

India Bangladesh Boundary Settlement: Issues and Solutions

Abstract

The paper seeks to unravel the intricate issues involved between India and Bangladesh over the boundary disputes that plague the two nations. It seeks to look into the Ground realities and the legal regime that obtains between the two countries. What are the possible remedies and mediations that can bring the two neighbours at peace thereby contributing to the economic development of the said regions. The issue have been analyzed thread bare.

Keywords: Mediation, Tribunal, Incursion, Demarcation.

Introduction

It is very common knowledge that disputes about the position of a boundary often take different forms as they arise out of different causes and certainly retain the potential to be too often be unduly bitter, costly and lots of time-consuming before their peaceful resolution. As they concern two or more countries, boundary disputes are primarily concerned with the legal and technical issues of determining the line of the boundary between or amongst them or may be a result of the prevailing state of the relationship amongst the neighbours involved. The replies also indicated that most boundary disputes involve court or tribunal proceedings to some extent, but that many are resolved by other forms of dispute resolution, particularly mediation. They also indicated that there are several reasons why disputes are not resolved quickly, cheaply and conclusively. Though boundaries are said to be defined in law according to general land law principles, boundary disputes are related to the position of a boundary and the ownership of the relevant land falling either side of that boundary. As far as the international boundary disputes are concerned, they are either related to either ground level physical boundaries or subterranean incursions. Howsoever it may be, the present civil justice framework allows boundary disputes to be settled in a variety of ways – as is the case for civil disputes generally for resolving them faster with emphasis on the most widely favoured approach is Through encouraging the use of mediation and independent expert determination; rather than following any court and tribunal procedure.

Review of Literature

Brenden, R. Whyte (2002) *Waiting for the Esquimo: An historical and documentary study of Cooch Behar enclaves of India and Bangladesh*, deals with the historical positions that obtained pertaining to India-Bangladesh disputes with regard to enclaves. His lucid coverage throws insights into the emergence of the problems.;

Indian and Bangladesh land boundary agreement (PDF 2015), Ministry of External Affairs GOI, throws light on the relative positions of each government on the issues of enclaves along the Indo-Bangladesh border.

AmitRanjan, (2018); "India-Bangladesh Border disputes: History and post-LBA dynamics" discusses the history of Mental construction of the border between India and Bangladesh.

Objective of the Study

The paper explores the issues of dispute involved between India and Bangladesh pertaining to border areas. It seeks to untangles the issues involved and offers possible alternatives that can resolve the long standing disputes between two nations.

Issues

Boundary disputes often results in conflicts which consume time and resources of the countries, causing great discomfort and agony to the citizens. In case of India and Bangladesh, the boundary dispute is a legacy of the partition that has created tensions among the two nations. In most of such entities constitution of Tribunals and legal entities has not proved to



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be successful, rather mediation techniques have proved themselves to be better tools. Though general legal principles are still used, the ground situation on either sides of the border held by people becomes important in settlement of disputes. In such cases it has always been found that mediation techniques has always proved their efficacy in resolution of disputes, as this seems to take into account the aspiration of the population and ground realities the exchange of territories and population with human approach has found more favour and eventual success, rather than Arbitrary judgements of Tribunals.

The long standing boundary dispute between India and Bangladesh has its own uniqueness, embedded in the colonial historical regime of divide and rule policy of the British government in colonial India.

India and Bangladesh share a boundary stretching across 4096 km. The erstwhile Bangladesh earlier known as East Pakistan and India are governed by Radcliff Award 1947, which divided the territories between the two countries. There are many reasons to believe that the award did not take into account the practical ground realities of the population on the borders and gave a text book judgement, with ulterior motives causing simmering dispute between the two nations turning into long standing disputes.

The border areas between the two countries is covered with many Indian territorial enclaves within Bangladesh, and many Bangladesh, territories within India due to some pre-colonial treaties between the Maharajah of Cooch Behar and the Nawabs of Rangpur and continued to be maintained till the time of partition between India and what was then known as East Pakistan in 1947. The condition of the residents of these enclaves, as they are isolated from it by a strip of foreign land is very miserable as necessities to sustain life such as electricity, goods and health facilities are not readily available and they have to cross the territories which isolate the border thereby causing distress and anxiety.

