



Intersection of Religion, Constitutional Law and International Norms from Women's Property Rights in Bangladesh: An Appraisal

Dr. Abdullah-Al-Monzur Hussain

Associate Professor & Head
Department of Law
Prime University, Dhaka

ABSTRACT

This paper explores the relationship between women's property rights in Bangladesh and religious norms, constitutional laws, and international legal systems. This study holds that although traditionally women's property rights have been impeded by religious and cultural norms, constitutional reforms and international legal instruments have started to open the door for gender equality in this area. The approach used include a thorough examination of Bangladesh's legal system, as well as an examination of pertinent religious texts, constitutional modifications, and international treaties. Qualitative surveys and interviews with legislators, legal professionals, and advocates for women's rights also yield insightful information. The study's findings paint a complex picture that emphasizes the slow but steady progress achieved in resolving gender differences in property rights. In order to guarantee equal property rights for women in Bangladesh, it emphasizes how crucial it is to balance religious convictions with constitutional ideals and to harmonize national legislation with international agreements.

Key Words: *Women empowerment, property rights, economic development, social security*

1. Introduction

Property rights encompass a range of legal privileges that enable individuals to acquire, possess, sell, and transfer property, earn and retain income, enter into contracts, and seek legal redress through the judicial system¹. These rights are fundamental to an individual's autonomy and self-determination, as they empower people to meet their basic needs and exercise free choice. Property rights provide the legal and economic foundation for personal and financial independence, allowing individuals to participate fully in societal and economic activities.

However, realizing property rights for women has been challenging in many countries, including Bangladesh, due to deeply ingrained gender inequities². From an early age, girls in Bangladesh often face a societal environment where their value is perceived as lower than that of boys. This cultural bias results in significant disparities in access to resources such as food, healthcare, education, and other essential services³. As they grow up, these girls

¹ United Nations. (2017). A/HRC/34/56. Retrieved from <https://undocs.org/A/HRC/34/56>.

² World Bank. (2020). Women, Business, and the Law 2020: Gender Equality, Business and the Law. Washington, D.C.: World Bank Group. <https://openknowledge.worldbank.org/handle/10986/32679>.

³ World Bank. (2018). Bangladesh - Gender Dimensions of Development in Bangladesh: Background Paper on Gender Equality for the Systematic Country Diagnostic. World Bank. <https://openknowledge.worldbank.org/handle/10986/31793>.

frequently become ensnared in a cycle of powerlessness and economic dependency, which severely restricts their ability to assert their property rights effectively⁴.

One of the critical aspects of women's property rights is inheritance. Inheritance laws and practices are complex and influenced by social, political, racial, and legal factors that vary across different societies⁵. Historically, property ownership has been biased in favor of men, perpetuating gender-based economic inequality. This systemic bias stands in stark contrast to the principles of gender equality enshrined in international human rights instruments such as the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁶.

Particularly, CEDAW imposes major requirements on its state parties, requiring them to take all necessary steps to guarantee the complete growth and advancement of women, including the protection of their property rights⁷. It specifically emphasizes women's equal rights in areas like family benefits, eligibility for bank loans, mortgages, and inheritance. National legal systems have also accepted and verified women's right to a proportionate share of property, such as Muslim Law and Hindu Law in Bangladesh⁸. In addition to international and national legal frameworks, property rights are becoming increasingly important for the advancement and empowerment of women. These rights are crucial for advancing gender equality and guaranteeing the welfare of all societal members, in addition to being a matter of legal entitlement⁹. In order to comprehend and advance women's property rights in Bangladesh, a thorough analysis of the relevant legal, cultural, and social elements is required.

The significance of property rights for women extends beyond legal entitlement. These rights are instrumental in promoting gender equality and ensuring the well-being of all members of society. Empowering women with property rights enhances their economic status, increases their participation in economic activities, and improves their bargaining power within the household and community. Women who own property are better equipped to provide for their families, invest in their children's education and health, and contribute to the overall economic development of their communities. Furthermore, property rights play a vital role in protecting women from domestic violence and other forms of abuse. Women who own property have greater financial independence and are less likely to remain in abusive relationships due to economic dependency. Property ownership also provides women with a sense of security and stability, enabling them to make decisions about their lives and futures with greater confidence.

To advance women's property rights in Bangladesh, it is essential to conduct a comprehensive analysis of the relevant legal, cultural, and social factors. Such an analysis should consider the various dimensions of women's property rights, including inheritance

⁴ Chowdhury, A. M. R., & Bhuiya, A. U. (2002). Do poverty alleviation programmes reduce inequalities in health? The Bangladesh experience. In *Extending the Frontiers: Essays on the New Transatlantic Slave Trade Database* (pp. 155-179). University Press.

