

Pluralism in Women's Property and Inheritance Rights – Challenges for realizing human rights in Bangladesh & India

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Law is the instrument through which human rights translate into specific, enforceable norms. The essential ingredient to establish human rights is a legal framework that protects the basic rights it affords. However, it is evident that legal empowerment¹ of citizens, vis-à-vis the existence of a legal framework alone is a core pre-requisite to gain justice, especially for the vulnerable sections of society. A strong and effective legal system needs to: assess the knowledge of rights and legal processes of citizens; identify the reasons for citizens' inability to access legal proceedings; negotiate the traditional and cultural views about those rights; and, address the associated socio-economic reasons and costs. All such requirements need an understanding of the power relationships between all relevant stakeholders and knowledge of how to engage these groups.

Although women represent around 50% of the world population and their contribution is immense in all sectors of development, their social, economic and political position is not the same as that of their male counterparts. In Bangladesh, the number of working women increased to [18.6 million in 2016-17 from 16.2 million in 2010](#). In India, women make up 48 percent of the Indian population but have not benefitted equally from India's rapid economic growth. Women in India represent [29 percent of the labour force](#), down from 35 percent in 2004. Women's property and inheritance rights are one of the most significant determinants of their [status](#). Due to gender-based discrimination and social constructs, women have [inferior status](#) in all the aspects of life. Women's access to positions of influence, power, and/or decision-making within many societies, communities, and even within the household is limited due to their lack of access to land and property rights.

In many developing countries, especially in Bangladesh and India, the laws ensuring women's property and inheritance rights have proven largely ineffective in promoting their positions. This is partially due to the fact that the legal frameworks are discriminatory by their nature -- the *personal laws* are based on respective religious customs. For example, in Bangladesh, Muslim women generally inherit less than men,² whereas as per Hindu law, not all daughters of a man are equally eligible to inherit and the [1925 Succession Act](#) allows Christians to benefit from equal inheritance rights for men and women. By comparison in

¹ Empowerment is the expansion of freedom of choice and action. It means increasing one's authority and control over the resources and decisions that affect one's life.

² A wife (or wives taken together) receives one-eighth of the deceased husband's estate if there is a child, and one-fourth if there is no child. In contrast, a husband inherits one-fourth of his deceased wife's estate. A daughter that is an only child inherits half the estate of her deceased father or mother. However, if there is a son, a daughter inherits half as much as the son.

India, the [1925 Indian Succession Act](#) entitles every Indian to equal shares on inheriting property, with similar exceptions for Hindus, Sikhs, Jains, Buddhists and Muslims who are governed under separate laws of succession.

Furthermore, there was a 2005 amendment to the [1956 Hindu Succession Act](#), which originally did not give daughters inheritance rights in ancestral property, only a right to sustenance from a joint Hindu family. While this disparity has been removed by the 2005 amendment, we have yet to assess and understand to what extent these changes in the legal framework have affected the on the ground realities and challenged local power structure and societal norms and viewpoints to develop a more equal society.

Both in India and Bangladesh, woman acquires land rights via inheritance. Inheritance laws fall within the class of personal laws, and it is in the realm of personal laws that the legally pluralistic nature of most South Asian countries manifests itself. The following chart briefly describes the formal inheritance laws in Bangladesh and India:

Country	Inheritance Laws	Source	Jurisdictions	Rights of wives and daughters on intestate succession
Bangladesh	<i>Muslim Personal Law and Administration of Justice (Shariat) application Act of 1937</i>	Islamic law	Muslims	Women sharers (as wives, sisters, grandmothers or daughters) inherit but not equally to their male counterpart.
	<i>Hindu Inheritance (removal of disabilities) Act of 1928; Hindu law of inheritance (amendment) Act of 1929</i>	Hindu dayabhaga system	Hindus	Widow receives life estate; unmarried daughters and daughters with sons inherit; married daughters with daughters and childless daughters do not.
	<i>Succession Act of 1925</i>	Common law	Christians	Widow receives one third; lineal descendants (sons and daughters) receive two thirds divided among them.
India	<i>Hindu Succession Act of 1956</i>	Hindu religion	All Hindus (unless choose to exclude)	Estate divided into shares: widows receive one share, sons, daughters and mother of deceased receive one share each, heir of predeceased sons and daughters receive one

	<i>Muslim Personal Law (Shariat) Application Act of 1937</i>	Islamic Law	Muslim community	share between them. Generally, women (as wives, daughters, sisters, or grandmothers) inherit half of the share of their male counterpart
	<i>Indian Succession Act of 1925 (portions)</i>	English common law	Christian community	Widow receives one third; lineal descendants (sons and daughters) receive two thirds divided among them.
	<i>Indian Succession Act of 1925 (portions)</i>	Parsi custom	Parsi community	Widows and children (sons and daughters) inherit equal shares among them.

