

State's Obligation to Gender Equality: The case of women's right to ancestral property in Bangladesh

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Abstract: *The extent and depth of States' obligations concerning women's equal property (ancestral) rights are the cornerstone of this article. Analysing the two most important treaties, i.e. the International Convention of Economic, Social and Cultural Rights (ICESCR), and the International Convention on The Elimination of All Forms of Discrimination against Women (Women's Convention) to which Bangladesh is a party allows the author to focus on concerns such as non-discrimination and equality with regards to property rights. Subsequently, personal law governing women's inheritance rights in Bangladesh and national legislation will be evaluated to determine if they comply with the state's international human rights obligations. This article also resolves to understand the feasibility of bringing legislative reforms to the personal laws in a way that guarantees women's equal right to inheritance, following the right to property standards incorporated in international human rights treaties, without impairing the core values of the religion and the society.*

1. Introduction

Women's ownership of property enhances their independence, bargaining power, and capability to address vulnerability, making the right to property one of the most important Economic, Social, and Cultural (ESC) rights for women.¹ Gender equality in property rights encompasses women's rights to engage in property utilization and ownership, accompanied by comprehensive legal and societal safeguards.² Women endure multiple forms of discrimination regarding housing, land, and property due to their gender, which is often exacerbated by additional elements like socioeconomic status, age, class, and ethnicity.³

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¹ The Swedish International Development Cooperation Agency, 'Women and land rights' (*The Swedish International Development Cooperation Agency*, 2015) 2 <<https://cdn.sida.se/publications/files/-women-and-land-rights.pdf>> accessed 1 February 2025.

² Carol S Rabenhorst, 'Gender and Property Rights: A Critical Issue in Urban Economic Development' (*International Housing Coalition and Urban Institute*, 2011) 3 <<https://www.urban.org/sites/default/files/publication/27491/412387-Gender-and-Property-Rights.PDF>> accessed 1 February 2025.

³ OHCHR, 'Women and The Right to Adequate Housing' (2012) HR/PUB/11/02 41; Leslie Kurshan, 'Rethinking Property Rights as Human Rights: Acquiring Equal Property Rights for Women Using International Human Rights Treaties' (2000) 8 (2) *The American University Journal of Gender, Social Policy & the Law* 353, 357.

Undoubtedly, a contributing factor to the disproportionate prevalence of women in poverty is the reality that land and other real property typically constitute approximately 75 percent of a nation's total wealth, but women possess an estimated 1-2 percent of all titled land globally.⁴ Human Rights Resolution 2005/25 acknowledged the discriminatory nature of laws, policies, conventions, traditions, and practices that hinder women from owning and inheriting land, property, and housing, eventually excluding them from the development process and contributing to the poverty of women and girls.⁵

Women constitute 50.50% of the total population of Bangladesh as per the 2022 population and housing census.⁶ However, women trail behind men in terms of asset control and ownership; barely 13% of rural women report owning agricultural property independently or collectively.⁷ In Bangladesh, women have little financial decision-making authority and very little access to property rights.⁸ The percentage of female-headed households in Bangladesh was only 15.8 per cent in 2018, according to the World Bank.⁹ Approximately 91.04% of the overall population is Muslim, 7.95% is Hindu, 0.61% is Buddhist, 0.30% is Christian, and 0.12% is from other faiths.¹⁰ While the majority of laws in Bangladesh are secular, religious rules continue to govern personal matters like marriage, guardianship, dissolution of marriage, custody, maintenance, and succession.¹¹ The laws governing inheritance for Muslim women in Bangladesh have their roots in *Shariah* law, where women are typically “entitled to a smaller share” of an inheritance than men who are related to the deceased to the same degree.¹² The Arabic word “*Shariah*” means “path” or “way,” referring to a comprehensive religious and legal guidance system.¹³ *Shariah*’s legal and ethical foundation is

⁴ Rabenhorst (n 2) 4.

⁵ UNCHR Res 2005/25, (2005) UN Doc E/CN.4/RES/2005/25 2.

⁶ Bangladesh Bureau of Statistics, ‘Population and Housing Census’ (*Bangladesh Bureau of Statistics*, 2022) <https://bbs.portal.gov.bd/sites/default/files/files/bbs.portal.gov.bd/page/df95b543_51fe_4478_b6c2_b44593094ee1/2025-07-27-06-57-f0dd02117734c77aa00086d0c9770b0c.pdf> figures 2.5, 9.

⁷ Aphichoke Kotikula and others, *Voices to Choices: International Development in Focus Bangladesh’s Journey in Women’s Economic Empowerment* (World Bank 2019) 63.

⁸ Shah I Mobin Jinnah, *Land and Property Rights of Rural Women in Bangladesh* (CDA Bangladesh 2013).

⁹ World Bank Group, ‘Female-headed households (% of households with a female head, Demographic and Health Surveys’ (*World Bank*, 2024) <<https://data.worldbank.org/indicator/SP.HOU.FEMA.ZS?locations=BD>> accessed 30 October 2024.

¹⁰ Bangladesh Bureau of Statistics (n 6) 16.

¹¹ Humaira Anjum, ‘Inheritance Rights of Women in Bangladesh: A comparative analysis between Muslim and Hindu Personal Laws’ (*London College of Legal Studies South*) <<https://lcls-south.com/inheritance-rights-of-women-in-bangladesh/>> accessed 3 October 2024.

¹² OHCHR (n 3) 65.

¹³ Khaled Al-Farsi, ‘Exploring Sharia Law in Islamic Jurisprudence’ (2022) 2(1) *Social Science Chronicle* 1, 2.

based on the Quran and Hadith.¹⁴ Inheritance matters of the Muslims in Bangladesh are regulated by Shariat as per section 2 of the Muslim Personal Law (Shariat) Application Act 1937.

Women from Hindu and Buddhist communities in Bangladesh face greater hardships than women of other religions.¹⁵ This will not particularly address the rights of Buddhist and Christian women, as the rationale for this decision is that Christian women and men are governed by the Succession Act of 1925.¹⁶ The Buddhists of Bangladesh are subject to the Hindu law because they do not have their own law.¹⁷ A key human rights concern in Bangladesh is the existing inequality in women's property and inheritance rights, which threatens the country's development and women's empowerment.¹⁸

2. International Legal Framework on Women's Right to Property

The equal rights of women's access to land and additional sources of production are firmly grounded in several international human rights instruments, and they cover a wide range of subjects that are connected to women's property rights.¹⁹ United Nations human rights mechanisms particularly treaty monitoring bodies such as the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on Economic, Social, and Cultural Rights (CESCR), charter bodies, and special procedure mandate holders have not only addressed but also developed standards and interpreted women's property rights and inheritance in connection with various rights, including the right to adequate

¹⁴ *ibid.*

¹⁵ Bangladesh Legal Aid and Services Trust, 'Report on legislative initiatives and Reforms in Family Laws' (*Bangladesh Legal Aid and Services Trust*, 2020) 4 <https://www.blast.org.bd/content/publications/Legislative_Initiatives_Family_Law.pdf> accessed 31 October 2024.

¹⁶ *ibid.*

¹⁷ OHCHR, 'Special Procedures Preliminary findings of Country Visit to Bangladesh by Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief' (OHCHR, 09 September 2015) <<https://www.ohchr.org/en/statements-and-speeches/2015/09/preliminary-findings-country-visit-bangladesh-heiner-bielefeldt>> accessed 31 October 2024.

¹⁸ Arafat Hosen Khan, 'Pluralism in Women's Property and Inheritance Rights – Challenges for realizing human rights in Bangladesh and India' (*Centre for Human Rights & Legal Pluralism, McGill University*, 2019) <<https://www.mcgill.ca/humanrights/article/universal-human-rights/pluralism-womens-property-and-inheritance-rights-challenges-realizing-human-rights-bangladesh-and>> accessed 31 October 2024.

¹⁹ Open Society Foundations, 'Security Women's Land and Property Rights: A Critical Step to Address HIV, Violence and Food Security' (*Open Society Foundations*, 2014) 9 <<https://www.opensocietyfoundations.org/uploads/0e82bca7-6ede-4fbf-b2d9-5a0dac3ba071/Securing-Womens-Land-Property-Rights-20140308.pdf>> accessed 31 October 2024.

housing, non-discrimination, equality in marriage relations, and so forth.²⁰ Nevertheless, international human rights law has not explicitly addressed women's general right to property yet.²¹ The Human rights instruments described in this section are intended to present a wide scenario of the existing legal and policy landscape connected to women's property rights.

