

Do Indigenous Women Have Right to Inherit Land? A Critical Review of Customary Practices of Land Inheritance with Reference to Gender Justice in Bangladesh

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Abstract—Denial of a rightful share of ancestral lands and access to resources in a patrilineal customary inheritance laws characterizes the unequal power relationships of indigenous women in Bangladesh. Indigenous women face discrimination, social exclusion, structural marginalization, gender identity and systemic oppression in the patriarchal society in Bangladesh. Descent and property is transmitted through the male line in the two indigenous communities, namely: *Santal* and *Oraon*. Women remain systemically devalued without property and genealogical identity. Women are deprived of hereditary rights and have limited control over household resources and the decision-making process. They are confined to domestic workloads. They are marginalized, excluded from holding powerful decision making positions. Socially and economically they face multiple systemic discriminations. The research makes the case that rationalization of customary practices of inheritance in line with national and international policy instruments is significant for human rights-based equitable policy implications for improved livelihood, gender justice and life chances of indigenous women in Bangladesh.

Index Terms—Indigenous women, marginalization, customary practices, women development policy, gender justice.

I. INTRODUCTION

The area of concern is that indigenous women face discrimination, social exclusion, structural marginalization, gender identity and systemic oppression in patriarchal society. Descent and property is transmitted through male line in these two (*Santal* and *Oraon*) indigenous communities where women remain systemically devalued without property and genealogical identity. Women are deprived from hereditary rights and having limited control over household resources and decision-making process and secluded in heavy domestic workloads. The research was undertaken amongst the two most marginalized indigenous communities living in the remote rural areas in Northern part of the country. The ownership of land defines social status and power relationships in the rural context of Bangladesh. Denial of a rightful share of ancestral lands and access to resources in patrilineal customary inheritance laws [1] characterizes the unequal power relationships of indigenous women in Bangladesh. As a result, they are marginalized, victims of

violence, and excluded from holding powerful decision [2] making positions. Socially and economically they face multiple systemic discriminations. To address the critical structural causes of disadvantage of indigenous women, the qualitative research has been conducted on: a) Women's rights to inherit land and b) The implications of customary practices. This paper aims to address indigenous women's disadvantage and dispossession based on the findings of the study through the lenses of gender justice indicators. The research argues that indigenous women's struggle for full entitlement of citizenship rights and legal rights to inherit land and control over resources still remain elusive.

Due to rigid customary practices of inheritance laws, non-implementation of National Women Development Policy even though gender equality is enshrined in the constitution and rhetorical gender and development discourses of Bangladesh. Finally, the research makes the case that rationalization of customary practices of inheritance in line with national and international policy instruments is significant for human rights-based equitable policy implications for improved livelihood, gender justice and life chances of indigenous women in Bangladesh.

II. RESEARCH METHODS

The research project conducted a complementary method blending qualitative and quantitative research including case studies, focus group discussions and in-depth interviews of the two marginalized indigenous communities namely the *Santal* and *Oraons* communities of North-Bengal of Bangladesh. Under this research, a total of 160 persons including 138 males and 22 females (40 from each location) were recruited for in-depth interviews and a total of 85 persons including 58 males and 27 females were consulted for focus group discussions in four villages namely; Buski, Khidirpur, Panchpukur and Srirampara under Dinajpur district of Bangladesh. A purposive sampling has been employed in order to maximize the range of demographic characteristics of the participants, in terms of gender, age, education and occupation.

Qualitative method enabled me to explore critically how the research participant's define and interpret women's rights to ancestral lands and how do they interact and experience challenges of life chances and well-being being minority groups of indigenous people in Bangladesh. For the suitability of this research, semi-structured interview methods has been adopted because it offers fairly lists of

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questions along with open-ended questions for collecting robust information, data, individual's personal histories, and perceptions of women's marginalization, rights violation and vulnerability. This research can be an attempt to contribute to the literature of academic discourse as well as to fill a gap in available resources for the future researchers on the changing paradigms of gender deprivation and marginalization within the discipline of social science in the context of Bangladeshi society.

