



Authoritative Land Records

**Strengthening Access to Land and Property Rights
for all Citizens of Bangladesh**

WOMEN'S RIGHT TO LAND IN BANGLADESH

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Promote Access to Land for All Citizens of Bangladesh Project

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Abbreviations

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| CEDAW | : | United Nations Convention on the Elimination of All Forms of Discrimination against Women |
| ICCPR | : | International Covenant on Civil and Political Rights |
| ICESC | : | International Covenant on Economic, Social and Cultural Rights |
| ISPAN | : | Irrigation Support Project for Asia and the Near East |
| LRO | : | Land Reform Ordinance |
| MDGs | : | Millennium Development Goals |
| NWDP | : | National Women Development Policy |
| NCWD | : | National Council for Women Development |
| NAP | : | National Action Plan |
| PRSP | : | Poverty Reduction Strategy Plan |
| SAT Act | : | State Acquisition and Tenancy Act, 1950 |
| SDGs | : | Sustainable Development Goals |
| SAARC | : | South Asian Association of Regional Cooperation |
| UNO | : | United Nations Organisation |
| UDHR | : | Universal Declaration of Human Rights |
| WID | : | Women in Development |

Glossary

Agnatic heirs. Broadly, heirs are divided into three major categories: Koranic heirs who are almost female, agnatic heirs who are almost all male, and distant kindred. Under Muslim Law, second class of heirs are called 'asabat' or agnatic heirs which refers to near male agnates such as son.

adibasi. Indigenous people in Bangladesh.

bigha. The *bigha* (Bengali: বিঘা) is a unit of measurement of area of a land, commonly used in Bangladesh, Nepal and in a few states of India like Bihar, West Bengal, Assam, Gujarat etc. The precise size of a *bigha* appears to vary considerably. Sources have given measurements that range from 1,500 to 6,771 square meters.

char land. The land rises out of the riverbeds is called *char* land.

jotder. The owner of a proprietary agricultural farm or a tenure-holder under a *zamindari*. *Jotder* in rural Bangladesh are those who are strong in terms of landed property and power.

khas land. 'Khas land' means state-owned land which the government has lawful authority to give to landless people or the government can lease the land.

lathials. *Lathials* mean a number of persons holding sticks. In the villages or *char* (island) areas Bangladesh *lathial* means fighter or gangster with sticks.

moulovi. Religious head in the Muslim Community.

raiyyator an under-*raiyyat*. "cultivating raiyyat" or "cultivating under-raiyyat" means a raiyyat or an under-raiyyat, as the case may be, who holds land by cultivating it either by himself or by members of his family or by servants or by bargadars or by or with the aid of hired labourers or with the aid of partners.

stridhana. The properties gifted to a Hindu woman before her marriage, or at the time of marriage or at the time of giving farewell or thereafter are called 'stridhana'.

thana. A unit of local government in Bangladesh. Thana indicates a locality consists of a number of villages.

Uterine heirs. Under Muslim Inheritance Law, a third category of takers referred to either 'distant relations' or 'uterine heirs', enters into inheritance.

Executive Summary

In South Asia as well as in Bangladesh, land is the most valued form of property, conveying economic, political and symbolic significance. Land is not just a productive asset and a source of material wealth, but equally a source of security, status and recognition. Although this is true for both men and women, land rights have particular resonance for women in the context of gendered structures of human societies.

It has been frequently argued that women's access to and control over land can potentially lead to greater gender equitability alongside addressing material deprivation. Gender equality today is considered one of the crucial premises for economic and social development as well as women's empowerment as recognized in the MDGs and SDGs.

Women's economic empowerment is one of the most cited benefits of women's ownership of land. Economic empowerment in turn accounts for a decrease in domestic violence and a more gender equitable family and social relationships. Ensuring that women have equitable rights to land acknowledges their worth, helps break down perceptions of inequality within households and communities, and reduces their dependence on men for their survival. A decrease in domestic violence, greater bargaining power, which would help women to negotiate more gender equal allocation of rights in the family are some of the visible benefits of women's land ownership. The limited research on the benefits of women gaining secure rights to land and property suggests the following practical positive results: an increase in women's participation in household decision making (Field, 2003; Datta, 2006); an increase in net household income (Deere et al., 2004); a reduction in domestic violence (Panda and Agarwal, 2005); and increased expenditures on food and education for children (Katz and Chamorro, 2003; Doss, 2005). Strategically, however, whether it helps creates a more gender balanced society or not remains a matter of debate and needs more depth critical investigation, yet a more gender equitable society is a likely outcome.

Throughout the developing world, the vast majority of poor women, most of whom depend on land for their livelihood, are either landless or have limited and insecure rights to land. This reality has important consequences for sustainable development. Women's land rights in Bangladesh are also beset with a number of legal, social, cultural and institutional obstacles. Women of Bangladesh irrespective of socio-economic classes, religions, and ethnic groups are largely deprived of their justifiable rights on lands, regardless of the constitutional ban on the discrimination on the basis of gender. While estimating the effective ownership of women over land, a conservative estimate reveals that not more than 4 percent (ranging between 2% and 4%) of land in rural Bangladesh is owned by women (Barakat et al.: 2014). The factors that debar Bangladeshi women from enjoying and exercising fuller and effective ownership and rights on land are nuanced by diverse factors ranging from laws, policies, social, cultural norms, customary practices, religious doctrines to lack of education, awareness and unfavorable institutions and implementation practices and so on.

Against this backdrop, the present study on 'Women's Rights and Access to Land' has focused on to explore the practical barriers and policy gaps from a holistic approach meaning women's rights, access and control over land, that discriminate against Bangladeshi women in respect to their land rights. The specific objective of the study is to identify the strengths and weaknesses of the pertinent policies and ground level hindrances stemming from existing culture, customs, traditional and institutional practices in order to suggest ways to address and overcome the situation in a most practical and attainable manner in the present context of the country.

However, women's land rights are context and culture specific. Accordingly the study has taken into consideration the diversity of Bangladeshi women, such as Hindu, Muslim, Christian, Buddhist and *Adibasi*, while assessing the challenges they face at the ground level as well as the laws & policies governing their land rights.

The study has identified three major factors as breeding ground of varied forms of challenges/barriers. These factors are structural, legal and institutional. Patriarchy has been identified as the major structural barrier that gives birth to gender inequality and gender based practices at different levels in diverse ways. Since Bangladesh is a classic example of patriarchal society, unequal power relations lie at the heart of its gender relation and position of men and women in the society. Legal factor has been pointed out as a source of barrier perpetuate at the state level. Since inheritance is the primary vehicle for women to get land ownership, existing inheritance laws are of paramount importance. However, inheritance laws in Bangladesh are governed by family laws which are then governed by gender discriminatory religious laws which are different for different religions. Due to this legal plurality, different religious communities are governed by different sets of rule of inheritance of which Christian and Muslim women are comparatively better off than their counterparts of other communities. The concept of rights of women as citizen is conspicuously absent in this context. At the implementation level, institutional factor is the most formidable barrier that on the one hand slows down the execution process of whatever rights women have over landed property, and the other hand discourages them from claiming and establishing their rights through its pervasive malpractices, complicated system and women-unfriendly environment.

From these factors a number of forms of gender discriminatory social, cultural, traditional and religious practices derive. Among them, there are practices of patrilocality, polygamy, certain social expectations and pressures; concept of socially constructed 'good sister'; position of natal family as nest of women's social security; parental and male siblings' discriminatory behavior, women's lack of education especially legal literacy, purchasing power and the like. Barriers mentioned in this discussion cut across class, cast and religious boundaries.

When analyzing the constitutional provisions, land laws and inheritance related personal laws and policy documents, the study has focused on the constitutional rights relating to women's equal vis-a-vis equitable right to land; Hindu, Muslim and Christian inheritance laws; *khas* land policy; and National Women's Development Policy, 2011. It has been suggested that the Constitution of Bangladesh is considerably a liberal, democratic policy document that has strongly uphold women's equal rights in all aspects of lives irrespective of the cast, creed, class and religion, banning gender-based discriminations and enjoining the government to enact laws and policies in favor of women and marginal communities. Unfortunately though, the spirit of the Constitution has not been properly reflected through government's laws and policies all along.

With regard to inheritance laws, existing legal plurality has circumscribed women's rights as citizen. Here, each religious group follows their respective religious rules of inheritance, creating differences in rights across communities. Simply and briefly, it has been found that it is only Christian women who are entitled to have equal share in inheritance, while Muslim women as daughters get half of what their brothers get and a Muslim widow get 1/8 of the deceased husband's property. On the other hand, Hindu women generally do not have any rights to inheritance. Also, such is the case of Buddhist and indigenous women who too are officially guided by the Hindu succession law. However, indigenous peoples generally follow

their respective customary laws, except for the matrilineal *Garos* and *Khasis*, which exclude women from inheritance. In comparison across the communities, evidently therefore, Christian and Muslim women are better positioned in terms of inheritance rights than Hindu, Buddhist and Indigenous women. Ironically however, this cannot quite be a solace for them also, as at the practice level these rights are hard to exercise and materialize for the varied forms of barriers as delineated in the discussion above.

In contrast to inheritance rules, *khas* land policy of the government is more gender-friendly, requiring allotment of *khas* land to be in the name of joint ownership of husband and wife. However, here remains a drawback that the clause of joint ownership has excluded single/unmarried women, widows who constitute the most vulnerable section of population in rural areas.

Finally, adopting a pragmatic approach the study has devised measures to address the gaps of constitutional provisions, legal text, policies, and practice and their implementation based on the concept of equitable rights of women for near future; while suggesting legal reforms in line with the concept of gender based equality rights for the long term.

The major suggestions for the near future are as follows:

- Firstly, for now, in respecting and keeping with religious laws, it has suggested to take measures to remove barriers of implementation of whatever lawful rights of women already have especially in case of Christian and Muslim women and in the implementation *khas* land policies;
- Amendment of Hindu inheritance law is recommended following the footsteps of India's amendment of Hindu succession law in the 1950s. This will benefit Hindu, Buddhist and Indigenous women;
- General and legal education for women is to be extended to increase their awareness, knowledge about legal rights and how to exercise, access and control those rights;
- Gender awareness has to be inculcated into peoples' mind through reform in general education curricula and system for both men and women. Otherwise, only legal and policy reforms will not bring about desired change and establish women's rights over land;
- Procedural complicity has to be removed and simplification of the process has to be done through a number of measures such as digitalization of survey, provision of giving record while undertaking survey, creation of family database, greater care and accountability in issuing *warishnama*, link and coordination between the works of various land administration related offices and officials and so on;
- Women friendly institutional approach and official outlook are necessary to remove general fear that exists among women about land related procedures;
- Raising awareness about women's rights, gender issues as well as women's inheritance rights is necessary at different levels of the society including men, women and government officials involved in land administration;

- Government should take measures to fulfill its international commitments such as CEDAW and others.

In the long term with gradual social conditioning and raising social awareness, following measures have been suggested to bring about changes in strategic gender-relation and establish women's equal rights as per the constitutional provisions and country's international commitments:

- Enact Uniform Family Code following the strong demand of varied women's organizations of the country in order to ensure treatment of all women equally as citizens of the country;
- Amendment of Muslim inheritance laws following instances of amendments of other Islamic countries, such as Pakistan and several Middle Eastern countries;
- Finally and most importantly, the Constitution of Bangladesh should be upheld as the supreme source of all laws of the land and thereby its provisions relating to women's rights should be followed through.

Chapter One

Women's Right and Access to Land

1. Introduction

The role of women in family and society is important as provider of care to children, actor of agriculture, producer of food, manager of natural resources, depository of household food and nutrition security. But women's entitlement and control over and access to land is limited. The irony is that women play an important role in food production but land is very often owned and controlled by men. Generally, they get the rights to use land through relationships to a man—usually father, husband, and son. In relation to their father and son, they get a share of landed property, but are culturally discouraged to claim the property. In case of husband, woman's right is forfeited when she is divorced or deserted. Due to not having entitlement over and access to land women encounter increased vulnerabilities. They cannot take part in the decision making process. Women's entitlement and control over and access to land are, therefore, instrumental to ensuring women empowerment and placing them on respectable social position.

The power relation between male and female is argued to have given birth to patriarchy which systematically marginalizes women in all walks of life. This century-old power relationship also determines the attributes of femininity, viz. subordination and submission. The marginalization, subordination, and submissive role of women have been considered normal for hundreds of years in many societies. Though situation is changing gradually with the adoption of international instruments, signing of multilateral conventions and enacting domestic laws, rules and policies, male hegemony still has strong roots into social and state institutions.

Women, however, are not a homogenous category. In Bangladesh, their experiences vary according to their race, class, religion, culture, and education. In spite of the variations, a common thread of violations bind their experiences emanating from the hegemonic ideology of patriarchy. Marginalization and deprivation of women, consequently, are sanctioned and sustained in the name of social values, religion, and culture. It is economic empowerment and lawful entitlements to land which have the potentialities to ensure women's equitable land rights and finally place the women on the same footing with men.

Empirical evidence shows that, entitlements over and access to land is instrumental to ensuring true empowerment of women. So, concerns have been raised about women's access to, control over, and ownership of land over the years. The Millennium Development Goals (MDGs) also recognize the need to promote gender equality and empowerment of women. But Bangladesh is prevented from ensuring equal land rights of women due to the formidable barriers coming from personal laws, gender-insensitivity of the state, and patriarchy. It is increasingly recognized that equitable land rights of women lead them to the true socio-economic empowerment, which will reduce the power gap between women and men and ultimately ensure gender parity and social justice.

In its Articles 11, 13, 14, 15, 19, 27, 28, 29, 42 and 65, the Constitution of Bangladesh calls for ensuring equality of women, and their entitlements, and rightful demands in all spheres of life. Among the constitutional provisions, Article 27 declares that, "All citizens are equal before law and are entitled to equal protection of law", and Article 28 (1) loftily proclaims that, "Women shall have equal rights with men in all spheres of the State and of public life." Article 28 authorizes the state of taking 'affirmative action', that means, to enact laws, and rules, to adopt policies, and to take administrative measures to ensure equal as well as equitable rights of women.