2.1 Women's equal right to property under the auspices of ICESCR

Articles 2.2 and 3 of the ICESCR mandate that all covenant rights, including Article 11, which acknowledges the right to adequate housing as an integrant of the right to an adequate standard of living, are realised equally and without discrimination based on sex.²² The right to adequate housing is inextricably intertwined with all the other human rights and the guiding principles based on which the ICESCR is established.²³ Deriving from the right to an adequate standard of living, the right to adequate housing is of “*central importance*” for the enjoyment of all ESC rights.²⁴ Moreover, this right cannot be fully realised if dissociated from the right to property and the security of the home.²⁵

Articles 2(2) and 3 of the ICESCR protect the equal rights of men and women to their enjoyment of ESC rights.²⁶ With regards to article 2(2) General Comment No. 20 Paragraph 2 confirms that non-discrimination and equality are fundamental elements of international human rights law and necessary for the exercise and enjoyment of ESC rights.²⁷ The core of ICESCR article 3 is that the rights outlined in the treaty are to be enjoyed by men and women on an equal basis, something that also requires men and women to enjoy such covenant's rights equally in practice.²⁸ The CESCR makes it clear in General Comment No.

²⁰ Ingrid Westendorp, ‘Personal Status Law and Women’s Right to Equality in Law and in Practice: The Case of Land Rights of Balinese Hindu Women’ (2015) 7(3) Journal of Human Rights Practice 434.

²¹ OHCHR, ‘Land and Human Rights: Standards and Applications’ (2015) UN Doc HR/PUB/15/5/Add.1 3.

²² OHCHR (n 3) 26.

²³ CESCR, ‘General Comment no 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant’ (1991) UN Doc E/1992/23 para 7.

²⁴ *ibid* para 1.

²⁵ OHCHR, ‘Statement of Mr Miloon Kothari, Special Rapporteur on adequate housing at the Commission on Human Rights 60th session, (OHCHR, 2004) <<https://www.ohchr.org/en/statements/2009/10/statement-mr-miloon-kothari-special-rapporteur-adequate-housing-commission-human>> accessed on 21 October 2024.

²⁶ Ben Saul, David Kinley and Jaqueline Mawbray, *The International Covenant on Economic, Social, and Cultural Rights: Commentary, Cases, and Materials* (1st edn, OUP 2015) 250.

²⁷ CESCR, ‘General Comment no. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights (2009) UN Doc E/C.12/GC/20, para 2–4.

²⁸ CESCR, ‘General Comment No. 16 The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights (2005) UN Doc E/C.12/2005/4 para 6.

16 that Article 3 and Article 2(2) both call for “*formal and substantive equality*” as well as the elimination of direct and indirect discrimination.²⁹

States parties are obliged under Article 11, paragraph 1 of the ICESCR to acknowledge that everyone has the right to an adequate standard of living, which includes adequate housing.³⁰ To implement Article 3, with regards to paragraph 1 of Article 11, women must have the same rights as men to own, use, and control housing, land, and property, as well as to have access to the resources they need to do so.³¹ Although the right to adequate housing is usually considered as a “*free-standing human right*”, it is most generally acknowledged as a part of the right to an adequate standard of living.³² The CESCR's General Comment No. 4 states that the right to adequate housing is larger than just having a “*roof over one's head*.”³³ “*Legal security of tenure, availability of services, materials, facilities, and infrastructure, location, habitability, affordability, accessibility, and cultural adequacy*” are the seven elements defining “adequacy” that must be met for housing to be assessed in compliance with the ICESCR.³⁴ A person who is “adequately housed” has no fear of getting evicted or losing their home or land.³⁵ Discriminatory inheritance law is one of the main reasons of women's failure to secure the tenure of the house.³⁶

Women's right to appropriate housing is violated by a lack of tenure security and the failure to acknowledge women's property rights “inside, outside of, and upon the dissolution of marriage or domestic partnership”.³⁷ The CESCR in General Comment No. 7, para 10 on forced evictions, pays special attention to the disproportionate impact of homelessness on women and their heightened vulnerability, noting that “women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply to the right to access to property.”³⁸

Reiterating its prior position, the CESCR noted that “*non-discrimination is an immediate and cross-cutting obligation in the covenant*”.³⁹ It has also been

²⁹ *ibid* para 7.

³⁰ CESCR (n 23) para 6.

³¹ CESCR (n2 8) para 28.

³² OHCHR (n 3) 11.

³³ CESCR (n 23) para 7.

³⁴ *ibid* para 8.

³⁵ OHCHR, ‘Fact Sheet No. 21, The Human Right to Adequate Housing’ (2009) UN Doc Fact sheet no21/Rev.1 17.

³⁶ OHCHR (n 3) 18.

³⁷ ECOSOC, ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living’ (2004) UN Doc E/CN.4/2005/48 47.

³⁸ OHCHR (n 3) 29.

³⁹ CESCR (n 27) para 7.

emphasised in the Limburg Principles⁴⁰, which suggests that States shall eradicate de jure discrimination by abolishing any discriminatory laws, regulations, and practices that affect the ESC rights as soon as they become parties to the Covenant.⁴¹ Moreover, the CESCR notes that failure to end discrimination on the basis of a lack of resources is not a reasonable justification and instead constitutes “*impermissible discrimination*” unless all reasonable efforts have been carried out to use all available resources at the state party's disposal “*to address and end the discrimination as a matter of priority*”.⁴²

Article 2(2) and Article 3 of the ICESCR have essentially the same kind of state obligations to respect, protect, and fulfil concerning the right to adequate housing.⁴³ Respecting the right requires States parties not only to adopt specific laws, strategies, policies, and plans of action to address discrimination as per article 2(2) of the ICESCR, but these laws also need to be aimed at eradicating both formal and substantive discrimination in the area of ESC rights, including housing.⁴⁴ The obligation to protect under Article 3 of the ICESCR encompasses the prevention of third-party interference, whether direct or indirect, with the enjoyment of a specific covenant right.⁴⁵ The obligation to fulfil entails steps taken by the state parties to secure that men and women enjoy their ESC rights based on equality in practice.⁴⁶ The state parties are obliged to take “immediate” measures to provide legal security of tenure to individuals and households currently deprived of it.⁴⁷ In doing so, states must prioritize addressing the obstacles faced by women and amend or abolish discriminatory legislation that denies their equal rights, access, and control over land, property, and housing.⁴⁸ Substantive equality necessitates the amendment of discriminatory inheritance laws and practices that impact women's tenure security, ensuring that widows are not forced to move from their residences after the demise of their spouses.⁴⁹

⁴⁰ ECOSOC, ‘Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights’ (1986) E/CN.4/1987/17, principle 35.

⁴¹ *ibid* principle 38.

⁴² CESCR (n 27) para 13.

⁴³ Saul, Kinley and Mawbray (n 26) 287.

⁴⁴ CESCR (n 27) paras 37–38.

⁴⁵ CESCR (n 28) para 19.

⁴⁶ *ibid*, para 21.

⁴⁷ UNGA, ‘Resolution adopted by the Human Rights Council, Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context’ (2020) UN Doc A/HRC/RES/43/14 para 8.

⁴⁸ OHCHR (n 3) 23.

⁴⁹ *ibid* 18.

