

'Prevalence of personal laws creates the most serious gender gap'

In conversation with Sultana Kamal



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The Daily Star (TDS): Where do you see the most significant gender gaps within Bangladesh's current human rights and legal framework, particularly in relation to enforcement and implementation?
Sultana Kamal (SK): To talk about the human rights and legal frameworks of Bangladesh, one must note that lives of citizens of the country are governed by constitutional laws as well as a set of personal laws. These laws respectively govern a citizen's public and private life. The Constitution of Bangladesh guarantees equal legal status to all citizens irrespective of class, creed, place of birth, gender, religion or ethnicity in public life. This means that in public life, like all other citizens, women too are entitled to and have access to the same rights and opportunities as men. Moreover, our Constitution clearly states that all citizens will be equal before the law. However, in contravention to that directive of the Constitution, some vital aspects in the private sphere of the citizens' lives like marriage, dissolution of

marriage, custody and guardianship of children, dower and inheritance are governed by personal laws based on religions. These laws inherently deny equal rights of women. They are discriminatory not only between women and men of the same religion, but also between women and women of various religions.

In one word, prevalence of personal laws in itself creates the most serious gender gap within the legal framework of Bangladesh. There is no separate human rights law as such built within the legal framework of the country. Some of the clauses of the International Covenant on Civil and Political Rights are enshrined in the chapter three of the Constitution. The five most essential rights e.g., food, clothing, shelter, education and health are considered basic rights, not part of human rights and hence not justiciable in court. In a stratified society like ours, this creates situations of blatant discrimination against women. Moreover, the prevailing culture that views women as naturally subordinate to men normalises violence against them. This often prevents women from claiming or accessing the legal rights and remedies to which they are entitled.

TDS: In practice, what legal and procedural barriers most often prevent women from accessing justice after experiencing human rights violations?

SK: After experiencing human rights violation, a woman must bear the full responsibility for accessing justice. From the onus of reporting the violence to law enforcement agencies to producing evidence in court, the

burden falls entirely on the woman who has experienced the violence. The introduction of Special Tribunals has, to a considerable extent, made it easier for women to seek justice. However, the pervasive anti-woman attitudes that women encounter at every stage of the legal process, including when seeking medical assistance, practically discourage and hinder them from pursuing justice. A woman's financial capacity also plays a significant role in her ability to pursue legal remedies.

TDS: How do social norms, stigma, and power dynamics within families and communities discourage women from pursuing legal remedies?

SK: In a society like ours, which is shaped by patriarchal norms, violence against women is often considered normal or even necessary in order to control women. In occurrences of violence against women, it is not the perpetrator but the woman herself who is most often held responsible. To serve its own interests, patriarchy creates many divisions in society. One of these is the division between 'good' and 'bad' women. Unfortunately, for centuries, once a woman experiences violence, the first point of discussion will be whether the woman in question was a 'good' or a 'bad' woman. The general assumption will be that she must have crossed the line to invite violence against her. Questions relating to her 'chastity' and respectability will dominate the discussions. The media's role is often more sensational than sensitive. As I mentioned earlier, in a class divided society shaped by many factors such as money, political power, social status, cultural norms, and fear of

stigma, all these elements play a critical role in deciding whether the woman will seek and obtain justice or not.

TDS: Which types of human rights violations against women are most prevalent yet most difficult to seek justice for, and why?

SK: Research findings indicate that

takes a great deal of courage and moral support to seek justice against domestic violence. That is not to say it is easy to seek justice for gross violence such as rape, murder, or sexual harassment outside the family. Examples are not rare where money, social status, political power, and other factors determine the course of

mindset of most officials entrusted with the responsibility of delivering justice, from the lowest to the highest levels. A cultural change throughout the entire justice system is needed to ensure justice for women. Another very important issue is the prevalence of family or personal laws, which, as I mentioned earlier, structurally violate and deny human rights to women. Since 1972, women's movements in Bangladesh have demanded the introduction of a Uniform Family Code to eliminate discrimination against women in the private sphere. Another crucial policy initiative needed is the full implementation of CEDAW without any reservation.

TDS: Do you have any additional observations or recommendations regarding women's human rights and their access to justice in Bangladesh?