Bangladesh has signed the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Consequently, the state has undertaken a number of measures to ensure increased participation of women in all walks of life. For example, the Ministry of Women's Affairs was established in 1978. Women in Development (WID) focal points were established in all ministries, directories, departments, and agencies in 1992, and the National Council for Women's Development (NCWD) was established in 1995 as the highest decision-making body for women's advancement. The government also established a parliamentary standing committee for reviewing and advising on women's development programs. The WID coordination committee has been expanded at district and *thana* level for linkage and coordination. The government has reserved 10 per cent of high official posts for women. 10 per cent of gazetted posts, 15 per cent of non-gazetted posts, 60 per cent of vacant posts have been reserved for women (Mohsin, Amena, 2004: 191, 192).

Among the five-year economic plans, the Third Five Year Plan called for the removal of gender imbalance in development, the Fourth Five Year Plan integrated the issue of mainstreaming gender in development, the Fifth Five Year Plan called for ensuring women's rights and setting out principles for women's empowerment. A three-year Poverty Reduction Strategic Plan (PRSP) has spelled out specific strategies for women's development and reducing gender imbalance (Mohsin, Amena, 2004: 192.)

The National Action Plan (NAP) for women's advancement was officially approved in 1997. The NAP spells out certain objectives and activities to implement the Beijing Platform for Action adopted at the Fourth World Conference on Women in 1995. An important development took place in 2011 when the government had adopted the National Women Development Policy, which objectives were to give women rights to wealth and resources and earned through income, succession, loan/credit, land, and market management.

Various studies show that women with land have more bargaining powers in the family, which will help them to negotiate more rights and ultimately enable them to participate in the decision-making process. Moreover, there are strong linkages between rural poverty and access to land. Women without resources, particularly land, are therefore highly vulnerable to poverty, and destitution in case of divorce, desertion, and death of husband. Century-old typical role of subordination and submission of women is reinforced due to their lack of entitlements over landed property. They encounter added vulnerability as male ownership over land does not always benefit family and female members. So, women's ownership over and access to land has positive externalities for family in particular and society as a whole.

In Bangladesh, legal position of a woman is that she has lawful right to purchase and own land. Land laws of Bangladesh ensure that the legal heirs own the inherited land. But women do not get equal share or no property under personal laws. In spite of their having full or partial entitlements over land, there are cultural barriers in claiming parental property by women. They do not claim parental immovable property as it is not culturally encouraged and it also bears the risk of breaking relationship with the male members of a family.

The Land Reforms Ordinance (LRO), 1984 was a progressive law as it gave women rights on *Khas* land. Later on, a Government Notification was issued in 1986 about the distribution of *Khas* and non-agricultural land, which required that if *Khas* land was allocated to any landless family, the land would be registered jointly in the name of husband and wife. But landless women in many cases have been struggling to take possession of a piece of land though they have lawful entitlements. Local hooligans and politicians, reinforced by patriarchal ethos, in collusion with some government officials either obstruct landless women to get hold of or evict women from *Khas* land. It is, therefore, felt that an effective land administration policy and mechanism should be in place to establish landless women's possession and control over *Khas* land.

A woman usually gets access to immovable and landed property of a man through wedlock. In case of divorce or desertion she completely loses her access to the above mentioned property and is precluded from getting any benefit or proceeds from it. Inheritance constitutes the largest opportunity for women to get and own land as most of the landed properties are either owned or held by men. But Bangladeshi laws of inheritance are discriminatory against women in spite of the non-discriminatory provisions of the Constitution. Muslim, Hindu, and Christian women encounter varying degrees of discrimination due to religion-based personal laws. Indigenous women are regulated by their customary laws under which they are almost deprived of hereditary property and they have limited control over household resources.

2. Overall Objectives

Overall objective of the short term consultancy is to provide an outline on how to ensure improved land rights for women through policy and legislative tools, which are:

(a) Primarily, the study is aimed to provide specific recommendations on how to put in place appropriate legislative and policy tools by which women can enjoy equitable rights to land by identifying the legal, religious, and cultural barriers that prevent women from fully enjoying their rights to land;

(b) The study will also recommend some practical measures to undertake, improve in order to improve existing barriers, improve efficiency and simplification of the process in relation to women's land rights based on the findings of document reviews, consultations with relevant stakeholders and field visit.

3. Specific Objectives

Having its overall objectives to identify the legal, religious, and cultural impediments to women's enjoying equitable rights to land and making recommendations as to the adoption of the appropriate legislative and policy tools to ensure women's equitable rights, the study has a number of specific objectives:

I) In-depth Analysis of the Condition of Bangladeshi Women

The study will attempt to draw a true sketch of and make an in-depth analysis of the condition of Bangladeshi women in relation to their land rights and access to it. This aspect of the study will take into account of the major variations existing in the diverse groups such as in socio-economic classes, different religious communities, ethnic groups, and other marginalized segments.

II) Review and Critical Analysis of the Policy and Legal Instruments

The study will review and analyze laws, policies and other legal instruments relevant to women's right and access to land. Particularly, special emphasis will be put on the constitutional provisions, CEDAW and the Women Development Policy, 2011.

III) Inventory of Previous and Ongoing Activities

The study will conduct a quick inventory of key relevant efforts to draw lessons on practical stumbling blocks to improving women's right to land.

IV) Hold Consultation Meeting

The consultants will hold consultation meeting with the key stakeholders (relevant government representatives and decision-makers, non-government organizations, women organizations,

religious leaders, influential community representatives etc.) The objectives of the consultation will be to understand stakeholder's viewpoint, reservations and recommendations as to the plight of Bangladeshi women and possible legislative and policy intervention to ensure women's equitable land rights.

4. Methodology

The study is predominantly qualitative in nature and has followed the following methods:

- 4.1 **Documents Review:** The study has reviewed the following literature, documents, laws, international instruments, and policies – (a) Secondary Literature (Literature Review); (b) International Instruments and Policy Documents (CEDAW, and the Women Development Policy, 2011, Khas Land Policy etc.) and (c) Legislative Documents (Constitutional provisions relating to women's equal and equitable rights, right to property etc. Inheritance Law and Land Laws.)
- 4.2 **Consultation:** The study aims to consult some key stakeholders, including Government representatives and decision-makers, non-government organizations, women organizations, religious leaders, influential community representatives and other stakeholders.
- 4.3 **Individual Interview:** The consultants will interview academician, expert, and researchers having in-depth knowledge and practical experiences about Bangladeshi Women's right to land and access to it, and the social, religious and cultural obstacles creating barriers to women's enjoying equitable rights to land, if necessary.
- 4.4 **Research Team:** The research team consists of — (1) Two Consultants; (2) One Associate Consultant; and (3) Four Research Assistants.

Chapter Two

Women's Land Rights: Barriers & Challenges

Women's land rights in Bangladesh are beset with highly social, cultural, legal and institutional obstacles. An inquiry of how and where these rights are denounced, constrained and circumscribed therefore necessarily helps identify the roadblocks that stand in the path of women's land rights. This chapter examines these factors so as to get a glimpse of the practical situation of women's land rights in Bangladesh.

Land Rights and Its Significance

What is land-right?

As is increasingly recognized, "land rights" is a multi-dimensional notion. The "bundles of rights" approach, for instance, has distinguished between rights to access and withdrawal, management, exclusion and alienation of land (Schlager & Ostrom 1992). Ownership and use patterns, de jure as well as de facto land rights thus are likely to play a decisive role.

Nonetheless, among the many available definitions of land rights, a comprehensive and relevant here definition as provided by Agarwal (1994) delineates rights to land as legally and socially recognizable claims that are enforceable by external authorities such as customary (village-based) institutions or the nation-state. Rights include ownership and usufruct or use rights, both associated with varying degrees of freedom to lease, bequeath or sell the land. They may arise from inheritance on an individual or joint basis, from government transfers, purchases, etc. The discussion on women's land rights as follows is based on this broader concept of land rights.

Land rights include ownership, entitlements, control and access to land property.

Why women's land rights? Making the case

In South Asia as well as in Bangladesh, land is the most valued form of property, conveying economic, political and symbolic significance. Land is not just a productive asset and a source of material wealth, but equally a source of security, status and recognition. Land rights elevate the status of the rights holder in the eyes of family members and the community. It creates a sense of self-worth and give people options. Although this is true for both men and women, land rights have particular resonance for women in the context of gendered structures of human societies.

It has been frequently argued that Women's access to and control over land can potentially lead to greater gender equitability alongside addressing material deprivation. Gender equality is today considered one of the crucial premises for economic and social development. Most prominently, the third Millennium Development Goal (MDG) and post-MDG periods have focused on gender equality and the empowerment of women (UN Millennium Goals). Equal rights for women, in particular with regard to access and control of land, are often considered both an end in itself and a valuable means to achieve better development outcomes. Feminist critiques of development have identified the marginalization of women from the means of production, of which land rights constitute a major aspect, as a critical factor in the subordination of women (Boserup, 1970). Throughout the developing world, the vast majority of poor women, most of whom depend on land for their livelihood, are either landless or have

limited and insecure rights to land (Mehra). This reality has important consequences for sustainable development.

Evidently the relationship with rural poverty and access to land has strong linkage. Women's greater access to land can generate immense short-and long- term economic benefits such as poverty reduction, household income increase, and a higher productivity in agriculture. Women with stronger rights to land are also less likely to become economically vulnerable especially in their old age, or in the event of the death of or divorce or abandonment from a spouse. Land is a particularly critical resource for a woman in the event that she becomes a de facto household head as a result of male migration, abandonment, divorce, or death. In both urban and rural settings, independent land property rights under these circumstances can mean the difference between dependence on paternal family support and the ability to form a viable, self-reliant, female-headed household.

Women's economic empowerment is one of the most cited benefits of women's ownership of land. Economic empowerment in turn accounts for a decrease in domestic violence and a more gender equitable family and social relationships. Ensuring that women have equitable rights to land acknowledges their worth, helps break down perceptions of inequality within households and communities, and reduces their dependence on men for their survival as. A decrease in domestic violence, greater bargaining power, which would help women to negotiate more gender equal allocation of rights in the family are some of the visible benefits of women's land ownership. It has been found that women within marriages are more insecure in the absence of access to independent resources, especially to house-plots and land property and experience much higher levels of violence within marriage (Panda and Agarwal, 2005, ICRW, 2006, Bhattacharya et al, 2011, Sargeson, 2008, Belanger and Li, 2009), which is primarily based on a relationship of male authority and female subordination rather than recognition of an equal partnership, both legally and socially. The limited research on the benefits of women gaining secure rights to land and property suggests the following practical positive results: an increase in women's participation in household decision making (Field, 2003; Datta, 2006); an increase in net household income (Deere et al., 2004); a reduction in domestic violence (Panda and Agarwal, 2005); and increased expenditures on food and education for children (Katz and Chamorro, 2003; Doss, 2005). Strategically, however, whether it helps creates a more gender balanced society or not remains a matter of debate and needs more depth critical investigation, yet a more gender equitable society is a likely outcome.

Barriers to Women's Land Rights

Women's land rights are context and culture specific, and therefore the obstacles are necessarily so. Women of Bangladesh irrespective of socio-economic classes, religions, and ethnic groups- are largely deprived of their justifiable rights on lands. 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. While estimating the effective ownership of women over land, a conservative estimate reveals that not more than 4 percent (ranging between 2% and 4%) of land in rural Bangladesh is owned by women (Barakatet.al.: 2014). The factors that debar Bangladeshi women from enjoying and exercising fuller and effective ownership and rights on land are nuanced by diverse factors ranging from laws, policies, social, cultural norms, customary practices, religious doctrines to lack of education, awareness and unfavorable institutions and implementation practices and so on.

However, any discussion on women in Bangladesh should not sideline the fact that 'women' are not a homogenous category. Women of Bangladesh are diversified in the line of religion,

ethnicity, class, caste and rural-urban settings. In terms of religion, there are Hindu, Muslim, Christian, Buddhist and Nature worshippers indigenous people; in terms of ethnicity there are Bengalis and non-Bengali *adibasis*; in terms of class, there exists rich, poor, middle class alongside the difference between rural and urban population and finally there are outcaste *dalit* population. Coming from all these groups, the category of women becomes heterogeneous, posing difficulty for any generalized discussion on them as their specific situations sometimes impact upon their rights to land in varied ways. Although, the discussion as follows will be primarily a generalized discussion in relation to barriers and obstacles that women in Bangladesh commonly face, attention will be paid to the special cases of difference.

Factors

This is a well established fact that women in Bangladesh and most Asian countries for that matter are more or less discriminated against in relation to land rights. Yet, the documentation of the challenges/obstacles that women encounter on the ground level especially in the context of Bangladesh is sporadic and scattered; hard to find something concrete in one place. Still, following is an attempt to present the forms and factors related to the barriers of women's land rights.

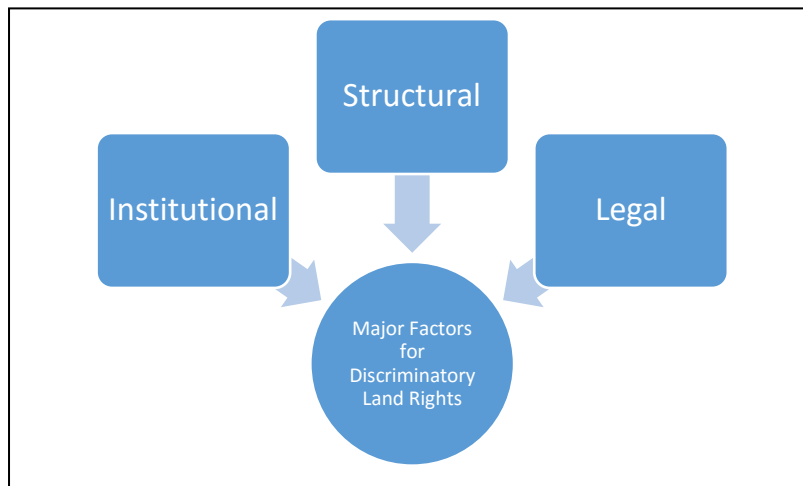
Roughly and broadly, but not solely, there are three major factors responsible for gender discriminatory property and land rights in Bangladesh: a) structural; b) legal; c) institutional. Large part of our existing culture, custom and practices are conditioned by these factors and stem from them. Consequently, women encounter a varied form of discriminatory practices that exist on the ground level.

a) **Structural:** Patriarchy is the basic foundation of gender based structural inequalities and unequal power relations between men and women. Patriarchy operates through ideologies and practices to create social structure, where women's subordination/inferior position and male domination and superiority are embedded. Patriarchal social structure gives birth to certain social norms and practices, religious doctrines, rituals, customs etc. which appear as 'normal', 'traditional' and therefore 'unquestionable' in the eyes of larger section of the population. They and most surprisingly even women internalize these as normal phenomena. Consequently, we see numerous examples of women acting as agent of patriarchal values and act against the interest of women, oppress other women and so on.