2.2 Women's equal right to property, land, and housing under the umbrella of the Women's Convention

Although the Women's Convention does not contain an article explicitly guaranteeing women's equal property rights, it does include provisions intrinsically connected to these rights. Article 2 examines the legal framework and the function of legislative and judicial entities in safeguarding women from both *de jure* and *de facto* discrimination.⁵⁰ The article has been termed as the kernel of the convention's objectives and purposes, and is pivotal to the full implementation of the convention by CEDAW.⁵¹

The first part of the chapeau of article 2 imposes an immediate and continuous obligation on the States parties to condemn discrimination.”⁵² Regarding the second part, CEDAW notes that while States have a “*considerable degree of flexibility*” in crafting a policy, they must immediately and without delay enact a policy to eradicate discrimination.⁵³ The final part comprises a clear obligation tied to several outcomes; however, the obligations are specific and required to be implemented immediately concerning Articles 2(a), 2(c), 2(d), and 2(g) of the Women's Convention.⁵⁴ In particular, Article 2(a) emphasises the role of law in eradicating discrimination against women, and Article 2(f) requires States parties to modify or abolish discriminatory laws, regulations, customs, and practices. The CEDAW recommends amending and repealing inheritance laws that prioritise male relatives of the deceased over female relatives.⁵⁵ In conjunction with Article 2(f) obligations, Article 5(a) mandates States parties to eradicate all detrimental practices rooted in the notion of “either sex's inferiority or superiority, or in stereotypical roles assigned to men and women.”⁵⁶

States parties must adhere to their legal obligations to respect, protect, and fulfill women's rights to non-discrimination and equality as stipulated in the Women's Convention.⁵⁷

⁵⁰ Andrew Byrnes and Meghan Campbell, ‘Article 2’ in Patricia Schulz and others (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (OUP 2012) 72.

⁵¹ CEDAW, ‘General recommendation No 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women’ (2010) UN Doc CEDAW/C/GC/28 para 6.

⁵² *ibid* para 15.

⁵³ Byrnes and Campbell (n 50) 77.

⁵⁴ *ibid* 78.

⁵⁵ *ibid* 90.

⁵⁶ *ibid*.

⁵⁷ CEDAW (n 51) para 9

2.2.1 Women's equal treatment in land, right to housing, and equal legal capacity under the Women's Convention

The CEDAW places a lot of emphasis on equal treatment in land as stated in article 14(2)(g) of the Women's Convention, qualifying it as the most essential provision for rural women in its numerous concluding observations.⁵⁸ Women have the right to "adequate living conditions," including housing, according to Article 14(2)(h) of the Women's Convention. Discriminatory laws on property allocation are one of the factors that render rural women homeless and violate their right to housing.⁵⁹ The issues covered by the 14(h) provision have not been focused on in detail by CEDAW; however, it has noted the *importance of access to Article 14(2)(h) rights* in several general recommendations.⁶⁰ The rights outlined in the Article in question complement and overlap with those in Article 15(2), which is reiterated in its general recommendation 21, para 25. CEDAW states that in numerous countries, a woman's capacity to generate income and secure adequate housing and nutrition needs of herself and her family is contingent upon her rights to own, administer, enjoy, and dispose of property.⁶¹

States must grant women "*identical legal capacity*" to men in civil matters, including "*equal rights to make contracts and to administer property*," under Article 15.2 of the Women's Convention, which inevitably requires the creation of a supporting environment that provides for the enjoyment of the social and economic rights enshrined in the convention.⁶² According to CEDAW, a woman's legal autonomy is refused when she is denied the right to enter into a contract or the right to obtain financial credit without the prior approval or guarantee of her husband or other male relative.⁶³ It also highlighted that legislative reform that eliminates legal capacity constraints in Article 15(2) areas is a specific and immediate obligation.⁶⁴

2.2.2 Equality in Marriage relations in connection with women's equal right to property and land

Considering the impact of gender inequality within the framework of marriage as profound and pervasive, States are required to provide "equal rights for both spouses concerning the ownership, acquisition, management, enjoyment,

⁵⁸ Fareda Banda, 'Article 14' in Patricia Schulz and others (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (OUP 2012) 374.

⁵⁹ CEDAW, 'General recommendation No 21: Equality in marriage and family relations' (1994) UN Doc A/49/38(sup)/4733/E para 25.

⁶⁰ Banda (n 58) 376.

⁶¹ CEDAW (n59) para 26.

⁶² Aruna D Narain, 'Article 15' in Patricia Schulz and others (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (OUP 2012) 395.

⁶³ CEDAW (n 59) para 7.

⁶⁴ Narain (n 62) 404.

and disposition of property, whether free of charge or for valuable consideration," according to Article 16.1(h) of the women's convention. Due to the objections from the United States and Morocco, Article 16(1) (h) does not address inheritance explicitly; however, the "*same rights in marriage and upon its dissolution*" clause applies to the inheritance of the property upon the death of one of the spouses.⁶⁵ Despite the convention's lack of specific language regarding discrimination against women regarding inheritance, CEDAW has repeatedly expressed concern about this issue⁶⁶ specifically acknowledging the inheritance concerns of widows and older women in several general recommendations.⁶⁷ CEDAW has made it clear that any law or custom that gives men a larger share of property upon the dissolution of a marriage or on a relative's decease is discriminatory and will significantly affect a woman's ability to dissolve the marriage as well as her dignity to live independently.⁶⁸

Obligations to respect, protect, and fulfil under Article 14 are comparable to Article 16 obligations of the Women's Convention mentioned later in this section.⁶⁹ To fulfil their obligation to respect under Article 16(1), States Parties must end their recognition of discriminatory written and unwritten religious law and customary practices, as well as refrain from preservation or enactment of laws, policies, and family codes of the same nature.⁷⁰ To protect women from discriminatory actions by spouses and other family members, it is necessary to enact laws and regulations that provide for equality between women and men in making decisions regarding marriage, including all aspects of property ownership, control, and inheritance.⁷¹ To comply with their obligation to fulfil, state parties need to ensure that women have access to courts or other independent and impartial tribunals to assert their rights under a nondiscriminatory code for all individuals.⁷² CEDAW also reminded States of their obligation to guarantee the equitable distribution of marital property upon divorce or legal separation.⁷³ Additionally, they are required to enact legislation forbidding the disinheritance

⁶⁵ Ruth Halperin-Kaddari and Marsha A Freeman, 'Article 16' in Patricia Schulz and others (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (OUP 2012) 410–11.

⁶⁶ *ibid* 434.

⁶⁷ CEDAW, 'General recommendation 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution)' (2013) UN Doc CEDAW/C/GC/29 para 49; CEDAW, 'General recommendation No 27 on older women and protection of their human rights' (2010) CEDAW/C/GC/27 para 51.

⁶⁸ CEDAW (n 59) para 28.

⁶⁹ CEDAW (n 51) para 9.

⁷⁰ Halperin-Kaddari and Freeman (n 65) 440.

⁷¹ *ibid*.

⁷² *ibid*.

⁷³ CEDAW, 'General recommendation no 29' (n 67) para 46.

of the surviving spouse, particularly older women, and make property grabbing and dispossession criminal in case of intestate succession.⁷⁴

A detailed discussion of the obligations of the State parties concerning the equal property rights of women and inheritance under international human rights treaties reveals the extent to which States violate their obligations by preserving discriminatory laws.⁷⁵

3. IMPLEMENTATION OF WOMEN'S RIGHT TO PROPERTY IN BANGLADESH

This part of the article will scrutinise Bangladesh's obligations under the two most important conventions to which Bangladesh is a party by examining and analysing relevant national and personal laws to determine how well they align with international human rights laws and standards that establish women's equal property rights.

3.1 Bangladesh's existing obligations concerning equal property rights of women and their implementation under international Human rights instruments

Conforming to the obligations under international human rights law, the notion of equality must underpin all the property rights that individuals may have ensured under national constitutions and other laws.⁷⁶ Bangladesh is obliged to its international treaty obligations, including the UN charter, UDHR, and other international instruments that promote gender equality and non-discrimination in all spheres of life.⁷⁷ Even though the Women's Convention offers a myriad of mechanisms and policy initiatives to battle gender discrimination, the governments of Bangladesh have not ratified the Women's Convention in full and have placed reservations. Formal equality under Article 15 of the Women's Convention requires state parties in plural legal systems to guarantee that all of

⁷⁴ CEDAW, 'General recommendation no 27' (n 67) para 52.

⁷⁵ Ingrid Westendorp, 'Rural Women's Right to Land and in Times of Urbanisation' in Ingrid Westendorp (ed), *The Women's Convention Turned 30: Achievements, Setbacks, and Prospects* (1st edn, Intersentia 2012) 331.

⁷⁶ Ingrid Westendorp, *Women and Housing: Gender Makes a Difference* (1st edn, Intersentia 2007) 138.