SK: Bangladesh has progressed to a great extent in the field of women's empowerment, but it has fallen short in ensuring equal human rights and dignity for women. Our educational systems, patriarchal cultural discourses and practices, the dominance of anti-women attitudes, and socio-political influences—more often than not supported and patronised by vested interest groups, particularly power-seeking political groups—are some of the factors hindering women from enjoying their rights and status as respectable, equal citizens of the country. Pro-people democratic forces and progressive citizen groups must pay greater attention to working towards creating social conditions conducive to the realisation and enjoyment of human rights for all, including women.

The interview has been taken by Miftahul Jannat.



ILLUSTRATION: ANWAR SOHEL

more than fifty per cent of women experience violence of one kind or another within the family sphere at the hands of family members. We may recall that until 2010, physical, mental, or sexual violence against women within the family was not even considered a crime. There was no law to prevent or deter domestic violence until then. Many women, even today, do not know that violence within the family is not permitted and that complaints can be lodged in a court of law. Additionally, because of cultural inhibitions, family indoctrination, and dogmatic religious beliefs, it

justice in such cases as well.

TDS: What changes—legal, institutional, or policy-level—are urgently needed to ensure women's equal access to justice in Bangladesh?

SK: As far as public rights are concerned, women are entitled to equal protection under the law. Over the past decades, many other specific laws have been enacted to prevent and deter violence against women. It is not so much the absence of legal provisions that is failing to reduce or control violence against women. The problem essentially lies with the

Land, lineage, and the fight for Indigenous women's rights



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substantially smaller than that granted to their brothers or children. The absence or inequality of inheritance rights has far-reaching consequences for indigenous women — depriving them of attaining financial autonomy, diminishing their agency in decision-making, fostering their dependence on, or in extreme cases their subjugation to, male relatives, and ultimately reinforcing the very patriarchal systems that sustain their marginalisation.

While the substance of inheritance laws is inherently discriminatory towards women, the way traditional courts and the communities concerned interpret and enforce them

and competence of the village elders and/or traditional leaders presiding over traditional courts. The situation is further compounded by the fact that the composition of the traditional leadership is exclusively male; hence the interpretation of customary law is inherently shaped by, and reflective of, their privileged patriarchal worldview. In an effort to redress the issue, after years of awareness raising campaigns on gender equality, efforts to build women's leadership capacity, and collective consensus-building among communities, indigenous peoples were able to initiate and sustain a reform that sought to reshape the traditional

women's rights activists. Proponents of women's rights have pointed out that, unlike personal laws that are rooted in divine commandments and hence cannot be changed, customary laws remain fluid, adaptable and, essentially, reformable. Laws emerge from prevailing social practices and evolve organically as those practices shift over time — unless such change is deliberately arrested.

Resistance to such reform stems from several quarters, most notably the imperative to preserve custom and the rejection of externally imposed ideas. Nevertheless, gender-discriminatory customs are capable of

albeit not on equal terms with men. This reform stands as a precedent that other indigenous communities can draw from and replicate in their own contexts. Beyond the reforms themselves, these cases also demonstrate indigenous peoples' right to self-determination in action — exercising autonomy over internal affairs and decisions on matters affecting them.

The concern most widely shared among indigenous populations in opposing women's inheritance of land centres on the increasing instances of exogamous marriages in the CHT — particularly cases of indigenous women entering into unions with non-indigenous men from different religious backgrounds. Like the majority Bengali community, indigenous communities are organised around patrilineal descent, in which a woman, upon marriage, is expected to shed her pre-marital ethnic and religious identity and assume those of her husband, with their children continuing his family's lineage. Consequently, within this patrilineal structure, granting indigenous women inheritance rights is seen as a threat to the continuity of intact landholdings within families, clans, and ethnic communities — and by extension, as eroding cohesion and the very fabric of indigenous society. Considering the long history of land disputes between indigenous peoples and non-indigenous encroachers, the concern that indigenous women will be deliberately sought out for marriage as a means of gaining access to indigenous land cannot be readily discounted. Regardless of how contentious this viewpoint may be, this concern held by the vast majority of indigenous populations must be brought to the forefront and subjected to thorough deliberation — for without addressing it directly, any reform aimed at securing land inheritance rights for indigenous women is unlikely to take hold. The key challenge lies in arriving at a resolution that simultaneously upholds women's equal rights while preserving and safeguarding the identity and integrity of indigenous peoples and their societies.