Most Asian families remain strongly patriarchal, with the man recognised as the 'head of household'. Land and other asset entitlements are generally issued to the head of the household. Women, constructed socially as dependent wives and mothers, are expected to obey and serve men and the family through their life cycle, and as long as they perform this role, their rights are protected. Thus, division of sphere in gender lines creates public-private dichotomy where men are associated with public works/life, women with 'private'/domestic work/life. Land as an asset falls within 'public' category and considered as the domain and natural possession of men. In this context women with landed property are generally an aberration.

From patriarchy, directly derives patrilineal, patrilocal culture. In fact, Bangladesh is a classic example of patriarchal, patrilineal, patrilocal social system, which cut across religion, ethnicity, class and caste. As expected, here family lineage is carried through male line/heir, affecting child preference in the family. Generally, son preference prevails in Bangladesh and they are considered as natural inheritor of family property. Therefore, for the most part, property is inherited along the male line. The basis for this norm is that daughters only "belong" to their natal family until they are married and then move to husbands' house after marriage and parents

should not live with their married daughters or accept financial help from them. All these have serious implications on women's rights and entitlements over land as will be elaborated later.



However, there are exceptions to it: *Garo* and *Khasi Adibasi* communities in Bangladesh have matrilineal and matrilocal social system; family property of these communities passes through female line, although it has not given birth to female domination in the society. Yet, women have more valued position than other women in the country.

b) **Legal:** Inheritance is the prime source for women to get property especially land rights in Bangladesh. Women's inheritance rights are mostly governed by formal and customary laws, and the primary formal laws are personal laws which in Bangladesh are based upon religion. Personal laws are those laws that deal with matters pertaining to a person and his or her family. While women often gain property rights through personal laws that govern inheritance, the right to inherit is impacted by other personal laws and practices and sometimes customs as well such as polygamy, marital property rules, bride price or dowry and partition etc.

Moreover, there exists a considerable amount of legal plurality in case of personal laws as well as inheritance laws in Bangladesh. Women of different religious groups, such as Hindus, Muslims, and Christians are governed by their respective religious laws. Surprisingly though, Buddhists and *adibasis* in Bangladesh do not have any separate laws formally; they are covered by Hindu personal laws. The distinct customary rules of each *adibasi* communities that in reality more in practice and guide their personal lives are not formally recognized by the state.

The legal issues relating to inheritance laws, their strengths and weaknesses will be discussed at length in the next chapter on Policy Review; here it will be succinct to mention that inheritance laws in Bangladesh are generally discriminatory against women, although Muslim inheritance laws provide Muslim women with limited and conditional rights, whereas Hindu inheritance laws grant nothing at all to its women.

The exceptions here are: first, Christian law which speaks of equal rights for both men and women, but in practice women are discouraged by custom, tradition, social pressures not to claim such rights in majority cases. Second, among the matrilineal *Garo* and *Khasi* communities, family property passes through female line. Accordingly daughters inherit mothers' property, although there is a specific practice of entitling a specific daughter (most cases the younger one), who is selected to stay with the parents and look after them when

needed, especially in old age, most or the whole of the family property, depriving the other daughters.

Apart from inheritance, to a certain extent women's land rights can be impacted by laws/policies of government allocation, purchase, or lease. In fact, in absence of family property/land to bequeath for children, government allocation is the primary vehicle for poor women from landless families.

c) **Institutional:** This is related to different unfavorable institutions/organizations of the society, poor implementation etc. In some cases legal and policy reforms though may be gender neutral and not explicitly discriminatory have nevertheless failed to benefit women equally to men, due to poor-functionality, bureaucratic complications, weak implementation approach, corruption, malpractices and the like. Government functionaries often compounded by those problems, obstructing the implementation of laws in favor of women. Generally in Bangladesh, government institutions are plagued by inefficient and corrupt practices. Land settlement office, revenue office, court- all are highly male dominated areas; women are likely to be particularly vulnerable to access these institutional services: where they may face unnecessary harassment, delay, bribery as well as processes and procedures unknown to them due to their limited experience of public and official dealings and ignorance. Women's limited opportunity to generate support from state institutions, such as agricultural extension facilities, formal credit institutions or courts, however, has been considered by most authors an important factor in explaining women's lack of control over land. In Parveen's research with 159 farmers' wives in three villages in the Mymensingh district in Bangladesh, he found that 44% of respondents had no opportunity to receive services from different extension agencies like the Department of Agricultural Extension (DAE) or the Department of Livestock Services (DLS) (2008).

Access to credit is crucial for vulnerable groups as well as for women in overcoming stressful periods or establishing and maintaining land rights. In this respect, formal credit institutions such as banks, financial institutions modus operandi are highly unfavorable to women; collateral and high interest rates are often make it impossible for vulnerable groups and women to receive credit from them. Sarwar et al.(2007) found that 87% received a limited amount of credit from informal institutions, often at high interest rates. It is found that in some respects women cannot get credit from formal institutions without the signature of a male relative. Furthermore, that the targeting of women by micro-credit institutions does not necessarily imply that women have actual control over credit (1998). In fact, according to Rahman (1996), 90% of women at Grameen Bank were said to be directly influenced by their male guardians when becoming member of the bank.

The particular ways women suffer in dealing with public/private institutions will be elaborated in the following section.

Forms

The varied forms of barriers Bangladeshi women encounter in relation to land rights are primarily impacted by social, cultural, religious and institutional system. Following is a description of key issues influencing women's land rights at the ground level:

Inheritance related :(1) **Patrilocality:** As we know Muslim women in Bangladesh are entitled to have limited and conditional share of paternal property as per the country's existing Muslim succession law (for detail see next chapter on Policy Review). Nonetheless, generally, after marriage women leave their father's house and move to their husbands' places following the patrilocal social norms. This poses a number of problems for them to claim their lawful rights. As they live away, in many cases they are not even aware of the fact when and how the paternal property has been distributed. In many cases, brothers hide the fact from their married sisters and thus women get deprived of their lawful entitlements.

At times, brothers sell the share of land that belongs to the sisters without informing them and thus they do not even get to know about their shares. Sometimes, it is found that during the land survey and settlement process, brothers have recorded their sisters' share/s in their names. These are quite common incidents both in the urban and village areas. It is more difficult for sisters to file a suit against brother/s for many reasons such as inability and unfamiliarity with the court and judiciary process, financial inability, fear of facing social, administrative and official harassments, fear of losing tie with and support from paternal family, brothers, relatives and so on.

(2) **Social expectations & pressure:** There is also a kind of social expectation that a married daughter will not claim her paternal share unless it is utterly necessary or voluntarily renounce it in favor of the brothers, or if claims at all that will be lesser in amount/portions. This is more so for those women who are financially better off than their brothers. Related perceived notions in this respect are - 1) brothers take care of the family, parents, so they are the ones to get father's property; 2) Once a daughter is married, her husband, son(s) are there to take care of her; 3) A married woman will have share in her husband's property. It is however conveniently forgotten that a married brother's wife may bring share of her inheritance, contributing increase in property/income in her marital house. It is quite common that even brothers, whose wives' are getting shares from their fathers, are discriminating the sisters while giving their shares.

There also exists a socially endorsed notion of 'good sister.' A 'good sister' does not usually take father's property as sign of her naturally loving/caring quality especially to her brothers. Such socially sanctioned 'sisterly behavior' act as a general deterrence for many women not to claim their paternal shares. This is not only true for Muslim women, Christian women who are entitled to get equal share of inheritance as per existing Christian Law are also victim of such indirect social pressure. An informal meeting with Christian women revealed that despite the presence of non-discriminatory law, in practice they are generally deprived of for social reasons as outlined above.

Social expectations at times also compel women to compromise with the quality of their share, especially in respect to land property. Brothers often get better quality of land, homestead, apartments located in better places with more monetary value, whereas sisters get the 'leftovers'.

Sometimes, brothers also put pressure, both directly and indirectly, on their married sisters to sell off their land/immovable properties in much less than market price or in nominal price. In order to compel sisters to relinquish their claim, sometimes situations are thus created that make it difficult for sisters who live away to control and access their paternal property and therefore renounce. It is natural for sisters married away to depend on brothers or other male members to look after their property/share at father's place. It then becomes easy for brothers/male

caretakers to manipulate the situation and make it work in their own advantage. Both village and urban women are victims of such deprivations.

(3) Lack of legal literacy: Lack of legal knowledge is another common cause for deprivation of women from inheritance. According to Muslim succession law, wife and daughter(s) are among the sharers (eligible heirs) of a deceased person. The law concretely specifies the portion share of property to be given to specific category of sharer. Women of a family are however in most part remain ignorant, oblivion with regard to land/property management and related legal matters; they sometimes do not even know about their share of inheritance. Management and distribution of property, land, dealing with law are generally perceived as men's work; usually male members of the family deal with such matters.

Due to lack of knowledge, women do not usually consult or are consulted with about these matters. This situation structurally put women in a disadvantageous position as they cannot discuss it even in time of confusion, need and crisis. Consequently, male members or other sharers can easily cheat them. Lack of proper information and knowledge make women to concede to whatever family's male members offer as share no matter how unfair and unjust those are. This is particularly the case of rural Muslim women who due to lack of education are not aware of their share of inheritance. In rural Bangladesh, distribution of property after father's passing away usually takes place through social/local mediation/arbitration. In such event of landed property distribution, women in most cases do not participate and men's influence always prevails in the local system. So women are to accept the local system of property distribution.

(5) Parental discrimination: Parents can be discriminatory towards daughters. Since Muslim inheritance does not have provision of will, there are instances that a father has purposely registered all his property in favour of the son(s) in order to deprive daughter(s). Patriarchal mind-set, male preference, keeping land property in family's hands are the causes of such parental discrimination. This happens in Christian families as well.

(6) Social Security: Sometimes Muslim women 'voluntarily' forfeit their rights to father's property for future security. In absence of any other social support services, parental home acts as a support and shelter home for married daughters in terms of their marital or other crisis. Hence, she usually wants to maintain a good relation with brother(s) and other relatives from parental side. Renouncement of share of inheritance acts as a gesture of good will, affection on her part towards her brothers, in return of which she can expect support in time of need. However, the apparent 'voluntarism' at times in fact is the result of unwritten/indirect social pressure that expects married women not to claim their shares.

Dowry: The situation of Hindu, Buddhist and *adibasi* women is far more deplorable because existing Hindu inheritance law does not provide women any rights to inheritance in the presence of any male heir such as brother or brother's son (for details, see next chapter on 'Policy Review').

The prevalence of giving and accepting dowry in Hindu marriage system acts as an excuse of depriving women from inheritance. A Hindu parent usually have to pay a huge amount of dowry in the form of money, property, gold, gift and so on in order to marry a daughter off with a prospective groom. Sometimes, it requires parents to sell land, house or other valuables or even get loan from others to materialize dowry payment. Parents arrange dowry by hook or crook, which may in case of poor people lead to utter destitution of the family. In turn it provides ground to claim that dowry is compensation to women's rights to inheritance. While

some may find this logical for poor families, for well off and educated families' using such claim to exclude women from paternal property share is highly unjust and discriminatory, as in their case the paid dowry may not constitute a considerable part of the family property. Ironically though where there is no demand of dowry women still cannot legally claim any share of parental property in absence of legal safeguard. Furthermore, it is to be noted that dowry is given to groom/groom's family; it does not belong to the bride, neither she can access and control it. It may only help increase her position in husband's family.

Polygamy: Polygamy in the form of polygamy is religiously endorsed in Islam and is a common practice in Bangladesh especially among poor, uneducated Muslim families. Having more than one wife can pose a practical problem in property distribution. If a man favours a particular wife over the other wife(or wives) and gives her better and larger share of property that can be discriminatory for other wife(or wives) and her children. It is in fact a common cause of women's destitution in the lower strata of the society; men are seen abandoning one wife and her children for a new one.

Purchase: Apart from inheritance, purchase is another source of land ownership for women. Nonetheless, a few women in Bangladesh have ability to purchase land on their own in terms of financial condition, exposure, skill, practice and so on. Land ownership, therefore, remains out of purview of most women irrespective caste, creed, class and religion. The few individuals who can afford to buy a plot of land usually do so jointly with their husband, brother or any other male relatives due to dependency, complicity of the process, lack of experience, exposure and for many varied reasons. In fact, instances and experiences of women's land purchase is varied, highly individualistic and confined to a limited segment of women. Thus, women's independent land ownership through purchase still remains a matter of far cry.

Joint Marital Property: In case of land/property jointly held by both spouse especially among urban, educated, well-off families, women's access to and control over it is generally severely limited. This is partly due to women's lack of interest and partly due to common perception about land as a men's domain and women's internalization of that perception. Women can also be discouraged by husbands/sons. Complicity and difficulties involved in land management process can also deter them.

There is, however, an interesting development in recent years in urban areas. Men with power, position and money, coming from government officials, bureaucrats, businessmen, are seen to buy properties/land in the name of their wives in order to evade tax and anti-corruption cases. In such cases, irrespective of the source, women possess actual ownership. However, in such instances also women actually lack access and control. It is men who actually are in possession of controlling, although women can lawfully claim the ownership if they wish so or in the event of dissolution of marriage.

Institution Related: Problems of institutional issues have been mentioned before, now we would focus on how in different ways or forms women are being debarred and discouraged at the grassroots level in materializing their rightful claim.

1) **Land administration & management:** Land administration and management system in Bangladesh is complicated, time-consuming and women-unfriendly. At present, three different departments are in charge of land administration and management in Bangladesh. Department of Land Records and Surveys (DLRS) under the Ministry of Land prepares Record-of-Rights (ROR). However, updating of ROR (mutation) is done by the Upazila Land Administration Office (AC Land Office) which is under the Ministry of Land but its office management is

under the Ministry of Public Administration (MOPA). Furthermore, registration of transfer deed is under obligation of Registration Department that is under the Ministry of Law Justice and Parliamentary Affairs (MLJPA). Land record preparation, upgrading of ROR and land transfer registration are the integral parts of land administration and these should be sufficiently coordinated. However, these offices work separately with little coordination among them. The whole process is manual, laborious and time consuming. Conventional methods of land survey, preparation and upgradation of land records, maintenance of all related data for each parcel of land, map preparation make land administration and management complicated and inefficient. In this situation, distortion and tampering of land records at various stages of survey and settlement operations (i.e. plot-to-plot survey, preparation of records and drawing of maps through conventional methods, objections, checking works, printing, etc.) are quite common. Ordinary women & men alike become victim of land document related fraudulence. Inadequate and improper land registrations, land settlement and mutation processes increase difficulties in land security. Faulty and long procedural land service delivery system automatically creates middlemen and frauds and the like. In such a situation, getting any simple task done requires help of middlemen and bribing officials etc.

