

DRAFT;
Provisional Version

Assessing Inheritance Laws and their Impact on Rural Women in Bangladesh



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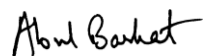
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ACRONYMS

ADB	Asian Development Bank
BBS	Bangladesh Bureau of Statistics
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHT	Chittagong Hill Tracts
FGD	Focus Group Discussion
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Land Coalition
KII	Key Informant Interview
MENA	The Middle East and North Africa
MFLO	Muslim Family Laws Ordinance
OECD	The Organization for Economic Cooperation and Development
UDHR	Universal Declaration of Human Rights

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EXECUTIVE SUMMARY

Background

From the dawn of civilization, human life is under an enormous influence of what came into being as the multifarious notions of ‘inheritance’. The rules of inheritance differ from society to society and have undergone a change over time. Inheritance rights have got another name—that is to say— human rights. But violation of such rights originates from an uneven distribution of inherited wealth, which, in turn, leads to economic inequality. Gender has a separate place to be discussed thoroughly on the ground of inheritance inequality in almost every society. Among the many forms of intergenerational inheritance, the most common is the transfer of properties, often immovable, to the immediate heirs after the death of a person. The most widely visible transfer of such inheritance is the - ‘land’. Women are denied ‘inheritance’ rights over land in many forms. The rejection of women’s inheritance and specially land rights marginalize them by contributing to their continued poverty and social subjugation. Regarding this, the present study is an effort to extract the real situation of the rural women’s inheritance rights to land across Bangladesh.

Methodology

The study is perceived as an exploratory study, designed to analyze the status of land inheritance of rural women in Bangladesh. All relevant literature, documents, laws and policies, and articles were reviewed critically in line with the study objectives. Besides, a survey was conducted. Both quantitative and qualitative methods had been used in the survey. Four broad groups living in rural areas of Bangladesh were brought under the survey. They are: (1) Muslim; (2) Hindu; (3) Chakma; (4) Garo; and (5) Santal. The study attempts to quantify the gap between the rightful amount of inherited land of a woman and the actual amount they get. The quantification has been done for Muslim women in rural areas of Bangladesh. For other non-Muslim women, the data are mostly in qualitative nature. Respondents at households were women who have gone through the experience of land experience at least once in her life from her deceased father or mother or husband.

Research Findings

Inheritance law in Bangladesh is a complex and thorny issue since there is no uniform law for the people of Bangladesh. Inheritance laws in this country are formulated mainly on the basis of religious doctrines. Therefore, Muslims, Hindus, Christians, Buddhists as well as the ethnic communities have different set of laws regarding inheritance rights. Those laws are known as their personal laws. Regardless of the constitutional ban on the discrimination on the basis of gender, women in Bangladesh rarely have equal property rights and rarely hold title to land. Social and customary practices effectively exclude women from direct access to land. Overall, Bangladeshi women are unlikely to claim their share of family property unless it is offered to them.

Women of Bangladesh irrespective of socio-economic classes, religions, and ethnic groups-are largely deprived of their justiciable rights on lands, including the inheritance issues. Hindu women, as well as women from Chakma, and Santal community are much deprived of their land-inheritance rights compared to that of Muslim women. Garos are matrilineal thus Garo women inherit and own land; however, due to their increasing interaction with the

mainstream patriarchal culture of Bangladesh- Garo women are also losing their exclusive rights on land.

While estimating the *effective ownership* of women over the land, a conservative estimate reveals that not more than 4 percent (ranging between 2% and 4%) of land in rural Bangladesh is owned by the women.

Both Muslim and non-Muslim women in Bangladesh have almost no ideas about the content of the inheritance laws. But, almost all of them have a perception that they are, by and large, deprived of the inheritance rights to land. Most of them have urged for initiatives likely to hasten change in this particular area of legal practice.

Most of the men know that there are inheritance laws in Bangladesh for both men and women which mainly came from the religious principles. They also know that, majority women in Bangladesh get less in terms of inheritances, especially in the cases of land inheritance. However, they also perceive the concept that, though women get less with their inheritance rights, nevertheless they are provided with other surpluses (i.e., property, money, gifts etc.) from other sources which can make their life comfortable. Hence, most of the males opposed any change so far in the existing laws and customs. However, this scenario is bit different among Garo men as they are not being entitled with the land inheritances due to their matrilineal system.