Access to property for women is still a distant goal in Bangladesh. Although equality is enshrined in the Constitution of Bangladesh, in 1996, only 3.5 percent (0.62 million) out of 17.8 million agricultural holdings were female owned.³ Women's ownership of homesteads is only slightly higher than their ownership of agricultural land and women are more likely to own the homestead if it is not attached to agricultural land. Similarly, in India, privately owned land is overwhelmingly held in the name of men. About 86% of rural women depend on agriculture for their livelihoods yet one survey revealed that less than 10% of privately held land nationwide was in the name of women.⁴

Civil society and donor agencies in both Bangladesh and India are largely focused on reforming the discriminatory laws and strengthening the supply-institutions within the justice machinery in order to protect human rights. Bangladesh's civil society spans the world, sharing indigenous expertise and experience, and has evolved to over 2,000 national civil society and non-government organisations in the country and even more community-based groups, working together towards a better society for all. When diversity and plurality of voices mobilise in a free and open democracy, civil society is a government's best ally to [achieve common development aspirations](#).

However, effective legal frameworks and well-functioning state institutions will remain ineffective in creating gender equality if we disregard the root causes of the problem that leads to the violation of rights in the first place. Therefore, the following issues will need to

³ World Bank, Whispers to Voices: Gender and Social Transformation in Bangladesh, at 76 (2008) Bangladesh Development Series, Paper No. 22 (hereinafter "Whispers to Voices")

⁴ Food and Agriculture Organization, India Agricultural Census 1995/1996 and Livestock Census 1997 at 1 (2000) New Delhi: Ministry of Agriculture, Government of India, Available Online. URL: <http://www.fao.org/es/ess/census/wcares/2000indiaweb.pdf>

be considered in order to identify such root causes of inequality in Bangladesh and in India, namely:

- 1. The legal framework in both Bangladesh and India is a product of religious and cultural systems. As such, how do these power dynamics between religious and cultural systems on one side, and human rights on the other, affect social dynamics at the household level?*
- 2. Socio-economic and identity politics at the household level stymie the fulfilment of rights and disempower women from seeking legal redress. What solutions exist to create equality at the household level?*

The personal laws of Hindus and Muslims find their source and authority in their ancient religious texts. Since ancient times, religion regulated almost every aspect of human life both public and personal. The area of applicability of religious laws has however been reduced and is only confined to private matters such as marriage, dissolution of marriage, maintenance, minority, guardianship, adoption, succession, and inheritance. These personal laws were considered immutable and beyond the legislative jurisdiction of the state. From a historical perspective, many areas of Hindu law and Muslim law have [remained unaffected](#) by centuries of political vicissitudes and socio-economic upheavals. During the rule of the British Raj in India, as a matter of colonial policy, it was politically expedient for the British to not interfere with existing personal law in so far as they related to family and inheritance rights alone.

In order to address these issues, I believe the best approach is a grassroots approach: one must identify women experiencing challenges in securing access and control over land, document their experiences in fighting for these rights, identify impediments to fair settlements of land disputes, including the role of all stakeholders in the process (from household to the State), and devise strategies to enforce and protect women's right to land ownership as provided under the existing statutory laws. The grassroots approach will make the distinction between legal land ownership and actual possession and use of the land.

Land disputes over women's property and inheritance right is now a major human rights issue that challenges development and women's empowerment in Bangladesh and India. Therefore, developing new policies and programmes to protect women's rights and empower women in both countries are essential. A large-scale political, social, and legal change is necessary in Bangladesh and India to establish women's effective land rights. It requires reforms in inheritance laws and land reform legislation and a political strategy to challenge the situation of legal land ownership and actual possession of land by women.

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