

Women Deprivation to Land in South Asia



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Women Right to Property, Inheritance & Land

*A comparative study of Pakistan, Bangladesh, Nepal and Sri
Lanka*

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General Picture

Women in developing countries rarely hold secure rights to land, which can provide physical safety and psychological security. Land can be a source of food and a base for income generating activities. 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 gives people options.

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.

This comparative study highlights how the South Asian countries, Pakistan, Bangladesh, Nepal and Sri Lanka have different histories, politics, terrain, and culture — however land still is a highly valued asset.

Women generally acquire land rights through inheritance, if at all. Inheritance laws fall within the class of personal laws, which can vary within the country, depending on religion or ethnic group.

Each region and country does have its certain traditional customary practices some beneficial to all members and some discriminatory to particular sections of the society. In subcontinent one of the most traditional practice is the denial of women right to inheritance. The patriarchal structures, economic and political subordination of women inhibit any social change to promote gender equality.

And today's dominant development paradigm has left out the women, which calls for an urgent need for the promotion of equitable development of women.

For instance in Nepal more than 90 percent of women engage in agricultural production, contributing in all stages of agricultural production including management and decision-making. They are the primary source of labor in small and medium farms and in large farms their labor contribution is more or less equal to that of men. However, women rarely have a legal title to the land they till. Without a title they are not viewed as farmers but continue to be perceived as homemakers by the government and the general public at large.

And similarly in Pakistan where majority of the women (based in the rural areas) contribute a significant portion of the agricultural labor force — through their involvement in a broad range of agricultural activities — are not officially recognized for their contribution

Ironically, there is no dearth when it comes to international human rights agreements and national constitutions specifying “that women and men should have equal rights to access, own, control, and inherit land, housing and other property.” The governments have even signed and ratified international agreements and passed laws granting equal property rights, but property ownership is exclusively in male control.

Even when women do have a clear legal right to own and inherit property and land, they may be unaware of their right. Women may not know that legal means exist through which they can claim that right, and few women have access to legal advice.

If they have access, they aren't economically equipped to actually take proper professional counsel. In many instances, judges and magistrates lack the capacity to interpret and implement national laws within the provisions of the international human rights instruments like UN CEDAW (Convention for the Elimination of Discrimination against Women). There is increasing evidence that where women can own and inherit property, they are better placed to support themselves and their families.

Despite the existing constitutional provisions in each country (Pakistan, Bangladesh, Nepal and Sri Lanka) women's rights end up having little practical relevance. Social practices of polygamy, child marriages, dowry, and discrimination against women in marriage registration, divorce and post-divorce maintenance/financial arrangements, child custody, inheritance etc — traditions and taboos including Watta Satta (exchange marriages), marriage with Quran and honor killing forced marriages — are continuing and barring women's individual growth. Religious misuse and biased interpretation toward women also contribute to women's dependency on male.

Having experienced some form of conflict in the recent past, each country is composed of significant and determinative regional, ethnic, tribal, religious, class, and caste differences. While the legal framework for each country reflects its own sociopolitical and economic history, all countries are compartmentalized by some degree of legal pluralism, especially when it comes to women's land rights.

For example, in Pakistan and Bangladesh, Islamic law has been codified making it the statutory law for all matters that it covers, yet in practice tribal law determine inheritance. Likewise, Islamic law has been codified in Sri Lanka, as has the customs of two historically important ethnic groups, and all three form part of the body of statutory law for the country.

The gaps in women's existing land rights in all the four countries highlight the importance of a complete set of land rights, secure social and legal recognition of a claim to land that translates into the ability to control land in practice.

Women in our society are too submissive to even utter it, lest they face a social boycott and that too by their own families. And, men don't see in it an issue because they remain the beneficiaries.

To say that women do not inherit a fair share in their fathers' and husbands' property is an understatement. Most of the time, they get nothing. In many cases, it is said that the dowry is a daughter's share (dowry, too, is a Hindu custom which people in this region adopted having lived with it for centuries, but this is

never brought up for discussion or banned). Sometimes, sisters are coaxed into relinquishing their share in favour of their brothers. Everywhere in this country, customs prevail over laws in a whole host of other ways.

