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Analyzing the Implementation of Shuf'ah 'Preemption' Rights in the Legal System of Bangladesh within the Framework of Islamic Law

Bangladeş Hukuk Sisteminde Şüf'a 'Önalım' Hakkı Uygulamasının İslam Hukuku Çerçevesinde İncelenmesi

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Öz

Şüf'a (önalım) yasası, İslami hukukun önemli bir unsurunu oluşturur ve arazi ortakları ile komşularının haklarını koruma amacını taşır. M.S. 622 tarihinde ortaya çıkmış olan bu yasa, 1400 yılı aşkın süredir Müslüman imparatorluklarda büyük bir rol oynamıştır. Günümüzdeki bölünmüş arazi işlemleri ve azalan kişi başına düşen arazi miktarı gibi çağdaş zorluklara yanıt olarak, arazi yönetimi yasalarının modernleştirilmesi gerekliliği, özellikle ön satın alma haklarını içerir. Bu makale, Şüf'a Yasasının farklı yönlerini ele almakta ve Bangladeş'in mevcut ulusal yasal çerçeveleri ile karşılaştırmaktadır. Ön alım hakkı, bir mülkün üçüncü bir tarafa satılması öncesinde ortaklara satın alma hakkı sunar. Bangladeş'te, üç farklı yasal yaklaşım öne çıkmaktadır: Müslüman (İslam) Hukuku Yaklaşımı, Devlet İktisap ve Kiracılık Yasası (1950) ve Tarım Dışı Kiracılık Yasası (1949). Bu çalışma, Bangladeş aile hukukunda önem arz eden Hanefi mezhebinin bakış açısına odaklanarak, çoğunluğun bu mezhebe yaygın biçimde bağlı olmasından kaynaklanmaktadır. Ayrıca çalışma, Bangladeş'te ön alım hakkının hukuki durumunu İslam hukuku açısından incelemeyi, bu konuya çözümler üretmeyi ve ön alım hukuku ilkelerinin mevcut arazi hukuku uygulamalarına entegre edilmesinin fizibilitesini değerlendirmeyi amaçlamaktadır.

Anahtar Kelimeler: İslam Hukuku, Şüf'a, Medeni Kanun, Komşu Hakları, Bangladeş.

Abstract

The *Shuf'ah* 'preemption' law, a significant component of Islamic Shari'ah law, safeguards the rights of land partners and neighbors. Originating in 622 AD, it has played a crucial role in Muslim empires for over 1400 years. In response to contemporary challenges, such as fragmented land transactions and decreasing per capita land availability, modernizing land management laws, including pre-purchase rights, is essential. This article examines the *Shuf'ah* Law's dimensions and compares Bangladesh's current national legal framework. Pre-emption rights empower co-sharers to acquire land before others, with consent or waiver paving the way for third-party acquisition. In Bangladesh, three legal approaches to pre-emption exist: the Muslim Law Approach, the State Acquisition & Tenancy Act 1950 Approach, and the Non-agricultural Tenancy Act 1949 Approach. The research relies on the viewpoint of the Hanafi school, which holds significance in Bangladesh's family law owing to the widespread adherence of the majority to this specific Madhab. In addition, the study seeks to explore the legal standing of the right of pre-emption in Bangladesh through the lens of Islamic law, provide solutions to this matter, and assess the feasibility of integrating pre-emption law principles into contemporary land law practices.

Keywords: Islamic Law, Shuf'ah, Civil Code, Neighbors' Rights, Bangladesh.

Introduction

Shuf'ah originates from the Arabic word *shafa'un*, denoting duplication, combination, and addition concepts.[1] It also holds a contrary meaning of "odd," as the Quran references it in "oaths even and odd,"[2] encapsulating augmentations and accumulation within Islamic jurisprudence. The Arabic term for pre-emption, *shuf'ah*, comes from the verb *Shafa'*, signifying a combination, increase, or reinforcement. This term reflects the pre-emptor combining their ownership with the property due to this right, thereby enhancing their holdings. *Haqq al-shuf'ah* in Arabic refers to a property owner's right adjacent to another property.[3] This term grants the right to buy a neighboring property from a new buyer, essentially replacing them and preventing outsiders from entering the neighborhood.[4] It holds immense importance in land management, particularly in safeguarding co-owners' and neighbors' rights. The Shafī', composed of co-owners of the original land, must be informed of an impending sale, allowing them to exercise their preemptive right to purchase the land at a fair value. If the contiguous landowner declines the offered land, the adjacent landowner (*shafi'*) is bound by the price set by an external or distant buyer.

In property transactions, the rightful owner must obtain the property at the same price, regardless of the seller's agreement. When a property is sold to a third party without the right of preference, the holder of the preference right can expand their assets by covering the selling price and related expenses, exceeding the initial cost borne by the buyer. This augmentation empowers holders to increase holdings without explicit consent. As per Majallah (article 950), 'What did the buyer of a sold property pay the price in return for taking ownership?[5]' If an individual lacking the sufficient right sells it to another, the third party with a rightful claim to the buyer shall sell the sale price and any additional costs. They shall have the authority to obtain the property and acquire possession legally.[6]

In Bangladesh, pre-emption was once familiar but has diminished in relevance due to changing lifestyles. Present statutory laws discourage pre-emption due to rigid provisions introduced in 2006, leading to fewer applications in civil courts. Bangladesh

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1 Aḥmad Ibn Muḥammad Ibn 'Alī Fayyūmī, *Al-Miṣbāḥ al-Munīr* (Egypt: Dār al-Ma'ārif-al-Qāhirah, 2001), 1/145; Akmal al-Dīn Bābartī, *Al-'Ināyah Sharḥ al-Hidāyah* (Beirut-Lebanon: Dār al-Kutub al-'Ilmīyah, 2007), 5/477.

2 al-Fajr, 89/3.

3 'Alī Ibn Abī Bakr Burhān al-Dīn Abū al-Ḥasan al-Morginány, *Al-Hidāyah Sharḥ Bidāyat al-Mubtadī* (Pakistan: Idārat al-Qur'ān wa-al-'Ulūm al-Islāmīyah, 1417), 3/24.

4 Khalid Rashid, *Muslim Law* (Lucknow-India: Eastern Book Company, 2004), 283.

5 Ali Himmet Berki, *Açıklamalı Mecelle (Mecelle-i Ahkam-ı Adliyye)* (İstanbul: Hikmet Yayınları, 1982), 188.

6 Hayrettin Karaman, *Ana Hatlarıyla İslam Hukuku* (İstanbul: Ensar Neşriyat, 1987), 1/285.

employs three approaches to 'Pre-emption': one under Muslim Law and two under existing laws- section 24 of the Non-agricultural Tenancy Act, 1949, and section 96 of the State Acquisition and Tenancy Act, 1950.[7] In the Bangladeshi context, the literature on preemption law is inadequate, with few works available for comprehensive research. Existing works also lack substantial exploration from the standpoint of Islamic law. This study concentrates on preemption's application within Islamic legal frameworks, comparing statutory laws with Islamic principles, notably within Bangladesh's family law grounded in Ḥanafī jurisprudence. It emphasizes the significance of preemption (shufa) in Bangladeshi society, examines historical amendment acts, and proposes suitable strategies for effective implementation.

