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Women's Inheritance Rights to Land and Property in South Asia - A Comparative analysis of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka

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ABSTRACT

The rights and remedies available to women all over the world and in all spheres of life have always been unequal and deprived them of their basic needs and wants – since hundreds of years. One such sphere is inheritance of property for women as compared to their male counterparts as these finances play a major role in shaping the lives of the receiver of inherited property. For the purpose of such evaluation – this paper focuses on emphasis on women inheritance rights in South Asia. A comparative analysis is conducted for six South Asian countries, namely, Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka. Taking into account the social, political and economic standing of these nations and statutory as well as customary provisions that governs the matters of inheritance in these countries, this paper critically evaluates the status of women and the rights and remedies available to them. It claims that even where certain rights are bestowed upon women, the implementation still continues to be a major task. This paper gauges the degree of social and legal barriers women will have to overcome in order to claim equal shares in matters of land and property.

I. INTRODUCTION

Discourse on gender equality and rights of women has gained currency in the recent decades owing to advancements and rapid economic progression in developing countries across the globe, including those in South Asia. While the six countries involved in this study, have different cultures, histories and terrains, however, in each of these nations, land is considered to be a valuable asset.

Inheritance

The concept of inheritance of an individual's property has existed since centuries and still continues to be the guiding concept in devolution of property in the most advanced and modern

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societies of the world.

In South Asia, women acquire land through inheritance, if they do so at all.

Land in South Asia

In South Asia, land is considered to be the most important asset and form of property, which confers to the owner not only economic but also social and political values.

All most all these countries involved in this research suffer from income disparity and over population.

Land is very often the medium which can grant women, economic, social and political freedom.

Apart from the legal and statutory laws which governs inheritance, customary rules and practices play a major role in determining the devolution of property, especially when it comes to land rights of women.

II. WOMEN AND INHERITANCE LAWS IN SOUTH ASIA – CASE STUDIES

(A) Afghanistan

The Islamic republic of Afghanistan has suffered from years of political and social unrest, has a failed economic set up and continues to be a victim of terrorism, corruption and extreme poverty.

Women In Afghanistan

Most women do not work and are dependent on their male relatives for every basic thing. Marriage is seen as an escape and the only way to have at least some kind of financial security. They are entitled for dower or mehr as enshrined in the Afghan Civil Code, but are hardly aware about the importance of this right because of its association with divorce, which is an unacceptable practice in Afghanistan.

Walwar , although illegal, is a common practice in Afghanistan and refers to a compensation sum being offered to the bride's family for raising the girl. If the bride's family is exceptionally well off, they might not ask for it but in families belonging to lower economic group, this is very prevalent and is seen as an important source of income for bride's family who nursed the girl.

It is common for women being denied their basic rights like education or even their Islamic marital rights. Child marriages and forced marriages which is in contradiction to the Islamic law, are also quite prevalent. women are denied even the most basic liberties and are constantly subjected to restrictions and abuse.

Legal Overview

Afghanistan has a pluralistic legal system. The Afghan civil code which derives its legality from the Hanafi Islamic laws, acts as the formal guiding source in matters of Inheritance. However, customary rules and practices play a major role in guiding legal matters like that of inheritance.

Women Inheritance

While the Civil law enables women to inherit land and the sharia has provisions for women inheritance of land, very few women actually inherit in practice² and are denied their legal rights to inheritance and ownership.

Under the applicable shariah law,

Women inherit as- daughters and widows

However divorced women- have no rights to husband's property.

Provision For Widows

- Normally, receive 1/8th of the property.
- In case of no children – 1/4th of the property
- Polygamous marriages – all the wives are entitled to equal shares
- Widows in separate households – are more readily to receive a share (which they often transfer to their sons)
- Widows in joint households – mostly do not receive their share as there is no division and all land is family land.

Daughters

- Are legally entitled to receive half their brother's share, however this is nowhere to be found in practice.

The cultural and social norms have made it almost impossible for women to own land in Afghanistan even though the Sharia has provisions for the same, and they are expected to be looked after by their husbands.

Further, women themselves refuse or give up their shares for their brothers owing to their social conditioning and as a means to maintain peaceful relations with their brothers who they can depend on for social protection in cases of divorce or widowhood.