III. INDIGENOUS WOMEN'S INHERITANCE RIGHTS, ROLE AND POSITION IN THE SOCIETY

The *Santals* and *Oraon* indigenous communities of Bangladesh are patriarchal society where women have hardly any rooms of inheriting properties even though men and women work alongside in agricultural activities for subsistence living. The customary practices of these two indigenous communities indicate that the sons have full rights of ownership to the father's property. The embedded customs demonstrated that if there are no siblings from a couple, the husband's property will be inherited by the sons of his brother (s) [3]. In exceptional cases, if a father does not have any son, only in that case daughters can inherit his property [4]. Generally, a wife will not be the owner of her husband's property. But, only when a mother is the owner of some property, in that case the daughters will inherit that property according to the customary land inheritance practices of these two ethnic communities. However, in a common, women from both these two indigenous communities are engaged in agricultural and domestic activities alongside of men for substantial living in a marginalized rural setting in Bangladesh.

IV. CONCEPTUAL FRAMEWORK ON GENDER JUSTICE

In this article, I will attempt to analyze indigenous women's role and position in the society through Moser's gender roles [5] social relation approach [6] in the research setting. The research supports that women from these two indigenous communities perform a 'triple role' (reproductive, productive, and community-managing activities) [7] more likely for low-income women in the most societies. Despite that women from these two indigenous communities were found engaged in agricultural activities for subsistence living as a counterpart of men where women get comparatively less wages than men. Thus, indigenous women's position in the society is lower than men as having limited control over household resources and decision making process, restricted and secluded in heavy domestic workloads in a patriarchal society. In contrast, men have 'sovereign power' [8] to control households and society among these two indigenous communities. In terms of inheritance rights, access to education and health services, women are still in a vulnerable position. As a result, women suffer from food insecurity, inadequate health care and sanitation facilities, poor nutrition intake in terms of national standard during lean season of the year when they have no work or other employment opportunities. Their vulnerability and marginalized position

is perpetuated through as the descent and property is transmitted through male line where women remains devalued without property and 'genealogical identity' [9] in these two ethnic communities.

This research has also addressed the role of family, community, market and the state on indigenous women's unequal position in the society. This analysis has been explored through the conceptual frame work of Kabeer's social relation approach. Kabeer's social relation approach is envisioned to analyze structural relationships that create and reproduce systemic differences and gender inequalities not only by family or household but also across a range of institutions including community, market and the state. To what extent, those institutions play a critical role in creating and reproducing gender inequalities amongst the two ethnic societies is the essence of the research. In this regard, Kabeer argues that institutions produce, reinforce, and reproduce social difference and inequalities. Thus, unequal distribution of resources, responsibilities, and power are driving factors for indigenous women's inequity in the society of Bangladesh.

V. SUMMARY OF THE RESEARCH FINDINGS

A total of 160 research participants have been interviewed and consulted regarding women's land inheritance rights and ownership in the two indigenous communities. The findings of the research demonstrated a mixed perception on indigenous women's inheritance rights to land and properties in the two researched communities. To some extent, the indigenous women's land inheritance right is a debatable and contested issue in both indigenous communities. Through this study, a wide range of different opinions have been perceived from the respondents. Out of 160 interviewees, 19 respondents voiced that girls should get equal share of lands like as boys, while 11 respondents argued for half-share of boys to women. It was reported that 64 respondents contended that women could be given one-fourth proportion of boy's lands for their survival, livelihood and well-being and 17 interviewees responded that women should be given some lands on the wish of parents without any legal bindings as a charity or kindness. It is obvious that majority of the respondents (111 persons) voiced for reforming and re-structuring the traditional practices of land inheritance in order to entitle women's rights to father's lands and properties amongst the two researched communities.

The research identified that 49 research participants expressed reluctance and adamantly opposed to giving land rights to women amongst the two ethnic communities based on long tradition and customs that have been followed over centuries amongst the two indigenous communities. The customary practices justified that women do not inherit any piece of land and properties from fathers' but only from mothers'.

An elderly male respondent from the Buski village indicated that:

The rights of women inheriting land does not exist in our community. It has been practiced over the centuries that women do not inherit lands from their natal family. At this

stage, it is very difficult to turn down traditional and customary practices of land inheriting rights in our Santal community.