The whole situation is difficult for ordinary men and women alike. However, understandably women are more vulnerable in these offices. They are victimized in getting land services and can easily be prey of cheats, frauds and lose money. Since these offices are male-dominated and have no separate service delivery booth/system for women, officials and others tend to ignore women, especially poor, village, uneducated women are often easily ignored and harassed. Waiting in a long queue with men creates extra hazard, sometimes they get sexually abused too. Things become harder for women for their unfamiliarity and lack of knowledge about legal matters, official processes and other technicalities. This is more so in case of poor, grassroots level women without money to bribe or pay for middlemen. The overall non-conducive institutional situation suggests that in a conservative cultural milieu as in Bangladesh, it is quite difficult for women to go out and get services from there, leaving them and their families reluctant to allow them to go to land offices.

Government allocation: In an extremely densely populated country like Bangladesh, landlessness is quite high. Although early in this section we mentioned that women's major source of land is inheritance, it is not equally true for poor, landless families, who virtually have no land to bequeath to their children. In this context naturally Government allocation constitutes major aspect of getting land for members of landless families. While in the course of time, men of such families may acquire land through purchase, dowry or so, it is quite unlikely or even impossible for women without financial ability to buy land. Furthermore, it is estimated that 30% of household in Bangladesh is headed by women. Of these households, about 95% fall below the poverty line and one-third are classified as hard-core poor. For these categories of women then government allocation is the sole means to possess land.

The Government of Bangladesh has formulated a comprehensive *Khas* Land Settlement Policy in 1997, which ensures women's rights in allocation to a certain extent as discussed below. While the details of the policy will be scrutinized in the next chapter, it is suffice to mention here that *khas* land has been classified as agricultural *khas* land, non-agricultural *khas* land and *Hat-Bazar khas* land. Agricultural *khas* land has been restricted only for landless families and will be allocated in joint ownership of husband and wife. In the priority list, widow and widower with active son category has been added with certain others. These are definitely areas of strength of the policy that enable downtrodden women to have land ownership. The flip side of it is, however, unmarried women, single women and sonless widow have been disregarded

and ignored, while in practical situation they are the ones who are in need most. A woman with husband or son has already some kind of income support, while a single woman, sonless widow or widow with daughters are economically and socially more vulnerable. Attaching women's *khas* land ownership rights with a male member, either husband or son, has thus failed to accept women's individual rights, displaying inherent patriarchal approach at the policy making level. And at the end, protection to one of the most vulnerable sections has remained largely immaterialized.

While argument in favour of joint ownership option in *khas* land distribution may say a woman alone may not effectively control, manage and protect the land due to her vulnerabilities in a male dominated society as well as lack of capacity, practically, however, in most cases in the name of joint ownership, husbands are deciding and controlling everything; a wife is only an owner in paper. Furthermore, in many cases, *khas* lands allottees are yet to physically establish their rights over the distributed lands as those are in possession of local influential elements. An ordinary woman allottee with almost no power is understandably in a precarious position in such a situation.

Legal processes: Law suits are part and parcel of land ownership in Bangladesh. High population growth and scarcity of land have given birth to intensive competition over land resources across the country. Grabbing of private lands is now a serious threat to individual security and cause of social conflict. This is also one of the major sources of land related law suits in the country. Also inter-and- intra-family conflicts over property share and distribution are there too apart from many other sources. Women and men with land may need to deal with land related legal process at any point of time.

However, the legal system in Bangladesh is marked by a number difficulties and limitations: lengthy, complicated, expensive, corrupt, non-cooperative police and judiciary, influence of money, threat, illegal pressure and fake and fraud practices that range from making fake documents to influencing the outcome of court decisions. Women face particular difficulties in dealing with such an institutional process and therefore become reluctant to go to court and pursue legal action.

Chapter Three

Review of Constitutional Provisions, Laws, and Policies Relating to Women's Right & Access to Land

Introduction

Role of women is instrumental to the development of family, society, and state. Almost all the studies conducted ever suggest that women's right to property, their authority to make household decisions, access to credit, and productive services have direct bearing on their family's health, nutrition, and economic well-being. In producing food, managing household activities, and ensuring nutrition security women play important role, but they do not have adequate legal entitlements over property, particularly land. As a result, their access to and control over land is extremely limited in Bangladesh. An examination of the constitutional provisions, laws, and policies relating to women's right and access to land is necessary to realize women's legal standing vis-à-vis the gap between the legal text and reality.

Women's Right

Women should be entitled to all the rights and freedoms for the simple reason that they are human being. Human rights are those inherent and inalienable rights which the human beings entitle because of their humanity. The core contents of human rights are same for all irrespective of race, colour, sex, religion, ethnicity, and political and other opinion, social or national origin. Women, therefore, are entitled to all the human rights, whether they are civil and political or economic, social and cultural or collective rights.

Simply, the term 'women's rights' refer to all the entitlements, rights and freedom of women and girls of all ages. Hosken, however, considers that women's rights may or may not be institutionalised, ignored or suppressed by law, local custom, and behaviour in a particular society. These rights are banded together and often differ from the freedoms recognised for and enjoyed by the men and boys for centuries. Women's rights activists, therefore, claim an inherent historical and traditional bias against the exercise of rights by women and girls (Hosken, 1981: 10).

Issues commonly discussed and the entitlements generally associated with the notion of women's rights include, though are not limited to, the right to life and liberty, right to bodily integrity and autonomy, right to education, right to work, right to own property and access to it, freedom of movement and of speech, right to vote, right to equality of opportunity and to hold public office, right to enter into contracts, and right to fair wages and equal pay. Women and their supporters have been campaigning for guaranteeing these rights and also ensuring their equal rights with men (Lockwood, 2006).

Women's Equitable Rights to Land

Throughout the world gender equality has been an important issue as it is related to sustainable development, reduction of poverty and overall household welfare. The Millennium Development Goals (MDGs) recognized the need to promote gender equality and empowerment of women, but the MDGs ended in 2015. Broader sustainability agendas, and the new sustainability goals aim to complete the unfinished tasks of the MDGs, and go much further, underlining poverty and inequality to identify their root causes which will ensure development for all. The Sustainable Development Goals (SDGs) or "the new agenda is based on 17 goals, including a stand-alone goal on gender equality and the empowerment of women and girls as well as gender sensitive targets in other goals" (UN Women, 2015).

It is widely recognised that secure and equitable rights to land and natural resources are instrumental to achieve sustainable development. Land rights empower people and are fundamental to achieve the right to food. They promote inclusive and equitable societies. But girls and women are extremely marginalised in terms of land ownership in most of the societies in the world. The UN Secretary General has recently said that secure women's rights to land and natural resources play an important role in ending poverty and achieving a life of dignity for all. It will also reduce gender-based violence and discrimination. Women's land rights remain a stand-alone target under the SDGs and continue to include inheritance rights as warranted by internationally-agreed standards (Joint Agency Technical Briefing, 2015).

'Equity' means fairness, and impartiality and in popular sense it is practically equivalent to natural justice (Black's Law Dictionary, 2009), a justice which is sanctioned by a higher authority than earthly one and conforms to reason and good conscience (Wacks, 2012). John Rawls in his book '*A Theory of Justice*' premises that fairness is the basic building blocks of justice. Fairness is conceived as unbiased and impartial treatment of things from a position of primordial innocence and sense of equality (Rawls, 2005). He argues that two intuitive principles of justice in particular will reach reflective equilibrium:

- (a) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be the greatest expected benefit of the least advantaged members of society (Sen, 2009: 59).

'Equitable right', therefore, means a right which is consistent with the principles of natural justice, good conscience, rationality and most importantly Rawls's 'fairness'. 'Women's equitable rights to land' connote that women will have just and reasonable entitlement over land and the land-management and land-administration system will enable them to hold, access to, and manage landed property.

Land usually includes farmland, wetland, pasture, rangeland, fishery, forest, as well as harvesting and hunting territories. 'Women's rights to land' entail the ability of women to own, use, access, control, transfer, inherit and otherwise take decisions about land and related resources (UN Women, 2013). In Bangladesh, according to section 2 (16) of the State Acquisition and Tenancy Act 1950, land means land which is cultivated, uncultivated or covered with water, at any time of the year and includes benefit to arise of land, houses of buildings and also things attached to the earth or permanently fastened to anything attached to the earth. In Bangladesh, women's equitable rights to land signify their rights to own, use, access, control, transfer, inherit and otherwise dispose of land.

A careful analysis, however, reveals that if there is any conflict between legal right and equitable right, the legal right will be upheld by a court of law though equitable right emanates from a higher authority, meaning God or nature. In this context, 'women's equitable rights to land' need to be effectively ensured by constitution and laws on the one hand, and must be progressively interpreted by a court of law on the other. Adopting policies and enacting laws are not sufficient, it should also be ensured that women can own, hold, and manage land in their real life practice. For example, the Land Reform Ordinance 1984 provides for joint ownership of husband and wife in *khas* land. In practice, this apparently good provision of law is reported to have created obstacles for women's exclusive holding and managing *khas* land. Women's right to land means they have exclusive rights over land indicating the necessity of

allocating *khas* land in the independent name of wives, as they are often manipulated by their husband. Secondly, there is no bar in the land laws of Bangladesh to own, hold and dispose of landed property by women, but they often cannot hold and manage their land due to the fact that the land registration and management system in Bangladesh is inefficient, corrupt and cumbersome.

Constitutional Provisions as to Women's Right and Their Entitlement to Property

In its articles 11, 13, 14, 15, 19, 27, 28, 29, 42 and 65, the Constitution of Bangladesh calls for ensuring equality of women, and their entitlements, and rightful demands in all spheres of life. The constitutional articles already mentioned bear varying importance due to their placing in different parts of the Constitution. Among the constitutional provisions, Article 14 states that, "It shall be a fundamental responsibility of the State to emancipate the toiling masses – the peasants and workers – and backward sections of people from all forms of exploitation." According to Article 15, "It shall be a fundamental responsibility of the State to attain through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people..." Article 19 (3) states that, "The State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life."

Article 27 declares that, "All citizens are equal before law and are entitled to equal protection of law", and Article 28 (2) loftily proclaims that, "Women shall have equal rights with men in all spheres of the State and of public life." Article 28 authorises the state of taking 'affirmative action', that means, to enact laws, and rules, to adopt policies, and to take administrative measures to ensure equal/equitable rights of women.

Among the constitutional provisions Articles 13 and 42 bear special importance as they are related to principles of ownership and rights to property. Article 13 provides: "The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms – (a) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalised public sector embracing the key sectors of the economy; (b) co-operative ownership, that is ownership by co-operatives on behalf of their members within such limits as may be prescribed by law; and (c) private ownership, that is ownership by individuals within such limits as may be prescribed by law." Article 42 (1) states: "Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised, or requisitioned save by authority of law."

Findings

Part II of the Constitution of Bangladesh titling "Fundamental Principles of State Policy" contains 20 articles – from Article 8 to 25 – and all the economic, social, and cultural rights are placed here which are not judicially enforceable, but "shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, 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 of its citizens..." (Constitution of Bangladesh, Article 8 (2). Fundamental rights are placed in part III of the Constitution which contains 23 articles – from Article 26 to 47A – and accommodate 18 civil and political rights violation of which entitles a citizen to file writ petition in the High Court Division of the Supreme Court. Thus, placing of rights in part II or III bears varying importance as fundamental rights are judicially enforceable, but fundamental principles of state policies are not.

Articles 27 and 28 of the Bangladesh Constitution occupy a unique place as they have entrenched, as least in theory, equal rights of all citizens, both women and men. While Article 27 ensures all citizens' equal standing before law and equal protection of law, Article 28 (1) declares that on grounds only of religion, race, caste, sex or place of birth the State shall not discriminate against any citizen. Implications of these constitutional provisions, together with Article 29, are that equal rights of all the segments of society are ensured by the supreme law of the land. The articles bear enhanced importance, because they –

- (i) Prohibit any discrimination on the basis of sex;
- (ii) Ensure women's equal rights with men in all spheres of the State and of public life;
- (iii) Ensure equality of opportunity for all citizens in respect of employment or office in the service of the Republic;
- (iv) Empowers the State to make special provision in favour of women or children or for the advancement of any backward section of citizens.

Article 13 has used the word 'people' and does not put any restriction on the basis of sex, so women shall have entitlements in the co-operative ownership and they shall also own or control the instruments and means of production and distribution. Article 42 clearly provides that every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property. Thus, any woman of Bangladesh, to whatever religion, caste, or race does she belong, will have constitutionally guaranteed right to acquire, hold, transfer or otherwise dispose of property, including land.

Recommendations

1. Religion and culture bear paramount importance as they are basic to keeping social order, peace, and solidarity, so religion and culture have to be respected. But violations of basic human rights in the name of religion, culture, and tradition must be condemned and all measures need to be taken to stop them. In the 21st century, when the world community has struggled to achieve the Millennium Development Goals (MDGs) and has adopted the Sustainable Development Goals (SDGs), laws that govern public and personal affairs must be compatible with the constitutional provisions and will be equally applicable to all citizens, particularly male and female. In this context, it is suggested that policy makers should take progressive initiatives to enact a Uniform Family Code, providing uniform laws as to marriage, divorce, maintenance, inheritance, adoption etc., which will be in conformity with the equality provisions of the supreme law of the land.
2. As an alternative to the enactment of the Uniform Family Code, it is suggested that religion-based personal laws to be updated to remove all the discriminations against women in the inheritance laws.