1. The General Mechanism of Pre-Emption

In simple terms, pre-emption entails the exclusive right of an individual to acquire a specific property before it becomes available to others. This legal concept grants a person the authority to buy immovable property before anyone else under certain circumstances. This particular right is vested in a third party called the 'pre-emptor.' When a property sale agreement is established, the pre-emptor can intervene and take the position of the intended buyer, essentially obtaining the property on the same agreed-upon conditions. The term 'pre-emption' originates in the Latin words 'prae,' meaning 'before,' and 'emptions,' signifying 'buying.' Its purpose is to ensure that this individual can secure the property before others have the chance.[8] However, this principle was notably affirmed by the Supreme Court of India in the Bishan Singh v. Khazan Singh case. This right is marked by the pre-emptor's more robust entitlement, granting them the ability to secure the entire property for sale. Notably, pre-emption has historical lineage, tracing back to Roman law, and it was also practiced in the Indian subcontinent during the era of Mughal rule as part of Islamic legal practices. Let us explore a couple of scenarios to grasp its application:

Scenario 1: In this situation, Ahmed and Khadiza are siblings who jointly possess inherited property in the exact location. Due to family disputes, Khadiza, the sister, sold her portion of the property to an external party. Ahmed, the brother, possesses the necessary means to purchase the property and has a genuine requirement for it. In this scenario, is there any potential legal recourse available to Ahmed?

Scenario 2: Consider the case of Aisha and Muhammad; Aisha and Muhammad share joint ownership of a pond. This pond holds significant financial importance as one of Muhammad's income streams. The potential sale of Aisha's share to an external

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7 The State Acquisition and Tenancy Amendment Act, 2006, *Laws of Bangladesh-Ministry of Law, Justice and Parliamentary Affairs* (1951).

8 Syed Lutfor Rahman, *Pre-Emption Laws in Bangladesh* (Dhaka: Ain-Grantha Prokashak, 1984), 1.

party threatens Muhammad's income stability. However, Muhammad is prepared and capable of purchasing Aisha's share in the pond. In this circumstance, what legal recourse does Muhammad have at his disposal?

These scenarios highlight the intricate interplay of pre-emption rights in property transactions and the legal options available to individuals facing such circumstances. The situation using mathematical symbols and equations is presented below:

A and B are adjacent landowners. X owns land A, and Y owns land B.

When X decides to sell land A, the process can be described as follows:

Offer to Y:

X offers land A to Y.

If Y accepts, the sale is concluded.

Offer to others:

If Y declines or does not respond, X can sell land A to another person, Z.

Pre-emption right of Y:

If X sells to Z without offering to Y, Y has a right of pre-emption.

Y can purchase land A from X by paying the same price Z paid.

Mathematically:

If Y accepts: Y owns land A.

If Y declines: X can sell to Z.

If Y exercises pre-emption:

Y pays the same price Z paid to X.

If the price seems inflated to discourage Y, the court adjusts the price.

In mathematical terms:

If Y exercises pre-emption: Y pays Price(Z) = Price(X).

Court adjustment: Adjusted Price(Y) = Rationalized Price(Z).

The primary mathematical expression: is $Y = X$ (if Y accepts), $Y \neq X$ (if Y declines) $Y = Z$ (if Y exercises pre-emption). The fundamental principle behind this law is to maintain neighborhood tranquility and prevent outsiders from disturbing it. It ensures harmony between adjacent landowners (A and B) and Y's pre-emption rights to keep the community's equilibrium.

The above example involves three distinct parties:

Vendor: The individual who owns the property and intends to sell it. In the given example, X is the property owner who chooses to sell his land.

Vendee: This party refers to the person who is an outsider to the property and purchases it. In the illustration, Z represents the outsider who wishes to buy the land. This is the third party involved.

Pre-emptor: The pre-emptor is the neighbor, co-sharer, or heir with the right of pre-emption. In the provided scenario, Y possesses adjacent land to X's property. Thus, Y is the neighbor and the holder of the pre-emption right.

2. The concept of Shufʿah in Islamic Law

According to the author of Al-'Inayah Sharh al-Hidayah, and as per the Shari'ah's terminology, the establishment of ownership by an individual through their rights of partnership and neighborship over the land sold to another adjacent land is termed as *shufʿah*.[9] Elaborating on the name *shufʿah*, the author mentions that it is called so because the purchased land merges with shafī‘'s land.[10] The author of al-Durr al-Mukhtār defines *shufʿah* as the imposition of ownership on the buyer through compulsion, stating, establishing ownership of land by force on the buyer is termed *shufʿah*.[11] Consequently, due to the partners' and neighbors' joint ownership of the land, forcefully acquiring the adjoining land at the same price as the buyer's purchased land is considered *shufʿah*.

An individual who possesses the right of pre-emption is referred to as a Shafī‘' or a person with pre-emptive rights for land.'[12] Therefore, the individual authorized to exercise the option to acquire adjoining land is termed a shafī‘.

2.1. The Stance of Shafī‘ in Classical Literature

In this particular case, shafī‘'s ownership of land can be categorized into two distinct types, as elucidated by al-Maydānī: (1) Shareek (partner) and (2) Neighbor.[13] Here, s*hafī‘* refers to an individual who shares or partners in the ownership of wealth. *Shafī‘*'s definition underscores that partners are individuals whose joint property remains undivided. Consequently, those who partake in this shared property are called s*harik* or s*hafī‘*.

In this context, individuals who are partners in the original property, those who share the right to the property, and those who share in its access paths are all considered partners. Nonetheless, within the realm of shufʿah rights, two categories of partners emerge: (1) The principal partner, or the individual who shares in the principal value of the sold property, and (2) The "khalīṭ" or the person who shares in the right of the sold property. In other words, "shafi- khalīṭ" refers to individuals with rights to

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9 Bābartī, *Al-ʻInāyah Sharḥ al-Hidāyah*, 5/473.

10 Maḥmūd ibn Aḥmad ibn Mūsá Badr al-Dīn ʻAynī, *Alibnāyah Fī Sharḥ Al-Hidāyah* (Beirut-Lebanon: Dār al-Kutub al-ʻIlmīyah, 2000), 11/274.

11 Muḥammad Ibn ʻAlī Ibn Muḥammad Ibn ʻAbd al-Raḥmān al-Ḥanafī Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār Wa-Jāmiʻ al-Biḥār* (Beirut-Lebanon: Dār al-Kutub al-ʻIlmīyah, 2002), 623.

12 ʻAbd Allāh Ibn Muḥammad Ibn Qudāmah, *Al-Mughnī* (Riyadh: Dār ʻĀlam al-Kutub, 1997), 7/454.

