go back their mainland etc. and implications of the LBA like humanitarian issue, land issue, security, settlement of border etc. before tracing out the main challenges of the implement phase. And finally evaluates the present situation of the implementation phase of the LBA in both the countries. Impending directions are specified before summarizing the paper in the conclusion. This study is based on secondary sources of materials, e.g., journals, newspaper, online news portal, report etc.

HISTORICAL BACKGROUND OF THE ENCLAVES AND THE LBA

Folklore tells enclaves were result of chess game between the Nawab of Rangpur and the Maharajah of Cooch Behar; two minor Indian kingdoms that faced each other, the rulers used villages as wagers and wrote the names of the villages on a small piece of paper-or chit-and exchanged them whenever they won or lost a game.⁴ Locals say that is why these enclaves are called "chit mahals" or "paper palaces".⁵ During the partition of the subcontinent in 1947, Rangpur went to East Pakistan (now Bangladesh) and Cooch Behar joined India, including the people who lived in the enclaves. However, the indecisive border line of Sir Radcliffe remained as an issue of contention between the two countries.

The first agreement to solve this issue was signed between the then Prime Minister of India Jawaharlal Nehru and his corresponding person Firoze Khan Noon in September 1958 which was known as Nehru-Noon agreement. But the agreement was not implemented because of Indian national's writ petition with the Indian high court claiming that South Berubari and the enclaves were Indian territories and no Indian territory could be transferred to a foreign country without constitutional amendment.⁶

After the independence of Bangladesh, both governments initiated efforts to resolve land boundary dispute. As a result, both countries were able to conclude the LBA at New Delhi on 16 May 1974 concerning enclave exchange, land boundary demarcation and related matters. As the agreement was signed by the then Prime Minister Sheikh Mujibur Rahman and his counterpart Indian Prime Minister Indira Gandhi, so this agreement was also known as "Indira-Mujib" border treaty. This treaty required ratification by both the countries. Bangladesh ratified the agreement in 1974 by completing amendment to its constitution which is called as "The Constitution (Third Amendment) Act 1974". However, Indian

⁴ "India agrees Bangladesh land enclaves swap", *BBC News*, May 8, 2015, at <<http://www.bbc.com/news/world-asia-india-32642851>> (accessed July16, 2015)

⁵ *ibid.*

⁶ *Supra* note 1.