⁵ Deere, C. D., & Doss, C. R. (2006). The gender asset gap: What do we know and why does it matter? *Feminist economics*, 12(1-2), 1-50.

⁶ United Nations. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/universal-declaration-human-rights/>.

⁷ United Nations. (1979). Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Retrieved from <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

⁸ Bangladesh Law Commission. (n.d.). *Compilation of Laws on Women in Bangladesh*. Retrieved from <http://www.lawcommissionbangladesh.org/old/pdf/Compilation%20of%20laws%20on%20Women%20in%20Bangladesh.pdf>.

⁹ Agarwal, B. (1994). *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge University Press.

laws, marital property regimes, and land tenure systems. It should also examine the barriers women face in accessing and exercising their property rights, such as discriminatory legal provisions, lack of awareness and education, and socio-cultural norms and practices. Addressing these challenges requires a multi-faceted approach that involves legal reforms, public awareness campaigns, and capacity-building initiatives. Legal reforms should aim to eliminate discriminatory provisions in inheritance laws and ensure that women's property rights are explicitly recognized and protected. This includes harmonizing national laws with international human rights standards and ensuring that legal provisions are effectively implemented and enforced.

Public awareness campaigns are crucial for changing societal attitudes and norms that perpetuate gender discrimination. These campaigns should focus on educating both men and women about the importance of gender equality and women's property rights. They should also aim to raise awareness about the legal provisions that protect women's property rights and the avenues available for women to seek redress in cases of violations.

2. Conceptual Framework

To ensure socio-economic and legal development the rights of property for women is very important in a society or a state. Equal property rights or ownership for women is most vital for economic, social and legal development. Without protect the proprietary rights for women, it will not be possible to reach in a sustainable economic development. Beside this the social and legal environment also depends on equal or sufficient ownership and proprietary rights for women. These proprietary rights can be maintained different forms and way in a state by different legal system.

3. Absolute Ownership for Women

Absolute ownership arises from buying any immovable property but most of the women in Bangladesh cannot acquire ownership in this method because they are not enough independent and capable to purchase any immovable property. They are always dominated by their family members or their husbands. Even they have no freedom of expression or thought relating to economic matter because of our socio-economic condition. But the socio-economic conditions are changing gradually because the compulsory primary and secondary education. The scenario is also seen in a Hindu Family with a Hindu woman. The rights of property for women can analyse according to personal law and socio-economic perspective. Most of the women in the country acquire immovable property by inheritance. Though they inherit property they cannot get their share appropriately and most of them can't exercise their proprietary rights.

4. The Right to Property in Islam for Women

The right to property means the right to acquire, enjoy, hold and dispose of property. Islam confers the security of ownership of property upon every human being without discrimination in respect of the property acquired by lawful means. The Holy Quran declares: 'And do not eat up your property among yourselves for neither vanities, nor use it as bait for the judges, with intent that you may eat up wrongfully and knowingly a little of (other) people's property.'¹⁰

“O you who believe, eat not up your property among your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual goodwill.”¹¹

¹⁰ .Sura 2:Verse188,Quran

¹¹.Sura 4:Vers 32,Quran

Similarly, the prophet (PHU) in his address delivered on 7 March 632 on the occasion of the Farewell Hajj said: ‘Your.... properties are forbidden to one another till you meet your Lord on the Day of Restriction. Islam recognizes the rights of every woman to acquire, holds, manage and dispose of her father or husband. In this regard, the Holy Quran says: “To men is allotted what they earn, and to women what they earn.”¹² Thus in Islam the income of women is her own property and she is its absolute owner. Male and female have equal rights over property. For example-a Muslim dies leaving a son and a daughter. The estate will be divided into three equal portions, the son obtaining two, and the daughter one. The daughter does not however, by reason of sex, suffer any disability to deal with her share of her property. She is the absolute master of her inheritance. The same rule is applying to a widow or a mother.¹³

5. Rights of Women in Hindu Law

If any Hindu dies leaving a widow and a brother, the widow succeeds to the property as his heir but she does not inherit the property absolutely. She is entitled only to the income of the property and cannot make a gift of the nor can she dispose of it unless there is a legal necessity. On her death the property will pass not to her heirs, but to the next heir of her husband.