Women's Right to Land: Ordinary Laws

Like Constitution of Bangladesh, women have the right to own and control land under the ordinary laws. Land laws have imposed no bar on women to acquire, hold, transfer or otherwise dispose of property. Section 7 of the Transfer of Property Act, 1882, for example, provides that, "Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force." Here 'every person' indicates any person including male and female citizen in Bangladesh. Thus, women have the legal right to purchase, own and hold land and transfer or otherwise dispose of landed property. However, a woman does not get legal entitlement to a land unless her name appears

on the land documents when a land is purchased by a household. Under the constitutional scheme three types of ownership – state ownership, co-operative ownership and private ownership – are allowed and there is a limit of private land ownership. The State Acquisition and Tenancy Act, 1950 (SAT) has been an attempt to retain the agricultural character of land by giving cultivators first right of purchase and prohibit other use; but it has failed to bring expected outcome due to the large number of exceptions and poor enforcement (CARE, 2003:9). Though the SAT Act is a landmark legislation as its object is to abolish the intermediate estates and to acquire them by the Government for the benefits of the tillers of the soil, but it has some exceptions. For example, section 3 read with sections 2 and 20 of the SAT Act and Rule 29A of the State Acquisition Rules, 1951 provide that the following cannot be acquired: (a) Rent-receiving interests in respect of non-agricultural lands with building standing thereon together with necessary adjuncts under a lease not being a lease in perpetuity; (b) Portions in *hats* and *bazaars* which do not fall within the definition of *hats* and *bazaars* and having structure and held under lease, *khas* lands to the extent of 375 standard bighas or an area determined by calculating at the rate of 10 standard *bighas* for each member of the family, whichever is greater; (3) *Khas* lands in excess of the above limit may be retained in a number of cases (Islam, 2013: 42, 43).

The SAT Act, 1951 provides that any rent-receiver, cultivating *raiyat*, cultivating under-*raiyat*, and non-agricultural tenant can hold 375 standard *bighas* of land or an area determined by calculating at the rate of 10 standard bighas for each member of the family, whichever is greater. Under the Bangladesh Land Holding Limitation Order, 1972 and the Land Reform Ordinance, 1984 a person can hold 100 bighas of land of which 60 bighas are the ceiling for the agricultural land (Islam, 2013: 42, 219).

Women’s Right to Land: Law of Inheritance

In Bangladesh, inheritance offers an important opportunity for women to own land. Since a large portion of property, including land, are at private hands, and the socio-economic and cultural environment mostly bar them from owning land, so inheritance remains the largest opportunity for women to get and own land (Uddin, 2011: 9-10).

Here women’s inheritance is determined by religion-based personal laws, which are discriminatory though women’s equal rights, equality of opportunity, and equal status are guaranteed by the supreme law of the land. The degree of discrimination varies from religion to religion. Muslim, Hindu, Christian, and Buddhist women encounter varying degrees of discrimination due to religion-based personal laws. Indigenous women are regulated by their customary laws under which they are almost deprived of hereditary property and they have limited control over household resources.

Muslim Women’s Right to Land: Muslim Law of Inheritance

Among the total population of Bangladesh, Muslim constitutes approximately 85 percent. Muslim women, therefore, are the largest and regulated by the Muslim Law so far as their inheritance is concerned. The Islamic scheme of inheritance, looking from a broader lens, has three distinctive features: (i) the Koran gives specific shares to certain persons; (ii) the residue goes to agnatic heirs, and failing them to uterine heirs; and (iii) bequests are limited to one-third of the estate (Fyze, 2004: 388).

Under the disposition of the Sunnite inheritance, the Hanafi jurists divide heirs into seven classes – the three principal and the four subsidiary classes. Among the principal classes, Koranic heirs consist of Class I, Agnatic heirs or residuaries Class II, and uterine heirs or distant kindred fall under Class III. According to Hanafi Law, the property of the deceased goes in the

first instance to the Koranic heirs. It goes to the agnatic heirs or Class II, if the estate is not exhausted by the Koranic heirs. The property, finally, will be distributed among the Class III heirs, if the first two classes of heirs are absent. It is to be remembered that these three principal classes of heirs together comprise all the blood relations of the deceased (Fyzee, 2004: 397). One illuminating part of the Muslim inheritance law is that the Koranic heirs consist mainly of females with a few exceptions. The rest of the property is kept for the second class of heirs who are all males. However, the Islamic Law of Inheritance has given a female half the share of the male as a general principle. For example, if a daughter co-exists with the son, or a sister with a brother, the female obtains one share, and the male two shares (Fyzee, 2004: 390-391). Major female sharers, according to the Islamic Law of Inheritance, get share of the deceased in the following fractions: (i) Daughter – $\frac{1}{2}$; (ii) Wife – $\frac{1}{8}$; (iii) Mother – $\frac{1}{6}$.

Women's Right to Land under Hindu, Christian & Buddhist Laws of Inheritance

As Bangladeshi Hindus are regulated by the Dayabhaga school of the Hindu law, so inheritance of Bangladeshi Hindu women is governed by this school. According to this school, succession to property is governed by the capacity to confer *pinda* or spiritual benefit to the deceased ancestors (Desai, 1990). Hindu women's interest has been highly obstructed as they are not allowed to give *pinda* during *ParvanaSradha* of their ancestors in the Hindu rituals. The only exception was brought about in 1937, when the Hindu Women's Right to Property Act made a special provision for widows who from then could inherit along with son, grandson and great grandson (Uddin, 2011: 13).

The Dayabhaga school recognises the following women as heirs: widow, daughter, mother, father's mother, and father's father's mother. In the context of the Dayabhaga school's following a chronology of heirs, the inheritance of mother, father's mother and father's father's mother is hardly possible, as they occupy 8th, 14th, and 20th position respectively. All Hindu daughters do not have the right to inherit property. As a rule of inheritance, unmarried daughter gets property first; in her absence married daughter having or likely to have male child succeeds. Although daughter's position is 5th, she cannot inherit in presence of son, grandson or great grandson. The following Hindu women are excluded from succession – (i) Daughters who cannot give birth to a male child; (ii) Widows having no male child; (iii) Mother with female child; and (iv) Unchaste women (Desai, 1990).

Condition of Bangladeshi Hindu women is seriously deplorable in terms of land ownership, as they get 'life interest' under the Hindu law of inheritance. Firstly, inheritance rights of all the Hindu women are not protected. Secondly, the Hindu women who inherit property do not get absolute ownership, therefore, cannot transfer property; rather they get limited interest in the inherited property, which upon their death returns to the male heirs of the person from whom they inherited. This predicament of Hindu women has been described by Professor M. Shah Alam, Member of the Bangladesh Law Commission, in the following language: "In Bangladesh, even the limited right of ownership is further limited by the fact that it is applicable only to homestead and non-cultivable estate and not applicable to cultivable or agricultural land" (Alam, 2004: 47).

It is to be mentioned that Hindu law recognises '*stridhana*' meaning women's property. The properties gifted to a Hindu woman before her marriage, or at the time of marriage or at the time of giving farewell or thereafter are called '*stridhana*'. A Hindu woman has absolute control of her property. Husband may use it during his distress, but he is obliged to compensate his wife. As absolute owner of the property, she can hold, transfer or otherwise dispose of her property. *Stridhana* of every description, as a general rule, passes on her death to her heirs, not to the heirs of the person from whom such property was acquired.

Inheritance of the Bangladeshi Buddhist women is governed by the Hindu law, so their inheritance is regulated by the same legal provisions as discussed above. The way interest of

inheritance of Hindu women is obstructed in Bangladesh, the Buddhist women are subjected to the same hardship.

The Succession Act 1925 governs the inheritance of the Christians in Bangladesh. According to section 33 of the Act, a widow gets one-third of her husband's property in presence of lineal descendents, and half in absence of them if the deceased leave some kindred. Wife gets the whole property if there is no lineal descendents and kindred. Daughters, grand daughters, great grand daughters get equal share with sons, grandsons, and great grandsons, therefore, there is no discrimination between Christian men and women in this respect.

Under the succession law, father gets the whole property to the exclusion of mother, if wife and lineal descendents are absent. In the absence of father, mother along with brothers and sisters get equal shares. Here there is no discrimination between brothers and sisters. If only mother is alive, she gets the whole property.

Indigenous Women's Right to Land under Their Customary Laws

According to the Bangladesh Adivasi Forum, there are 45 ethnic groups with approximately 2.5 million living in different hilly districts and plain land of the country. From different statistics it is estimated that smaller groups of the indigenous communities comprise 1-2 percent of the total population (Bangladesh EthnoBotany Online Database, 2012-2014). Indigenous women are regulated by their customary laws under which they are almost deprived of hereditary property and they have limited control over household resources.

Findings

Moin Uddin has mentioned some good aspects of women's inheritance under Islamic law, under which Muslim women get absolute ownership of property as an heir. Neither physical nor moral disability excludes from their right to inheritance. In Bangladesh, Muslim women can inherit all types of properties – whether it is moveable or immovable, agricultural or non-agricultural. In a fair comparison, Muslim law has given far more inheritance rights to women than any other scripture-based inheritance system, though there is no denying the fact that daughter and sister get half of their male counterpart, indicating clear discrimination between male and female. Scholars, however, try to rationalize the loss of Muslim women in inheritance given their having no economic responsibility and male's shouldering the onus of maintenance and dower (Uddin, 2011: 10-12).

Nevertheless, Islamic law of inheritance appears to be discriminatory if it is judged from a universal human rights standard and principle of equality. Even it is contradictory with the equality provisions of the Constitution of Bangladesh. Moreover, Bangladesh is signatory to a good number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires the state parties to take legal or other necessary steps to ensure equality between men and women in all spheres of life. A signatory state is obliged to repeal all discriminatory laws against women, but Bangladesh made reservation under Article 2 of the CEDAW.

The condition of Hindu women in terms of inheritance rights is the worst in Bangladesh as they get almost nothing as heir. Buddhist women are subjected to the same hardship as they are governed by the Hindu law of inheritance. Christian women enjoy satisfactory inheritance rights which are ensured by the Succession Act 1925 and in some cases they enjoy equal rights with men. Women, therefore, are not a homogenous category. In Bangladesh, their experiences vary according to their race, class, religion, culture, and education. Muslim, Hindu, and Buddhist women are subjected to varying degrees of discrimination. Christian women enjoy

far greater inheritance rights. Marginalisation and deprivation of women, consequently, are sanctioned and sustained in the name of social values, religion, and culture.

Recommendations:

- (1) A close reading of the Islamic law of inheritance and the changes made by the Quran to the pre-Islamic Arabian customs fairly appear to be women-friendly. Taking initiatives to ensure equal inheritance rights of Muslim women is strongly argued to uphold the true spirit of Islam. Policy makers of Bangladesh should take an action plan by which Muslim women's equal inheritance rights will be established gradually.
- (2) Hindu and Buddhist women should be given right to inherit by enacting new laws. Policy makers may take lessons from the laws enacted in India in this regard.
- (3) The Succession Act 1915 should be reviewed to eliminate the existing discrimination suffered by the Christian women in Bangladesh.

Women's Right to *Khas Land, Char Land, Forests etc.*

Khas Land : Land and peasantry, together, form the basis of reproductive civilization and foundation of agriculture and 'agro-culture' in Bangladesh. Where land is the gift of the nature, peasants are the actor to produce crops and make wealth out of the landed property. They combined have contributed to the development of agricultural society and civilization in this deltaic land. Land is the source of income and economic power, and also determines status of an individual in a family and society. According to the estimate of the World Bank, arable land in Bangladesh was last measured at 7628000 hectares in 2011. Arable land includes land defined by the FAO as land under temporary crops (double-cropped areas are counted once), temporary meadows for mowing or for pasture, land under market or kitchen gardens, and land temporarily fallow.

According to one estimate, Bangladesh has 3.3 million acres of *khas* land and 6-7 million landless households. '*Khas* land' means state-owned land which the government has lawful authority to give to landless people or the government can lease the land. *Khas* land is considered an important livelihood source for extreme poor and key to ensuring improving land productivity. Bangladesh can achieve significant progress in eradicating poverty if all of the *khas* lands are properly distributed among the extreme poor and if the lands are used productively. But the extreme poor households encounter sufferings and inefficiency in *khas* land distribution to be blamed. Studies suggest that if extreme poor households are provided with 0.50 acres of *khas* land, they can manage sustainable livelihoods (SHIREE, 2012).

The Government has enacted the Land Reform Ordinance in 1984. In 1987 the Ministry of Land launched the Land Reform Action Programme, an initiative to distribute *khas* land to landless families. In 1997 the Agricultural *Khas* Land Management and Settlement Policy was adopted by the Government which mandates the allotment of *khas* land in the joint names of the husband and wife.

Char Land: Bangladesh is a deltaic region, which has been formed by the combined downflow of the three indomitable rivers – the Brahmaputra (the Jamuna), the Ganges (the Padma), and the Meghna – along with a great number of tributaries and distributaries and finally flow into the Bay of Bengal. Thus, Bangladesh acts like an inverted funnel in the delta. Here sedimentation and siltation have become regular phenomenon every year and they together rejuvenate the alluvial topsoil of the landmass of the country (Haider and Haider, 2004: 375). As Bangladesh is a country of numerous rivers, their tributaries, distributaries, canals and streams, every year its land sinks into rivers and new land rises out of the riverbeds. The land

rises out of the riverbeds is called *char* land and becomes a major cause of dispute and conflict, since there is huge competition to establish control over the *char* land. According to the provision of the Bengal Alluvion and Dilluvion Regulation 1825, *char* lands are to be distributed among the people having land records who lost their land through river erosion.

Riverine *Chars* in Bangladesh 2000, published by the ISPAN (Irrigation Support Project for Asia and the Near East), has estimated that there are approximately 1722.89 Sq. KM of *char* lands adjacent and within five major rivers in Bangladesh. In addition to this, there are numerous *chars* in small rivers (Sarwar, Islam and Monzoor, 2007).

Intense violence and confrontation are seen in the *char* areas as the local *Jotders* with their private force known as *Lathials* try to take control of the land and evict landless poor. *Char* lands are reported to be places of innumerable incidents of injury, rape, and murder. In the absence of officially developed data, it is assumed that most of the *char* lands are in the control of the local powerful who continue their occupation in collusion with the dishonest government officers. Consequently, landless women have limited control over such land, because they fear physical confrontation and administrative hassles. Moreover, they do not have money to bribe for getting allocation of title in their names. *Char* lands often lack land records, and long time will be needed for conducting surveys, verification and publication of maps, and all these constitute formidable barriers for securing titles. In this reality, the landless people give rent to the powerful grabbers to stay on *char* lands instead of securing land titles (Sarwar et al., 2007).