² Jo Grace, "Who Owns the Farm? Rural Women's Access to Land and Livestock", Afghanistan Research and Evaluation Unit, 17 (2005).

(B) Bangladesh

Once a part of the British India, the state of east Bengal emerged to be part of newly found Pakistan in 1947 and became east Pakistan in 1955. In 1971, east Pakistan seceded from the west Pakistan union and became the independent nation that it is today and was named as Bangladesh³.

Women In Bangladesh

Women are mostly involved in the informal sector and those who are employed, earn a significantly less percentage than their male counterparts.

Marriage at an early age is prevalent and the average age for marriage turns out to be 16. Women getting divorced or abandoned by their husbands is also common which further leads to a life of hardships⁴.

The legal process for contracting polygamous marriage, which basically consists of listing out justifiable reasons for wanting a polygamous marriage coupled with the existing wife's consent in the form of certified attestation, is governed by The Bangladeshi Muslim Family Laws Ordinance.

Now even though this ordinance specifies punishments for contracting such polygamous marriages against the prescribed rules, however such marriages still continue to stand valid. Moreover, there is no penalty if one fails to obtain the consent of the first wife, a significant requirement under traditional Islamic law.

Legal Overview

The legal system of Bangladesh has its roots in Moghul, British and indigenous practices of law.

There are no uniform civil laws and family matters including those of inheritance are governed by personal laws of each community.

Over 90% of the people are Muslims and follow Islam and are governed by Muslim personal laws, while Hindu, Christians, Buddhists and tribal communities too have their own set of personal laws⁵.

³ Hugh Russel Tinker and Syed Sajjan Hussain, "Bangladesh" (Encyclopaedia Britannica, April 13,2020) <<https://www.britannica.com/place/Bangladesh>> accessed 6th November, 2021.

⁴ Elisa Scalise, "women's inheritance to land and property" (landesa , December 2009) < <https://landportal.org/library/resources/women%E2%80%99s-inheritance-rights-land-and-property-south-asia> > accessed 6th November, 2021.

⁵ world bank, "Whispers to Voices" Women in Development and Gender Study, (2008)

Inheritance For Women

The Muslim personal law is mainly unlegislated and is based on classical *Hanafi fiqh*. Under the Shariah women are eligible to inherit only half of what a male counterpart obtains⁶. The quranic law prescribes specific shares of property the nearest members of a deceased are entitled to receive, including women.

However in real grounds even though women possess the right to own inherit property, many happily let go of this right in exchange for ‘nair’ which is a right to visit her parents- once or twice every year⁷.

The Dayabhaga school of law is the governing authority for inheritance amongst Bangladeshi Hindus. A Hindu women’s right to property is on the face of it- nonexistent. The dayabhaga system of Hindu law operates on the heir's capability to offer salvation to the deceased and only a son is deemed fit for the same. Thus, a woman receives no share if she gives birth to a daughter or is childless after marriage.

The Christians are governed by the Succession act, and the provisions for women inheritance in these communities have been explained in the following table:

Inheritance Laws	Community	Rights of women on intestate succession
Muslim personal law (Shariat)	Muslims	Women do have a share in property but not equal to their male relatives. Many forego their inheritance rights in exchange for their right to visit their parents once/twice a year.
		Widows are eligible for life estate;

⁶ Chowdhury Dilruba Shoma, “Inheritance rights of women and Shariah law: the case of Bangladesh” (devpolicy blog November 4 2009) < <https://devpolicy.org/inheritance-rights-of-women-20191104/>> accessed 7th November, 2021.

⁷ Kamrul Hossain, “In Search of Equality: Marriage Related Laws for Muslim Women” (Nov 2003) 96, Vol. 5-1

Hindu law of inheritance derived from dayabhaga system	Hindus	daughters can inherit only if they are unmarried or have sons. In case of married daughters with daughters or childless- they do not inherit.
Succession Act,1925	Christians	Widows receive 1/3 rd of property while 2/3 rd is divided amongst lineal descendants.

On an overall level, the society here is inclined towards sons and property is mostly inherited amongst the male line. Even though the law has certain provisions safeguarding women's rights, the same is not visible or applicable in reality.

