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Unjust Land Right of Women in Bangladesh

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Abstract

There have been many efforts in the recent few years to bring women into mainstream development in Bangladesh, but they are falling far behind and there have been disparity between men and women in the family and society in many respects. One of the factors that are working behind the backwardness is women's limited and unjust right and access to resources, particularly to land. Moreover, the existing systems, laws, administration etc. are not suitable for women to enjoy rights over immovable property. Hence, they require a separate land policy and legislation where equal rights over land should be clearly mentioned as per the international conventions. In addition, proper implementation of existing land laws, women friendly and digital land administration as well as women welcoming environment and supportive system of access to land can establish their rights and can empower them as well. This article aimed to elaborate the situation where a basic right of women has been manifestly deserted with a particular focus on the interpretation of the constitutional position and the existing statutory provisions regarding right to hold property by women. This Article also took an attempt to focus on indigenous women's right to inherit land and religious position in this regard along with some effective suggestions.

Key Words: *Land, Right, Unequal, Women, Bangladesh, Law, Discriminatory, Equal.*

Introduction: Women in our country suffer various discriminations; social and economic inequality is an ordinary matter in the country. The key issue acting as an obstacle against development of the women is related to their limited as well as unjust right and access to resources, particularly to land.¹ Apart from these the existing laws and patriarchal values and practices of our society created sharp discrimination against the women folk.² The recent annual development plan as well as the ten years plans of the Govt. of Bangladesh put emphasis on women development through increasing literacy, better health and nutrition, employment generation, credit for the women and by many initiatives. But there has been no mention of women's better access to land, not even in the form of the Govt. allocation of land for the landless women.

The most economic important factors affecting women situation in the gender gap are right, control and access to assets.³ In rural south Asia particularly in Bangladesh, the most significant form of property is arable land, which is still critical determination of well-being, social status and empowerment.⁴ This research is going to explore the causes behind the unequal land right of women in Bangladesh as well as the position of women in this regard. Then it will analyze different aspects of our existing legal provisions regarding the issue. Then this paper will try to address the loopholes. After that, this study will examine religious stipulation concerning the property rights of women in Bangladesh. Apart from the mainstream women, this article will also address the indigenous women's right to land. At the end, this study will recommend some effective suggestions to improve the situation and to maintain the equality guaranteed by the Constitution of the People's Republic of Bangladesh.

Methodology: The research paper is designed to be analytical nature and critical appraisal of existing discrimination against women's equal right to hold property. The major source of this study is secondary and for the purpose of this research relevant data have been collected from various sources. The "Keen Observation Method" has been applied in this research work. By using this method, the researcher go through different articles, texts, booklets, handouts, seminar presentations, notes, newspapers, national & international research papers, web sites and so on to find interrelated study

materials, in order to be acknowledged in the allied topics. The collected data have been analyzed and interpreted by the author.

Objectives: The objectives of this study are:

- To find out the existing obstacles to get equal right to land by women;
- To examine the Constitutional position and ordinary legal provisions in this regard;
- To evaluate existing religious provisions relating to this issue;
- To suggest what ought to be done to improve the condition of women in Bangladesh.

Reasons behind the unjust land right of women in Bangladesh: Women with land have greater bargaining power, which would help them to negotiate more gender equal allocation of rights in the family.⁵ The relationship with rural poverty and access to land has strong linkage. However, the women without independent resources are highly vulnerable to poverty and destitution in the case of desertion, divorce and dead of husband. However, inter-family inequalities of women are increasing in relation to economic and social activities. Beside the social norms and unlawful activities of other shareholders, the Govt. functionaries often compound those problems and often obstruct the implementation of laws in women's favor.⁶ Generally, in our country's perspective, it is still true that women have subordinate position in family and society, which is determine by their lack of ownership, control and management, transfer and access to land as well as other properties.⁷ Further, there have been substantial evidences that economic resources in the hand of male household member often do not benefit the female members in equal degree, hence independent ownership of such resources; specially land can thus be crucial important in promoting the well being and empowerment of women.⁸

Generally, after marriage women are leave their father's house and live with husbands. In most of the cases brothers hide the fact from their married sisters and thus women are dropped from their paternal land and other properties. It is more difficult for the sisters to file a suit against brother and so face administrative and official harassments. Brothers often sell the share of land that belongs to the sisters without informing them and thus women remaining ignorant about their inherited land property. Most of the cases women do not know about the parental and husband's property. They do not keep information and particulars of the property. Also most of them are not aware about any land related laws, their right to inheritance and have no documents as a claimant. Additionally, women are deprived by various technical ways i.e they are deprived in survey and record.