In Pakistan, the guiding principle behind laws of inheritance, like many other laws, is the Sharia. Other religions do not have scope for jurisprudence the way Islam does. Interestingly, as far as inheritance laws are concerned, no one has suggested that there needs to be some kind of rethinking (Ijtihad). Some sects allow a greater share for women than others but, by and large, even the Sharia laws are not followed when it comes to women's share in property.

True, this is not an isolated situation and is closely linked with the state of women's empowerment in general; the women can't get or even claim their rightful share because of their ignorance, their restricted mobility, their lack of access to courts and so on. And, when they do raise a voice, it is at the behest of their husbands who want to pressurize the wife's family. So, under all circumstances it is male versus male fighting over their just or unjust share.

But, this does not mean we should let the issue rot under the carpet. There is a need to build awareness about the issue and thus, in today's Special Report, we have tried to look at various aspects, including the role of courts in granting women their rights and the implementation of their verdicts. We have looked - - yet again -- at the tribal customs which keep taking a different shape in each province and region but always to the disadvantage of women.

At the end of the day, wherever the women get some share is because of the good sense of individuals and families.

Women right to Property, Inheritance & Land: Comparatively assessing country-level situation

In Pakistan women who constitute 52 percent of the total population of Pakistan (more than half of the population) are marginalized and deprived of their social, economic, political and legal rights. Ranked 104th (of 125 countries) in property rights for women in International Property Right Index (IPR) 2010, Pakistan has 98 percent muslim majority where the religion Islam gives the right of inheritance to all inheritors either male or female. But the Pakistan's ranking shows the poor condition of the inheritance rights for women in the country.

A large section of women population in Pakistan is landless and deprived of their right to own, control and inherit land and property. Women are deprived of their inheritance more particularly in the rural areas where the male relatives, in convenience with revenue officers, rob women of their lawful rights.

This unequal opportunity to land ownership is a structural and systemic gender barrier that is both, the cause and effect of women's marginalization. Apart from the formal laws there are combinations of factors such as discriminatory customary practices, social inhibitions and unequal power structures that impact women right to inheritance. Many despicable practices remain unchallenged in the society.

Likewise Bangladesh (formerly know as East Pakistan) is no different when it comes to on-ground women inheritance A study conducted by the World Bank in 2008, shows that in Bangladesh 25percent of women who were eligible to inherit property gave it up. Based on its political history — Bangladesh has a complicated legal foundation — access to property for women is still a distant goal. Although equality is enshrined in

the legal system, in 1996, only 3.5 percent (0.62 million) out of 17.8 million agricultural holdings were female owned. 62 Women's ownership of homesteads is only slightly higher than their ownership of agricultural land and women are more likely to own the homestead if it is not attached to cultivable land.

Most Bangladeshi women are employed in the informal sector. According to official estimates (2003), only 26 percent of women ages 15-59 were employed in the formal sector, and only 10 percent of employed women and 22 percent of employed men, aged 20-55, receive any cash wages.⁶³ In addition, women who are employed year-round earn 60-65 percent of what their male counterparts do in the agricultural sector.

Little over 4 percent of all women and 13 percent of employed women are casual workers in Bangladesh. They are customarily involved in the post-harvest processing of crops, rearing of livestock animals and poultry birds, and home-gardening of fruits and vegetables. To the extent that they sell the products themselves, they do contribute to household savings, expenditures, and investment, and there are some poor rural women who earn from lending their small savings to various productive rural enterprises.

At present, women in Nepal control 4 percent of land holding and 10.84 percent (2001) households have land holding in the name of women. Their main access to land is through their relationship with husband.

Therefore, in essence, they are the secondary owners of the land owned legally by their husband. This type of access is vulnerable to breakdowns in relationships, divorce and to the changing priorities of male land owners. Using data from 'Nepal Demographic and Health Survey,' it shows that children of mothers who own land are significantly less likely to be severely underweight or stunted.