13 ʻAbd al-Ghanī al-Ghunaymī Maydānī, *Al-Lubāb Fī Sharḥ al-Kitāb* (Beirut-Lebanon: al-Maktabah al-ʻIlmīyah, 2002), 3/262.

specific easements, such as right of way or water discharge, and privileges related to pathways or water management. [14]

According to the author of *Al-ʻInāyah Sharḥ al-Hidāyah*, the principal partner is the one responsible for the assets being sold. Concerning the *shufʻah* of a partner,[15] however, al-Marghinānī states that the right of pre-emption will be established for the individual who shares in the original entity being sold.[16] This implies that the person with a stake in the principal value of the goods sold is the leading partner. The author of Fatḥ al-qadīr, Ibn Humām, asserts that the person sharing the rights of the sold land is someone whose rights have not been distributed. Typically, these rights to sold land are intertwined. Such an individual, who holds title to the sold land, is termed the 'Khalīṭ.'[17] In his ḥāshiyah, Ibn Abidin mentioned: as for the neighbor, customarily, this refers to the adjacent individual or someone who resides in the immediate locality. The term 'locality' pertains to the area where the tribe lives and dwells, resembling a close-knit neighborhood.[18] Addressing the notion of neighbors, according to a hadith, as narrated by Abu Bakr, Umar, and Ali, the Prophet Muhammad stated that the range of neighbors extends to forty houses.[19] The ḥadīth emphasizes that those whose neighbors are not secure from their harm will not enter Paradise. Ali further added that anyone who hears their shouting is considered a neighbor. The Qur'an also underscores the importance of neighbors.[20] Abdullah ibn Abbas narrated that the Prophet Muhammad (peace be upon him) said: 'If a person possesses land or property and intends to sell it, they should first offer it to their neighbor for purchase.'[21] However, Ibn Kathīr posits that the nearest neighbor is a fellow Muslim.[22] Upon considering the classical scholars mentioned viewpoints, including those from the Qur'an and Hadith, the nearest neighbor is classified into three categories: (1) individuals with a kinship relationship, (2) those who live in proximity, and (3) Muslims.

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14 Maydānī, *Al-Lubāb Fī Sharḥ al-Kitāb*, 3/261.

15 Bābartī, *Al-ʻInāyah Sharḥ al-Hidāyah*, 5/475.

16 al-Morginány, *Al-Hidāyah Sharḥ Bidāyat al-Mubtadī*, 3/26.

17 Muḥammad Ibn ʻAbd al-Wāḥid al-Sywāsy al-Sakandarī Kamāl al-Dīn Ibn Humām, *Sharḥ Fatḥ Al-Qadīr ʻalá al-Hidāyah Sharḥ Bidāyat al-Mubtadī* (Beirut-Lebanon: Dār al-Kutub al-ʻIlmīyah, 2003), 5/375.

18 Muḥammad Amīn Ibn ʻUmar ʻĀbidīn, *Radd Al-Muḥtār ʻalá al-Durr al-Mukhtār* (Beirut-Lebanon: ʻĀlam al-Kutub, 2003), 9/259.

19 Aḥmad Ibn ʻAlī Ibn Muḥammad Ibn Ḥajar ʻAsqalānī, *Fatḥ Al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī* (Egypt: Maktabat al-Dār al-Salām, 1998), 10/447.

20 al-Nisa, 4/36.

21 Muḥammad Ibn Yazīd al-Rabʻī al-Qazwīnī Ibn Mājah Abū ʻAbd Allāh, *Sunan Ibn Mājah* (Egypt: Dār Iḥyā' al-Kutub al-ʻArabīyah, 1999), 1/17.

22 Ismāʻīl Ibn ʻUmar Ibn Kathīr, *Tafsīr Ibn Kathīr* (Riyadh: Dār Ṭaybah, 1999), 2/298.

Consequently, the concept of distant neighbors can be comprehended from two standpoints: (1) individuals who share no familial ties and (2) neighbors who adhere to faiths other than Islam. When considering the principle of *shuf'ah* or pre-emption, priority is accorded in inheritance to immediate family, fellow Muslims, and subsequently to distant neighbors and those practicing different religions. In determining precedence among neighbors, a pertinent ḥadīth narrated by Talha Ibn Abdullah recounts a conversation with Aisha in which she inquired, 'I have two neighbors. To whom should I present a gift?' The Prophet responded, 'Offer it to the one whose entrance is closer to yours between the two.'[23] This ḥadith, along with the evidence from the Quran and the Hadiths, establishes two distinct categories of neighbors regarding their rights: (1) The Nearest Neighbor and (2) The Farthest Neighbor.[24]

As a result, it becomes an obligatory duty to uphold the rights of neighbors based on their proximity, as indicated by both the Quranic teachings and the wisdom of the Hadith. The preceding discourse outlined three fundamental grounds for being mindful of *shuf'ah* rights. These are as follows: (1) Partnership (Sharīka), the reason for shufʿa, which the jurists unanimously accept, is being a shareholder in the real estate sold; (2) Partnership (Sharīka) in the rights associated with the sold assets, characterized by a joint partnership or a combined arrangement, and (3) neighborhood considerations.[25]

However, a significant aspect highlighted in classical sources pertains to who holds the right of *shuf'ah*. A ḥadīth found in Abdurrezzak's al-Musannaf narrates that irrespective of the individual, the neighbor's claim takes precedence as the right of *shuf'ah*.[26] The term '*Mā kāna'* within the ḥadīth encompasses anyone, indicating that the right of *shuf'ah* is applicable regardless of one's gender, status (free or enslaved), age, or religious affiliation (Muslim or non-Muslim). *Shuf'ah* is a transaction that extends to all individuals, regardless of gender, age, or religion. This right remains consistent even for non-Muslim individuals, primarily because the essence of being a good neighbor fundamentally contributes to social harmony. This extends to Muslims and non-Muslims, as fostering peace is imperative for society. This distinction is not upheld since Islam aims to establish order within the public domain and promote social cohesion in a sociological context. In this framework, the criteria for evaluating interactions among

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[23] Abū 'Abd Allāh Muḥammad Ibn Ismā'īl Ibn Bukhārī, *Ṣaḥīḥ Al-Bukhārī* (Bangladesh: Hamidiya Library, 2002), 1/788.

[24] 'Abd Allāh Nāṣiḥ 'Alwān, *Tarbiyat Al-Awlād Fī al-Islām* (Egypt: Dār al-Salām lil-Ṭibā'ah wa-al-Nashr, 1992), 1/303.

[25] Abū Bakr Ibn Mas'ūd Kāsānī, *Badā'i' Al-Ṣanā'i' Fī Tartīb al-Sharā'i'* (Beirut-Lebanon: Dār al-Kutub al-'Ilmīyah, 2003), 6/4.

[26] 'Abd al-Razzāq Ibn Hammām Ṣan'ānī, *Muṣannaf 'Abd Al-Razzāq* (Egypt: Dār al-ta'ṣīl, 2015), 3/81.

individuals within society is based not on religion, language, or ethnicity but on the foundation of justice alone.[27]

In addition, a single distinction exists in this scenario: If a non-Muslim acquires the property using wine or pork as payment, and the *shafiʿ* is also a non-Muslim, the *shafiʿ* can accept the property in exchange for wine and pork. In their legal framework, these items hold value and are considered legitimate for transactions. A sales contract involving these items remains valid between them. However, if the *shafiʿ* is a Muslim, the acquisition does not include wine or pork but their monetary equivalence. This rule applies to the *shafiʿ* and any of the parties involved, whether they are Muslim – the *shafiʿ*,' the buyer, or the seller. In this case, using wine or pork as payment is impermissible under Islamic law, as these items are not recognized as legitimate goods. Consequently, a sales contract involving them is null and void. When purchasing goods subject to the right of *shafiʿ* of *shufʿah*, the buyer must offer payment equivalent to the item's value, directly or through an alternative means.[28]