⁷⁷ CEDAW 'Consideration of reports submitted by States parties under article 18 of the Convention Eighth periodic report of States parties due in 2015' (2015) UN Doc CEDAW/C/BGD/8 para 20; CEDAW 'Consideration of reports submitted by States parties under article 18 of the Convention: Third and Fourth periodic report of States parties' (1997) UN Doc CEDAW/C/BGD/3-4, para 2.1.4; CEDAW, 'Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined sixth and seventh periodic report of States parties' (2010) UN Doc CEDAW/C/BGD/6-7 para 37.

their legislation complies with the Convention and is applied.⁷⁸ More than any other Article, customs, traditions, religious law and practice, and gender stereotyping have a greater impact on the implementation of Article 16 of the Women's Convention.⁷⁹ All these provisions are highly relevant in the context of Bangladesh.

With regards to Articles 2 and 3 of the ICESCR, the following declaration has been made by the then government of Bangladesh: "*Bangladesh will implement Articles 2 and 3 in so far as they relate to equality between man and woman, in accordance with the relevant provisions of its Constitution and in particular, in respect to certain aspects of economic rights viz. law of inheritance.*"⁸⁰ CESCR was nonetheless worried that some part of this declaration amounted to reservations that would prevent the Covenant from being put into practice.⁸¹ Being a state party to ICESCR, Bangladesh must review pertinent legislation and policies to guarantee their alignment with the obligations of Article 3 and Article 11 of the ICESCR, and repeal or change any laws or policies that are inconsistent with the ICESCR's mandates.⁸² Governments are further obligated by the non-discrimination clauses of paragraphs 2.2 and 3 of the ICESCR to guarantee that evictions are devoid of any discrimination.⁸³ An in-depth analysis of the initial report presented by Bangladesh reveals that no such steps have been taken by Bangladesh to implement the above-mentioned obligations under the ICESCR.⁸⁴

As mentioned earlier, Bangladesh acceded to the Women's Convention in 1984 with four reservations. Upon its accession to the Convention, Bangladesh issued the following reservation: "*The Government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of articles 2, 13 (a) and 16 (1) (c) and (f) as they conflict with Sharia law based on Holy Quran and Sunna.*" On 23 July 1997, the Government of Bangladesh informed the Secretary-General of its decision to withdraw the reservation concerning articles 13(a) and 16(1)(f) made upon accession.⁸⁵ The governments had ignored the committee's repeated recommendations to withdraw the reservations to articles 2

⁷⁸ Banda (n 58) 380.

⁷⁹ Halperin-Kaddari and Freeman (n 65) 420.

⁸⁰ CESCR, 'Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: Initial reports of States parties due in 2000' (2017) UN Doc E/C.12/BGD/1 para 5.

⁸¹ CESCR 'Concluding observations on the initial report of Bangladesh' (2018) UN Doc E/C.12/BGD/CO/1 para 7.

⁸² CESCR, 'General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions' (1997) UN Doc E/1998/22 para 9; CESCR (n 28) para 34.

⁸³ CESCR, 'General Comment No 7 (n 82) para 10.

⁸⁴ CESCR (n 81).

⁸⁵ Reservations of Bangladesh to Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 03 September 1981, acceded on 06 November 1984) 1379 UNTS 336.

and 16(1)(c) within a specific timeframe.⁸⁶ They escaped committee concerns by declaring that the reservation is "under consideration" or "active consideration" without providing a concrete timeline.⁸⁷ The government of Bangladesh has not addressed the matter and has not taken any decisive action to end these reservations.⁸⁸ The Committee reiterates that reservations to articles 2 and 16(1)(c) of the Convention are incompatible with the object and purpose of the Convention and that Article 2 is the very essence of the obligations of States Parties under the Convention.⁸⁹ As a result, it is "impermissible" by Article 28, Paragraph 2 of the Women's Convention.⁹⁰ It also believes that Article 16-related reservations, whether made for national, traditional, religious, or cultural reasons, are inadmissible in light of the Convention and should be evaluated, changed, or withdrawn.⁹¹ The reservations, particularly concerning Article 2, blatantly undermine the equality principles enshrined in the Women's Convention and Bangladesh's obligations to promote and protect equality in women's property rights.⁹²

"The Government has not yet considered the women's convention as legally binding", stated in several state reports submitted by Bangladesh to the CEDAW.⁹³ CEDAW believes that the Government is primarily responsible and especially accountable for carrying out all of the State party's obligations under the Women's Convention, while making it binding upon all organs of the government.⁹⁴ Turning to the ICESCR, the initial report to the CESCR noted that, similar to other common law jurisdictions, Bangladesh adheres to the doctrine of incorporation, which states that unless a statute is passed specifically for that

⁸⁶ CEDAW, 'Concluding observations on the eighth periodic report of Bangladesh' (2016) UN Doc CEDAW/C/BGD/CO/8, paras 8–9; CEDAW, 'Concluding observations of Sixth and Seventh periodic reports the Committee on the Elimination of Discrimination against Women' (2011) UN Doc CEDAW/C/BGD/CO/7 para 11 and 12; CEDAW, 'Concluding comments on the fifth periodic report of Bangladesh' (2004) UN Doc A/59/38 part II paras 237–238.

⁸⁷ CEDAW, 'Fifth periodic report of Bangladesh' (2003) CEDAW/C/BGD/5 para 51; CEDAW, 'Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined sixth and seventh periodic report of States parties' (2010) UN Doc CEDAW/C/BGD/6-7 para 68.

⁸⁸ Andrew Byrnes and Marsha A Freeman, 'The Impact of the CEDAW Convention: Paths to Equality' (*World Bank*, 2012) 36
<<https://openknowledge.worldbank.org/server/api/core/bitstreams/d9753556-3fd6-5fee-b9c6-24e313e05555/content>> accessed 8 August 2025.

⁸⁹ CEDAW (n 87) para 8.

⁹⁰ CEDAW (n 51) para 41.

⁹¹ CEDAW (n 74) para 54.

⁹² Citizens' Initiatives on CEDAW, Bangladesh (CIC-BD), 'Status of the implementation of the UN CEDAW Concluding Observations 2011' (*Bangladesh Mahila Parishad*, 2016) 3
<<https://www.mahilaparishad.org/wp-content/uploads/2017/01/Bangladesh-CEDAW-Alternative-report-2016-3.pdf>> accessed 8 August 2025.

⁹³ CEDAW (n 77) para 134, 2.1.2.

⁹⁴ CEDAW, 'Concluding observations of Sixth and Seventh periodic reports the Committee on the Elimination of Discrimination against Women' (2011) UN Doc CEDAW/C/BGD/CO/7 para 10.

purpose, provisions from international treaties are not automatically incorporated and applied in the domestic legal system.⁹⁵ The CESCR voiced its concern about the full incorporation of the ICESCR into the domestic legal order following the General Recommendation 9 (1998) on the domestic application of the ICESCR.⁹⁶ It is beyond a reasonable doubt that Bangladesh has international obligations as a state party to these treaties, to respect, protect, and fulfil women's rights related to access, use, and control over land and other productive resources, as stressed by international human rights bodies and mechanisms, regardless of any domestic arrangements.⁹⁷

3.2 Equality and non-discrimination in the Constitution of Bangladesh

Articles 27 and 28(1) of the Bangladesh constitution safeguard all people, including women, against discrimination and provide equal protection of the law.⁹⁸ Article 27 declares all citizens are equal and entitled to equal protection of the law, while Article 28 declares principles of non-discrimination on grounds of religion, race, caste, sex, or place of birth; and that women have equal rights with men in all spheres of the State and of public life.⁹⁹ With regards to Article 2 of the ICESCR, non-discrimination was stated as one of the “fundamental tenets of the Bangladesh Constitution” in the initial report before the CESCR.¹⁰⁰ However, CESCR notes that article 28 (2) of the Constitution confines gender equality to the state and public domain, while religious personal laws controlling marriage, divorce, maintenance, and property inheritance are mostly discriminatory against women (arts. 2 (2), 3 and 10 of the ICESCR).¹⁰¹ Therefore, it drew the attention of Bangladesh in this context to its general comment No. 20 (2009) on non-discrimination in ESC rights.¹⁰²

3.3 Women's right to inheritance of property under the existing personal laws in Bangladesh

Bangladesh adopted generally non-religious secular legal standards to safeguard the rights of women, but when it comes to inheritance, however,

⁹⁵ CESCR, ‘Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: Initial reports of States parties due in 2000’ (2017) UN Doc E/C.12/BGD/1 para 8.