Contrastingly Nepalese women have a wide diversity among them — based on caste, class and location, tradition and the like. The role of land for the livelihood security of these divergent women's groups is also different. In most cases, it is important that marginal women's access or ownership of land is

more important because educated women might ask for their rights if it is incorporated in the laws and policies.

Therefore, dalit and underprivileged *janajati* women, physically and mentally challenged women, women of minority groups, women engaged in work attracting social stigma need to emphasize in land reform programs. How far these groups have access to land and how land ownership, if any, is helping them to maintain livelihood needs to be understood.

Just like its neighbors Pakistan, Bangladesh and Nepal — Women's land rights in Sri Lanka are impacted on by legal provisions and personal laws that govern different segments of the community. In addition to legal provisions, traditions and customs have a significant bearing on land ownership as well as access to and enjoyment of land among women. These laws, as well as customs and traditions, can discriminate against women.

Based on existing literature on women's property ownership and its impact on the lives of men and women, it is explicit that property ownership among women in Sri Lanka is a complex issue impacted on by laws, customs, cultural practices and gendered perceptions of the roles of men and women in society. women are discriminated against in property and land ownership, succession and enjoyment of property.

According to *'The World Factbook'*, the majority of female landowners had received their property through inheritance. 90-percent of rural households in the North and East are female-headed households.

Discriminatory land laws have impacted in a negative manner on more than 800,000 internally displaced (IDPs) members of all communities, Tamils, Sinhalese and Muslims as a result of the armed conflict in Sri Lanka between the Liberation Tigers of Tamil Eelam (LTTE) and Government forces in the North-East of the country for the past two decades.

Most recent surveys undertaken by the office of the United Nations High Commissioner for Refugees (Colombo) show that over 75% of IDPs wish to return home, subject to the principles of voluntary, safe, secure and dignified return. A serious

overhaul of existing laws, particularly those relating to land rights, is necessary in order to assist voluntary repatriation.

Exposing discrimination based on social practices, religious and customary barriers

In each country i.e. Pakistan, Bangladesh, Nepal and Sri Lanka social practices are devised to make women powerless and voiceless in the power-structure of the society. On the other hand, despite what might otherwise be classified as legal pluralism, customary practices are often overwhelmingly more important to women's land rights than formal laws. So naturally, whatever rights women may have to inherit are significantly impacted by other laws and customs that govern family and social relationships.

Following is a description of the key practices that influence women inheritance in all four countries.

Religious discrimination

In most of the Muslim countries, including Tunisia, Jordan, Morocco, Somalia, Indonesia and Maldives, men and women enjoy equal rights to inheritance, while Bangladesh and Pakistan remain far behind despite having constitutional provisions that guarantee equal rights for both men and women in all spheres of life.

Pakistan women's property rights are often at the intersection of formal, customary and/or religious laws because they are most often granted via a personal relationship. Muslim personal law which stipulates the women share in inheritance lower than man which is gender based discrimination in the existing formal laws.

According to Islamic Sharia law in Bangladesh, the wife inherits a fixed share of one-eighth of the deceased husband's estate if he leaves behind agnatic descendants. If he does not leave behind any agnatic descendants, then the wife inherits a quarter of the husband's estate. A daughter, who is an only child, inherits half the estate of her late father or mother. If there is more than one

daughter and no son, then the daughters jointly inherit two-thirds of the estate. However, if there is a son (or sons), then the daughter's or each of the daughters share will be equal to half of the son's or half of each of the son's share. In all cases within the family men inherits more than the women do.

In reality a Muslim woman hardly gets what she is entitled to, even according to Islamic law, due mainly to patriarchal family scheme or social norms and/or acceptability.

Bride price, dowry or polygamy

The payment of dowry or bride price is often considered the daughter's share of the family assets and is the accepted justification for why daughters should not inherit equally with sons. In Pakistan, when dowry is paid, the wife often does obtain access to the property although the value of dowry is rarely equivalent to what she would have received as inheritance of the family estate. Women are paid a dowry in small gifts of moveable property, often jewelry or household items, rather than immovable property. In Pakistan as in other South Asian countries, the practice of dowry was originally intended to compensate a woman for family property that she does not inherit.