Situation of Muslim Women in Rural Bangladesh: Negative pressure from the patriarchal society of Bangladesh lets the situation take a turn for the worse for women in the practice of statutory legislations on inheritance of land. According to religious principles, the Muslim women legally obtain inheritance rights no matter how limited those are; but in reality they are deprived of their rights because of the existing patriarchal mind-set. The established values and norms reveal that a ‘good sister’ should surrender her share on paternal property in favor of her brothers. This also discourages women from asserting their right. The survey reveals that the households possess 65.1 decimal of land on average, of which only 10.3 decimal of land is owned by the women of those surveyed households. That is, only 15.8 percent of land at household level at rural areas is owned by women. While taking into consideration of *effective ownership* of women over the land- the scenario becomes much depressing. A conservative estimate reveals that not more than 5 percent (ranging between 3% and 5%) of land in rural Bangladesh is effectively owned by the Muslim women.

The survey data reveals that Muslim rural women receive only 43.2 per cent of land compared to their lawful rights of inheriting land. But, the amount of inherited land is not always indicative of receiving justiciable amount of land. In majority cases women inherits land in the areas where the market price of land of that is significantly lower compared to those received by their brothers. Thus, physical amount of lawful rights of land may not always indicative of establishing women’s full inheritance on land. When considering these factors into consideration (based on the survey data), it is estimated that women practically do not receive not more than 25 percent (ranging between 20% and 25%) of the justiciable amount of land. Besides, when taking into consideration of the real rights of women in the form effective ownership- the scenario becomes much gloomy. In addition, if *money value of the pains and sufferings of women* due to the process of land inheritance could be estimated and then deducted from the money value of the inherited land, then the actual amount of inherited land of women would be far away from their justiciable rights of land inheritance.

Decision about utilization of the inherited land, selling of that land, using money generated from that land are mostly taken jointly with husband; but in the group discussions it is clearly revealed that *joint decision with husband* is largely dominated by the husband. Thus, the *real ownership of land* is a far cry for women.

In socio-cultural setting of rural Bangladesh, after death of husband, in many a case- the widow becomes unwanted among her in-law household. Thus, in most cases, they face more problems and resistance to get the inherited land from her deceased husband. In majority cases, the women- become vulnerable after their husband's death as they are not economically dependent; thus, they cannot even think of fighting to get her lawful rights.

Rural women face problems both in pre-receipt and post-receipt stages of land inheritance. Women have to undergo misbehavior of husband and other family members if they cannot fetch their share of landed property from their fathers' house, while the brothers and their wives become hostile after the women receive their share of land, inherited from father or mother. Along with the receipt of lower amount of land and money (paid instead of land), the women face problems in the form of mental torment, loss of money and time in case of the pertinent dispute settlement, and even physical violence.

Land inheritance system has a complex impact on the life of rural women in Bangladesh. Rightful land ownership by women may not always incur positive impact on their lives. On one hand, inherited land can empower women; on the other hand, it can raise tension between husband and wife on the ground of controlling that land. Claiming their rightful inherited father's/mother's land can also disrupt the relationship between women and her brothers. Therefore, the social structure of Bangladesh makes the dynamics of land inheritance for women more complex. Social norms and values in Bangladesh also shape the impact of land inheritance system on women. Sometimes, women value availing inherited land from father/mother/husband unethical.

Hence, it is obvious that Muslim rural women face a great dilemma in balancing the relationship between her parent households and her own household. If the victory falls upon her in the obtainment of rightful share of deceased parents, she is in a perilous position of losing family ties with her brother. But exposure to the loss of that inheritance right lets her relationship with husband or children suffer a big setback. Therefore, under the patriarchal social structure of Bangladesh, most of the rural women do not have any win strategy to avail their proper access and control over inherited land. In fact, under this circumstance, their greater satisfaction level *on whatever amount of land they get* is a rational behavior. Balancing the both relationship, if she gains lesser amount of inherited land or money (in exchange of inherited land), she generally considers herself fortunate.

Situation of Hindu Women in Rural Bangladesh: Hindu law, in general does not have any provision for a Hindu woman to inherit, except in few extraordinary and exceptional circumstances. Their position in the family and society is peripheral and vulnerable. Hindu law was widely modified for women in 1937 by Hindu Women's Right to Property Act. After that no reform was done for women.

As the Bangladeshi Hindus follow the laws of 'Dayabhaga', it is also known as Bengal school. This implies the right of male heirs to offer oblations to purify the deceased's body and to give rest to the spirit. It is the guiding principle for succession. The heirs are

prioritized on this right. Female heirs are not given priority to offer such oblation. In-fact they stand after deceased's son, son's son, and grandson's son.