The most important matter that granting of absolute rights to women, over the property they held. No women can be defined property rights on the basis of any custom, usage or text and the said Act reformed the personal law and gave woman greater property rights. In practice, a female heir cannot ask for partition of the residence until and unless the male heirs ask for their respective shares, Also the right of residence exercised by the daughter is limited by her marital status, a daughter may claim this rights if she is unmarried.¹⁴ Rights of Property in India: The Hindu Succession (Amendment) Act, 2005 removes discriminatory gender that was in the provisions of the Hindu Succession Act, 1956 and now it gives the various rights to the daughters that are as follows: In the context of coparcener, the daughters will have same rights on the son.¹⁵ The Act was amended in 2005. to give equal rights to women. It is applicable to the various sects and castes of Hindus, apart from Sikhs, Buddhist and Jains, Prior to the amendment; women had no right to a joint ownership or coparcener property.

6. Rights of Property of other Legal System

In 1870 the English Common Law accepted a principle that married women had the right to have control over her own property and that it could not be transferred without her permission to her husband on marriage. The same principle was only recognized by France in 1937. Muslim-majority countries like Turkey, Yemen, Jordan, Lebanon and Kuwait have ratified CEDAW without any reservations. Sharia-governed Pakistan and Indonesia. Other countries also adopted reforms in personal laws to afford greater rights to women. In India legislation conferred ownership rights on women and changes in the Hindu Law of all schools and brought changes not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. Now the widow succeeds along with the son and to take a share equal to that of the son. The widow was entitled only to a limited estate in the property of the deceased. A daughter has no inheritance rights though the enactments having brought important changes in the law of succession by conferring new rights of succession on certain females but there are found defect in many respects.¹⁶

¹²Sura 4 Verse 29, Quran

¹³ Outline of Muhammad Law, Fourth Edition, Asaf A. A. Fayzee

¹⁴(<https://www.law.cotpus.com/academic/rightproperty-Hindu-women>)

¹⁵<http://www.nrilegalservice.com/property-rights-women-india>

¹⁶ Hindu Women's Right to Property Act 1937

7. Women empowerment and rights in the Constitution of Bangladesh

Women's rights are protected principles of equality and participation that steps shall be taken to ensure participation of women in all spheres of national life.¹⁷ The Constitution ensured that equality of opportunity to all citizens.¹⁸ The Constitution also provided that all citizens are equal before the law and are entitled to equal protection of the law.¹⁹ Moreover, It is also provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth.²⁰ Article 28 (2) more directly and categorically says that women shall have equal rights with men in all spheres of the State and of public life. This latter provision means that all rights mentioned in the Constitution, such as right to life, right to personal liberty, right to property, freedom of movement, freedom of speech, freedom to exercise a profession or occupation are equally applicable to women in Bangladesh. The majority of the world's poorest are women and girls with the share of women employed outside of agriculture remain as 20% in Southern Asia. In Bangladesh women and girl inappropriately affected by poverty and discrimination. Women and girls are not allowed to make decisions about their house hold's income, or tradition and culture forbid them to leave their home. CARE Bangladesh is focused on women to exercise their choice in decisions affecting their live to reduce violence against women forthe emergence of strong social movements. It is found that the majority of the women are marginalized from their property in the social practice. It suggests that the Islamic solution for property sharing should be implemented to empower women in Bangladesh.²¹ Discrimination against women in Bangladesh is an ongoing debate. Historically women are given less important compared to men.²² In Bangladesh women have almost lost their right to property as they do not have any access to property ownership. They have no financial independence because of the strong cultural norms in rural Bangladesh as a result the majority of women are landless although a few women own land²³. They have very little right to control and use their properties and they are sometimes forced to leave their properties to their brother's. Very few of them takes legal actions as they lack education and the legal procedure is also prolonged and complicated overall women are mostly financially dependent on men and considered a burden on the society. According to Oxfam Report the picture is similar in India, Pakistan and several African countries.²⁴ Women's control over land is an essential pre-requisite for women-empowerment and sustainable development.²⁵ Patriarchal social norms limit women's mobility confine their roles to the house hold and giving men most of the financial decision-making power. Some of these women are trying to earn their livelihood but they are not able to invest on develop any kind of asset because of the lack of financial inclusion. That's a big risk in the country wants to achieve its economic growth and get out of poverty.²⁶

8. Women's Rights of Property and Empowerment in the International Perspective

Universal Declaration of Human Rights provides that everyone has the right to own property as well as in association with others.²⁷ It also ensured that no one shall be arbitrarily deprived of his property. Universal Declaration of Human Rights ensured the equal rights of men and