2.2. Reasons For Pre-emption As Per Islamic Jurisprudence

As outlined in the Majallah, the factors that lead to the emergence of the right of preemption can be categorized into three: a partnership in the *Mabīʿ* (the property subject to the sale contract) itself, partnership in a servitude content, and adjacency to it. These factors establish a precedence hierarchy, where the utilization of the right prevents its progression to the subsequent group. Should those in the higher group fail to exercise the right of preemption, this right becomes applicable to the next group (Majallah 1008-1010).[29] However, the rationale for shufʿah, a concept unanimously accepted by jurists, is to have a share in the sold real estate. The following scenarios are also regarded as factors leading to the activation of the shufʿah right among various categories of *shafiʿ* (vendees), succinctly elaborated below:[30]

2.2.1. Being a Co-owner of An Easement Right (Sharīk)

The initial classification within the *shafiʿ* perspective pertains to *sharīk* ownership in an easement right, where individuals jointly hold rights irrespective of the watercourse's length, direction, or the extent encompassed by the easement. For example, Zimam and Tawqueer are two brothers and co-sharers in the property. Here, if Zimam sells his property to Abdullah, Tawqueer has the right of preemption in this

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27 Abū Bakr Muḥammad Ibn Aḥmad Ibn Shams al-Dīn Sarakhsī, *Al-Mabsūṭ* (Beirut-Lebanon: Dār al-Maʿrifah, 1989), 12/161.

28 Sarakhsī, *Al-Mabsūṭ*, 12/277.

29 Berki, *Açıklamalı Mecelle (Mecelle-i Ahkam-ı Adliyye)*, 198.

30 ʿUthmān Ibn Fakhr al-Dīn ʿAlī Zaylaī, *Tabyīn Al-Ḥaqāʾiq Sharḥ Kanz al-Daqāʾiq* (Egypt: al-Maṭbaʿah al-Amīrīyah al-Kubrá, 1314), 5/239.

case. In this context, all involved parties are considered equal. It is important to note that the utilization of public roads and rivers, which are accessible for everyone's use, does not serve as a foundation for the right of *shuf'ah*. The primary entitlement within the scope of *shuf'ah* is reserved for the original partner. This stems from their inherent privilege to acquire and take possession of the corresponding property. A ḥadīth narrated by Rafi' conveys the Prophet's words: The partner holds a greater entitlement, as they are the nearest, regardless of the nature of the property.[31] Another ḥadīth by the Messenger of Allah underscores that this partner possesses the right of *shuf'ah*, and every owner holds the right of *shuf'ah*.[32] There is another ḥadīth where the Messenger of Allah said: 'Whoever has a partner in any stream or date palm, he has no right to sell that property unless she declares it to his partner.[33] Suppose an individual intends to sell their property by their ownership share. In that case, the remaining partners are entitled to exercise their right to buy before any external party. This entitlement is governed by the number of individuals involved, following the principles of the Hanafi madhhab. For instance, if there are three partners, each possesses an equal claim. Conversely, the Shafi''i madhhab determines this right based on the share's value. In other words, the other two partners hold identical rights within the Hanafi madhab. In contrast, within the Shafi''i madhhab, the right of *shuf'ah* is distributed among them in alignment with their respective ownership shares.[34] The evidence presented unequivocally establishes the partners' priority in exercising the *shuf'ah* right.

2.2.2. Being adjacent to the property (Khalīṭ)

Following the clarification of Sharīk, the subsequent categorization within the *shafi''* framework pertains to khalīṭ. In this context, the property remains part of an undivided sale within a collaborative partnership, where the allocation of rights to those who share ownership in the initial property reflects their involvement in the ownership of assets that have been either liberated or sold. This principle extends to partners in pathways and water canals, highlighting the comprehensive nature of this concept. The endorsement of this right stems from a ḥadīth by al-Sha'bī's declaration that the khalīṭ holds greater rights than the *shafi''* individual. Furthermore, the *shafi'* individual takes precedence over their neighbor, while neighbors possess more rights than others.[35] The Ḥadīth signifies that those who jointly own a property possess the

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31 Ibn Mājah, *Sunan Ibn Mājah*, 1/2498.

32 Muḥammad Ibn 'Īsá Ibn Mūsá Tirmidhī, *Sunan Al-Tirmidhī* (Egypt: Dār al-Gharb al-Islāmī, 1996), 3/365.

33 Ebul Hüseyin Muslim Ibn Haccac Müslim, *Sahihi Müslim* (İstanbul: İrfan Yayınları, 1990), 133.

34 Sarakhsī, *Al-Mabsūṭ*, 12/168.

35 'Abd Allāh Ibn Muḥammad Ibn Ibrāhīm Abī Shaybah, *Muṣannaf Ibn Abī Shaybah* (Saudi Arabia: al-Rushd, 2004), 7/167.

right of pre-emption if a co-owner plans to sell their share to an outsider. This principle of *shuf'ah* grants the initial right to the partner, but in cases where the partner is absent, this responsibility falls to the neighbors. Here, the term "partner" encompasses both primary partners and khalīṭs; the neighbor inherits this right if the khalīṭ is not present.

Nonetheless, ownership of flowing water properties, regardless of length, direction, or layout, guarantees equitable involvement. In the Hanafi school of thought, entitlements to *shuf'ah* rights are established through shared ownership, co-ownership in an easement right, and proximity to the sold property. In cases where multiple parties hold equal *shuf'ah* rights, they can collectively waive these rights, allowing the property to be sold without *shuf'ah* claims (*Ḥaqq al-shuf'ah*). The invocation of *shuf'ah* rights precedes more substantial claims, while others are limited in scope. In the Majallah, higher-ranking *shuf'ah* holders waiving rights enables lower-ranking holders to claim them; however, Abū Yūsuf maintains that higher-ranking holders void others' rights. When *shuf'ah* holders share the same rank, the Hanafi school divides the rights equally, whereas other schools allocate *shuf'ah* rights proportionally to their property shares. The Ẓāhirī school acknowledges co-ownership of movable property, and the Jafari school recognizes co-ownership of private passages as grounds for *shuf'ah* rights.[36]

2.2.3. Rights of the Neighbor (Jār)

The last group pertains to individuals who possess adjacent goods eligible for the preemption right (al-jār al-mulāṣiq). These goods are continuous immovable properties. When immovable properties comprise multiple floors, each owned by different individuals, each floor's owner is considered a neighbor (al-jār al-mulāṣiq) to the other floors. For example, as stated in Article 1011 of the Majallah, when distinct owners possess the lower and upper floors of a building, each floor is viewed as a neighbor (al-jār al-mulāṣiq) regarding the other.[37] Various references in Ḥadīth support this entitlement. Several references in the ḥadīth support this entitlement.[38] The property under consideration in the contractual arrangement must unequivocally qualify as a tangible immovable asset. There is a narration from the prophet where he was asked by a companion of him, "What if there is a piece of land where no one holds a share and there are no partners, but neighbors are present? The prophet replied that the neighbor's claim takes precedence due to their proximity.[39] This is one piece of

[36] ʻAlī Ibn Aḥmad Ibn Saʻīd Ibn Ḥazm, *Al-Muḥallá* (Beirut-Lebanon: Dār al-Kutub al-ʻIlmīyah, 2001), 8/3.

[37] ʻAynī, *Alibnāyah Fī Sharḥ Al-Hidāyah*, 11/275.

[38] Tirmidhī, *Sunan Al-Tirmidhī*, 3/32.