In relation to the 'Stridhana', when a female heir inherits even after all those discriminatory rules, she has some restrictions. She can sell her property only for legal necessity or for religious or charitable purposes. The Hindu law is clearly unequal. The biggest criticism Hindu law faces is the exclusion of daughters in presence of sons. Besides the absolute exclusion of daughter in presence of son, the limited interest of female heirs in property is another issue of great concern.

Despite all these prescribed forms of the Hindu laws for the women members of the family, as well as, the statutory laws as the guidance for their inheritance; the Hindu women in Bangladesh still face many deprivations.

The field survey also reveals that, lands are basically owned by the head of the households in the Hindu families; and generally, the head of the households is a man. Hence, only the men are the heir of all the assets of a family who can own, administer, and enjoy the benefits of those properties/lands.

On the other hand, from the responses it is also found that, though in Bangladesh, the Dayabhaga School is prevalent on the cases of inheritances; still people try to ignore the principles of this school and deny giving any possessions to the women.

From the responses of the Hindu women, it is found that, it is a tradition that they are not given anything from their fathers' properties/lands. It has been going on like this since ages. They are also deprived of from their husband's properties/lands after their husbands' death. They are even driven away from there or they just live on the mercies of others. They only inherit properties/lands either there is no male issue in a family or directly from mothers.

All the responses delineate the truth that the Hindu women get exposed to the highest degree of negligence and deprivation in respect of the inheritance issue. The patriarchal attitude of Hindu people creates absence or vacuum in the life of Hindu women in terms of having entitlements on father's or husbands properties. This situation makes their life troublesome and they face the hardest of realities.

All of the Hindu women in their interviews admitted that they do not know anything about the Hindu inheritance laws. Many have also pointed out that, they did not even hear of the 'Dayabhaga School' that has prescribed women's inheritance system for Hindus in Bangladesh.

Hindu women have suggested that government should take initiative to enact laws in favor of the Hindu women. The Hindu inheritance laws should be modified overall and provision of women's inheritance should be included.

Situation of Chakma Women in Rural Bangladesh: At present there are more than 45 different ethnic communities living in Bangladesh. Among them, the Chakmas are the largest ethnic group in Bangladesh. The Chakmas are observed to be living all over the Chittagong Hill Tracts – the northern hilly parts of Bangladesh.

There was neither the concept of private ownership or inheritance among the Chakma community, nor they felt the need of these. But these have changed gradually. The custom of property inheritance has been started among the Chakma community. Property is distributed in accordance with social tradition, while no deeds are prepared for this arrangement. Preferences are given to those heirs (often the elders) who can usually shoulder the responsibility of looking after parents at their old age. The Chakmas have a serial of preference for heirs of a deceased person's property. These are often bound with some conditions.

According to the customary inheritance system of Chakma community, only the son(s) inherit the family property. If a family does not have any male children, then the daughter of that family generally becomes the inheritor of property by default. In Chakma community, a widow does not have any right of ownership over her late husband's property.

In the CHT, according to the section 7 of Regulation No. 1 of 1900 (CHT Manual of 1900), the District Commissioner is empowered to give succession certificate to the heirs of a deceased person. This may have some implications on the Chakma people's land inheritance and/or possessions.

The field-survey based experience also suggests that all lands are owned by the head of the households in the Chakma families, who is generally a man. Hence, only the men are the owner of all the assets of a family, be it land or any other properties. In general, the women members of a Chakma family are not entitled to any assets/lands ownership. Among the Chakmas, as the survey explores that, the women get the possession of properties/lands only if there is no male issue available in the families.

However, this situation is changing with some insignificant incidents. The well-off families, who have surplus properties/lands after giving to the sons, have started to give entitlements to their daughters, who would receive a portion of their properties/lands through a written consent of their parents.

The Chakma women have opined for immediate changes in the Chakma customary rules and making provision for the inclusion of the provision in favor of women's inheritances. A separate rule should be introduced.

Situation of Garo Women in Rural Bangladesh: The Garos are a prominent community, dwelling across the plains of Bangladesh. The social system of the Garo community is centered on mother, revealing its matrilineal nature. However, now-a-days, the enhancement of the exercise of male-dominated authority has cropped up in the Garo community, along with the participation of an increasing number of males in several activities—a particular social phenomenon that appears compatible with the male centered way of seeing things.