(C) India

The Indian subcontinent hosts approximately 1/6th of the world population and is the most populous democracy in the world. Since it gained independence in 1947, the country has come a long way on economic and social fronts. However, the citizens continue to fight a battle against communal disharmony and rigid discriminatory practices arising out of years and years of oppressive caste system and male dominance

Legal Overview

The Constitution of India ensures equal treatment of all its citizens and expressly permits the government to make special provisions for women and children.

In India, state law mainly controls matters involving land, and each state has its own land legislation.

People belonging to different religions are ruled by different set of laws. Personal religious laws apply and exist on a national to regional level, however the regional laws are rarely implemented.

Women Inheritance

Inheritance Laws	Source	Jurisdiction	Provisions for women

Hindu Succession Act of 1956	Hindu religion	All Hindus (unless choose to exclude)	Estate divided into shares: widows receive one share, sons, daughters and mother of deceased receive one share each, heir of predeceased sons and daughters receive one share between them.
Muslim personal law	Islamic Shariat law	Muslim community	Women inherit half the share of their male counterpart
Indian Succession Act of 1925	English common law	Christian community	Widow receives one third; lineal descendants (sons and daughters) receive two thirds divided among them.
Indian Succession Act of 1925 (relevant portions)	Parsi custom	Parsi community	Widows and children (sons and daughters) inherit equally.

- While the laws expressly and mostly provide for equal inheritance between sons and daughters- the reality is far from this. The system of dowry is still widely present and deeply penetrated. Despite laws aiding women inheritance, not only they don't receive it but also women never ask for their share of property as the same is stigmatized. Even though things are changing for the better and the nation has witnessed a considerable positive change in terms of women inheritance – there's still a long way to go.

(D) Nepal

Wedge between the giants India and China, the South Asian country of Nepal was an isolated society until the mid of the 20th century. Though one of the least developed countries in the world, the nation has made progress towards its goal of economic liberalization.

Agriculture is the main source of income in Nepal and contributes for more than half of the country's export earnings⁸. That being said, only 16-20% of Nepal's land is cultivable.

Although the country Code of Nepal prohibits and penalizes discrimination of any kind, it's still very much prevalent across the nation, specially in orthodox societies. The Nepalese society has deep rooted caste, ethnic, religious and gender hierarchy and discriminatory practices. Social inequality is prevalent in all spheres of life ranging from job and economic opportunities to access of basic resources.

Women, Madhesi's and Janajatis are the most discriminated groups⁹.

Women In Nepal

Women constitute 51% of the Nepali population and represent 66% of the agricultural labor, yet only own an estimated 8% of the land¹⁰.

The Nepalese society gives great importance to association with family and kin group. work and individual profession is gendered and women end up doing chores for the extended family apart from her domestic chores.

Legal Overview

⁸ Richard Riseley Proud, Leo E. Rose , “ Nepal” (Encyclopedia Britannica, May 15 2020) < <https://www.britannica.com/place/Nepal>> accessed 6th November, 2021.

⁹ World Bank, “Nepal: Women Gain a Voice and Greater Access to Resources through the Hills Leasehold Project, in Gender in Agriculture Sourcebook”, Innovative Activity Profile I, (2009 World Bank, Washington D.C.) <<http://siteresources.worldbank.org/INTGENAGRLIVSOUBOOK/Resources/completebook.pdf>> accessed 6th November, 2021.

¹⁰ Associates in Rural Development, “Conflict Over Natural Resources at the Community Level in Nepal”, at v. (2006), submitted to USAID, < http://pdf.usaid.gov/pdf_docs/PNADF990.pdf> accessed 6th November, 2021.

The Muluki Ain, or the legal code, introduced in 1854 and revised in 1963, ruled the country for years and served as a general civil and criminal code that was applicable to all Nepalese regardless of religion, caste or ethnicity.

The Constitution of Nepal came into effect on September 20,2015.

Women Inheritance

Before the 11th amendment to the Muluki Ain, widows barely had any rights to property. After a series of legislative changes the inheritance rights of widows started being addressed to a limited extend.

However, the 2015 constitution and country code, both established widows rights to property and set penalties for any failure in transferring the property to women¹¹.

Even though now women possess rights over ancestral property, however in practice, these rights cannot be exercised if their parents or husbands refuse for the same. A women can get her share only after the husband's or the parent's consent.