Forests and other Land: Though official statistics of Bangladesh Government claim 17% forest of the total land, but the Earth Trend has estimated that forest area of Bangladesh is only 9% in 2000. According to an estimate of the BBS (Bangladesh Bureau of Statistics), rivers and inland water bodies' occupy around 6.7% of total land area in Bangladesh (Srwar et al. 2007). Bangladesh Government is the lawful owner of the forest land, rivers and inland water bodies', but it is reported that the forest department manages 10.3% of 17% forest land. There are powerful people who have occupied forest land and hills. Many landless people are reported to reside on the foot of the hills by giving rent to the influential.

Findings

Unnyan Onneshan (The Innovators) in its study titling "Women's Rights to Land: Roles, Limitations and Transformation" has mentioned that available *khas* land in Bangladesh is 14 lakh acre, quoting the Parliamentary Standing Committee Report in 2004. But Barakat, Zaman and Rahman (2001) estimate that *khas* land in Bangladesh is 33 lakh acre on the basis of Government data. Unfortunately, all the *khas* land is not controlled by the Government as its official record says that illegal grabbers control 35.7% of the total *khas* land.

According to Barkat, Zaman and Rahman, wealthy and influential people are the beneficiaries of the distributed *khas* land, as rich and powerful people get 88% of the distributed 12-lakh acres of cultivable *khas* land and landless poor get only 12%. Unnyan Onneshan in its study has mentioned that available macro data does not cover the statistics of women's appropriation of *khas*land, but their researchers during the field study got ideas that women are the most susceptible group regarding distribution of *khas* land. Researchers met many women who were struggling for years to establish their holding in the land that were allocated to them by the government.

International Human Rights Instruments, CEDAW and Women Development Policy, 2011

There are a great number of international human rights instruments adopted by the nations, many of them were drafted, negotiated, and finally accepted by the international community under the auspices of the United Nations Organisation (UNO). Among them the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights comprise the International Bill of Rights. All the international human rights instruments – the UDHR, the ICCPR, and the ICESCR – have put human dignity and human rights on high pedestal and declared the universality of human rights irrespective of caste, race, sex, colour etc. Equality before law, equality of opportunity, and equality of women and men are cardinal principles of international human rights regime. As member of the United Nations Organisation, and also as signatory to the international human rights instruments, Bangladesh is obliged to make its laws compatible with the UDHR, the ICCPR, the ICESCR, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and other international human rights instruments. But, Bangladesh continues to maintain its reservations under Articles 2 and 13 (a) of the CEDAW.

The CEDAW is the only international human rights instrument which affirms the women's rights relating to their productive, reproductive, and community activities. It is, therefore, considered as the international bill of women's rights adopted by the United Nations in 1979. The convention constitutes the global basis for recognising just rights of women and ensuring gender equality. State parties that have ratified or acceded to the CEDAW are legally obliged to enact laws and take effective measures to put an end to all sorts of discrimination against women. Each member state which has ratified the convention is required to submit a periodic four-yearly report on the status of implementation to the UN CEDAW Committee. Bangladesh has signed the CEDAW in 1984 and signed and ratified the Optional Protocol to CEDAW on 6 September, 2000.

Signing CEDAW may be a step forward, but Bangladesh Government kept four reservations during signature. Reservations from two articles have been withdrawn, but Bangladesh's position remains unchanged as to Articles 2 and 16.1.C. The state parties are required to enact new laws or adopt new policies or amend all discriminatory laws that affect women's rights. These reservations, therefore, allow a country to continue with its discriminatory laws and policies. As reason of reservation, Bangladesh stated that it would be difficult to change the provisions of religion-based personal laws (Rashid and Munni, 2012).

Bangladesh has adopted the National Women Development Policy (NWDP) in 2011, which loftily declares to ensure the equal rights of women and men in all spheres of national life, particularly in family, society, and work places. The NWDP has ensured women's full control over their earned property, credit, land, inheritance, and market management. It has said about initiatives of direct election in the place of 45 reserved seats for women in the parliament and also about ensuring 33% representation of women in all the political parties. The policy has declared that all laws contradictory with the CEDAW would be abolished and new laws would be enacted to put into effect the equality provisions of the Constitution of Bangladesh (Shamsi, 2011).

Chapter Four

Jamalpur Visit: Revealing the Reality

Consultants visited Jamalpur on 14 and 15 December, 2015 with a view to reveal the field-level reality as to the women's right and access to land. They talked with the village women and men in a focus group discussion. Considering the important role of the UNO (*Upazila Nirbahi Officer*) and Chairman of the Union Parishad (UP), Consultants met one UNO and two UP Chairmen and discussed the various aspects of difficulties in ensuring and implementing women's right to land as they face in their operational areas and to get perspective on remedies. The Consultants finally joined in a discussion meeting with the staffs of Uttaran, a NGO working on to provide support in establishing women's legal and valid land rights in the area, and heard their field-level experiences. Uttaran staffs' experiences reveal the obstacles exist in the way of ensuring women's right to land. Jamalpur visit bears importance as it helps the Consultants to perceive the ground reality and thereby determine the compatibility of their study with the real life situation. Most importantly, Consultants got some operative directions from the recommendations of the rural women and men, UNO, UP chairman, and Uttaran activists as to the short-term and long-term imperatives.

Focus Group Discussion

The Consultants talked to a group of 11 village women and men at Atabari village of Shahbajpurthana in Jamalpur district. Among them 4 were women and 7 men. By profession the men were farmers and the women were housewives. At the evening of 14 December the Consultants exchanged views with the village women and men for almost 2 hours.

When asked about the condition of village women's right to land, the women present in the focus group discussion said that – condition of the village women, mostly Muslim, as to their entitlement over land is not satisfactory. Brothers intending to deprive sisters of their father's land usually do not inform the sisters as sisters are married to places remote or remoter to the father's village. *Warishnama* (a certificate as to the list of heirs) is alleged to be prepared in presence of brothers who usually do not inform the sisters. If sisters are informed by a third party or any NGO activist or remain present after getting information from any other source, the sisters are reproached by their brothers and subjected to harassment. Women present in the focus group discussion complained that their brothers did not want to give their deserved share of their father's property and when the brothers were compelled they gave worse quality land to the sisters.

Women said that it has become a norm in the village that sisters have no share in the father's home –it may be building or tin-shed house or shanty – and land adjacent to the home. Sisters and other female members of the family are entitled to the father/deceased property as per personal law, but in many cases they do not get their lawful property due to the reluctant or antagonistic attitude of the brothers. Where sisters and other female members of the family get father's/deceased property, they get worse property or land having lesser value. Quoting traditional village arguments sisters complained that – in most of the cases brothers tell that they have borne the expenses of education, maintenance, and marriage of the sisters, so sisters have forfeited their right to get and own property/land.

Admitting the above mentioned village reality in Bangladesh men said that – nevertheless, there are some good people who do not deprive their sisters or other female members. They insisted that men in some families are sufficiently sympathetic and humane to their sisters and other female members and provide support for their education and other development.



The Economist

Women and property rights

Who owns Bangladesh?

Aug 20th 2013

Often women do not claim any of their inheritance, leaving it in their brothers' possession. Activists in Bangladesh call it the "good-sister syndrome": hoping that the brother will look after his sister's rights. In their experience, more often than not "the good brother does not reciprocate in the way the good sister anticipated".

In a study titled "[Women, land and power in Bangladesh](#)" Jenneke Arens, a Dutch researcher, finds that sons and husbands are often at fault.

Khadija, rich peasant widow, called me into her house. She was clearly upset: 'I inherited nine *bigha* (three acres) of land from my *mama* (uncle) who brought me up, but my sons have registered my land in their names, they took my fingerprint.'

Consultants' View

From the focus group discussion it appears to the consultants that the condition of village women as to land rights is not satisfactory in Bangladesh. Majority Muslim and Christian women as sisters are deprived by their brothers of their father's property/land. In most of the cases, either women are not given any property/land or if given they are given worse property.

In some cases brothers take resort to a tricky strategy as they invite their sisters and give a portion of their entitled property and then ask the sisters to gift off the rest property in brothers' name. In some cases sisters are victim of the worst marginalization when they are deprived by the male members – both father and brothers are to be blamed for this deprivation. Village women do not get their lawful share though their share is fixed by the Muslim Law. Strong patriarchy, traditional mind set and cultural barriers may be identified as formidable obstacles in ensuring village women's right to land in Bangladesh.

Meeting with the UNO and Union Parishad Chairman

Consultants met the Upazila Nirbahi Officer of Jamalpur Sadar in Jamalpur district and two Union Parishad Chairmen there.

One of the Chairman said that after death of father majority families give proper share to their female members. The Chairman appeared to be predominantly patriarchal in his mentality and in the face of cross-examination he admitted that the village women are not comfortably placed in their rightful land ownership. He even said that girls/women are very affectionate, so they do not need any property/land. He did not hesitate to say that brothers have exclusive right to the father's home and sisters only have the right to visit father's home for a couple of days. But the Chairman admitted that consciousness about the necessity of women's right to land has been increased. Now deprived sisters may get property/land if they complain to the government authorities.

Another Chairman said that sisters are deprived in most of the cases. "Even we", he said, "cannot ensure proper rights of women". He said that concerned government authorities can play an important role in ensuring women's right to land. He admitted that it is not possible to go beyond the share allocated by the holy Quran, though rural people do not give Quranic share to the female members of their families.

The UNO who was also AC Land of that area said that in many cases investigation is not properly done as to who are the heirs of a deceased. He put importance on the digital survey as to *Warishnama* (a certificate as to the list of the heirs). He said that Union Parishad Chairman should give the certificate of *Warish* (heirs) properly and Settlement Officer and Surveyor should act sincerely to ensure women's rights. Existing deplorable condition of women may be minimized if certificate of *Warish* is provided properly and mutation is done on the basis of that certificate, he emphatically said.

Meeting with Uttaran Staffs

Consultants met the Uttaran staffs and exchanged views on different aspects of women's right to land. The staffs informed that survey is going on in 34 *mouzas* (a unit of area) in Jamalpur Sadar district. They said that rural women in Bangladesh, mostly Muslim, are deprived of their rightful share in their inherited property/land. The staffs have experienced divergent realities when working in the villages in assisting women to establish their land rights. To them the following factors may be blamed for the deprivation of rural women –

- (a) Brothers are generally seen to bear reluctant and antagonistic attitude towards their sisters. They try to deprive their sisters by different means or tricks. In case of failure, the brothers are seen to reproach, bully, even assault their sisters in front of the surveyor and Uttaran staffs. The brothers angrily question to the sisters, surveyor and Uttaran staffs that – "We have spent huge amount of money for your (sisters') education and marriage after father's death. Now have we to give land to you?"

- (b) Village people view that women are for the household activities. Women will cook, take care of the children, ensure the welfare of the family, but property/land should not be a valid concern of women and what in fact they understand of property/land?
- (c) In many cases women do not claim their proper share of property/land as it is not socially and culturally encouraged. Women are afraid of losing their relationship with the male members of family. Men can risk their relationship, but women due to their kindness and amiability are mostly unlikely to sacrifice their family bondage.
- (d) Property/land related documents are generally kept by the brothers after father's death. In many cases brothers blackmail their fathers emotionally and make him to write his property/land in the name of brothers.

Condition of Landless and Other Communities

Uttran staffs informed that khas land is allotted for agricultural activities. But landless people do not get khasland, rather influential people get the khas land in their possession by giving bribery to the government officials. The staffs informed that Garo women get full property or land as per their indigenous law. Christine community on the other hand is seen to get equal portion of property according to the Succession Act, 1925.

Recommendations of the Village Women and Men, UNO, UP Chairman and Uttaran Staffs

The village women and men, UNO and UP chairman and the Uttaran staffs made a number of valuable recommendations to place the village women on their rightful position as to land rights. Their recommendations are as follows:

- (1) Female education and consciousness will be required for ensuring women's right to land.
- (2) Procedure relating to land rights, ownership and management is complicated and time-consuming, so it needs to be made easier.
- (3) Gender education needs to be included in the curriculum of primary education to tertiary education and women's land rights should be taught as a part of gender education.
- (4) Warish (list of heirs) certificate must be mandatory and land will not be recoded if sister/sisters remain absent.
- (5) There should be a law to the effect that the *Warishnama* shall be issued after including all the heirs –all the brothers and sisters. If there is any mistake in the *Warishnama* or certificate of the heirs, the person responsible for the mistake shall be liable to a fine of Tk. 10 thousand.
- (6) Rural men should be made conscious about the benefit and utility of the women's right to land. Particularly, fathers have to provide attested photocopy of the land related documents to all his heirs – both sons and daughters.

(7) Intervention of the UNOs and Union Parishad Chairman may be instrumental in changing the existing situation and ensure women's equitable right and access to land.

Chapter Five: Conclusion

Findings and Recommendations

Conclusion

It is fairly recognized that both nationally and globally women's equitable rights to land is crucial to achieve development. Women's right to land, access to credit and productive services yield positive externalities for family's health, and children's education in particular, and ensure overall welfare of the society as a whole. Women will have a secured position in family and society when they are economically well-off. Women's equitable right to land, meaning just and reasonable women's right to and control over landed property, is one effective way to ensure their income and entrench their socio-economic position. Both the MDGs and SDGs put enhanced importance on gender equality, because it is related to reduction of poverty, household wellbeing and sustainable development. The Sustainable Development Goals (SDGs) or "the new agenda is based on 17 goals, including a stand-alone goal on gender equality and the empowerment of women and girls as well as gender sensitive targets in other goals."

Bangladesh, as a country of emerging economy, has already reached at the first leg of a middle-income country. Bangladesh's per capita income has risen to \$ 1314 and on the basis of it her economy ranks 58th (bdnews24.com, 15 May, 2015). On the social development index Bangladesh stays at the top among the SAARC countries. Considering its economic potentials, both the Goldman Sachs's 'Next Eleven' and JP Morgan's 'Frontier Five' have included Bangladesh in their list. Women empowerment through employment, micro-credit programmes, works and businesses may be credited for its contribution for whatever development Bangladesh has achieved and whatever potentialities already have been created for this country. But, it is very much likely that Bangladesh might not sustain its development or she may not hold on the current development, if Bangladeshi women's equitable rights to land are not ensured.

Findings

Overwhelming number of poor women in the developing countries are either landless or have limited and insecure rights to land and almost all of them depend on land for their livelihood. This reality has important consequences for sustainable development. Women's land rights in Bangladesh are also beset with a number of legal, social, cultural and institutional obstacles. Women of Bangladesh irrespective of socio-economic classes, religions, and ethnic groups-are largely deprived of their equitable rights to land, regardless of the constitutional ban on the discrimination on the basis of gender. While estimating the effective ownership of women over land, a conservative estimate reveals that not more than 4% of land in rural Bangladesh is owned by women (Barakat et.al.: 2014). The factors that debar Bangladeshi women from enjoying and exercising fuller and effective ownership and rights on land are nuanced by diverse factors ranging from laws, policies, social, cultural norms, customary practices, religious doctrines to lack of education, awareness and unfavorable institutions and implementation practices and so on.