[39] Ibn Mājah, *Sunan Ibn Mājah*, 1/17.

evidence supporting this ruling through Ḥadīth.[40] This includes tangible assets like houses, shops, and fields considered property. However, it is essential to note that structures on the land, such as houses, shops, and even trees, must be directly connected to the sale. The *shuf'ah* right is only activated when the entire property, including the land, is sold; otherwise, the sale of just the house, detached from the land, does not trigger the *shuf'ah* right.[41] By this stipulation, the concept of *shuf'ah* does not apply to assets like ships, cars, or any other movable belongings.

3. Terms of the Right to Shuf'ah in Islamic Law

The initial requirement pertains to the partnership involving easement (khalīṭ) or proximity (neighbors) to the given reasons. The discussion of the preemptive right (*shuf'ah*) only arises when these circumstances are in place. The subject of the preemptive right must encompass a real estate property or an entity in the likeness of real estate.[42] Majallah's Article 1017 encapsulates two essential criteria[43]: firstly, the property must constitute real estate or land, and secondly, the concept of preemptive right does not extend to assets such as automobiles or vessels, ships, etc., which lack the nature of the real estate. Within Islamic jurisprudence, while the Ḥanafī jurist al-Kāsānī aligned with Imam Malik's perspective on pre-emptive right applying to ships,[44] the prevalent stance within the Ḥanafī school of thought does not concur with this viewpoint.[45]

In contrast, the Ẓāhirī jurist Ibn Hazm contends that the preemptive right extends to all partnership instances, encompassing food and swords.[46] Similarly, according to Majallah Article 1019-1020, the preemptive right does not apply to structures or trees detached from the specified area. However, if they are affixed to the land, linked to a watercourse, preemptive rights hold for buildings and trees that are sold.

Regarding the intended definition of property, it implies the necessity for it to be privately owned by an individual rather than publicly owned by the state. Consequently, the preemptive right does not hold on lands owned by institutions or the

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40 Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, 1/96.

41 Karaman, *Ana Hatlarıyla İslam Hukuku*, 1/286.

42 ʻAynī, *Albināyah Fī Sharḥ Al-Hidāyah*, 11/276.

43 Berki, Açıklamalı Mecelle (Mecelle-i Ahkam-ı Adliyye), 201.

44 Kāsānī, *Badāʾiʻ Al-Ṣanāʾiʻ Fī Tartīb al-Sharāʾiʻ*, 6/117.

45 Mālik ibn Anas ibn Mālik, *Al-Mudawwanah al-Kubrá* (Saudi Arabia: Wizārat al-Awqāf al-Saʻūdīyah-Maṭbaʻat al-Saʻādah, 1324), 4/216; Aḥmad ibn Idrīs Shihāb al-Dīn Qarāfī, *Al-Dhakhīrah* (Beirut-Lebanon: Dār al-Gharb al-Islāmī, 1994), 6/280.

46 Ibn Ḥazm, *Al-Muḥallá*, 8/3.

state, like public parks and gardens. Moreover, the preemptive right does not find application in forested areas.[47]

According to article 1024 of Majallah, *shafī'* should be cautious not to engage in actions leading to the forfeiture of his entitlement to assets connected with the preemptive right (*shuf'ah*).[48] For instance, whether exercised with or without a fee, if he declares his intention not to exercise this right, he forfeits it. Similarly, the scope of the preemptive right shifts to the possession of a third party or another individual within the group of *shafī'*, and the *shafī'* in question provides his consent to this transfer.[49] Any expressions or behaviors signifying agreement result in the preemptive right being relinquished once more. This is because the preemptive right, unlike a transferable entity, can neither be bought nor sold. It is a right that can only be exercised or explicitly renounced.[50]

Furthermore, it is crucial to note that the preemptive right (*shuf'ah*) comes into effect exclusively after establishing a sales contract, as highlighted in MajallahArticle No. 1021. This assertion within the Majallah emphasizes the Hanafi school's stance, stipulating that *shuf'ah* is contingent upon transactions involving modest payments.[51] Similarly, the consideration of *shuf'ah* extends to instances where the imposition of a price is specified, as detailed in Article 1022. As a result, scenarios such as gratuitous grants, inheritance, or bequests that lack a monetary element do not give rise to the preemptive right (Majallah1023).

All claims of the seller over the sold real estate must have lapsed. For instance, in an unlawful sale, the seller cannot exercise the preemptive right unless their entitlement to reclaim the property through contract termination has been forfeited. Furthermore, the presence of a right of choice acts as an impediment to *shuf'ah*. However, this circumstance does not encompass every possible scenario. For instance, the absence of foresight and speculative intention does not obstruct the assertion of this right (Majallah, 1026), these aspects are inherent for the buyer without necessitating additional conditions.[52]

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47 İbrahim Kâfi Dönmez, "Şüf'a", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi*, 2010, 39/252; Karaman, *Ana Hatlarıyla İslam Hukuku*, 1/188.

48 Berki, *Açıklamalı Mecelle (Mecelle-i Ahkam-ı Adliyye)*, 202.

49 Ali Haydar Efendi Eminefendizâde, *Dürerü'l-Hükkâm Şerh-i Mecelleti'l-Ahkâm* (Kostantiniye: Matbaa-i Ebüzziya, 1330), 3/158–161.

50 Dönmez, "Şuf'a", 39/252.

51 Zaylaī, *Tabyīn Al-Ḥaqā'iq Sharḥ Kanz al-Daqā'iq*, 5/252–253; Muḥammad ibn al-Ḥasan Shaybānī, *Al-Aṣl* (Doha, Qatar: Wizārat al-Awqāf wa-al-Shu'ūn al-Islāmīyah, 2012), 9/280–282.

52 Eminefendizâde, *Dürerü'l-Hükkâm Şerh-i Mecelleti'l-Ahkâm*, 3/172.

3.1. Revoke The Shufʿah Right

There are scenarios where the preemptive right (*shufʿah*) ceases to hold. Primarily, if a person explicitly conveys consent through words or actions, even when witnessing the sale, the right will be forfeited. In addition to this, the right to Shufʿah becomes void in the following instances:

Upon shafī''s death

If the Shafīʿ partially or completely relinquishes the right

Upon reaching an agreement with the buyer for compensation

When the property of the *shafīʿ*, subject to *shufʿah* entitlement (*mashfūʿun bihi*), is sold without a court's shufʿah decree

If the shafīʿ acts as a guarantor for the buyer of the sold goods

If the shafīʿ negotiates with the buyer regarding the sale or rental of the property in question.[53]

shufʿah's rights will cease to exist upon establishing the property boundary. As a result, once the property boundary is established, the concept of shufʿah's operation will be nullified. To elaborate, when two individuals have lawfully transferred their rights to a location if one intends to vend their property, they cannot assert *shufʿah's* privileges as a former co-partner. A narration in Tirmidhi attributed to Jabir stipulates that if a property is divided between two individuals, the right of Shufʿah will be invalidated.[54]

In each case, *Shafīʿ's* agreement to the sale is a factor in question. However, it is essential to note that the Shufʿah right is not lost upon the customer's death.