Cultural barrier also plays negative role to be a claimant of parental property.⁹ Women generally do not claim inherited property. Claim to the parental immoveable property will generate conflict and rupture relation with brothers. Our society does not encourage women to take paternal property and often consider that as sin.¹⁰ Cultural norms dictate that a "good sister" will forfeit her share of paternal property. It also discourages women from ascertaining their right. If they claim that property relation between the siblings will be damaged. Male relative with vested interest, file court suit, forge deeds and use threats and even physical violence to discourage women from pursuing the claims. Sometime they forced them to transfer the property to them without any consideration. Sisters also consider about the financial condition of their poor brothers. If they take that property their relatives will be more vulnerable. Furthermore, the whole system, culture, tradition, morality, values, rules are against women and that should be changed for the betterment of our mother, sister, wife and daughter.

Equality ensured by the legal instruments: The Constitution of the People's Republic of Bangladesh is the solemn expression of will of the common people of this soil. We achieved this golden piece of Bill of Rights through the great freedom fight in 1971 and we paid an ocean of blood for this supreme charter. This is a Constitution adopted, enacted and given by the people for themselves.¹¹ Thus, the constitutional spirit authorizes the equal rights among the citizens irrespective of their religion, race, cast, sex or place of birth and the rights are guaranteed as fundamental rights and protected by the constitution, including women's equal rights with men in all spheres of the State and of public life. Apart from this, in chapter II of the constitution, where the fundamental principles of State policy are enumerated and equal rights of women are ensured are as follows:

- Article 11 guaranteed fundamental human rights and freedoms and respect for the dignity of the human beings.
- Article 13 provides that people shall own or control the instruments and means of production and distribution; which also ensures private ownership of property by women.

■ Article 14 declares that it shall be a fundamental responsibility of the State to emancipate the toiling masses, the peasants and workers, and backward sections of the people from all forms of exploitation. Still in our country women are not equal in comparison with men. Hence they are regarded as backward section of people and deserve additional treatment from the State to bring them into mainstream section.

■ Article 15 states that State accepts a fundamental responsibility towards raising the standard of living of the people, it specifically undertakes responsibility for providing social security to inter alia, widows.

■ Article 19 promulgates equality of opportunity and participation of women in all sphere of national life. This article also imposes a responsibility on State mechanism to adopt effective measures to remove social and economic inequality between man and woman and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.

However, these matters are not judicially enforceable in the courts of law as per the provision of the constitution.¹² However, these principles shall be fundamental to the governance of Bangladesh, shall be applied by the State in making of laws and policies, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh and shall form the basis of the work of the State and its citizens.

Next, part III of our constitution provides fundamental rights, which are judicially enforceable and guaranteed by the constitution itself. These rights are enforceable by the Supreme Court of Bangladesh under its Writ jurisdiction. As a citizen of Bangladesh all women are entitled to enjoy all these fundamental rights and can invoke them in case of infringement of any of the fundamental right. Apart from these, our constitution imposes an additional obligation on the State to take extra initiative in favour of women. The provisions which guaranteed womens' equality are as follows:

■ Article 27 declares all citizens are equal before the law and are entitled to equal protection of law.

■ Article 28 enumerates that the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex or place of birth. Women shall have equal rights with men in all fields of the State. However, it further states that nothing shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens. Hence, the Constitution undoubtedly permits statutes approving affirmative action for women.

■ Article 29 ensures quality of opportunity in public employment for all citizens.

■ Article 42 guarantees that every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property.