Looking beyond one's own community for answers can be a valuable approach — particularly by studying the practices and/or

reform initiatives of indigenous communities elsewhere that operate under similar jurisdictional conditions and grapple with similar challenges. The inheritance law of the plainland indigenous Rakhine people, for instance, can be considered the most gender-neutral law among all the indigenous communities in Bangladesh. While men and women are equally entitled to inheritance of parental property, the share each receives may differ based on their contribution to the family rather than their gender, reflecting a principle of non-discrimination on the basis of gender and of equitable rather than strictly equal rights. All children and the surviving spouse are entitled to inherit from a deceased person's estate, irrespective of their gender. However, the inheritance right is revoked for a child who has failed to fulfil his or her duties toward their parents during their lifetime in the manner expected of a responsible child. Within the Rakhine community, a child who enters into an exogamous marriage, particularly with a non-Indigenous person from a different religious background, is regarded as having acted in defiance of familial and communal expectations, effectively rendering him or her disobedient, and thereby disentitled the child from land inheritance.

There are other examples from around the world that merit careful observation as well. However, communities should exercise caution before replicating practices or reform initiatives from other indigenous communities, and should extensively examine the unique historical, socio-cultural, economic, and political contexts that have shaped and sustained those practices within those societies.

What remains clear is that sustained awareness-raising efforts on the equal rights of women are essential to cultivating the broad-based consensus necessary for securing indigenous women's land inheritance rights. Although the process is inherently lengthy, it is precisely this deliberateness that will lend the resulting reforms their legitimacy and sustainability.



FILE PHOTO: ANVIL CHAKMA

Among Indigenous communities, women generally cannot inherit their father's immovable property if brothers are present, nor do they have rights to their husbands' property.

further amplifies these inequalities. It needs to be noted that, unlike in the plains where the manner of civil litigation is regulated by the Code of Civil Procedure 1908 and the Family Court Ordinance 1985, these have no application in the CHT due to its specialised administrative regulations. Instead, personal law matters are tried by the chiefs of Mouzas and Circles. Given that these laws are regulated by unwritten customs, their application is subject to both certainty and confusion or discrepancy, depending on the knowledge, understanding of the laws,

leadership system by introducing the appointment of Indigenous women to positions of traditional leadership. Twelve years on, much remains to be done. Yet meaningful improvements, in the form of comparatively less gender discriminatory verdicts in family dispute cases, have already become evident.

With regard to the content of the inheritance laws, the call to secure inheritance rights for Indigenous women in the CHT has steadily gained ground in recent years, thanks to the continued efforts of indigenous

being reformed entirely from within, without external interference: first by securing community consensus, then through precedent-setting rulings of traditional courts. The outlawing of the long-standing custom of polygyny within the Chakma community is a testament to this.

On reforming inheritance law, the Bawm Indigenous community offers a compelling example, having collectively reformed inheritance laws that once denied women property rights, and by doing so secured Bawm women's right to inheritance,

The personal laws, including those on inheritance, that govern the lives of Indigenous peoples are rooted in custom. In contrast to the personal laws applicable to other citizens in the plains, the customary laws of the indigenous peoples of the Chittagong Hill Tracts are based on membership in one of the eleven distinct indigenous communities, rather than on their religious affiliations. The common thread between the two is their shared denial of equal rights to women.

Though there is no uniform customary law governing all indigenous communities across the region, the laws on inheritance follow a general principle while varying significantly between different ethnic communities and even among clans within the same community. Regarding the right to inherit land, the prevailing trend is that women cannot inherit their father's immovable property if brothers are present, nor do they have rights to their husbands' property. In some communities, if there are no sons, daughters inherit property equally, while in others, paternal uncles inherit. Additionally, customs differ concerning pre-marital property owned and post-marital property acquired by the mother, with some communities allowing equal inheritance for both sons and daughters, while in others, daughters are the sole heirs. Only two clans, each from two ethnic communities, maintain a strict practice of allowing women to inherit paternal and spousal property — and even then, the share allocated to women remains