⁹⁶ CESCR (n 81) para 5–6.

⁹⁷ OHCHR and UN Women, ‘Realizing Women's Rights to Land and Other Productive Resources’ (2020) HR/PUB/13/04/Rev.1 19.

⁹⁸ The Constitution of the People's Republic of Bangladesh 1972, arts 27 and 28.

⁹⁹ CEDAW (n 77) para 8.

¹⁰⁰ CESCR (n 95) para 25.

¹⁰¹ CESCR (n 96) para 29.

¹⁰² *ibid* paras 6, 58, 63.

Shariah law and Hindu law are applied.¹⁰³ The fundamental rule of the law of inheritance for Muslims stipulates that a female co-sharer receives half of a male of the same degree, meaning that a husband receives 1/2 and 1/4 in two capacities, and a woman receives 1/4 and 1/8 in the same categories.¹⁰⁴ According to *Shariah* law, a decedent's daughter and son must split the estate in a 2:1 ratio, with the daughter receiving half of the son's portion. If no boys are remaining as heirs, the deceased's daughters will be entitled to half of the estate, or two-thirds when there are many daughters.¹⁰⁵ In a few capacities, only Muslim women get an equal share with Muslim men and other Relatives.¹⁰⁶ A Bangladeshi Muslim is only permitted to leave one-third of his estate as part of the testamentary succession, and this can only go to someone who is not already an heir, and if there are other heirs, a father cannot bequeath all of his possessions to his only daughter.¹⁰⁷

On the other side, the *Dayabhaga* school of Hindu law governs inheritance of Hindus in Bangladesh.¹⁰⁸ When it comes to inheritance, there are only a few instances in which a Hindu woman can inherit property from a deceased person, and even then, she can inherit only a life interest and cannot dispose of all the inherited property at her will.¹⁰⁹ For example, a Hindu widow in Bangladesh is not allowed to alienate the immovable property she has inherited, even though she is entitled to inherit a restricted "life interest or widow's estate".¹¹⁰ Daughters are given fifth place in the line of inheritance; they can only inherit their father's property if he has survived with no sons, grandsons (through sons), great-grandsons (through son's sons), or a widow.¹¹¹ The ability of daughters to inherit is closely related to their capacity to bear sons.¹¹² A daughter who is not married and is expected to have sons in the future is favored above a daughter who is married; daughters who are barren, widowed daughters without children, or with a daughter only, are not entitled to inherit their father's property.¹¹³ Given the aforementioned laws on inheritance, it is quite evident that Bangladesh's existing

¹⁰³ Dilruba Shoma Chowdhury, 'Inheritance rights of women and Shariah law: the case of Bangladesh' (*Development Policy Blog*, 2019) <<https://devpolicy.org/inheritance-rights-of-women-20191104/#:~:text=Shariah%20law%20stipulates%20that%20women,a%20male%20counterpart%20would%20obtain>> accessed 31 October 2024.

¹⁰⁴ Quran 4:11, 12, 176.

¹⁰⁵ *ibid.*

¹⁰⁶ Issa Khan and others, 'The Right of Women in Property Sharing in Bangladesh: Can the Islamic Inheritance System Eliminate Discrimination?' (2016) 5 SpringerPlus 6 <<https://springerplus.springeropen.com/articles/10.1186/s40064-016-3347-2>> accessed 31 October 2024.

¹⁰⁷ Dinshah Fardunji Mulla, *DF Mulla's Principle of Mahomedan Law* (10th edn, The Eastern Law House 2008).

¹⁰⁸ Mridul Kanti Rakhshit, *The Principles of Hindu Law* (3rd edn, Signet Press Ltd 1985) 65.

¹⁰⁹ Khan and others (n 106) 6.

¹¹⁰ Rakhshit (n 108) 358.

¹¹¹ *ibid* p 350.

¹¹² Bangladesh Legal Aid and Services Trust (n 15) 8.

¹¹³ N H Jhabvala, *Principles of Hindu Law* (17th edn, Jamandas and Company 2016) 260.

personal inheritance laws are overtly discriminatory against women's equal property rights.

The distribution of property under Islamic law is based on a system of property sharing called *fara'id*¹¹⁴ that considers the roles and responsibilities of men and women in Muslim society.¹¹⁵ The lesser share for women is justifiable from a religious standpoint because women inherit property without any obligation to their families, whereas men are entirely responsible for all family obligations, meaning the husband is obligated to provide for his wife and all his children in all circumstances, regardless of whether he remains married or divorced.¹¹⁶ Conversely, the woman may be expected to care for herself or be supported by a man both before and following her marriage, and she bears no responsibility for the maintenance of her husband or children.¹¹⁷ In sharia law, women in various capacities have a defined share, and they are never excluded from the inheritance, nor are there any restrictions on their management of the property.¹¹⁸ A man must pay the *mahar*, which is a sum of money the groom has to pay his bride at the time of marriage, and *nafaqah* to his wife and children (material support for wife and children).¹¹⁹ However, the question that deserves an answer is whether or not this kind of perfect "Muslim" society exists in Bangladesh. The question of whether Islam upholds women's subordination or accords them equal rights has been the subject of an increasing amount of discussion in scholarly circles.¹²⁰ This debate is outside the purview of this article, and it is not intended to be an assessment of Islamic inheritance law but rather to analyse the state's behaviour as a signatory to the International Human Rights treaties.

¹¹⁴ Islamic inheritance law is called al-fara'id. Faraid is constituted by the holy Quran and the Sunnah. See A B M S A Chowdhury, 'The problem of representation in the Muslim law of inheritance' (1964) 3(3) Islamic Studies 375, 376.

¹¹⁵ Khan and others (n 106).

¹¹⁶ *ibid.*

¹¹⁷ Sayyid Qutub, 'In the shade of the Quran' (*Kalamullah.Com*) vol 3 surah 4 <https://www.kalamullah.com/Books/InTheShadeOfTheQuranSayyidQutb/volume_3_surah_4.pdf> accessed 10 August 2025.

¹¹⁸ Muhammad Faizul Haque and others, 'Women Rights to Inheritance in Muslim Family Law: An Analytical Study' (2020) 4(1) International Journal of Islamic Business & Management 23.

¹¹⁹ Khan and others (n 106) 5.

¹²⁰ Afroza Begum, 'Protection of Women's Rights in Bangladesh: A legal study in an International and comparative perspective' (PhD thesis, University of Wollongong 2004) 85 <<https://ro.uow.edu.au/theses/595/>> accessed 30 October 2024.

3.4 Violation of the state's obligation concerning women's equal property rights in Bangladesh

*“Deprivation of property rights is itself a human rights abuse”.*¹²¹

Land in Bangladesh is largely owned by men, which limits women's decision-making, productivity, and access to extension services and loans.¹²² According to the 2015 Bangladesh Institute of Health Science Hospital data, rural men own agricultural land (69.3%) and nonagricultural land (86.5%) at substantially higher rates than rural women (12.1%) and (6.9%), respectively.¹²³ Bangladesh scores poorly (2.38) on gender equality components in the International Property Rights Index on the ground of its property regime.¹²⁴ Bangladesh ranked 121 out of 129 non-OECD countries in 2021 based on women's access to land ownership, access to bank loans, credit, access to property other than land, social rights, and inheritance practices.¹²⁵ Unsurprisingly, Bangladesh received a score of 1, the lowest possible on the original scale, for its inheritance practices.¹²⁶

As specified by the CESCR, due to discriminatory personal laws governing inheritance, women's access to land ownership is severely constrained in contravention of Articles 2(1), 3, and 11 of the ICESCR.¹²⁷ CEDAW recognises that customary laws and practices regarding inheritance provisions that discriminate against women are in contradiction with the Women's Convention.¹²⁸ The constitution of Bangladesh says nothing regarding equal rights for men and women in private life, although it guarantees the same in public life, which is discriminatory towards women, as home, marriage, and family are places where women frequently encounter the most discrimination concerning inheritance, divorce, and child custody. This silence permits personal laws, rooted in religion or tradition, to perpetuate discriminatory behaviours within private domains. The lack of express equality rules regarding private life results in legal voids, precluding courts from intervening in “private life” matters when discrimination arises, as the Constitution does not mandate equality in these contexts. The Constitution's silence directly contradicts Articles 15 and 16 of the Women's

¹²¹ Kurshan (n 3) 355.