A village headman from Srirampara village who supports the existing traditional practices of disinheriting women claimed that:

If women are given land rights, this may raise family disputes and violence against women generated as a result of commercial interests, and it could trigger a high rate of divorce and extra-communal marriages of indigenous women for land procurement which could destabilize peace and harmony in the society.

Like him, other respondents with similar perceptions urged that women will transfer or sell out land to people outside the family or outside the community when they are married out with external community people. From this point of view, respondents perceived that if they women are conferred land rights, it could produce social instability and undermine their family traditions.

Despite this, there exists a long traditional practice, a majority proportion of research participants (111 research participants) are inclined to bring some positive changes in order to establish women's rights over land and property arguing that woman have every right like a son to entitle land for survival and livelihood. A Santal woman from the Buski village urged that:

Women should be given land rights as they are inheritors equal to sons for their well-being and to end the many years of gender discrimination. If the women become the custodian of lands, the land dispossession will be drastically decreased in our community.

The woman explained to me that land dispossession by selling out due to poverty and economic hardship is an alarming issue in the community. If the women are given land rights, like her many women claimed that there could be a possibility to stop land dispossession in the community. Similarly, an Oraon woman from Panchpukur village commended that:

The traditional practices of land inheritance of our community need to be reformed and restructured in considering equal inheritance rights to male and female. As we do neglect and pay less attention to our daughters, we need to give them inheritance rights. If women possess land, they will be empowered as ownership to land is regarded as a social power in the community.

From the four different locations and villages, the research participants claimed different opinions on entitling indigenous women's land rights based on customary practices. Simultaneously, a disproportional share like as half-share, one-fourth share and lump-sum share between boys and girls have also been pronounced by the research participants. The outcome of this research is significantly positive as the majority of the research participants are in favor of bringing changes in customary practices that deprive women from inheriting lands and properties. A village leader from the Khidirpur avowed that:

It is the time to change our social structures and traditional customary practices of land inheritance of our community in line with Muslim and Christian community. Women should be given land inheritance rights not as a

charity but as a right to equal share of a father's property. In this way, we can establish gender justice within our community.

According to the Muslim Family Laws in Bangladesh, the women get one-eighth share if there is child and one-fourth if there be no child from the estate of her husband [6]. Among the Hindus in Bangladesh, a large number of women are also excluded from inheritance rights [10]. The customary practices of inheritance rights of the researched two indigenous people in Bangladesh are also governed by Hindu laws. As a result, the inheritance right of indigenous women is unequal and discriminatory. Apart from patrilineal indigenous communities, among the matrilineal Garos another indigenous group of the greater Mymensingh district of Bangladesh, property and descent go to mothers to daughters. The customary practices of Garos indicate that no man could inherit property under any circumstances [11]. The inheritance processes differ community to community, but to some extent, the right to inheritance is elusive to define women's equal power-relationship in the society.

However, this research has been conducted in a small place with a small proportion of indigenous population and it cannot be generally conceptualize women's rights to land. This research does not refer or indicate the holistic picture of the two indigenous communities rather than a starting point of questioning traditional practices of inheritance rights that has deprived women from inheriting land and properties over centuries. It requires detailed study in the future for re-structuring traditional practices and customs that may enable women's rights to lands amongst the two indigenous communities of Dinajpur district in Bangladesh.

VI. DISCRIMINATION AGAINST INDIGENOUS WOMEN IN BANGLADESH

This research has also found out that indigenous women are discriminated in attaining inheritance rights and they are also excluded from participation in the traditional social structures in the society. Very often they are victims of violence. The incidence of violence and discrimination against indigenous women is significantly high due to their marginalization, social exclusion and lack of recognition in the society. The indigenous women face 'double discrimination' [12] by their Bengali neighbors and by the male members of their own communities. Women from these two communities do not inherit land rights only exception in the families who do not have sons. Apart from being excluded from traditional community administrative structures and deprived from hereditary rights, the indigenous women face serious 'gender violence' [6] including verbal and physical violence that stigmatize the indigenous women in Bangladesh because of their 'gender identity' [14]. The patrilineal society imposes women's restriction on mobility, limited access to economic resources and they have little participation in the decision-making process within a household. Along with family, the critical role of community, market and state are also contributing factors for women's subordinate position and structural inequalities.