Beside these, Article 65 provides that women are free to contest election from any constituency and the parliament will reserve fifty seats exclusively for the women.

In case of violation of any of the above fundamental rights, which are to be interpreted in the light of the preamble and the fundamental principles, the aggrieved person can file a writ petition before the High Court Division. Apart from the fundamental rights guaranteed under the Constitution, every woman has other legal rights recognized by various statutes. The High Court Division may also take steps *suo motu* to protect legal rights violated by the Government if there is no other equally efficacious remedy. The recent trend of public intersect litigation has widened the scope and now any person can move the court representing the interests of the underprivileged like women.

Aside from the Constitution, ordinary laws of the land also protect equality between men and women regarding right over immoveable property. Nonetheless, still there exist some inheritance laws which foster discrimination in respect of land right of women. Moreover, our customs and systems of the society are not less liable for this situation. This study locates following deficiencies in our existing legal system:

Ownership: Women have the legal right to purchase and own land like all other Bangladeshi citizens. Moreover, the land laws of Bangladesh ensure that the legal heirs own the inherited land. However, here is a legal limit of private land ownership. In 1961 the highest limit was sealed to 375 *Bighas* by each family through Ordinance number 15. However, in 1972 the ceiling lowered to 100 *Bighas* by Ordinance number 18 and in 1984 through the Land Reform Ordinance that ceiling was lowered to 60 *Bighas*. But in practice, the scenario is not same with the theory and very few women own land.

Among them most are urban and rich women and a part of them owned land in document to avoid their male relatives' ceiling limit.

If a family purchases land, a woman has no legal ownership right to the land unless her name appears on the deed or other land documents.¹³ Nevertheless, the fact remains that once registered in their own name, women may be forced, threatened or deceived by husband, brother or son to transfer the control of inherited lands. Customarily in our country, male members of the family hold property and women rarely purchase land on their own because of cultural gender role constraints and their lack of independent financial resources.¹⁴ Moreover, our social values do not encourage us to purchase land by both husband and wife. Individual women also face considerable pressure from male relatives who want to acquire or control the immoveable properties.

Women's right on *Khas* land: In our country, only the Land Reforms Ordinance (LRO), 1984 has focused on women rights on *khas* land for the first time. In this Ordinance and in 1986 in a Government notification formulated under the light of the LRO about *khas* land and non-agriculture land distribution which indicated that if two acres of land is distributed to a landless family one acre should be given to the husband and one acre should be given to the wife. However, landless women are the most vulnerable group in the contestation of power regarding the distribution of *khas* land. Many women are struggling for years to establish their holding in the land that allocated to them by the Government for various social and political reasons. Most of the time musclemen are using force to evict them from the Govt. and subsequently disposes the women with the help of the local politicians and Govt. officials. For this reason, the landless women need an effective *khas* land distribution policy to establish their right over the land effectually promptly and permanently.

Divorced womens' right on husband's land: If a woman marries a man who owns land, her marriage generally ensures her access to the land and/or the produce of the land. When a woman is abandoned or separated, however, she often completely loses access to land and its produce.¹⁵ Laws regarding separation and divorce are different for Hindus, Muslims, Christian and Indigenous. Hindu, Christian and Muslim women have the right to maintenance if there is a formal divorce, but neither have the legal right to claim any of their husband's immoveable property. Indigenous women are governed by their own customary practices rather than the codified laws. However, Hindu women have the right to permanent maintenance from their husbands. Additionally, during the divorce proceedings the court can order temporary maintenance for wife, if wife has no independent income sufficient for her support.¹⁶ Under certain circumstances, a woman can claim maintenance from her husband even though she is still married to him. These circumstances include when: (1) her husband deserts her; (2) her husband has been cruel to her such that it is reasonable for her to believe that living with him would cause injury to her; (3) her husband has another living wife; or (4) her husband has a mistress in the house or resides habitually with a mistress elsewhere.¹⁷

A divorced Muslim woman is entitled to several forms of support under Muslim law. Firstly, she is entitled to "reasonable and fair" maintenance during the period of *iddat* (three menstrual cycles or the period until the birth of a child).¹⁸ Secondly, she has the right to *denmahr* (Dower) agreed to pay at the time of marriage. Thirdly, she can claim any property given specifically to her. After the period of *iddat*, a Muslim woman's ex-husband has no legal obligation to support her, unless she has a child under two years of age.¹⁹ If a single woman does not have means to support herself she can seek an order requiring any relatives who are her heirs to support her in proportion to the amount they will inherit from her.²⁰ If no such relative exists, the State *Waqf* Board is to pay maintenance to support her.