Traditional patriarchal practice in Nepalese society has further been incorporated within the legal framework. For example, a man can exercise his rights over half of the immovable property or all of the movable property at his own discretion even without the consent of his wife, son, unmarried daughters and widowed daughter-in-law.

Despite the presence of these legal provisions, the implementation is not a real thing. Inheritance of property still continues to be affected by the the societal customary practices which are patriarchal in nature.

(D) Pakistan

Islam-i Jamhuriya-e Pakistan, also known as the Islamic Republic of Pakistan, is the world's 5th most populous country that came into existence in August of 1947 before which it formed a part of the British Indian territory.

Muslims are in an overwhelming majority of more than 97% of the population and a large share of the country's population reside in rural areas. Land is a very important source of income and an indicator of economic superiority.

Women In Pakistan

The rights and status of women in Pakistan is not uniform and varies across regions, ethnicity

¹¹ Elisha Shrestha, "widows in nepal still need to fight for their property rights", The Kathmandu Post, (Lalitpur, January 15 2020)

and class. However, the position of women vis-à-vis men is one of subordination and inequality based in patriarchal norms of the society¹².

Pakistani women are seen as the family's 'izzat' or pride, and face restrictions in mobility, education, dressing and association. Women have a secondary status in Pakistan with women's labour force participation being as low as below 16%.

The society operates on gendered division of labor and women are expected to cook and care for the family while men are expected to cater to the financial needs of the family¹³. However with time, there are advancements and changes in the society and in the arena of women's rights and equality.

Legal Overview

The availability of statutory law in matters of inheritance and property rights, is fragmented with more than a dozen laws governing various land issues at national and provincial levels.

Article 23 of the Constitution of Pakistan ensures equal rights to all its citizens in holding and disposing property.

Islamic shariah as codified in the Family Laws Ordinance 1961, and the West Pakistan Muslim Personal Law (Shariat) Application Act (V of 1962) is the governing authority for matters of inheritance in Pakistan. The courts of ruled that every Muslim is presumed to be a Hanafi, unless the contrary is proved.

Inheritance Law	Jurisdiction	Provisions for women
Muslim Personal Law (Shariat) Application Act of 1962	Muslims (presumed to be Hanafi, unless proved otherwise)	Women inherit half as much as their male counterparts. The proportion of share varies according to- 1. the relationship with

¹² Asian Development Bank, "Country Briefing Papers: Women in Pakistan", at 1 (2002), <http://www.adb.org/Documents/Books/Country_Briefing_Papers/Women_in_Pakistan/women_pakistan.pdf> 5th November, 2021.

¹³ Convention on the Elimination of all Forms of Discrimination Against Women, Pakistan, <<http://daccessdds.un.org/doc/UNDOC/GEN/N05/454/37/PDF/N0545437.pdf?OpenElement>> 5th November, 2021.

		deceased and 2. by sect. i.e Shia or Sunni
Customary law (via the MPLA)	For inheritance of agricultural land	Inheritance is determined by the personal laws of citizens.

Women Inheritance

Even though there is presence of right to inherit under the shari'a , not many women inherit in practice. Widows, normally loose their right to inherit property if she remarries outside the family of her deceased husband. This is in contradiction to the Islamic principles enshrined in the shari'a but is prevalent.

This phenomenon can be traced to land being considered as a symbol of economic and social superiority and the desire to keep the land 'within' the family and a women is no longer considered to be a part of the family after she remarries.

Dowry is considered as compensation for women's inheritance in most of Pakistan.

Further, a women may be granted inheritance in Pakistan but this would come at a cost of broken relationships with family and brothers, and also social ostracization in some cases.

(E) Sri Lanka

Formerly known as Ceylon, Sri Lanka is an ethnically, linguistically and religiously diverse nation. It's an island country located in the Indian Ocean and geographically separated from the Indian subcontinent by the Gulf of Mannar and the Palk Strait.

Women In Sri Lanka

Sri Lanka was the first country in the world to elect a female head, Sirimavo Bandaranaike.

Women can not be taken to be a homogenous group and their access to resources, rights and abilities differ based on various factors like class, ethnicity and geographical location.

While Sri Lanka has fared well in arenas of gender equality compared to the other South Asian countries in this research, however, there still remains many underlying issues of gender inequality.