Similarly in Sri Lanka receiving property on marriage is most significant among the Muslim community in the Eastern Province where land forms the main part of dowry. Males in the same community accept this custom unconditionally and in turn look for women with land as dowry property when contracting marriage.

Women in the Tamil community also receive property on marriage although it is not in the same extent as among women in the Muslim community. Men in both Muslim and Tamil communities had not received any property at marriage. The situation is different in the Sinhala community where, in all Provinces both men and women have received property from parents

A survey on the role of access or ownership of property, on acceptance of polygamy by the wife brings forth that 64 % women interviewed in Nepal on causes of violence listed polygamy as the top factor among all social malpractice such as *deuki/ badini*, accusations of witchcraft, child marriage, dowry, bonded labour and the practice of *jari*. Though it is illegal to have more than one wife, but women get no property on divorce and so a woman may choose to remain married to her husband even only on name.

Tribal customs

Bangladesh has some 45 tribal communities where women suffer various forms of discriminations due to economic hardships and having no access to or ownership of land despite their significance contribution to agricultural activities. Except the two tribes of *Mandi* and *Khasi*, all other tribes are governed by patriarchal system and so does their rights to inheritance. *Mandi* and *Khasi*, although governed by female leaders, do not ensure equal rights to inheritance for men and woman. The only tribe that practices equality in rights to inheritance is *Rakhain*.

A practice of ‘haq bakhshwana’ (giving up rights) is followed in southern parts of Punjab and Sindh in Pakistan. Under this tradition a girl member of the family is forced to stay single or is married to the Quran. The main motive behind this practice is to keep property within the family.

Displacement due to Armed Conflict

After years of unrest in Sri Lanka when a peace initiative has been taken still the conditions necessary for resettlement are not yet in place. Destruction of property and sources of water such as wells, occupation of their lands and properties by the security forces and the members of the LTTE, laying of landmines by both parties involved in the conflict in the vicinity of their camps are some of the apparent reasons that prevent IDPs from going back to their original places of living. There are many other reasons that prevent those IDPs including women from settling

down in their property. Since the conflict ended in mid 2009, the above identified problems of IDPs have aggravated and the scale of displacement has increased drastically.

Pakistan today faces the same situation — the war on terror and the its resulted operation in the country's Khyber Pakhtunkhwa province has left IDPs stranded. There is no mechanism whereby the land of the women could be given back to them.

Legislation and legal frameworks for women rights to inheritance

Women's property rights is one of the burning issues since the last 4-5 years in Nepal. It is a matter of increasing concern not only to women but also to men folk of the society. Before 11th amendment in Nepalese Law (*Muluki Ain*) there was the provision to divide the property among parents and sons only. But the daughter should have of 35 years and unmarried to be qualified to get property from her parents and she would return this property to their parents after deducting the marriage expenses if she marries. The daughters were taken as objects of kind.

The provisions in law were silence in all the matter of daughter but the same law had the mandatory specifications for parents to provide food, nutrition, raring caring, and quality education to the son. It was also mentioned that if they can not maintain all for the sake of son, they were compel to provide them property.

On this discriminatory backdrop, a public concern rait was file in Supreme Court in 2050 and the court ordered in 2052 to discard those provisions carrying doubled-meaning and table the bill of equal rights. After this, government amended the *Muluki Ain* as 11th amendment in 2059.

In Sri Lanka the Land Development Ordinance of 1935 aims to provide for the systematic development and alienation of state land in Sri Lanka. The Ordinance provides for the alienation of state lands for development purposes by way of permits to individual persons and stipulates the procedure to be followed in nominating a successor to such land after the death of the original permit holder.

There are certain provisions in the statutes passed by Parliament which prevent women from accepting office due to their sex.