Registration of land: The registration system of land in our country is not easy for the illiterate women. Furthermore, the administration is not women friendly. The system is complex, expensive and time consuming as well. Additionally, digital system to preserve and search records has not been introduced yet. People often take aid from middlemen to do registration of their acquired land. Hence, the system must be changed and it must be women friendly. Moreover, the processes of mutation, partition, survey, payment of land development tax are not women friendly. Most of the officials are male and they are failed to realize the problems of women. Hence, the Govt. should take initiative to remove these barriers from the land administration.

Religious provisions regarding women's right to property: Despite constitutional promises of non-discrimination, Bangladeshi laws of inheritance continue to be discriminatory against women. Since

religion-based personal laws determine inheritance of the citizens of this country, the degree of discrimination varies from religion to religion. However, inheritance remains the single most opportunity for women to own land. Since almost all agricultural lands are at private hands and their economic conditions bar them from owning land by other means, inheritance is the best chance of women to own lands. The majority of women both Muslims and Hindus face inequalities, lower inheritance of shares of land than male. The *Sharia* law is not equal between male and female for ownership of land. According to *Sharia* law, a female is entitled to only of half of what a male receive from the paternal property.²¹ But in practice, the female rarely gets what she is legally entitled to get, due mainly to patriarchal family system. Hindu women do not inherit any land according to Hindu laws, which very often make their position in the family and society very peripheral and vulnerable.²²

A Muslim woman can hardly realize the rights that law has promised them. The prevalent Muslim and Hindu family laws regarding inheritance are discriminatory to women. Yet Bangladesh is a state party to International Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments which ensure women equality²³ and committed to give the right of equal ownership over all kinds of property to women as of men. Various socio-economic, religious and cultural factors synergistically results in deprivation of women from effective right and access to land.²⁴

The law of inheritance related issues is governed by the personnel laws based on the religion of the concerned individual. Thus, the Muslim women are governed by the *Sharia* Law. According to the *Sharia* Law the daughter, widow and mother will get the following share from the deceased man's property:

The Daughter:

1. If a daughter of a late father is the only child then she will get only half of the property. Rest of the property will be distributed among the widow, father, mother and other relatives of the deceased, if alive. In this scenario, there is a possibility to distribute the property among the daughter's uncle or uncle's son. Hence, the daughter is deprived from her father's property. However, the Law Commission of Bangladesh has recently proposed to amend the rule in light of Quran to give the daughter larger amount of share from her father's property. Nevertheless, the father has an option to will his property in his daughter's name. However, according to Muslim law no one can will not more than one third of his/her total property if there is another inheritor. In that case the person can gift his total property to his daughter.
2. If a late father doesn't have son and he has more than one daughters then they will get two third of the property together.
3. If a late man has daughter and son then the son is entitled to twice of what a female receive from her father.

The Widow:

1. If the late person doesn't have any children or doesn't have any grandson or generations downwards then the widow will entitle to one fourth of the total property. In case of any children the widow will get one eighth of the property.
2. If a deceased person has son or grandson then the widow (one or more than one) will get one eighth of the property together.

The Mother:

1. If the late man has children or have any grandson or generations downwards then the mother will get one sixth of the property.
2. If that late person doesn't have any children or doesn't have any brother or sister then the mother will entitle one third of the property.