¹⁷ Article 10; The Constitution of the People's Republic of Bangladesh, 1972

¹⁸ Article 19 (1); The Constitution of the People's Republic of Bangladesh, 1972

¹⁹ Article 27;); The Constitution of the People's Republic of Bangladesh, 1972

²⁰ Article 28 (1); The Constitution of the People's Republic of Bangladesh, 1972

²¹ The rights of women in property sharing inheritance system eliminate discrimination?w.w.w.ncbi.nlm.nih.gov

²² Mohammad Islamic Law and women rights in Bangladesh.Soc.Sci.2013;2 (2) :22-23[Google Scholar]

²³ MohajanHK.Are Bangladesh Women enjoying human rights properly? Int J Mainstream, socsci 2012;2(1):43-56

²⁴ Men land owner six times more than women in Bangladesh; <https://www.the-daily-star.net>

²⁵ Women, Land and power in Bangladesh: Jhagrapur Revisited-www. Uplbooks.com

²⁶ Why Most Bangladeshi Women still don't have a bank account;www.newsdeeply.com.women-advancement-

²⁷. Article17, UDHR on 1948.

women have determined to promote social progress and better standards of life in larger freedom. The lack of control over both productive and non-productive resources that in both rural and urban places women at a reduced level of advances in areas of security of home, maintaining a basis for survival and accessing economic opportunities as a result development related problems faced across the territory of the state and increase lack of property and inheritable rights especially over land and ownership as a result state faces hunger, and poor health.²⁸Ownership of land and property empowers women and gives social security. Without the security of a home or income women and their families fall into poverty traps and struggle for livelihood, education, sanitation, health care and other basic rights.²⁹ Women's property rights also include inheritable rights enjoyed by women as a religious obligation. The patterns and rights of property ownership vary between societies and influenced by cultural, racial, political, and legal factors. Not only nationally but also globally women are in lack of property and ownership, low levels of education, hunger, and poor health. Thus the land property right impact on production of wealth, development, economic growth and poverty reduction.³⁰As a result there are not found equality in the society and usually denied equal ownership rights.³¹ Women who are potentially able to meet their subsistence needs on their hearten to leave the household if they are not given a large share of the surplus. However, due to patriarchal property rights husband control over the allocation of wives, labor time, and husband can make decisions that reduce the value of their wives, alternative to marriage.³² Male domain is very important encumbrance of women empowerment because of theWorld-Wide prevalence of patrilineal inheritance custom. Man, and WomenBoth plays an important role in productive resources like house hold goods but only man have rights of inheritance of family succession and women have little opportunity to improve their status or living conditions within family and community. As a result, they are rendered dependent on male relatives for survival and have little say over how property is used to generate income or to support families. There is a strong resistance by men towards endowing women, especially daughters, with rights to land access.³³In Kerala, Uttar Pradesh of India, it is found that female ownership of property increase a women's economic security, reduces her willing ness to tolerate violence, and can deter spousal violence.³⁴

9. Reasons behind Lack of Property Rights for Women

- Women are dependent on the father, husband, son, brother etc. as well as legal and social restrictions prevent many women from owning and inheriting land and other property and making decisions regarding use of family assets. Absence of economic freedom is the main reason so that women cannot own property like land and physical assets. Islamic law recognized that women have financial independence but current social practice women does not have financial independence.³⁵

²⁸Grown, Coren; Gupta, Getta Roa, Ices, Ashian (2005, Taking action achieving gender equality and empowering women), (Task force on Education and Gender Equality). London sterling.Va: Earth scan. ISBN-184407223. Women' empowerment, CARE Bangladesh, carebangladesh.org

²⁹Available at asiaapacific.unwomen.org).

³⁰ Wikipedia the encyclopedia

³¹ Grown,Careni; Gupta, GeetaRao;Kes,Aslihan (2005).Taking action achieving gender equality AND empowering women (Task force on Education and Gender Equality). London STERLING, Va: Earthscan ISBN 184407223.

³² Braunstein, Elissa; Folbre, Nancy (2001). To honor and obey: efficiency, inequality, and patriarchal Property rights. Feminist Economices. Taylor and Francies. 7(1): 25-24, doi: 10.1080/713767276.

³³Agarwal, Bina (October 1994). "Gender and command over property: a critical gap in economic analysis and policy in South Asia." World Development. Elsevier. 22(10): 1478/13547097338799.