4. Terms of the Right to Shufʿah in Islamic Law

Upon receiving information regarding the property sale, *shafīʿ* has three options to assert his claim. These avenues are drawn from the classical fiqh text and are outlined in Article 1028 of Majallah,[55] as provided below;

4.1. Ṭalab al-muwaāthabah

Article 1029 of Majallah addresses the initial appeal form, falling within the first category, '*talab al-muwaāthabah.*' In this regard, the *shafīʿ* is required to promptly assert his claim by addressing the assembly, stating either 'I am the *shafīʿ* of the property/goods' or 'I demand shufʿah.' shafīʿ asserts that the goods fall under the bey' contract, implying the pre-emptive right for purchase. His declaration of intent must be made immediately upon hearing the relevant information within the assembly. The al-

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53 ʿAbd Allāh Ibn Maḥmūd Ibn Mawdūd Mawṣulī, *Al-Ikhtiyār Li-Taʿlīl al-Mukhtār* (Beirut-Lebanon: Dār al-Kutub al-ʿIlmīyah, 1999), 2/42–45.

54 Tirmidhī, *Sunan Al-Tirmidhī*, 3/652.

55 Berki, *Açıklamalı Mecelle (Mecelle-i Ahkam-ı Adliyye)*, 203.

'Ināyah sharḥ al-Hidāyah author argues in favor of this immediate demand, stating that any delay could render *shafī'*'s application null and void, as explained in the article of 1032 of Majalla. Alternatively, the demand could be made through words, actions, or deeds that indicate this intent. Silence without explanation or engagement with other matters despite being aware of the situation signifies consent. Promptness is emphasized, and *muwaāthabah*, meaning 'jump', illustrates the urgency to express the demand upon hearing.[56] Even if the *shafi'* is absent when the contract is executed, the same conditions apply upon later notification. If the buyer acknowledges *shafī'*'s request for the right of *shuf'ah* in court, there is no issue. However, if the buyer denies it, the *Shafī'* must pursue this claim, even without witnesses, to be prepared to swear an oath when required. Although it is recommended to have a witness, it is not mandatory.[57]

However, the *ṭalab al-muwaāthabah* process demands swift action from the *shafī'* to assert their right to *shuf'ah*, whether through immediate verbal declaration or actions reflecting their intent. The term's association with 'jumping' signifies the urgency of response. If the buyer denies the claim, the *shafī'* should still proceed and can take an oath even without a witness, though having one is advisable.[58]

4.2. Ṭalab al-taqrīr wāl'Ishhād

The second mode of asserting the demand for *shuf'ah* is referred to as *talab al-taqrīr wāl-ishhād*, detailed in Majallah's Article 1030.[59] As previously mentioned, *shafī'* should consider this as the subsequent step and treat it as such. During this process, it is imperative to have a witness present, which is a requisite condition. *shafī'* must state, "I have held the position of *shafī'* for these property/goods, requested Shuf'ah, and reiterate this request; let it be witnessed." While not obligatory in the *talab al-muwaāthabah*, the presence of a witness becomes mandatory in this case.[60] This approach involves having witnesses to validate that one is right to *shuf'ah*. Whether the goods are subject to the right of *shuf'ah*, belong to the customer, or pertain to the *shuf'ah* right, if they remain under the seller's possession, the seller must execute this step. In this context, including a witness is not solely essential to validate the assertion but also serves as a safeguard for the buyer. It acts as insurance against potential refusals and operates as substantiating evidence. If the customer disputes the claim and abstains from swearing an oath, the *taqrir* is considered to have occurred.[61]

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56 Bābartī, *Al-'Ināyah Sharḥ al-Hidāyah*, 5/10/440.

57 Dönmez, "Şüf'a", 39/252.

58 Orhan Çeker, *İslam Hukukunda Akidler* (Konya: Tekin Kitabevi, 2019), 126.

59 Berki, *Açıklamalı Mecelle (Mecelle-i Ahkam-ı Adliyye)*, 203.

60 Dönmez, "Şüf'a", 39/252.

61 Çeker, *İslam Hukukunda Akidler*, 126.

4.3. Ṭalab al-Khuṣūmah wāt-tamalluk

The third approach for asserting the right to *shuf'ah* is known as *talab al-Khuṣūmah wāt-tamalluk*. Article 1031 of Majallah outlines this process: *shafī'* should demand and initiate legal action in the presence of a judge. This demand is referred to as hostility and appropriation. Legally speaking, hostility signifies the positioning and entitlement of the plaintiff and the defendant before the court. It acknowledges that both parties are actively involved in the lawsuit and possess the legal capacity to be participants. Appropriation, in this context, refers to asserting a claim.[62] Suppose the customer does not willingly surrender the goods subject to the right of *shuf'ah*. In such instances, *shafī'* reports this scenario to the court. This action is taken to procure the goods and ensure that the right of *shuf'ah* is adjudicated in their favor. This entails *shafī'* initiating a lawsuit against the customer to seek legal recourse and secure their right to the goods.[63]

However, per the provisions outlined in Majallah's Article 1034, a timeframe of one month was established, drawing from the perspective of Imam Muhammad. On the contrary, Abu Ḥanīfah holds that no temporal constraint exists for postponing the proceedings following the presentation of witnesses and the determination of rights. If *shafi'* refrains from initiating a legal claim within a month, except in cases of justifiable reasons like residing in a distant location or being incarcerated, his entitlement is waived.[64]

The aspect of appropriation is also subject to two conditions, which align with the previously outlined methods. It involves demanding and taking possession of the designated property through coercive means with the customer's consent or through resorting to legal recourse and obtaining a court verdict. If *shafi'* wishes to exercise his *shuf'ah* right, he cannot selectively claim only a portion of the property in question; instead, he must commit to acquiring the entirety of it.[65] Contrastingly, the other three legal schools allow *Shafi'* to attain ownership of the property without filing a lawsuit. Nonetheless, there exists a divergence of opinions regarding how to express the intention to purchase. The Shafi'i and Maliki schools of thought posit that a mere declaration of intent is not solely sufficient. Instead, they advocate for reinforcement through additional means, such as a monetary payment.[66]

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62 Berki, *Açıklamalı Mecelle (Mecelle-i Ahkam-ı Adliyye)*, 204.

63 Dönmez, "Şüf'a", 39/252.

64 Muḥammad Ibn Aḥmad Ibn Ja'far Ibn Abū al-Ḥusayn Qudūrī, *Mukhtaṣar Al-Qudūrī* (Beirut-Lebanon: Dār al-Kutub al-'Ilmīyah, 1997), 1/57.

65 Çeker, *İslam Hukukunda Akidler*, 126.

66 Dönmez, "Şuf'a", 39/252.

5. Shuf'ah Law in Bangladeshi Context

While Bangladesh follows a secular legal system, its family law predominantly stems from Islamic law governing inheritance, marriage, and divorce. As a Muslim-majority nation, Islamic jurisprudence significantly shapes Bangladesh's family law, drawing mainly from the Hanafi school. The legal framework explicitly references "*shufa*," outlining property transaction rights, notably in agricultural land dealings.

In the Indian subcontinent, the legal principle of 'pre-emption' can be traced back to the era of Muslim rule, precisely the period of Muslim governance (1202–1757). Subsequently, significant changes were introduced to the legal framework during the British colonial period. Contrary to altering the law of pre-emption, the British chose to perpetuate the *shuf'ah* law from Islamic legal tradition, which had been instituted during the period of Muslim rule, as the foundation of their pre-emption law.