In this context, the present study on 'Women's Rights and Access to Land' has focused on to explore the practical barriers and policy gaps from a holistic approach meaning women's rights, access and control over land, that discriminate against Bangladeshi women in respect to their

land rights. Women's land rights in Bangladesh, however, are context and culture specific. Accordingly, the study has taken into consideration the diversity of Bangladeshi women, such as Hindu, Muslim, Christian, Buddhist and *Adibasi*, while assessing the challenges they face at the ground level as well as the laws & policies governing their land rights.

Findings as to Barriers and Challenges relating to Women's Right to Land

The study has identified three major factors as breeding ground of varied forms of challenges/barriers. These factors are structural, legal and institutional –

- (a) Patriarchy has been identified as the major structural barrier that gives birth to gender inequality and gender based practices at different levels in diverse ways. Since Bangladesh is a classic example of patriarchal society, unequal power relations lie at the heart of its gender relation and position of men and women in the society.
- (b) Legal factors have been pointed out as root cause of barriers perpetuate at the state level. Since inheritance is the primary vehicle for women to get land ownership, existing inheritance laws are of paramount importance. However, inheritance laws in Bangladesh are governed by family laws which are then governed by gender discriminatory religious laws that are different for different religions. Due to this legal plurality, different religious communities are governed by different sets of rule of inheritance of which Christian and Muslim women are comparatively better off than their counterparts of other communities. The concept of rights of women as citizen is conspicuously absent in this context.
- (c) At the implementation level, institutional factors constitute the most formidable barrier that on the one hand slows down the execution process of whatever rights women have over landed property, and on the other hand discourages them from claiming and establishing their rights through its pervasive malpractices, complicated system and women-unfriendly environment.

From these factors a number of forms of gender discriminatory social, cultural, traditional and religious practices derive. Barriers mentioned in this discussion cut across class, cast and religious boundaries. Among them, there are –

- Patriarchy;
- Polygamy;
- Social conventions & customs
- Concept of socially constructed 'good sister';
- Position of natal family as nest of women's social security;
- Parental and male siblings' discriminatory behavior;
- Women's lack of education especially legal literacy;

Findings as to the Review of the Constitutional Provisions, Land Laws, Inheritance related Laws and Policies

When analyzing the constitutional provisions, land laws and inheritance related personal laws and policy documents, the study has focused on the constitutional rights relating to women's equal vis-a-vis equitable right to land; Hindu, Muslim and Christian inheritance laws; *khas* land policy; CEDAW; and the Bangladesh National Women's Development Policy, 2011. It has been suggested that the Constitution of Bangladesh is considerably a liberal, democratic policy document that has strongly upheld women's equal rights in all aspects of lives

Flaws of Existing Land Laws and Khas Land Policy &

Recommendations for Amendment

The successive governments, since the independence of Bangladesh, have enacted many laws and adopted many policies as to land to ensure smooth land use and to promote land reform. But the land laws, relevant rules and regulations and policies are complicated and not poor-friendly. The government, however, has identified the landless and labourers who should be given priority in the distribution of *khas* land. (Salauddin, Sheikh, 2005). Section 7 (1) of the Land Reform Ordinance 1984 provides that, the Government shall, in settling *khas* land fit for being used as homestead, give preference to landless farmers and labourers. According to section 11 of the Agricultural *Khas* Land Management and Settlement Policy 1997 (in Bengali), during the allocation of the *khas* land particular types of families should be given priority. Section 11 (c) of the same Policy provides that during the allocation of *khas* land ‘a widow with a capable son or family abandoned by husband’ will get priority. Section 11 (c) is clear violation of Article 27 of the Bangladesh Constitution, as this section sanctions that ‘a widow with a capable son’ will be qualified to get *khas* land. The section thereby excludes any ‘single widow’ or ‘any widow having daughter’, which constitutes clear transgression of the Constitution’s ‘equality clause’. To remove discrimination and to ensure women’s, particularly poor women’s, right and access to land, the following amendments are proposed:

| Law/Policy | Existing Provision | Proposed Amendment |
|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Land Reform Ordinance 1984 | 7. Settlement of <i>khas</i> land for homestead – (1) Where in the rural area any <i>khas</i> land fit for being used as homestead is available, the Government shall, in settling such land, give preferences to landless farmers and labourers: Provided that not more than five <i>kathas</i> of such land shall be allotted for such purpose to any individual. (2) Any land settled under sub-section (1) should be heritable but not transferable. | 7. Settlement of <i>khas</i> land for homestead – (1) Where in the rural area any <i>khas</i> land fit for being used as homestead is available, the Government shall, in settling such land, give preferences to landless farmers and labourers [and special importance shall be given to the condition of landless women] : Provided that not more than five <i>kathas</i> of such land shall be allotted for such purpose to any individual. (2) Any land settled under sub-section (1) should be heritable but not transferable. |
| The Agricultural <i>Khas</i> Land Management and Settlement Policy 1997 | 11.0 Priority list of landless families: (a) Indigent freedom-fighter’s family; (b) Family which has lost all its land due to river erosion; (c) Widow with a capable son or family abandoned by husband; (d) Family without agricultural land and homestead; (e) Family which has been landless due to acquisition of land. | 11.0 Priority list of landless families: (a) Indigent freedom-fighter’s family; (b) Family which has lost all its land due to river erosion; [(c) Any landless woman or widow or family abandoned by husband;] (d) Family without agricultural land and homestead; (e) Family which has been landless due to acquisition of land. |

irrespective of the cast, creed, class and religion, banning gender-based discriminations and enjoining the government to enact laws and policies in favour of women and marginal

communities. Unfortunately though, the spirit of the Constitution has not been properly reflected through government's laws and policies all along.

With regard to inheritance laws, existing legal plurality has circumscribed women's rights as citizen. Here, each religious group follows their respective religious rules of inheritance, creating differences in rights across communities. Simply and briefly, it has been found that it is only Christian women who are entitled to have equal share in inheritance, while Muslim women as daughters get half of what their brothers get and a Muslim widow get 1/8 of the deceased husband's property. On the other hand, Hindu women generally do not have any rights to inheritance. Also, such is the case of Buddhist and indigenous women who too are officially guided by the Hindu succession law. However, indigenous people generally follow their respective customary laws, which, only apart from the matrilineal *Garos* and *Khasis*, exclude women from inheritance. In comparison across the communities, evidently therefore, Christian and Muslim women are better positioned in terms of inheritance rights than Hindu, Buddhist and Indigenous women. Ironically however, this cannot quite be a solace for them also, as at the practice level these rights are hard to exercise and materialize for the varied forms of barriers as delineated in the discussion above.

In addition to other objectives and finally, the constitutional provisions, laws, and policies relating to women's right and access to land have been examined with a view to realize women's legal standing vis-à-vis the gap between the legal text and reality. The scrutiny reveals the following findings:

- (a) A combined reading of Articles 27, 28, 42, 13 and 19 of the Bangladesh Constitution clearly state that – (i) All citizens are equal before law and are entitled to equal protection of law; (ii) Women shall have equal rights with men in all spheres of the State and of public life; (iii) State has lawful authority to make law in favour of women; and (iv) Every citizen, including women and men, shall have the right to acquire, hold, transfer or otherwise dispose of property, including land.
- (b) There is no bar in the ordinary land laws of Bangladesh to acquire, hold, transfer or otherwise dispose of land by women.
- (c) The Agricultural *Khas* Land Management and Settlement Policy 1997 has granted joint ownership of *khas* land. In contrast to inheritance laws, laws and policies relating to *khas* land are more gender-friendly, requiring allotment of *khas* land to be in the joint names of husband and wife. However, here remains a drawback that the clause of joint ownership has excluded single/unmarried women, widows who constitute the most vulnerable section of population in rural areas.
- (d) Bangladeshi women encounter formidable barriers and varying degrees of discrimination as to their property rights, including land, under the religion-based inheritance laws. The Muslim women, comprising almost 85% of the total women folk in Bangladesh, do not get equal share with their male counterpart under the Muslim law. Some scholars want to justify this inequality in the context of less responsibility of Muslim women in holding the financial oar of a family and men's increased responsibility with the onus of providing dower and maintenance. Nevertheless, the existing inequality of women under the Muslim inheritance law is contradictory with the constitutional provisions and the CEDAW.

Loopholes of Existing Land Laws, Ordinance and Policy &

Recommendations for Amendment

Section 6 (h) of the Agricultural *Khas* Land Management and Settlement Policy 1997 requires the allotment of *khas* land to be recorded in the joint names of husband and wife. This provision creates obstacles for owning and managing *khas* land by any wife independently. The Policy needs to be amended to enable any landless woman, whether mother or daughter or wife or widow or whatever capacity she holds in a family, to be legally qualified for getting *khas* land. At the field level, specifically in villages, female members of the family as mother, daughter and sister are excluded from the *warishnama* (certificate of heirs) which is issued by the Union Parishad Chairman. Lands are recorded by the surveyors in the names of the heirs on the basis of this *warishnama*. As a result, female members' exclusion from the *warishnama* ultimately causes their exclusion from the land record. There are anomalies or lack of procedural provisions to execute law under sections 86 and 87 of the State Acquisition and Tenancy Act 1950, section 39 of the Acquisition and Requisition of the Immovable Property Ordinance 1982, and section 6 of the Courts of Wards Act 1879. As a result, the following amendments are proposed:

| Law/Ordinance/ Policy/Topic | Existing Provision | Proposed Amendment |
|-------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Agricultural <i>Khas</i> Land Management and Settlement Policy 1997 | 6.0 Process of Selecting Landless: (h) The land will be allotted in the joint names of husband and wife. | 6.0 Process of Selecting Landless: [(h) An equal share of land will be allotted in the separate names of husband and wife.] |
| <i>Warishnama</i> (Certificate of heirs) | Issuance of <i>warishnama</i> by the Union Parishad (UP) Chairman is a customary practice. Now <i>warishnama</i> is issued under the authority given by the Government to the UP Chairman. | [Government Order as to <i>Warishnama</i> : (1) On the application in the prescribed form, the Chairman of any Union Parishad shall issue <i>warishnama</i> including all the heirs of the deceased. (2) Exclusion of any heir from the <i>warishnama</i> shall make the Chairman liable to a penalty of ten thousand taka.] |
| The State Acquisition and Tenancy Act 1950 | Sections 86 and 87: These two sections have been amended several times from its enactment. Section 86 says about diluvion (<i>sikasti</i>) which means gradual erosion or submersion of land either by a river or sea. This section states that if diluvated land reappears in the same place | Sections 86 and 87 of the State Acquisition and Tenancy Act 1950 say about the diluvion and alluvion. Thus the Government gets legal entitlements of the land reappeared in case of diluvion and land |

| | | |
|--------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The State Acquisition and Tenancy Act 1950</p> | <p>within 30 years and the former owner abandons his/her interest and cannot identify the land, then the land reappeared will vest in the government as <i>khas</i> land. Section 87 says about alluvion (<i>paisti</i>) which means gaining of land by gradual accession from the recess of a river or the sea and states that if any land so gained, it shall absolutely vest in the Government (Islam, Mohammad Towhudul, 2013: 221, 222).</p> | <p>gained by gradual accession from recess of a river or of the sea in case of alluvion. [Thus the Government needs to amend the law or enact new law or adopt policy to ensure allocation of <i>khas</i> land gained by diluvion and alluvion to the landless, including all women who do not have land and homestead.]</p> |
| <p>The Acquisition and Requisition of the Immovable Property Ordinance 1982</p> | <p>39. Service of notices and orders: (2) When such person cannot be found or the notice or order cannot be so delivered or tendered, the service of the notice or order may be made by delivering or tendering it to any officer or such person or to any adult male member of the family of such person residing with him or...</p> | <p>39. Service of notices and orders: (2) When such person cannot be found or the notice or order cannot be so delivered or tendered, the service of the notice or order may be made by delivering or tendering it to any officer or such person [or to any member of the family of such person residing with him] or...</p> |
| <p>The Court of Wards Act 1879</p> <p>6. Proprietors of estates shall be held disqualified to manage their own property when they are-</p> | <p>(a) females declared by the Court incompetent to manage their own property; (b) persons declared by the Court to be minors; (c) persons adjudged by a competent Civil Court to be of unsound mind, and incapable of managing their affairs; (d) persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own property; (e) persons as to whom the Court has declared that they are disqualified, and that it is expedient in the public interest that their estates should be managed by the Court.</p> | <p>By an amendment 6 (a), that means, [“females declared by the Court incompetent to manage their own property”] should be repealed.</p> |

(e) The Christian women’s inheritance is regulated by the Succession Act 1925, which has fairly ensured equal rights of women, except the right of mother, indicating the

necessity to amend this area of the law. Hindu and Buddhist women get almost nothing as heirs; responsibility may be attributed to the Hindu inheritance law.

- (f) Like many other countries in the world, femininity and ‘womanhood’ in Bangladesh are social and cultural construct. Bangladeshi women, largely, cannot exercise whatever inheritance rights they have due to social and cultural barriers. Social norms and cultural ethos do not encourage the women to claim property. It is seen that father, husband and son hold, control and manage landed property and they predominantly bear male-dominated ethos. Women hardly have their names on land documents, certificates, lease and contracts. Even where the land is in the name of mother, wife and daughter, the land is controlled and managed by the male members of the family. There are numerous instances of deprivation of women by their close family members, even by their sons, brothers and husband. For example, Khadija, a rich peasant widow, has described in a report titling “Women and property rights: Who owns Bangladesh?” published in the Economist that how she was cheated by her sons. Khadija was upset as her sons registered 9 *bighas* (three acres) of land in their name by taking her fingerprint which she inherited from her maternal uncle (The Economist, 20 August, 2013).
- (g) Researchers have, most importantly, noted two problems for women in realizing their inherited properties, viz., the gap between legal rights and actual ownership, and the gap between actual ownership and effective control (Agarwal, 1994). But in Bangladesh, the latter is more vivid a problem than the former.
- (h) Women’s continued lack of right to, control over and access to land constitutes formidable barrier to achieving women empowerment. Women’s disadvantageous position has created a systematic and perpetual dependence on men for access to resources which subjects the women to male domination, further generating insecurity and violence. This is prejudicial to the interest of women, as in a privatization-driven economy property, land, economic asset and resources determine power and independence. This lack of property ownership, especially in terms of land, limits their access to the institutional credit, which keeps them away from self-employment opportunities (CDA, 2013).