¹²² Aphichoke Kotikula and others (n 7) 66.

¹²³ *ibid.*

¹²⁴ Property Rights Alliance, International Property Rights Index 2021: Executive Summary (2021) 44 <https://atr-ipri21.s3.amazonaws.com/IPRI_FullReport_v7.pdf> accessed 1 February 2024.

¹²⁵ *ibid.*

¹²⁶ OECD Data Explorer Archive, ‘Stats Gender, Institutions and Development Database’ (OECD, 2019) <<https://stats.oecd.org/Index.aspx?DataSetCode=GIDDB2019>> accessed on 31 January 2024.

¹²⁷ CESCR (n 96) para 59.

¹²⁸ UNGA, ‘Report of the Committee on the Elimination of Discrimination against Women Convention’ (Exceptional Session Suppl No 38 UN Doc A/57/38 153–54).

Convention, which obligate signatory States to provide women's equality with men in legal, civil, marriage, and family matters.¹²⁹

In its general recommendation 29 para 10, CEDAW found these constitutional and legal frameworks discriminatory, violating Article 2 and Articles 5, 15, and 16 of the Women's Convention.¹³⁰ *De jure* inequality in Bangladeshi women's property rights, particularly discriminatory inheritance laws, affects the implementation of Article 14(1)(g) of the Women's Convention; hence, CEDAW advised Bangladesh to develop a clear legislative framework to safeguard rural women's rights to inheritance and land ownership.¹³¹ The reservation of personal status law for inheritance under the umbrella of the national constitution is a "clear failure to meet women's convention obligations".¹³²

It is believed by CEDAW that countries where laws and practices regarding inheritance and property result in severe discrimination against women and do not reflect the equality in ownership of property acquired during the marriage, violate the Women's Convention.¹³³ In the context of Bangladesh, this is significant due to the absence of laws that guarantee women's equal rights to manage and utilise marital property throughout marriage and to equitably share it upon dissolution of marriage. Hence, acknowledging the significant contribution of Bangladeshi women to their marital households and assets, concern has been expressed by CEDAW about the lack of any legal regime recognising, defining, or setting out rules for control over, and equal division of marital property during marriage or the equal division of marital property upon divorce.¹³⁴ The Married Women's Property Act, 1874¹³⁵ which applies to any married woman except those who at the time of her marriage "*professed the Hindu, Muslim, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions*", provides that except in cases when the title to the property is in both the husband's and wife's names, each spouse retains separate ownership of whatever assets they acquire during their marriage.¹³⁶

Unfortunately, a World Bank survey conducted in 2006 revealed that merely 10% of Bangladeshi women respondents had their names listed on any marital

¹²⁹ Rashed Ahmed and Nishat Tarannum, 'A Critical Review on Women Oppression & Threats in Private Spheres: Bangladesh Perspective' (2019) 1(2) American International Journal of Humanities, Arts and Social Sciences 104.

¹³⁰ CEDAW (n 67) para 10.

¹³¹ CEDAW (n 94) para 36.

¹³² Halperin-Kaddari and Freeman (n 65) 422.

¹³³ CEDAW (n 59) para 35.

¹³⁴ CEDAW (n 87) paras 42–43.

¹³⁵ The Married Women's Property Act, 1874, ss 2 and 4.

¹³⁶ Bangladesh Legal Aid and Services Trust (n 15).

property documents, whether rented or owned.¹³⁷ It is not acknowledged that the other spouse's contributions to the household grant any claim to a portion of it in the event of a divorce.¹³⁸ Since Bangladeshi women are more likely to be evicted from marital homes upon dissolution, the lack of a legal regime regulating marital property also threatens their right to adequate housing.¹³⁹

CEDAW has consistently voiced its concern that the preservation of multiple legal systems “*is itself discriminatory against women*”.¹⁴⁰ As Hindu personal law allows very limited property rights, like “life interest” to Hindu women, they remain particularly vulnerable to the system.¹⁴¹ Nevertheless, according to the rule of succession that applies to Christian women, Christian women are in a somewhat better situation than Muslim or Hindu women since they have the same right to inherit as their male counterparts.¹⁴² Thus, CEDAW urged Bangladesh to adopt a Uniform Family Code that fully adheres to the convention's provisions and General Recommendation 21 on equality in marriage and family relations and applies to people of all religions and confessions in the country.¹⁴³ The Uniform Civil Code is a statute that is intended to a citizens uniformly, regardless of religious or cultural variety, specifically concerning family matters such as marriage, divorce, inheritance, and custody.¹⁴⁴ The campaign for a unified family code holds a significant position in the history of the feminist movement in Bangladesh during the 1980s and 1990s. The Bangladesh Mahila Parishad initiated the movement, published it, and submitted it to the Government in 1993.¹⁴⁵ The women's organisation, in collaboration with feminist attorneys and various civil society entities such as Ain o Shalish Kendra, formulated the

¹³⁷ Human Rights Watch, “‘Will I Get My Dues ... Before I Die?’: Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce” (*Human Rights Watch*, 2012) 5 <<https://www.hrw.org/report/2012/09/17/will-i-get-my-dues-i-die/harm-women-bangladeshs-discriminatory-laws-marriage>> accessed 1 February 2023.

¹³⁸ Ibid 45.

¹³⁹ CEDAW, ‘Consideration of reports submitted by States parties under article 18 of the Convention, Combined sixth and seventh periodic reports of Bangladesh’ (2010) UN Doc CEDAW/C/BGD/6-7 para 51.

¹⁴⁰ CEDAW (n 74) para 14.

¹⁴¹ Mahua Zahur, ‘Hindu Women’s Property Rights: Bangladesh Perspective’ (2016) XI(1) BRAC University Journal 79.

¹⁴² Bangladesh Legal Aid and Services Trust (n 15).

¹⁴³ CEDAW, ‘Concluding comments on the fifth periodic report of Bangladesh’ (n 86) paras 247–248. The issue was also raised when Bangladesh appeared before the UN Human Rights Council as part of the Universal Periodic Review procedure in February 2009. See UNHRC, ‘Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 – Bangladesh’ (2008) UN Doc A/HRC/WG.6/4/BGD/2 para 10; See also UNHRC, ‘Bangladesh Responses to the Recommendations Made During the UPR of Bangladesh on 3 February 2009’ (2009) A/HRC/11/18 para 15.

¹⁴⁴ Bangladesh Legal Aid and Services Trust (n 15) 15.

¹⁴⁵ Sohela Nazneen, ‘Men Abroad? Movement for a Uniform Family Code’ in Mulki Al-Sharmani (ed) *Feminist Activism, Women's Rights and Legal Reform* (Zed books 2013) 101.

necessary adjustments, participated in dialogues with many societal groups, and vigorously advocated for legal reforms to establish a standard family code.¹⁴⁶ The Citizens' Initiatives on CEDAW Bangladesh, a platform of 56 women and human rights organisations, demanded that the Government should take immediate steps for finalisation/formulation and approval of the Uniform Family Code in addressing the Concluding Observations of the CEDAW Committee.¹⁴⁷ However, Bangladesh escaped its obligation by stating that a uniform family code is “under consideration”.¹⁴⁸

Despite the then government's strong commitment to remove the discriminatory provisions by stating that “*unequal provisions in personal laws such as in inheritance, marriage, and divorce contribute to women's inferior social, economic and legal status*”¹⁴⁹ in its combined 3rd and 4th periodic reports before CEDAW, this article has identified a large gap between Bangladesh's commitments and their implementation. No measures have been adopted so far to address the inconsistencies between personal inheritance laws and the Constitution, let alone the international human rights standards.

