

In Search for Security and Poverty Alleviation: Women's Inheritable Entitlements to Land, the Untapped Resources*

*Taslima Monsoor***

Women are the poorest of the poor in Bangladesh. Everything will be better for women if their poverty is alleviated. The means to alleviate poverty of women is to provide them of their rights specially their rights of inheritance. The primacy given to custom has worked to the detriment of Muslim community and a shift to sharia law of succession would be a positive step.

Problems arise over abuses of this relative status system. The crux of the problem is that many women in Bangladesh today are deprived even of the rights granted by the religious and state-sponsored family laws. Prominently, women are deprived of their rights of inheritance, maintenance, dower, dissolution of marriage, custody, guardianship, and other forms of property. Thus, it was found in a study of the metropolitan city of Dhaka that 88% of Muslim wives did not receive any dower.¹ A study of two villages in Bangladesh revealed that 77% of women from families with land did not intend to claim their legal share in their parental property to retain better links with their natal family.² These are instances of the patriarchal arbitrariness of Bangladeshi society which regards women's claims to their rights as challenging the existence of the patriarchal system itself, despite the fact that these claims are based on an Islamic obligation or official law.

The usual manifestations of women's subordination in a patriarchally dominated society may be identified in child marriages, polygamy, unilateral divorce, seclusion, dowry and violence against women. Women in Bangladesh are, thus, subordinated within an intensely hierarchical system of gender relations which constantly attempts to deny women not only access to social power and control over their own lives but also

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** The author is an Assistant Professor, Department of law, University of Dhaka.

¹ Akhter, Shaheena: "How far Muslim are protecting the rights of the women in Bangladesh," Dhaka 1992, p. 35.

² Westergaard, Kirsten: "Pauperization and Rural Women in Bangladesh: a Case Study", Comilla, 1983, p. 71.

granted rights to which they are entitled.³ The material base of patriarchy is men's control of property, income and women's labour. With the growth of women's studies, more and more authors have identified labour, power and sexuality as the main structural elements shaping the relationship between gender and power.⁴

The study of gender and property rights is a complicated one which has been hardly explored. There is rarely any systematic study on women's right to inheritance. Usually it is thought that it is not so pressing or demanding as the study on dowry, violence, *parda* etc. It is erroneously thought that women inherit only occasionally and the amount of inheritance is small. But whatever the amount and whenever they inherit it is their right, granted right which can empower them and secure them from the trap of poverty. These misconceptions are blocking women's access to land, the most valuable economic resource, where competition for scarce resources are fierce.⁵

In this article we see inheritance as other process of devolution as gift or dowry⁶ and on devolution of land. It also covers other aspects of property than immovable property.

The whole spectrum of law of inheritance and women is a wide area which is difficult for one article to cover. Thus, this article attempts to analyse the laws applicable to the majority of the female population. Islamic law of inheritance⁷ have different interpretations but as the majority of women fall under Hanafi school of Sunni Jurisprudence this article will highlights that part of the law only.⁸ However, comparisons are

³ Kabeer, Naila: "Subordination and struggle: Women in Bangladesh". In *New Left Review*, No. 168, March-April 1988, pp. 95-121, at p. 101.

⁴ See for example Connell, R. W.: "Gender and Power", London 1986, p.104.

⁵ Jansen, G. Eirik: "Rural Bangladesh: Competition for Scarce Resources". Oslo 1986.

⁶ See for different systems of devolution, Goody, Jack: 'Introduction'. In Goody, Jack, John Thirsk and E.P. Thompson (ed.), "Family and inheritance: Rural society in western Europe, 1200-1800", Cambridge 1976, p. 1.

⁷ Rahim, Abdur: *Muhammaltan Jurisprudence*. Lahore, 1911; Jung, Muhamed Ullah ibn Jung: "The Muslim Law of inheritance". Lahore, 1934; Mulla, Dinshah Fardunji: "Principles of Mohomedan Law", Calcutta 1933; Fyzee, Asaf A.A.: "Outline of Muhammadan Law", Delhi, 1974; Rashid, Syed Khalid : "Muslim Law", Lucknow 1979; Doi, Abdur Rahman I.: "Sharia: The Islamic Law", Kuala Lumpur, 1984; Verma, B.R. : "Islamic Law Personal". 6th ed. Allahabad, 1986; Jhabvala, Nashirvan H.: "Principles of Muhammadan Law", Bombay, 1986; Hussain, Syed Athar: *Muslim Personal Law*. Lucknow, 1989.

⁸ Islamic Family and women in different jurisdictions are considered, for details see Nasir, Jamal J.: "The status of women under Islamic Law." London 1990; Esposito, John L.: "Women in Muslim Family Law", New York 1982; Layish, Aharon: "Women and Islamic

also be shown as to how the customs and conventions of other legal communities are effecting inheritance' and depriving women of their granted rights.

The law of Muslim inheritance ruled absolutely for over a mellenium from ninth to nineteenth century. The impact of it was so much that tll legal scholars and historians in pre-modern Muslim societies restricted themselves in understanding the specific details and intricacies of tll law of inheritance.⁹ Thus the focus was exclusively on legal rules and there were no interaction with the social process.¹⁰ On the otllr hand the anthropologists tend to highlight the social process than the legal intricacies.¹¹ In modern Muslim societies there are interdisciplinary studies of law and society. But there is rarely any study on Muslim law of inheritance and its practical applications in society which is the primary aim of this article.

The Muslim law of inheritance states that as a general rule, a female is given one half the share of a male. This has aroused considerable debate globally. The International Conventions and Declarations has erased this discrimination and are pursuing nations who have reservations in the religio-personallaws to do tll the same. However, no one seems to see that what ever is there in official and Islamic law are not even realised. The UN Convention on tll Elimination of All Forms of Discrimination Against Women of 18th December 1979 purports to guarantee equal rights to women.¹² Women in Bangladesh are also apparently guaranteed sexual equality by the Constitution of Bangladesh and the general law. But patriarchal interpretation of the law continues tll dominance of patriarchal attitudes.¹³ However, there are internal contradictions within the

Law in a non-Muslim State" – (a study based on the decision of the Sharia Courts of Israel), Jarusalem 1975; Mir-Husseini, Zeba: *Marria-e on trial- a study of Islamic family law, Iran and Morocco compared*. London and New York 1993.

⁹ See for details, Powers, S. David: "*Islamic inheritance system: A socio-historical approach*", in Mallat, Chibli and Jane Connors (ed.): *Islamic Family Law*, London 1993, pp. 1-29.

¹⁰ For example see Sacht, Joseph: "*The origins of Muhammadan Juris Prudence*", Oxford 1950; Coulson, Noel J.: "*A history of Islamic Law*" Edinburgh 1964; Coulson, Noel J, "*Succession in Muslim Family Law*", Cambridge 1971.

¹¹ See for details Mundy: "*Women's Inheritance of Land in Highland Yemen*", *Arabian Studies*. No. 5, 1979, pp. 161-188.

¹² On this Convention see for example Tinker, Catherine: "*Human rights for women: The U.N. Convention on the Elimination of All Forums of Discrimination Against Women*". In *Human Rights Quarterly*. Vol. 3, No. 2, Spring 1991, pp. 32-43.

¹³ On this see in detail "*Bangladesh: Strategies for enhancing the role of women in economic development*". Washington DC 1990, (World Bank); Jahan, Roushan; "*Hidden Wounds*,