The core objective of pre-emption rights within the scope of Muslim law is to anticipate and prevent potential challenges that might arise from introducing unrelated individuals as co-partners or neighbors. This principle reduces potential complications among partners, sellers, or neighbors, thus ensuring a harmonious living environment.[67]

In Bangladesh, various civil laws incorporate this concept. Section 96 of the State Acquisition and Tenancy Act of 1950 pertains to agricultural land, while Section 24 of the Non-Agricultural Tenure Act of 1949 applies to non-agricultural land. Moreover, the Muslim Personal Law (*sharia'h*) Enforcement Act of 1937 holds relevance for Muslims. In the case of undivided homesteads, the pre-emption of immovable property is governed by Section 4 of the Partition Act of 1893.[68] Sections 26, 96(17), and 24(10) of these Acts govern pre-emption matters. The pre-emption right is exclusively established within Muslim law, and while not mandated, it is prioritized.[69]

It is essential to highlight that Section 24 of the Non-Agricultural Tenancy Act deals with the right of *shuf'ah* concerning non-agricultural land, and its provisions are specifically applicable to land within municipal areas.[70] The exclusivity of Section 24 of the Non-Agricultural Tenancy Act governs pre-emption related to non-agricultural land, making the stipulations in Section 96 of the SAT Act inapplicable.[71] The presumption of the implied repeal of Section 24 of the Non-Agricultural Tenancy Act cannot be made, even considering sub-sections (2) and (3) of the SAT Act. The prime

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67 Md. Milan Hossain, "Pre-Emption: Bangladesh Approach", *Sociology and Anthropology* 3/2 (2015), 81.

68 Asaf A. A. Fyzee, *Outlines of Muhammadan Law* (England: Oxford University Press, 1993), 348.

69 The State Acquisition and Tenancy Amendment Act, 2006.

70 Hossain, "Pre-Emption: Bangladesh Approach", 82.

71 Hossain, "Pre-Emption: Bangladesh Approach", 83.

objective of Section 24 is to prevent external purchasers from acquiring non-agricultural tenancy lands, thereby preserving the right of co-sharer tenants to assert their claims.[72]

5.1. Preemption under the State Acquisition and Tenancy Act (SAT), 1950

Section 96 of the State Acquisition and Tenancy Act 1950 addresses the pre-emption right. However, Act No. XXXI, in 2006, modified Article 96 of this Act. In its previous version, co-tenants and tenants with adjoining land to the transferred property could invoke the pre-emption right under the earlier section or Section 96. Nevertheless, Section XXXI of 2006 introduced changes that restricted the eligibility for pre-emption to only an heir who is also a co-sharer tenant.[73] In the earlier provision, the term 'right of pre-emption' covered scenarios where a segment or share of a holding was 'transferred' to a non-co-sharer tenant. However, the word 'transfer' was substituted in the revised section with 'sale.' By introducing the term 'sold,' the concept of 'transfer' now exclusively relates to sales, excluding any other transfer forms.[74]

Under the preceding provision, the window to file a pre-emption application was open for four months from the notice date or the transfer's awareness date without a maximum time restriction. However, the currently amended section grants a shortened timeframe of two months, applicable within three years from the sale deed's registration date. As per current law, the right of pre-emption cannot be exercised beyond three years from registering the sale deed, irrespective of the party's awareness of the sale's details. However, under the earlier section, the pre-emptor could assert their right if they could demonstrate their refusal to accept the transfer.

In the prior provision, any partner could exercise the right of pre-emption at any time. For instance, even if they approached the court five or nine years after the land had been sold, claiming to have only learned of the transfer four months prior, they could still exercise their right. However, this created significant challenges for those who acquired the land within the last five to nine years and had seen its value appreciate. Reverting to the previous price proved insufficient to counteract the value changes. In the past section, co-tenants and neighboring tenants could trigger the first refusal, burdening the court with numerous applications. This scope has now been narrowed down. Section 96 of the SAT Act permits only co-tenants to seek first refusal. The current provisions appear more rigid and discourage pre-emption applications without solid justification. The earlier section had flaws that could inconvenience

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72 Hossain, "Pre-Emption: Bangladesh Approach", 83.

73 The State Acquisition and Tenancy Amendment Act, 2006.

74 Mohammad Hamidul Haque, *Trial of Civil Suits and Criminal Cases* (Uttarakhand: India: Universal Book House, 2010), 166.

buyers, which is mitigated by specific provisions, including a time limit of three years from registration. Section 96 of the State Acquisition and Tenancy Act 1950 provides the right to pre-emption agricultural land.[75] Section 96 (1) of the Act provides that if a notice is given to a co-partner under section 89 within 2 months from the date of receipt of the notice and if no notice is received, or if no notice is received, 2 months after the date of the transfer. An advance suit should be filed in civil court within (two) months. As per Section 96 of the SAT Act 1950, the pre-emption right explicitly applies to sales. Under Section 96(1)(a), when a portion or share of a raiyat's holding is sold to a non-co-sharer tenant, one or more co-sharer tenants of the same holding can enact their pre-emption right.[76] To illustrate, consider 'Zimam,' Tawqueer, and Abdullah, co-sharer tenants of Holding No. 650 by inheritance, while Salem and Rusab became co-sharer tenants through purchase, with respective shares of 10, 15, 20, 10, and 15 decimals. Tawqueer sold his portion to Fahman, an outsider, not a co-sharer tenant. In this case, the right of pre-emption arises for Zimam and Abdullah but not for Salem and Rusab, who, being co-sharer tenants by purchase, do not possess the pre-emption right under the new section. Zimam and Abdullah, individually or jointly, have the right of pre-emption.

According to Section 96 (1) (d) of the Act, a pre-emption suit cannot be filed after 3 (three) years from the registration of the sale deed. According to Section 16 (2) of this Act, all the estate's co-owners must be parties when filing the pre-emption case in the court. However, Section 96 (3 (a)) of the Act provides that if the value mentioned in the land acquisition deed is approved, the advance suit with 25% compensation under Section 96 (3) (b) and 17% simple interest under Section 96 (3) (c) must be filed.[77]

Upon completion of the registration of the sale of a property under the registrar's deed, land transfer notices must be sent by Section 89 of the State Acquisition and Tenancy Act and Section 23 of the Non-Agricultural Tenancy Act. After receiving the notice or becoming aware of the property's sale, a suit for the advance purchase of agricultural land must be filed within four months.[78] For non-agricultural land, the period is extended to four months. However, suppose the notice is not served or the sale is concealed. In that case, the lawsuit must be initiated within three years from the date of agricultural land registration and within 12 years from the date of non-agricultural land registration. Filing the case beyond this stipulated period will result in dismissal.

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75 The State Acquisition and Tenancy Amendment Act, 2006.

76 The State Acquisition and Tenancy Amendment Act, 2006.

77 The State Acquisition and Tenancy Amendment Act, 2006.

78 Hossain, "Pre-Emption: Bangladesh Approach", 83.

It should be noted that, regardless of land classification, if the remedy sought involves claiming a pre-emption right under Muslim law, the *tamadi* (limitation: the time limit for filing a suit is fixed by the Limitation Act.) period is limited to one year. Before seeking redress in Muslim law courts, the first claim or *ṭalab al-muwaāthabah* must be raised as soon as news of the property being sold surfaces. This means the pre-emption claimant must declare their intention to buy the property. Subsequently, the second claim, or *ṭalab al-taqrīr wāl-ishhād,* must be raised openly, entailing a public declaration of the property's purchase in front of two witnesses. Following this, the case must be directly filed in court as the third claim, or *ṭalab al-khuṣūmah wāt-tamalluk*. The claim for the right of pre-emption must be filed in a civil court with appropriate jurisdiction, as determined by the Civil Courts Act 1887 provisions and the Civil Procedure Code 1908.