It was in May 16, 1974 when Indira Gandhi and Mujib-Ur-Rehman signed an agreement for settlement of land dispute that provided, that India would retain Berubari Union No. 12 enclave and Bangladesh would keep Dahagram and Angorpota enclave, with India providing access to Bangladesh residents through a 178 x 85 metre corridor, called as Tin Bigha corridor. This agreement was ratified by the Bangladesh ipso facto, but India failed to ratify it. Still this agreement became a working agreement between the two countries facilitating convenience to the people living across the boundaries.

The only issue that remained a bone of contention between the two countries was pertaining to 6.1 km. in three sectors:

- a. Lathitola-Dumabari (Assam)
- b. Muhuri River- Belonia (Tripura)
- c. Daikhata-56 (West Bengal)

Exchange of these areas and adverse Possessions remained a contentious issue between the two countries causing acrimony mistrust and

suspicion among the two countries thereby converting the region into a theatre of power play.

In order to stop the sway of Bangladesh towards China and Pakistan, India under NarsimhaRao Govt. took a bold decision to permanently lease, the Tin Bigha corridor to the Bangladesh in 1992, despite local opposition. Apart from these several other measures were undertaken to build mutual confidence building measures. This eased the situation along the border.

It was in the year 1997 that once again both countries showed unwillingness to finalize the list of enclaves. Thereafter joint working groups were set up in 2001 to look into the details of the issues pertaining to enclaves. All this resulted in India and Bangladesh signing an agreement in 2011, which will make 1974 agreement more workable. It was decided to swap 162 enclaves and provided residents a choice of their nationality.^{4,5,6}

Bangladesh gained by way of 4617 acres of its Dahagram-Angorpot enclave comprising of 14,215⁷ people. Though this was verbally agreed, nothing happened till Nov. 2013.

The issue regarding the choice of nationality remained on paper.⁸ It was only in the year 2013, on Dec 2013⁹, the constitutional (119th Amendment Bill) 2013 was introduced in the RajiyaSabha, which was approved by the standing committee on external affairs in Nov. 2014.¹⁰

The prospects of better relations between the two countries further showed more improvement after the election of Modi Government, as the govt. sought a new policy to befriend neighbours to minimize the influence of China. Further it can be inferred that India showed its willingness to abide by the UN Tribunal award on the long disputed sea issues on New Moor Island. This created goodwill among the two nations; obviating India's fear of big brother attitude as merely a fiction. The goodwill of good atmosphere resulted in the reciprocal visit of two Prime Ministers to each other's countries.

It was expected that with the signing of land boundary agreement, the economic cooperation among the two countries will get further impetus and dissuade Bangladesh from falling into China's influence.

The govt's stated move to bring a constitutional amendment bill in the Parliament though in a truncated form, that will delink Assam from the LBA, created stir in Bangladesh regarding the viability of agreement, but back door diplomacy by the Modi Government, allayed fears in Bangladesh, given SheikhHasina govt's sagacity, it opened the door to a new era of friendship between the two governments.

The stand of the state govt's, like west Bengal did create problems, but Modi govt's assurance regarding swap of population across enclaves, leading to migration of people in Bengal, who would be taken care by central govt. pledging crores of rupees eased the situation.¹¹ Delinking of Assam from the LBA agreement assuaged the fears of indigenous population, regarding security and economic opportunity in Assam. The passage of 119th

Remarking An Analisation

amendment bill has further enhanced cooperation among two nations. Bangladesh govt's maturity and understanding of the situation clearly can herald a new era of cooperation between the two nations.

Conclusion

The Indo-Bangladesh land agreement and the subsequent passage of the 119th amendment by Parliament taking into considerations the aspirations and interests of the border populations is a landmark initiative, which will augment the relation between India and Bangladesh in the realm of economic, cultural and educational cooperation. Bangladesh entertained a long mistrust of India, as a big brother attitude and the agreement certainly will allay the fears of India. India's access to North East through a corridor for its development will clearly get stimulation after conceding interests of Bangladesh. India will be able to advise Bangladesh better on issues of Bangladeshi migrants, Teesta water dispute and Border Fencing across the borders. These steps are certainly going to play an important role in Bangladesh becoming a responsible ally in India's neighbourhood.

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