Recommendations

Ensuring women’s equitable rights to land and their effective access and control over it are keys to gender parity and establishing a welfare society where human rights and freedom of all segments of society will be entrenched. Keeping the goals in mind, the Consultants have given a judicious consideration to the recommendations made by the rural women and men, UNO, UP chairman and field-level activists working on women’s rights to land. Given the reality that approximately 85 per cent women in Bangladesh are Muslim, the Consultants consider that the progressive interpretation of Muslim Law may play a role of catalyst in ensuring equitable and just land rights of women in compliance with Article 27 of the Constitution of Bangladesh, which constitutional provision loftily declares that – “All citizens are equal before law and are entitled to equal protection of law.”

Finally, adopting a pragmatic approach the study has devised measures to address the gaps of policies, practice and their implementation based on the concept of equitable rights of women for near future; while making long-term recommendations to ensure equal rights of men and women.

Recommendations of the Rural People, UNO, UP Chairman and Field-level Activists

- It is female education and their economic empowerment which can play an important role in ensuring women's right to land. Gender education needs to be included in the curriculum and women's land rights should be taught as a part of gender education.
- Not only the consciousness of the women will be necessary, rural men should be made aware about the benefit and utility of the women's right to land. Fathers have to provide attested photocopy of the land related documents to all his heirs – both sons and daughters.
- Procedure relating to land rights, ownership and management is complicated and time-consuming, so it needs to be made easier.
- *Warish* (list of heirs) certificate must be mandatory and land will not be recoded if sister/sisters remain absent. There should be a law to the effect that the UP Chairman shall issue the *Warishnama* after including all the heirs –all the brothers and sisters.
- Intervention of the UNOs and Union Parishad Chairman may be significant in changing the existing situation.

Progressive Interpretation of Muslim Law

Progressive interpretation of any law has been considered an effective instrument to meet up the changing needs of time and human society in harmony with the inherent spirit of the principal script or main text of law. It is fairly agreed that progressive interpretation of Muslim Law is necessary: (1) To perceive the inner meaning of the Muslim Law; (2) To meet the changing needs and persuasive influence of normative framework of international human rights jurisprudence; and most importantly, (3) To eliminate discrimination and ensure equality. Jurists, academicians and researchers have done this in different Muslim countries. For example, many countries having Muslim majority have imposed severe restrictions on polygamy and it is totally banned in Tunisia and Turkey. In Bangladesh and Pakistan, section 6 of the Muslim Family Law Ordinance states that no man, during the subsistence of an existing marriage, can contract a marriage without the permission in writing of the Arbitration Council – a body consisting of representatives of each of the parties to a matter dealt with under the Ordinance – which would grant the sanction applied for after considering the context and if Council is convinced that the proposed marriage is necessary and just (Rahman, A. Faizur, 2013).

It is argued that in the Quranic conception, marriage is a bonding of two minds which cannot be achieved simultaneously with more than one woman. In *State vs. Nadeem Khan* (2013), the Delhi Additional Session Judge rejected bail to a *Moulovi* (religious head) in a forcible marriage case and observed that there is no blanket sanction for polygamy in the Quran. The Judge also called upon religious heads, priests and *Moulovi*'s "to ensure that religious texts are progressively interpreted and to confirm that it is only those beneficial practices which are in the best interest of all sections of humanity which are encouraged and observed" (Rahman, A. Faizur, 2013).

Muslim Law, therefore, may be progressively interpreted to ensure women's equitable rights to land as jurists and scholars have done it in case of restricting polygamy, providing post-divorce maintenance to wife etc. in Bangladesh, Pakistan, Tunisia and Turkey. Muslim Law's progressive interpretation may be used for a positive change. For example, the holy Quran has

provided that, "... And women shall have rights, similar to the rights, against them, according to what is equitable": Baqara: 228. Again, according to the verses of the holy Quran, "To men is allotted what they earn And to women what they earn": Nisa: 34. This trend of progressive interpretation cast sound responsibility on the policy makers to enact law and on Judges to interpret the Muslim Law progressively to promote the cause of women's equitable rights to land.

Short term Recommendations

Implementation Related:

- Measures should be taken to properly implement the existing Muslim and Christian laws of inheritance by ensuring that women get proper shares as per their rights mentioned in the laws. Concerning Government officials at the field level made to be specially vigil against any discriminatory, debauchery act that deprives women from their lawful rights;
- Proper distribution of *khas* land at the village, town and city levels have to be ensured through effective and constructive monitoring process. Corrupt practices such as favoritism, bribery, unwanted exercise of power and influence are to be effectively dealt with. Fair, skilled and transparent administrative measure is needed to ensure this;
- Simplification of existing land related official procedures and system (registration, mutation, survey-settlement and judicial etc.) is a must to do. For example: land related administration and procedures are currently divided in-between three government ministries such as land, law and public administration ministries. This has created huge procedural complications, confusions, overlaps and time consumption. Consolidating land administration to one ministry (especially Land ministry) will eventually remove a number of procedural barriers. Alternatively, for immediate action, effective coordination between the ministries is highly needed. Procedural simplification is essential to encourage women of all sections of the society to come forward to place their legal claims and gain access and control on landed properties;
- Women-friendly institutional approach and settings are needed to earn women's confidence to the system and reduce general fear regarding the land related processes that exist amongst a great many women and men alike;
- In generally, implementation of women's existing property rights will be easier if official corruptions are minimized. Measures to this end are therefore crucial.

Awareness Related:

- Undertake countrywide massive awareness raising program on gender rights with focus on women's inheritance rights: make people particularly aware of the importance and significance of women's inheritance rights and its benefits for the family, community and the country. The program should have particular components on: a) existing shares under the Islamic and Christian laws, the necessity of following the laws and the progressive interpretation of Islamic

law; b) the necessity of bringing about changing the existing Hindu laws in line with similar instances from other country;

- Raise awareness of women in general about their rights and non-rights under the existing inheritance laws of the country so that they can raise voices in case of deprivation and for further progressive changes;
- Undertake special sensitization program particularly for Hindu, Buddhist and indigenous communities for necessity to amend the Hindu succession laws. Campaign should be launched to unite various sections of the people of these communities to accept and endorse the desired changes and its positive implications for the greater benefits of the communities.

It is desirable that indigenous communities be treated by their respective customary laws and sensitization is needed to bring about changes in those laws to incorporate women's rights to inheritance. Also there exists the need for a separate in-depth study on the customary inheritance practices of the indigenous peoples to suggest measures how to bring about effective changes in that practice to ensure women's rights;

- Make women aware of the system and procedures related to land administration and land laws so that they can confidently deal with it;
- Make women aware of the importance and process of land registration so that they take measures to register their legal land entitlements;
- Raise gender sensitivity of the concerned Government officials, their subordinates and persons involved with land administration (from top to bottom). It is a must to ensure fair and respectable treatment of women at all levels of land administration. This can be done through providing gender sensitivity/awareness training for these people;
- Disseminate knowledge on Khas land policy and laws among landless men and especially women through information sharing and awareness raising programs;
- Previous studies have mentioned that women in Bangladesh themselves do not often realise that they should have title over the lands. Many women are aware of the rights, but either do not know how to control and manage lands or feel socially barred and culturally discouraged from claiming and exercising their land rights. In this context, it is suggested that the legislative and policy recommendations must be paired with education for men and women about the collective benefits of society if it ensures women's equitable rights to land (Sarwar *et al.*, 2007).
- It appears that the main issue in Bangladesh is that of control, not of ownership. Although women get ownership as per inheritance rights, it is only symbolic in absence of proper control (Uddin, 2011: 17). It is suggested that both women and men should be educated and made aware about the individual and

collective benefits of women's controlling and managing their inherited property, including land. The awareness programmes are predominantly the responsibility of successive governments, while family, media, and civil society can play an important role. It is suggested that government ministries like land ministry, women affairs ministry, social welfare ministry and government bureaus may take awareness programmes.

- General and legal education for women is to be extended to increase their awareness, knowledge about legal rights and how to exercise, access and control those rights.
- Gender awareness has to be inculcated into peoples' mind through reform in general education curricula and system for both men and women. Otherwise, only legal and policy reforms will not bring about desired change and establish women's rights over land.
- Government should take measures to fulfill its commitments under the supreme law of the land, i.e., the Constitution of Bangladesh as well as the CEDAW and other international instruments.
- As to general and legal education relating to women's equitable rights to land and gender awareness, it is suggested that in schools, colleges and universities a special course may be introduced or this may be imparted specially as part of human rights, land rights, sociology, law, social welfare or with other relevant subjects. Government ministries and bureaus may initiate education and awareness programmes through radio, television and newspapers. In addition to this, government and non-government organizations, and civil society may organize weekly or monthly summer camps or winter camps to make the people aware about the benefits of gender equality and women's equitable rights to land.

Procedure Related:

Simplification, efficiency and modernization of the land administration related processes are must for ensuring women's ownership, access and control over land resources. Existing procedural complicacy has resulted in unfair and corrupt practices, delay in time, harassment of women, falsification, fabrication, misrepresentation, middlemen's ascendancy and so on. Currently, digital land survey is underway through the initiative of the Government of Bangladesh, which is applauding indeed. However, based on our field experience, we feel alongside this initiative a basic change in the system and simplification of processes can be possible with some few additional measures, as suggested below:

- **Provide owner a copy of the digital land record instantly on the spot and update relevant documents:** While digital land survey is being done, any change in maps, occupancy note/information etc. can be simultaneously recorded and the owner(s) can be provided with the record of the land straightway. For this surveyors are additionally to be provided with a portable printer along with the computer. This simple task will remove the painstaking process of collecting land record by the owner(s) later on that involves paying

bribe, facing harassment, paying multiple visits and waste of time and also will reduce the administrative tasks. In the event of any dispute or correction, the issue can be raised as usually within a certain period of time as it is now;

The digital record thus done has to be regularly updated with information of correction, dispute, death, sale and any kind of land transfer and new information through cross-checking and authentic verification. A trained person has to be officially assigned for this task.

- **Prepare a family register/database:** women are largely the absentee owner. Married women staying with husband in distant places are often not present during the time of land survey, when most of the acts of deprivation, fraudulence (ways are discussed previously) take place. Also due to absence, women lose occupancy rights as usually the brothers' use and occupy the property and may happen to pay rent as well.

In this context it is then highly recommended that a digital database of family register with information of number and name of the family members be prepared so that concerned official(s), surveyors are aware who the possible owners of the land under survey are; whether the rent is being collected from the proper owner etc. The database can be prepared in the presence of local civil society members, NGO workers and reliable neighbors. This database/register has to be regularly updated with information of correction, birth, death, and any other relevant new information through cross-checking and authentic verification;

Key officials involved in land administration have to have access to this database so that they can check and cross-check in case of fraudulence or any malpractice while performing their duties;

- **Introduce greater accountability in issuing *Warishnama*:** *Warishnama* is the single most important document that gives official recognition to one's rights over parental property. Therefore, issuing this certificate should be done with utmost care, sincerity and integrity. Currently, Union Parishad Chairman issues this certificate.

It is strongly recommended that there should be greater accountability so that s/he does it with greater sincerity and integrity. To this effect the provision of a co-signer in the *Warishnama* can be introduced;

Also, it is recommended that Union Parishad Chairman consult the family database (mentioned above) before issuing any *Warishnama* (Certificate of heir).

- **Link and coordination between works of concerned land officials:** Upazilla Settlement officer(s), field level Surveyor and Subregistrar – are the officials respectably responsible for survey, settlement and land registration. These key personnel should have same information, substantive coordination and

information sharing mechanism for efficient and effective delivery of their duties.

Also, there has to have coordination between the offices and works of AC land, Zonal and Upzilla settlement offices and Subregistrar offices. Since three of these offices/officers work under three different Ministries (respectively Public Administration, Land and Law Ministries) coordination at the Ministerial level is also desirable as mentioned earlier.

Policy and Law Related:

- Amendment of the existing Hindu law of inheritance is recommended as it appears to be easier for the policy makers to do so by following the footsteps of India. It is argued that Hindu law of inheritance originated and developed in India and it had amended its inheritance law in 1950s. Amendment of Hindu law of inheritance will benefit both the Hindu and Buddhists women as both the segments are regulated by the same law;
- As it is pointed out earlier that while Muslim women are often deprived of their share fully, they are also often given bad and worst share of the land. In order to address this issue, a legal provision can be added to the existing law specifying that daughters have to be given shares from every plot of their fathers' property;

Accordingly, Surveyors will remain vigilant during the land record process ensuring that daughters get their shares from all the plots.

Long Term Recommendations

Policy Related:

In the long term with gradual social conditioning and raising social awareness, following measures have been suggested to bring about changes in strategic gender-relation and establish women's equal rights as per the constitutional provisions and country's international commitments:

- Government and policy makers may consider enacting the Uniform Family Code as proposed by different women's organisations of the country, though the prospects are bleak to take initiatives immediately or in the near future. For now, in respecting and keeping with religious laws, it is suggested that measures should be taken to remove barriers of implementation of whatever lawful rights of women already have especially in case of Christian and Muslim women and in the implementation of *khas* land policies;
- At a later time initiatives should be taken to amend the Islamic law of inheritance as there are instances of bringing amendments to the provisions of inheritance. For example, the principle of representation is not recognised by the Muslim law of inheritance. But Pakistan, following several Middle Eastern countries, introduced this principle by the Muslim Family Law Ordinance, 1961 (Fyzee, 2004);

- It is suggested that Muslim law should be interpreted progressively or alternatively, laws such as the Muslim Family Law Ordinance, 1961 should be enacted with reference to verses of Quran and Hadith. It is argued that in pre-Islamic Arabia women had hardly any right, but Islam had put the women on high pedestal by giving and protecting their rights. It is also argued that Muslim women could be given equal inheritance rights if inherent message of Islam is taken into account and Muslim law is interpreted progressively;
- Finally and most importantly, the Constitution of Bangladesh should be upheld as the supreme source of all laws of the land and thereby its provisions relating to women's rights should be followed through. The successive governments should also carry out their commitments under the CEDAW, UDHR and other international instruments.

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