4. HARMONISATION OF PERSONAL INHERITANCE LAWS OF BANGLADESH

To secure women's equal property rights in Bangladesh, especially regarding inheritance, and to align them with international human rights standards, legislative reform of the personal law governing inheritance is mandatory. Achieving equality under the Women's Convention does not always entail repealing laws that reflect a particular religion's core values.¹⁵⁰ CEDAW explicitly stated that it expects States to explore the potential for advancement towards equality offered by the flexibility of custom and the possibility of interpretation of religious law.¹⁵¹ Particularly in areas where more liberal interpretations of Islamic law have been incorporated into significant legal reforms.¹⁵² Legislative reforms must be done by taking into consideration the context in which women live, to secure women's enjoyment of the ESC rights, as the inequity in their lives is profoundly rooted in history, customs, and culture.¹⁵³ Best practices from

¹⁴⁶ *ibid.*

¹⁴⁷ Staff Correspondent, A uniform family code to make way for gender equality, (Nov 1, 2018) <<https://www.thedailystar.net/city/news/uniform-family-code-make-way-gender-equality-1654555>> accessed on 23 June 2025. CEDAW (n 93) 4.

¹⁴⁸ CEDAW (n 140) 113.

¹⁴⁹ CEDAW (n 77) para 1.6.

¹⁵⁰ Afroza (n 120).

¹⁵¹ Halperin-Kaddari and Freeman (n 65) 438.

¹⁵² *ibid* 421.

¹⁵³ International Federation for Human Rights, ‘Montréal Principles on Women's Economic, Social and Cultural Rights’ (2002) 2 <<https://www.refworld.org/reference/themreport/ifhr/2002/en/21089>> accessed 10 August 2025.

various Muslim and Hindu majority countries to consider harmonising the human rights standards on the right to property and personal law of inheritance offer a guideline to Bangladesh to meet its international human rights obligations regarding the equal property rights of women without undermining the central values of the religion.

4.1 Bangladesh Government's Attitude towards reforming discriminatory provisions of inheritance laws in compliance with international treaty obligations

It is extremely important to shed some light on the government's attitude towards revising discriminatory inheritance laws, because, instead of taking any concrete step, they have been evading the state's international obligation to do so for decades by making up different excuses. The then government initially claimed that it had reservations about the women's convention's articles 13(a) and 16(1)(c), which it believed conflicted with *Shariah* law. Even though it was stated in the same paragraph that "Bangladesh does not have any *Shariah* law as such," *just a few provisions are incorporated in the laws*.¹⁵⁴ Moreover, it has also been declared that "*Provisions of the Shariah are not immutable but subject to reinterpretation based on the needs of the time*," citing evidence of significant reforms to family law.¹⁵⁵ After a decade, the government changed the track by declaring that it was taking recommendations from the Law Commission¹⁵⁶ about the withdrawal of reservations into consideration.¹⁵⁷ Then again, concerns were raised regarding potential actions by Islamic fundamentalist groups in response to the withdrawal, indicating that careful measures were being implemented to avoid jeopardization of the ideals of CEDAW.¹⁵⁸ It acknowledged that personal laws have discriminatory elements in the area of inheritance, but presented another excuse: changes to personal laws require consensus from the leaders of all religious faiths.¹⁵⁹

The excuse of *Shariah* law is not convincing because several Muslim-majority nations, including Indonesia, Libya, Zambia, Gabon, Nigeria, Yemen, Jordan, Kuwait, Tunisia, Lebanon, the Maldives, and Oman, have ratified CEDAW without placing any reservations to Article 2.¹⁶⁰ Furthermore, Muslim nations like Turkey, Yemen, Jordan, Lebanon, and Kuwait have made no reservations at all.¹⁶¹ Approximately 10% of Bangladesh's population is non-

¹⁵⁴ CEDAW (n 77) para 2.1.4.

¹⁵⁵ *ibid*.

¹⁵⁶ CIC-BD (n 92) 2.

¹⁵⁷ CEDAW (n 77) para 44

¹⁵⁸ *ibid* para 45.

¹⁵⁹ *ibid* para 47.

¹⁶⁰ Sharifa Begum and others, 'The CEDAW Implementation In Bangladesh: Legal Perspectives and Constraints' (Research report no 83, Bangladesh Institute of Development Studies 2011) 5.

¹⁶¹ CIC-BD (n 92) 2.

Muslim, and their lives are governed by laws other than Muslim laws on matters pertaining to personal laws.¹⁶² Maintaining reservations based on *Shariah* is therefore not generally acceptable and unfair to minorities.¹⁶³ The Muslim family laws were drastically reformed in 1939¹⁶⁴, 1961¹⁶⁵, and 1985¹⁶⁶ through progressive interpretation of the Holy Quran and other mechanisms of interpretation, i.e Ijma, Qiyas, Sunna, and Fiqh.¹⁶⁷

The Muslim Family Law Ordinance, 1961, Section 4, grants the deceased's grandchildren of predeceased children the right to inherit an equal share as their parents would have if alive, thereby significantly reforming associated *Shariah* Law provisions through the introduction of the "Doctrine of Representation".¹⁶⁸ In contrast to other Muslim nations, this provision in Bangladesh allows children to inherit their deceased parent's share of their grandparents' property.¹⁶⁹ If reforms are possible despite the existing Islamic laws governing these issues, it is completely intolerable that legislation ensuring equal rights to inherit property cannot be passed. Regrettably, the Hindu personal law has not been updated since the division of the Indian Subcontinent in 1947.¹⁷⁰ Nonetheless, in neighbouring India, which is predominantly a Hindu-majority country, significant modifications have been made to the family laws and inheritance laws for the benefit of women.¹⁷¹

4.2 Examples of good practices from Muslim and Hindu majority countries towards safeguarding equal property rights of women

The CEDAW urges States parties to take into account the initiatives of countries with identical religious backgrounds and legal systems that have successfully incorporated commitments deriving from international legally binding instruments into domestic legislation, to withdraw reservations.¹⁷² One of the significant reforms implemented in the early years of the Turkish Republic under the direction of Atatürk, the Republic's founding president, was the revision

¹⁶² Bangladesh Bureau of Statistics (n 6) 16, table 2.16.

¹⁶³ CIC-BD (n 92) 3.

¹⁶⁴ The Dissolution of Muslim Marriages Act, 1939.

¹⁶⁵ The Muslim Family Laws Ordinance, 1961, s 4.

¹⁶⁶ The Family Courts Ordinance, 1985 (Repealed by The Family Courts Act, 2023).

¹⁶⁷ Bangladesh Legal Aid and Services Trust (n 15) 10.

¹⁶⁸ AWM Abdul Huq, 'Section 4 of the Muslim Family Laws Ordinance, 1961: A Critic' [2010] The Northern University Journal of Law 1, 7.

¹⁶⁹ ECOSOC (n 37) 39.

¹⁷⁰ The Sati Regulation, 1829; The Hindu Widow's Re-marriage Act, 1856; Hindu Women's Right to Property Act, 1937.

¹⁷¹ Bangladesh Legal Aid and Services Trust (n 15) 11.

¹⁷² CEDAW, 'General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution)' (2013) UN Doc CEDAW/C/GC/29 55.

of the inheritance laws and the guarantee of equal inheritance rights.¹⁷³ The civil law that guaranteed equal rights to property and inheritance regardless of gender was established by the Turkish government in 1926.¹⁷⁴ Male and female surviving spouses and male and female children inherit property equally, including both immovable and movable properties under the revised Turkish civil code of 2002.¹⁷⁵

Tunisia removed all of its specific reservations to the Women's Convention in 2014, and the country's new constitution reflects the change, and such a change paved the way for the country to amend its personal and other discriminatory laws to uphold its obligations under the Convention.¹⁷⁶ The law of "*gender equality in inheritance*" was first approved and passed in Tunisia, which guaranteed that male and female children receive an equal share in inheritance after the death of a parent.¹⁷⁷

Against the backdrop of some illegal practices of preventing women from inheriting, particularly land, in parts of the country, the Egyptian parliament approved an amendment to the inheritance law in 2017 that intensifies the punishment for those who refrain from delivering inheritance rights to one of the inheritors.¹⁷⁸ Throughout South Asia and the Middle East, there is a strong social pressure on women to give up their inheritance rights and transfer property to male relatives.¹⁷⁹ In this context, Jordan has established a novel policy that automatically registers inheritance in the names of daughters.¹⁸⁰ Following changes to the personal code made in 2010, the Islamic courts issued instructions to protect women's inheritance rights, and the instruction stipulates a "three-month cooling-off" period during which heirs cannot renounce their rights, barring

¹⁷³ Muhammad Faizul Haque and others, 'Women Rights to Inheritance in Muslim Family Law: An Analytical Study, (2020) 4(1) International Journal of Islamic Business & Management 5 <<https://www.cribfb.com/journal/index.php/ijibm/article/view/543>> accessed on 31 October 2024.