Hindu women cannot imagine their inheritance right over land. Because in accordance with the rule of the *Sanatan* religion women are neither entitled to parental property nor own husband's property after his death. In some special circumstances they can merely enjoy immovable property of her husband where they have no absolute ownership, just entitled to lifetime enjoyment. Hence, it can be said that the existing Hindu law of Bangladesh is absolutely against womens' ownership over land whereas India has repealed this type of inequitable inheritance rule from their law by amending that laws. In Bangladesh most of the Hindu women are governed by *Daibhaga* rule.

According to the Hindu law women are entitled the following share from their male relatives:

The Daughter:

1. If the late father has son, grandson, great grandson then the daughter(s) will be excluded from her father's property.
2. If the above mentioned are absent then an unmarried daughter (if any) will get a portion of the property and exclude her married sister(s).
3. Barren daughter, daughter having no son, widow daughter are not entitled to any property and the same will go to the male members of the family.

The Widow: The widow of a deceased man can only enjoy life time ownership over the immoveable property and cannot dispose of the property. According to the Hindu law the widow has mere right to access the property during her life time only and no proprietary right over the land. After the death of the widow the ownership will return to his male relatives. Nonetheless, the widow may be permitted to transfer the property in some exceptional circumstances where there is no other alternative except transferring the property to sustain or to arrange marriage ceremony of an unmarried daughter.

The Mother:

1. If the late person has son, grandson, wife and father then the mother is not entitled to any portion of the property.

The Sister: A sister cannot be an owner of the property of her deceased brother.

However, India and Nepal have changed their laws relating to women's inheritance but regrettably there are no ratifications made in Bangladesh, therefore the Hindu women's situation remain unchanged. Recently while Bangladesh Law Commission initiated to ratify existing Hindu laws of this country, unfortunately male part of the community stand against that ratification.

The Christians are the minor but very important part of Bangladesh. Christian womens' property rights are as follows:

For the daughter of a deceased father: According to Christian inheritance law son and daughter will get equal right over father's property.

For the widow of a deceased person: If a late person has children then the widow will have one third of property. If the late person doesn't have children then the widow will have the ownership of the whole property.

For the mother of a deceased person: If a late person has son, daughter and father then the mother will be deprived from getting any property. In absence of the above, the property would be shared to mother, brothers and sisters equally. If a late person doesn't have any brother or sister then the mother will get the whole property.

For the sister of a deceased person: If the late person has father or son then the sister will not be entitled to any property of him. In absence of the above, the sister will have equal opportunity to share the property with her mother and brother(s).

However, if we can bring minor changes to the state laws regarding land rights that change should not be rebellious.²⁵ The situation of inheritance laws of Bangladeshi women is wide spread throughout the country. This is only a symbol of women rights. Although women can inherit and/or own a part of her father's and husband's immoveable property, they seldom exercise their rights to do so. The common view in rural areas is that men play the major role in cultivating land. Only men have the right to make decisions about how to use and exploit the land. Women rarely have their names on land titles, certificates, leases and contracts.²⁶

Indigenous womens' right to hold immoveable property: Indigenous women face discrimination, social exclusion, structural marginalization, gender identity and systemic oppression in our patriarchal society.²⁷ Descent and property are transmitted through male line in many indigenous communities where women remain systemically devalued without property and genealogical identity. Women are deprived from hereditary rights and having limited control over household resources and decision-making process and secluded with heavy domestic workloads. Denial of a rightful share of ancestral lands and access to resources in patrilineal customary inheritance laws characterize the unequal power relationships of indigenous women in Bangladesh. As a result, they are marginalized, victims of violence, and excluded from holding powerful decision making positions. Socially and economically they face multiple systemic discriminations. The customary practices of many indigenous communities i.e *Santal* or *Oraon* indicate that the sons have full rights of ownership to the father's

property.²⁸ The embedded customs demonstrated that if there are no siblings from a couple, the husband's property will be inherited by the sons of his brother (s).