Since the 1940s the Sri Lankan government has invested in basic health and education; thus, indicators of Sri Lankan women's life expectancy, literacy, and maternal mortality have been

impressive at a national level¹⁴.

Region, ethnic group, and religion can play a part in what whether a women inherits family land in practice. For instance, in both Tamil and Muslim communities of the North East Province, inheritance follows the matrilineal line.

Legal Overview And Women Inheritance Laws

Sri Lanka has a highly complex legal system that has elements of English common law, Roman-Dutch civil code, two codified customary laws, and codified Shari'a law, governed by a constitution. Under Sri Lanka's constitution, land issues are matters for shared legislation and control by the central government and provincial councils¹⁵

Inheritance Laws	Source of Law	Jurisdiction	Provisions for women
Muslim Intestate Succession Ordinance	Islamic law	Applies to all Muslims in Sri Lanka. No opt out option.	Women inherit half as much as their male counterparts.
Matrimonial rights and inheritance (Jaffna), aka Thesawalama	Tamil custom from the Jaffna region	Tamil inhabitants of Jaffna peninsula (even if they reside elsewhere) and their property, no matter where its located. No option to opt out.	Widow entitled to separate property, widow has no right to ancestral property and children (sons and daughters) inherit equally.

¹⁴ Nelathi De Soysa, "The Truth Behind Sri Lanka's Development Statistics", (2000) <<http://www.twinside.org.sg/title/2093.htm>> 7th November, 2021.

¹⁵ Constitution of Sri Lanka, (2000) article 143; Indo-Sri Lankan Accord of July 1987

Kandyan Law (1939)	Law and custom of Kandyan monarchy (ended in 1815)	All Sinhalese who can trace back their lineage to province of Kanady during kandyan monarchy.	<p>Widows- life estate of non-ancestral property.</p> <p>For descendents - inheritance of ancestral land depends the type of marriage contracted (binna or dinna) and origin of ancestral land.</p> <p>If binna (groom moves to brides home)- daughter inherits equally with brothers and unmarried sisters.</p> <p>If diga(bride moves to grooms home)- daughter does not inherit.</p> <p>All children inherit maternal ancestral land equally provided that mother had not married in binna on her fathers property.</p>
Matrimonial Rights and Inheritance	Roman and Dutch law	Sinhalese who are not Kandyan or who opt out of the Kandyan Act,	Widow inherits one half share; one half shared among

Ordinance		Non Muslims who are not governed by above laws	descendants (sons and daughters)
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III. WHY DOES THIS INEQUALITY IN RIGHT TO INHERIT, CONTINUES TO EXIST?

There are several factors that contributes to this disparity in matters of land rights in these south Asian countries. Overall, these contributing factors are rooted in years of patriarchal practices and rigid social and customary laws, and can be summarized in the following points:

- Lack of awareness amongst women
- Absence of proper legal documentation
- Social conditioning
- Emotional attachment with brothers and vulnerability in cases of divorce or widowhood- where brothers act as social protection
- Fear of social ostracization
- Dowry being seen as an alternative to Inheritance
- Stringent legal procedures
- Dominance of rigid customary practices
- Religion being misinterpreted to suit ideas of male dominance

IV. CONCLUSION

Women all over the world have been victims of the patriarchal leanings of the society, and South Asia is no different. In matters of land rights, women clearly do not inherit equally to their male counterparts, or don't inherit at all.

Formal laws are many a times seen to be *prima facie* discriminatory. Or it may codify the customary practices that are overtly discriminatory in nature. (as observed in almost all the countries studied)

Even though there have been advancements from a legal perspective, however enforcement of these laws still continues to be a challenge and more of a farfetched dream.

Women are faced with inequality in almost all walks of life and the rigid customary practices form a critical barrier in their access to land rights.

Matters of land ownership and possession fall under the civil wing of law, and unlike criminal laws, it entirely depends on women recognizing, standing up and fighting for their rights -

something which is very unlikely to happen in societies where women are oppressed from the womb to the tomb.

“We need to reshape our own perception of how we view ourselves. We have to step up as women and take the lead.”

- Beyonce

Equal inheritance of land and property is crucial in ensuring we create a society where all genders are set on equal footing and receive equal access to resources and opportunities.

Unless women acquire equal footing in matters of land rights, their communities continue to stand on fragile grounds.