These provisions are violative of the constitutional provisions in regard to equality and non-discrimination based on sex.

Interestingly Article 7 of the Constitution of Bangladesh, the supremacy clause, proclaims that all powers of the state belong to the people and that can be exercised by the representatives only on behalf of the people. Article 7 further says that the Constitution is the supreme law of the land and any other law inconsistent therewith would stand void.

Articles 10, 19, 27, 28 and 29 of the constitution guarantee equal rights of men and women in all spheres of the state and public life.

Also the Law and the Constitution of Pakistan under Article 23, allow the citizens of Pakistan equal rights to acquire, hold, own and dispose of property but reserve the right to intervene in the property rights if the ownership or disposal of property clash with what is perceived to be the broader public interest. The State is also responsible for providing protection to its citizens.

Thus the State, under Article 24 of the Constitution of Pakistan could interfere in an individual's property rights to protect the rights of those who are disadvantaged in the areas of ownership and devolution i.e., women and children.

Pakistan and Bangladesh both signatories of CEDAW, Article 16 provides that State Parties must take all appropriate measures to eliminate discrimination and ensure same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

In ratifying the CEDAW, both the countries had reservation regarding the provisions related to equal rights within the family. This is a sharp departure from the commitment made by the government to establish gender equality. Personal laws that govern family issues encourage various and often discriminatory living standards for men and women, which the opposite and against the Constitution's provision for equal rights of men and women in all spheres of the state and public life before the law and entitlement to equal protection by the law.

To a lesser extent women's inheritance rights can be impacted by laws that govern transfer of property as well, such as government allocation, purchase, or lease. The personal laws which govern inheritance for women may be statutory, religious, or customary.

However, it is often difficult to precisely identify a given personal law as either one of those types; rather, personal laws evolve from the interplay of statute, religion, and custom, and, how those bodies of laws are interpreted by judicial or other official decisions.

Recommendations for women economic empowerment through respectable right in inheritance & property

Women's inheritance rights are beset with highly contextual legal and cultural obstacles. The following recommended approaches are sound first steps towards identifying possible means to address the cultural change that will be required to ensure equity in inheritance rights for women and men.

- Women's land right should be regarded as human right issue, by the government, international community and other concerned.
- Land rights for women must be both legally and socially recognized to be effective
- Speak to women about property rights for women. Since customary rules often govern women's lives, attempting to change custom can be very threatening to women and men alike.
- Work with men to champion the property rights of women. In patriarchal cultures, men are the powerbrokers; projects intended to promote gender equity must explicitly target men as well as women.
- Understand the specifics. Study the role of customary, religious and formal laws for women noting that the relevant roles may be different across regions, tribes, clans and class.
- Legal awareness, legal literacy, and legal aid. Lack of awareness and enforcement has a critical impact on women's inheritance.

- Initiate debate with policy makers, NGOs, networks, and advocates towards creating social legitimacy for women's land rights and control over resources.
- Women and men both can use their voting power to affect the policy position of candidates running for election.
- Legal Change. While it is true that legal change alone is insufficient to ensure women's inheritance rights in the face of customary law, a strong legal foundation can be an important and necessary first step.
- Land leasing, purchase, or allocation programs for women. The underlying expectation is that a woman will gain more power within the household and thus be less prone to abandonment or domestic abuse if she is the owner of the land that the family relies on for its survival.
- Joint land occupancy rights of man and woman over each farming plot, if being managed by a family.
- Independent land right of women, in the case of single woman, divorcee and a widow managing the field.
- Awareness raising about rights and laws, legal reform, capacity building and mobilization of women to assert their rights
- Women should be encouraged to take care of their properties themselves
- Alter the inheritance laws to ensure greater equity and social security for the women. Universal family laws as well as universal inheritance laws could be enacted to amend the existing inheritance laws;
- Women of ethnic minorities must be ensured equal rights through reforming customary and inheritance laws of the respective community and groups
- Encourage undertaking of social mobilization for changing attitudes towards daughters' equal inheritance rights and for extending women's land right.

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