The inheritance rights of Garos have their own identification and distribution system, based on their customary laws. In terms of the family properties, these are passed down in the female line. The individual inheritance system of the Garos largely depends on their marriage system. In choosing bride and bridegroom, the Garos still follow their old customs and traditions. Such a practice has implication on their customary rules and traditional lives.

Lands are mainly owned by the women members of Garo households, since the ownership of land and other assets, in line with the tradition of the Garo community, takes place under the

matrilineal system. Another thing is the management and utilization of the properties. The entitlement of Garo women to the assets or lands is exhibitivive of female ownership or, in other words, the fact of becoming the owner. But in reality, it is the men who, in most cases control, administer, and operate the properties and/or lands.

The Garos are comfortable with the ‘*Maahari*’ system still now in terms of land and/or property distribution. Since the Garo ‘*Maahari*’ system is, basically, governed under a matrilineal system, the women do not collapse into troublesome situations in inheriting land. As the Garo society remains under the spell of female arbitrary or overbearing control, the land inheritance issue leads to certain problematic situation for males.

The Garo women, including the key informants, have put forward a suggestion that the Garo customary laws about inheritances may be passed as a Bill in the House of the Nation (Parliament), so that they (Garos) can have plentiful legal scope of authority to exercise a standardized system in the settlement of inherited property. However, a reality arises arguably that a sense of deprivation over the issue of land ownership is active to some extent among the Garo males, and as such they claim that they should have certain entitlements to land ownership.

Situation of Santal Women in Rural Bangladesh: The Santals, like the other indigenous communities, have imbibed customary rules and beliefs of their own.

As the Santal society is patriarchal in nature, the Santal customary law permits all the sons of a deceased Santal the scope for an equal share in the inheritance of property – movable and immovable – left by their father. Daughters are inhumanely deprived of the right or claim to any portion of parental property. This practice unveils the daughters’ exposure to discriminatory treatment. A widow can make no claim to her husband’s property. Nor even can she claim any maintenance.

The field level experience also suggests that, lands are mostly owned by the men members of the Santal families. The women members are not entitled to the obtainment of any kind of lands and/or other assets. They are deprived of their rights to lands (and assets), and this, in turn, lets their basic human rights suffer a big setback in a hundred different ways. As the women do not inherit any piece of land or property, they are buffeted by the poverty-stricken aspect of life. Pragmatically speaking, they become the poorest of the poor. The same traditional practice continues unabated even in a comparatively well-to-do family. The women in those families can neither enjoy their rights to properties as an heir, nor can they wither away their miseries. This has also influenced their decision making criteria inside the families to a great extent.

The Santal women have opined that they can lawfully and ethically become the rightful owner of land as heir from parents. They have suggested modifications in the Santal customary laws, along with the provisions, intended to incorporate the legal rights of Santal women to properties, and more precisely, to land inheritances.

However, at present, with the spread of education, the Santals have grown closer, less or more, to the liberalizing tendency. The glimmer of hope is that the age-old laws seem to undergo certain changes. Some Santals are becoming interested to contribute a certain portion of their property, in the form of gift, to their beloved daughters, so that they do not get crushed out of existence owing to the deadly sting of deprivation.

Conclusions

The issue of inheritance rights to land and property for women is overlaid with labyrinthine complexity and political sensitivity. The reason why the inheritance issue is calculated to be politically sensitive is ascribable to the fact that the matter should be approached from a comprehensive perspective. Accurately speaking, it relates to the expedition of broader social, political and educational change in every sphere of life as part of the well-planned, dynamic strategies intended to redress the historical injustices to women. A question arises, “How does the matter appear in the assessment of an advisory body that performs research and advocacy for the driving force of state machinery?” The best answer is that not a single government out of those, who succeeded one after another since 1971, has properly acknowledged the burning issue. Asserting women’s rights to land is inextricably tied-up with the united efforts of multiple stakeholders, encompassing individual, family, social organizations, the state machinery, government as well as non-government organizations, political parties, financial institutions, civil society and the like. Since the Constitution of the People’s Republic of Bangladesh, on several occasions, emphasized the participation of women in every sphere of national life, unflinching efforts, on behalf of the government, need to be stepped up in view of the emancipation of women, so that a balanced society—where women are entitled to the plentiful scope for an equal share in the inheritance of property—might emerge in the future to come.