At the community level, in terms of participation and representation in the local government power structures, they also experience similar discrimination, alienation and powerlessness. Due to their indigenous and racial identity, their applications and opinions are largely ignored in terms of accessing social safety nets such as old aged schemes, widowed allowance and other provision of basic social services at the local government level. The indigenous women have weak voice and limited stake in the local government authorities. Most of the women interviewed claimed that their concern is ignored and hardly valued due to their ethnic identity.

In terms of wages in agricultural sector, the indigenous people especially women are discriminated against. The poor landless households have limited options but to sell their physical labor in the market for subsistence living. The discrimination of wages is informally institutionalized in the rural setting even though men and women performed same type of work. A large proportion of women respondents have reported that on average men earn *two hundred fifty taka (BDT)* per day while women get paid *two hundred taka (BDT)* only which is equivalent to 2.80 Australian dollars per day. Besides, the indigenous women are 'stigmatized and verbally and physically abused' [15] in the work place in the farm by the dominant Bengali population. More often, their payments are delayed up to one week. Sometimes, their payments are denied 'completely or partially' [16]. Vinding and Kampbel [15] have identified that indigenous women are engaged in 'low-wage jobs, are often underpaid compared to the wages of indigenous men and non-indigenous women, and have little employment security'.

The patrilineal social structure deprives women from inheriting property, land and other resources due to absence of 'structured and organized legal codes' [18] even though the national constitution guarantees equality and equal protection for all citizens. The constitutional rhetoric of gender justice, equity and equality, inclusion and participation seemed to be well documented but in practice those pillars of foundations are in dismal situations. As a result, the discriminatory inheritance laws existing in most of the indigenous communities further 'hinder women's overall emancipation' [19] in the society. In fact, equal rights of women in all spheres in Bangladesh is not only a question of women's development, it is a fundamental human right that is yet to be guaranteed by the state.

VII. RATIONALIZATION OF THE CUSTOMARY PRACTICES

This research makes the case that disinheriting women from properties leave women vulnerable regarding their equal rights in private and family life. The study invokes that removal of institutionalized forms of discriminations based on customary laws and legal systems in inheriting land and properties and control over resources should be aligned in light of national constitution, policy and international conventions.

The constitution of Bangladesh is enshrined with equal opportunity for men and women. The National Women Development Policy 2011 stresses women's full access to or control over earned income, inheritance, credit, land and

market to leveling existing inequalities and promoting equal rights between men and women in the society. Besides, Bangladesh government has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to eliminate discrimination and inequality against women.

This study indicates that re-forming and re-structuring customary practices of the two indigenous communities is significantly important to enhance women's participation in the traditional social structures and decision making process both at family and community level. Thus, the society will recognize and value women's contribution, voice and position in the society for women's empowerment, equality and better quality of life chances.

VIII. CONCLUSION

The 59 indigenous women in the researched locations perceive that without having land inheritance rights, they feel deprived and they are marginalized in the community. In typical rural areas in Bangladesh, ownership to land and properties constitute power and status in the society. Without having lands indicates lower social status and vulnerable position in the society. As a result, indigenous women have less voice, power and they have limited life chances because of their limited access to health care services due to their poverty, educational disadvantage and limited understanding of root causes of health and well-being issues. Indigenous women's unequal power relationship in the society urges to address 'Strategic Gender Needs' [16] to challenge women's subordinate and different positions in the society and stress for women's equality, equity and empowerment.

This study suggest that there is a common need to reform and re-structure traditional customary practices of inheritance rights in line with national constitution, policy and international conventions amongst the two indigenous communities which deprive indigenous women from land rights.

Finally, the vulnerable position of indigenous women in the society urges to address the influencing factors of women empowerment which may lead to improve women's self-determination, access to socio-economic resources, freedom of choices and participation in decision-making process in the contemporary society of Bangladesh.

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