In exceptional cases, if a father does not have any son, only in that case daughters can inherit his property. Generally, a wife will not be the owner of her husband's property. But, only when a mother is the owner of some property, in that case the daughters will inherit that property according to the customary land inheritance practices of these two ethnic communities.²⁹ The inheritance right of indigenous women is unequal and discriminatory. Apart from patrilineal indigenous communities, among the matrilineal like *Garos* another indigenous group of the greater *Mymensingh* district of Bangladesh, property and descent go to mothers to daughters. The customary practices of *Garos* indicate that no man could inherit property under any circumstances. However, the inheritance processes differ community to community, but to some extent, the right to inheritance is elusive to define women's equal power relationship in the society.

The constitution of Bangladesh is enshrined with equal opportunity for men and women. The National Women Development Policy 2011 stresses women's full access to or control over earned income, inheritance, credit, land and market to leveling existing inequalities and promoting equal rights between men and women in the society. Besides, Bangladesh government has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to eliminate all sorts of discrimination and inequality against women. Hence, Bangladesh is obliged to eliminate all kinds of discrimination. Therefore, the vulnerable position of indigenous women in the society urges to address the influencing factors of women empowerment which may lead to improve women's self-determination, access to socio-economic resources, freedom of choices and participation in decision-making process in the contemporary society of Bangladesh.

What need to be done to change the situation: Women's right to land can encourage family welfare; efficiency in resource management as well as it can enhance equity and empowerment of the women. Association for Land Reform and Development (ALRD) in 2000 reported that women with land have greater bargaining power, which could help them to negotiate more gender equal allocation in the family and higher wage in the market and status in the society. Women's risk of poverty would be reduced and their welfare would be enhanced if women have direct and effective access to land. Evidence from around the world suggests that women can use land more efficiently and they can choose appropriate cropping patterns. Women entitlement with land would not only empower them economically, but also strengthen their ability to challenge social and political gender related issues. The Government has an obligation to serve and protect all its people, especially the marginally poor and the vulnerable. Hence the following matters should be done immediately for the betterment of the women of our country:

- Amendment of inheritance laws to ensure greater equity and social security for the women. Universal family laws as well as universal inheritance laws to be incorporated and enacted immediately;
- Women of Hindu, Muslim, Christian and other ethnic minorities must be ensured equal rights through reforming customary values and norms of the respective community and groups;
- Advocacy and lobbying for promoting equal rights and access of women to land and other properties at different levels including community, local Govt., national institutions, policy and legislation;
- Lobbying for tenancy reform and ensuring that women have equal claims in leasing and other agreement;
- Make the law clear and non-contradictory with gender;
- Clarify different types of land ownership and use of immoveable property;
- Working for speed up mutation process and easier tax payment method for the village people;
- Undertaking effective legal literacy program so that poor women could have greater capacity to understand and deal with land related issues;
- Assisting women to register their land claims with the land registration office;
- Ensuring the recording of women's land shares;
- Providing the legal supports and advice in case women who wish to contest their claims and helping women with dispute settlements;

- Social mobilization for changing attitudes towards womens' inheritance right and for extending womens' land right;
- Motivating male to change their mentality and to recognize women's equal right to property;
- Changing the land administration to make the processes easier;
- Strengthening extra family economic support for women, so that they do not have to depend so much on male relatives, on whose behalf they forgo their claims, etc.

Conclusion: Land provides security in times of peril when poor women need money. The legal rights of women in resources strengthen their position in family and society which is the process of empowerment. Nevertheless, the link between equality and empowerment is very important to strengthen womens' position. Entitling women with land could be an effective way to empower them economically and strengthen their ability to challenges gender inequalities in both social and political within and outside the home. Outside the household land rights are found to empower women by improving the treatment they receive from the villagers; and by encouraging their access to and role in rural decision-making processes. Effective rights and control over immovable property positively influence to achieve other important rights such as education, employment, income, empowerment etc.

Legal and social measures in the form of social movement are to be taken for ensuring womens' just land right in Bangladesh. There is a great need for legislative and organizational reforms to establish womens' rights and effective control over land, which need a neutral political will to improve the situation. In addition, the Govt. needs to formulate a new land policy and legislation to ensure equality for women. There is also need for awareness rising and reducing knowledge gaps in land rights, gender and legal issues to enhance womens' capacity to bargain with the community, state and within the household.

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