³⁴In the land of women: Domestic violence and landownership in Asia-Pacific, <https://blogs.adb.org/.../land-women-domestic-violence>

³⁵Legal Framework on property Ownership Bangladesh Perspective; A. B. M. Zahir Hossain and Iftekhairul Islam; <https://un.org>docs>

- Complex procedural aspect effects on the rights of property for women. Man is responsible for providing maintenance for women and children from his property but there is no rule regarding this. In many cases, man takes over women's property to provide maintenance for the family. Women and her family are required to provide bridal gift to man many occasions.
- Poorly drafted regulations and laws governing land and property.
- Custom, tradition, etc. create barriers to rights (marriage/polygamy; inheritance).
- Lack of knowledge, Information, and enforcement of women property rights.

10. Socio-economic Effect for Absence of Property Rights of Women

- There cannot be ensure sustainable development in the country and cannot be ensure equality and justice in the society.
- Discrimination and other women and child related crimes are increasing day by day like, rape, domestic violence, cruel, inhuman and degrading treatment for women.
- Social and personal insecurity are increasing in the all sphere of the country. The main factor acting as a hindrance against development of the women is related to their limited and unequal right and access to resource, particularly to land and other fixed assets.³⁶
- There are much weakness in basic rights of women such as Dower, Maintenance, Inheritance, Guardianship of children and development in social activities where women rights being violate in every step.³⁷
- The discriminatory attitude against women rooted in the family and extends to the state level.
- Traditional belief of keeping women under the shadow of such as their fathers or husbands.
- Absence of equal rights on Property between men and women.

11. State Implementation Measure

- Awareness among the women to establish land right and initiate to develop independent human being.
- Women land rights means freedom control of men and establish rule of Law.
- Priority should be given upon the distribution of khas land.
- Implementation of declaration of CEDAW and Beijing conference plan for action.
- Detail survey on situation of land ownership.

12. Conclusion

In conclusion, whether examined through the lenses of religion, the constitution, or international law, the problem of property rights for women in Bangladesh is a complex and multifaceted issue that necessitates careful analysis and coordinated reform efforts. The nation has made notable progress toward gender equality in property rights despite historical obstacles rooted in cultural and religious conventions. However, these achievements are just the beginning, and a comprehensive approach is necessary to fully realize women's property rights in Bangladesh. The Bangladeshi Constitution has been essential in recognizing and upholding the property rights of women. It provides a legal framework that guarantees equality before the law and prohibits discrimination based on gender. This constitutional guarantee is a powerful tool for women to claim their property rights and challenge

³⁶Available at <https://www.ohchr.org/CDABangladesh>

³⁷Available at www.assignmentpoint.com/law

discriminatory practices. However, the mere existence of legal provisions is not enough; effective implementation and enforcement are crucial to translating these rights into reality for women across the country. International legal frameworks, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), have played a significant role in advancing women's property rights in Bangladesh. CEDAW obliges state parties to take all appropriate measures to eliminate discrimination against women in all areas, including property rights. Bangladesh's commitment to CEDAW has been instrumental in shaping national policies and laws that promote gender equality. These international standards have not only influenced legal reforms but have also helped change public perceptions about women's rights and roles in society.

Advocacy and awareness activities must continue to play a crucial role in transforming societal attitudes towards women's property rights. Public awareness campaigns that educate both men and women about the importance of gender equality and the legal protections available to women are vital. These campaigns should address the cultural and religious misconceptions that perpetuate gender discrimination and highlight the benefits of gender equality for the entire society. The collaborative efforts of policymakers, legal experts, civil society organizations, and the international community are essential to achieving these goals. Policymakers must prioritize gender equality in property rights in their legislative agendas and ensure that adequate resources are allocated for the implementation and enforcement of relevant laws. Legal experts can provide the necessary support and advocacy to help women navigate the legal system and claim their rights. Civil society organizations can continue their critical role in raising awareness, providing support services, and advocating for policy changes. The international community can offer guidance, support, and pressure to ensure that Bangladesh remains committed to its international obligations regarding women's rights. In conclusion, the journey towards gender equality in property rights in Bangladesh is ongoing. While significant progress has been made, much work remains to be done. By adopting a holistic and coordinated approach, Bangladesh can overcome the challenges posed by cultural, religious, and social barriers and create an environment where women can fully enjoy their property rights. This is not only a matter of justice and human rights but also a crucial step towards the nation's overall development and prosperity. Through collective effort and sustained commitment, the vision of gender equality in property rights can become a reality for all women in Bangladesh.

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