Section 96 (9) (e) of this Act states that if the court approves the application for pre-emption, the concerned court shall direct the purchaser of the deed to register the deed with the applicant at the registry office within the next 60 (sixty) days. Under this section, all duties, fees, and taxes shall be exempted upon deed registration.[79]

Section 96 (10) of this Act states that if the deed purchaser cannot register the deed at the registry office within 60 days, the concerned court shall file the deed for execution and registration within 60 days.[80] A suit establishing the right of pre-emption can only be initiated after the sale of an immovable property to a third party has been registered under the registrar's deed. It is crucial to note that this suit cannot be brought earlier than the time of such registration.

However, Under Section 96(12) of the State Acquisition and Tenancy Act of 1950, if an individual is discontent with the court's ruling in the case's conclusion, they can file an appeal in the Court of Civil Appeals against the said decision. If a party remains dissatisfied with the Appellate Court's verdict or identifies any legal error, an avenue for recourse exists as a revision. This can be pursued under Section 115 of the Code of Civil Procedure, 1908.[81]

5.2. Contrast: Islamic Law vs. Legislation on Pre-emption in Bangladesh

In Bangladesh, the principle of pre-emption, according to Islamic law, exclusively holds relevance within interactions involving Muslims. In cases where a Muslim and a non-Muslim are involved, the *shuf'ah* provision of Islamic law does not apply. Suppose a disagreement emerges between a Muslim and a non-Muslim concerning pre-emption. In that case, the resolution falls under the jurisdiction of statutory laws, notably the

[79] The State Acquisition and Tenancy Amendment Act, 2006.

[80] Md. Sajidur Rahman, "What, Why, Where Preemption", *Prothom Alo* (May 23, 2023).

[81] Ahmed Chagir, "Right of Preemption in Muslim Law", *Lawyers Club* (2021).

SAT Act of 1950 and the NATA Act of 1949. Variations between Islamic law and the SAT Act of 1950 are outlined in the subsequent comparison:

a) As observed in Islamic law, three distinct categories of individuals hold the right to initiate pre-emption: (1) Shafi‘ -i Sharīk, (2) Shafi‘ -i khalīṭ, and (3) Shafī‘-i Jār (neighbors). On the other hand, the pre-emption right, according to Section 96 of the Bangladesh Act, is exclusive to co-sharer tenants inheriting a holding only.

b) Section 96 of the SAT Act stipulates that 25% of the consideration amount indicated in the deed must be provided as compensation, along with 8% simple interest, as part of the pre-emption application. This contradicts Islamic law principles.

c) By section 96(1), a pre-emption application can be submitted within two months of the notice issued under section 89 of the SAT Act. If no such notice is issued, the application window remains open for two months from the date of the notice; in this scenario, the application can be made within three years from the sale deed's registration date. After the specified period elapses, no application is permissible. Conversely, a pre-emption suit under Muslim law must be initiated within one year of registration or acknowledgment.

d) Before initiating a pre-emption application, the SAT can apply informally per Section 96 of the Act. However, when applying pre-emption, a specific court fee is required, whereas Islamic law does not stipulate any such fee.

e) Following section 96, if an application is approved, the purchaser must prepare and register a deed as instructed by the court. Conversely, no analogous provision exists in the context of pre-emption under Islamic law.

f) In compliance with Section 96, initiating a pre-emption application involves filing a miscellaneous suit without issuing a decree.[82] Conversely, in Islamic law, a pre-emption suit constitutes a civil suit that results in issuing a decree.

Conclusion

Pre-emption in Islam is paramount in preventing potential buyer harm. This concept seamlessly aligns with the Prophet's wisdom, advising against causing harm to oneself or others. Rooted in Islamic law, this mechanism adeptly navigates the complexities of ownership boundaries, with its core objective being preventing harm to all parties engaged in a transaction. Its significance shines particularly when a more deserving buyer emerges, safeguarding their rights without incurring losses. This wisdom of pre-emption extends beyond its immediate context, acting as a shield against harm from external forces. It not only ensures the tranquility of a community but also safeguards it from discord. This historical fabric is evident in the prevalence of pre-emption in the Indian sub-continent and Bangladesh, especially among co-sharer

[82] The State Acquisition and Tenancy Amendment Act, 2006.

tenants. However, its application has remained the same due to contemporary demands. However, instances of pre-emption continue, often entangling parties in intricate legal complexities, especially in scenarios involving agricultural land and property enhancements.

Focusing on the Bangladeshi legal landscape, pre-emption remains closely interwoven with Islamic law, primarily affecting transactions between Muslim individuals. It is crucial to note that this principle does not extend to interactions between Muslims and non-Muslims, with statutory laws exemplified by the SAT Act of 1950 and the NATA Act of 1949 taking precedence in resolving pre-emption-related disputes. A comparison between Islamic law and the SAT Act uncovers significant variations impacting the practical application of pre-emption. While Islamic law covers various categories empowered to initiate pre-emption, the scope of the Bangladesh Act narrows this right exclusively to co-sharer tenants inheriting property. Compensation requirements, as outlined in the SAT Act, differ from those in Islamic jurisprudence. Timelines for triggering pre-emption applications and suits also highlight differences between the two. Provisions governing court fees diverge, particularly in the prerequisites for preparing and registering a deed. The procedure for initiating pre-emption applications follows different paths in the SAT Act and Islamic law, encapsulating the inherent intricacies within each framework.

Despite regulations in the State Acquisition and Tenancy Act of 1950 and the Non-Agricultural Tenancy Act of 1949, Section 24 specifies scenarios exempt from pre-emption. These exclusions define the boundaries pre-emption operates in the Bangladeshi legal system. Cases where the land sold is designated as a homestead or when the sale precedes a pre-emption suit, along with collusive or fraudulent sales, are not eligible for pre-emption. Moreover, matters involving property transfer or sharing, bequests between spouses, property transfers through donations, and the concept of '*heba-bil-ewaz*' fall outside pre-emption's scope. An exception is the unique '*heba-bil-ewaz*' concept, where a property gift follows prior consideration from the donee. Additionally, donations or bequests by three blood relatives that revert property ownership are not subject to pre-emption. In Muslim Law, establishing a '*waqf*' as an endowment for religious or charitable purposes constitutes a distinct property transfer method unaffected by pre-emption.

Amidst these intricate variations, the essence of pre-emption asserts its profound significance in Bangladesh's property transactions. This importance, where Islamic principles intersect with statutory laws, reflects the attempt to harmonize sacred beliefs with modern legal frameworks. As society evolves, the significance of pre-emption may vary due to shifting socio-economic dynamics, evolving legal interpretations, and changing societal priorities. This interwoven tapestry of principles signifies an ongoing negotiation between tradition and modernity, highlighting the unwavering nature of pre-emption in navigating the ever-changing world.

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