¹⁷⁴ *ibid* 5.

¹⁷⁵ OHCHR (n 97) 56.

¹⁷⁶ *ibid* 41.

¹⁷⁷ Tribune desk, 'Tunisia becomes the first Arab nation to approve gender equality in inheritance law' *Dhaka Tribune* (Dhaka, 25 November 2018) <<https://www.dhakatribune.com/world/africa/161746/tunisia-becomes-the-first-arab-nation-to-approve>> accessed on 31 October 2024.

¹⁷⁸ Naela Gabr Mohamed Gabr, 'CEDAW and the Role of Rural Women's Land Rights' (*UN Women*, 16 March 2018) 5 <<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/62/meetings/Naela%20Gabr%20Mohamed%20Gabr%20-%20CEDAW%20and%20the%20Role%20of%20Rural%20Womens%20Land%20Rights.pdf>> accessed 1 February 2023.

¹⁷⁹ Aphichoke Kotikula and others (n 7) 79.

¹⁸⁰ *ibid*.

exceptional conditions approved by the courts after the distribution of inheritance rights and the registration of property in the names of heirs.¹⁸¹

Malaysia, Singapore, Indonesia, Tunisia, Morocco, and Turkey have introduced reforms to their laws, allowing divorced women a share in the marital property.¹⁸² In Malaysia, section 58 of the Islamic Family Law (Federal Territories) Act, 1984, permits the court, upon granting a dissolution of marriage, to mandate the division of assets acquired jointly during the marriage or assets previously owned by one party that have experienced a "substantial improvement" in value due to the efforts of the other Muslim spouse or jointly.¹⁸³ Comparable provisions are found in Article 76 of the Malaysian Law Reform (Marriage and Divorce) Act, 2012, which regulates non-Muslims in Malaysia.¹⁸⁴

The Hindu Succession Act of 1956, as amended in 2005, eliminated the disparity in inheritance rules between males and females in India and granted women equal inheritance "rights to ancestral and jointly owned property", making daughters inheritors with the same rights as sons concerning *co-parcenary* property.¹⁸⁵ The deceased's son, daughter, widow, and mother are all treated equally, and each receives an equal share of the deceased's property following section 10 of the aforementioned act.¹⁸⁶ It is worth mentioning that in the Netherlands, children inherit equally with the surviving parent, which means children have a claim on the surviving parent for their share of the inheritance, but they cannot possess it until both parents have passed away, allowing the surviving parent to continue living comfortably without interruption.¹⁸⁷ It is especially pertinent when a Muslim or Hindu widow is entitled to own property jointly with a son but is forced to sell her property, possibly even the only home she has, to give the son or sons their fair portion.¹⁸⁸

4.3 How to overcome the challenges hindering equal property rights of women in Bangladesh

The very first Special Rapporteur on adequate housing, after analyzing family and inheritance laws in Muslim countries and communities and their effects on women's rights to adequate housing, concluded that women's disproportionate inheritance share in these regions is not solely or directly attributable to Islam, but has developed through socio-cultural practices.¹⁸⁹ "Tunnel vision", focusing on

¹⁸¹ *ibid.*

¹⁸² Human Rights Watch (n 137) 46.

¹⁸³ Islamic Family Law (Federal Territories) Act, 1984, s 58(2) (Malaysia).

¹⁸⁴ Law Reform (Marriage and Divorce) Act 1976 (Malaysia).

¹⁸⁵ OHCHR (n 97) 42

¹⁸⁶ Rakhshit (n 108) 438.

¹⁸⁷ Ingrid (n 76) 148.

¹⁸⁸ *ibid* 147.

¹⁸⁹ ECOSOC (n 37) para 40.

personal status laws, obscures key aspects of the lives that women lead in predominantly patriarchal societies like Bangladesh. It is difficult to argue that just granting Bangladeshi women equal inheritance rights would significantly alter their “enjoyment” of property rights.¹⁹⁰

CESCR urged Bangladesh to take necessary measures to facilitate women’s access to land ownership in Bangladesh by revising personal laws regulating property inheritance to guarantee women’s equal right to inheritance.¹⁹¹ It has also recommended expanding the application of gender equality provided for in Article 28 (2) of the Constitution to all spheres of life and adopting a unified family code that grants men and women the same rights in marriage and inheritance.¹⁹² Legislative reform is crucial because women need a solid legal foundation as a basis for asserting their rights. Personal laws should be revisited and updated so that they are consistent with international human rights obligations.¹⁹³

The CEDAW emphasised in General Recommendations 25 and 28 that modifying the law to remove discriminatory measures is a start; it is not adequate on its own.¹⁹⁴ It also emphasised that even in cases where formal legislation supposedly guarantees equal rights to own and control property, and equal inheritance rights for widows, ineffective enforcement of these regulations may lead to an unequal economic outcome.¹⁹⁵ To make women’s rights a reality, it is necessary to simultaneously improve the legal enforcement mechanisms governing women’s rights.¹⁹⁶ The Family Courts’ authority should be expanded to include disputes involving inheritance, to provide an effective forum for the resolution of family issues.¹⁹⁷ Moreover, it is essential to endorse the idea of marital property and facilitate its equal distribution between spouses at the dissolution of marriage for all groups, while acknowledging both the monetary and non-monetary contributions of women.¹⁹⁸

5. Conclusion

On the one hand, strengthening women’s access to land, property, and productive resources contributes to achieving financial independence while improving their position in their families and communities. On the other hand,

¹⁹⁰ Afroza (n 120).

¹⁹¹ CESCR (n 81) para 60.

¹⁹² *ibid* para 30.

¹⁹³ Ingrid (n 20) 445.

¹⁹⁴ Banda (n 58) 380.

¹⁹⁵ Halperin-Kaddari and Freeman (n 65) 434.

¹⁹⁶ International Federation for Human Rights, ‘Montréal Principles on Women’s Economic, Social and Cultural Rights’ (n 153).

¹⁹⁷ Bangladesh Legal Aid and Services Trust (n 15) 10.

¹⁹⁸ Human Rights Watch (n 137) 98.

gender inequality in the form of denial of property rights has a catastrophic effect on women's, particularly low-income women's ability to provide for themselves and their children in the event of a dissolution of marriage or on the demise of the sole breadwinner of the family. The practice of granting men ownership of all the ancestral or marital property, whether by customary or religious rules, because they must provide for the female members of the family, is not valid.

The findings of this article demonstrate that States are obliged to respect, protect, and fulfil women's property rights, such as the right to land, productive resources, and adequate housing, without any discrimination under the international human rights instruments. The elimination of all discriminatory laws is the first step towards achieving substantive or formal equality, as illustrated by an in-depth analysis of international standards governing the property rights of women in the second part of the body.

It is very clear from the findings of the third body part that Bangladesh still has a long way to go until gender discrimination is eliminated and the country fully complies with its obligations under international human rights instruments in respect of equal property rights of women. Even though innovative reforms to personal laws have been implemented in other Muslim or Hindu-majority countries to end gender discrimination in property matters, Bangladesh has yet to show that any viable initiative to make a significant change in its legal system that would establish equal property rights for women has been successful. Hence, there is no justification for the government to postpone enacting the legislation that will ensure one of the most significant ESC rights of women, namely an equal right to property, which is already overdue.

Stringent legal measures guaranteeing women's access to adequate remedies in the event of a violation of property rights would be a marked improvement in the current socio-cultural setting of Bangladesh. The July 2024 uprising offers a distinctive opportunity for the new interim Government of Bangladesh, which must seize the chance to carry out all necessary legal and administrative measures to reform laws, customs, and practices, ensuring they promote non-discrimination and equality while preserving the cultural identity of ethnic and religious groups, thereby safeguarding women's equal rights to property.

