

Hindu Women's Right to Property in Bangladesh: A Grave Denial of Gender Justice

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Abstract

With the orthodox Hindu legal system in Bangladesh, there have been substantial pessimistic arguments around Hindu women's property rights. Due to the dominance of patriarchy within the community, intra-religious subordinate complexity, and age-old customary practices, Hindu women have been deprived of their intended advantages, which has resulted in a blatant disregard for the rights guaranteed by the sacred provision of the constitution of Bangladesh and the international human rights norms, particularly concerning the twin ideals of equality and non-discrimination. The outcome also significantly affected their potential to exercise and enjoy property rights, which is considered one of the most effective means of empowerment and advancement, both from the context of their economic independence and self-determination. Proactively taking into account the aforesaid context through a systematic review of the existing literature and statutory norms, this paper aims to identify the byproducts of gender-based disparity, focusing on discriminatory property rights of Hindu women in Bangladesh. The paper strives to assert a firm stance against the violation of gender justice in Hindu women's property rights. Also, with functional distributive fairness guaranteed in society as a whole, this endeavor will forge an emphatic voice for the inclusion of gender-neutral property rights.

Keywords: *Equality; Hinduism; Property Rights; Stridhana; Widow's Estate.*

1. INTRODUCTION

Treating like things alike is the fundamental tenet of formal equality.¹ The subsequent assumption, which is derived from human rights law, is that, in terms of being entitled to exercise their rights and liberties, men and women are equal. The equality clauses foster 'economic empowerment'² and 'socio-cultural betterment of the community'.³ In mapping the gender parity in 95 countries, the McKinsey Global Institute's reports⁴ revealed that no country has achieved

1 Catharine A. MacKinnon, "Sex Equality under the Constitution of India: Problems, Prospects, and 'Personal Laws,'" *International Journal of Constitutional Law* 4, no. 2 (April 1, 2006): 181–202, <https://doi.org/10.1093/icon/mol001>.

2 Dea Hernawati Yuniar, Edi Dwi Riyanto, and Nadya Afdholi, "Women Empowerment and Gender Equality in the Sale of Boran Rice in Lamongan Indonesia," *EGALITA Jurnal Kesetaraan Dan Keadilan Gender* 19, no. 2 (November 19, 2024): 115–23, <https://doi.org/10.18860/egalita.v19i2.27389>.

3 R. Sathiyabama, "Gender Equality in Property Rights: The Position of Hindu Women – Historical Perspective," in *Interdisciplinarity: The Palimpsest of Culture Reference* (IRF Press, Fundacja, 2016).

4 Georges Desvaux and Sandrine Devillard, "Women Matter: Ten Years of Insights on Gender Diversity," McKinsey and Company, 2017, <https://www.mckinsey.com/featured-insights/gender-equality/women-matter-ten-years-of-insights-on-gender-diversity>.

full gender parity yet, and 40 countries are demonstrating poor gender parity ratios in different sectors.⁵ Along with the above, the report also unveiled that 18 countries have unequal inheritance rights, one of the fifteen gender inequality indicators set by the above report within four broad categories of gender parity issues.⁶ With optimizing suggestions, they predicted boosting the World GDP growth by more than 28 trillion by 2025 if the countries can advance most in their gender equality issues.⁷ Besides, there is a close link between gender equality and poverty alleviation. The World Bank study has found that a major portion (almost 90 %) of women's income is invested in their families, compared to 30-40 % for men.⁸ Ensuring gender equality also contributes to increased social and political engagement, advancements in the education sector, better health outcomes, and decreased gender-based violence. However, gender disparity is a frequent phenomenon around the globe. The Global Gender Gap Index has revealed that in 2022, gender-based disparities have been closed by 68.1 %.⁹ According to the Index analysis, achieving full parity will take 132 years if current trends of progress continue.¹⁰ The disparity is more apparent when looking at women's property rights. Global statistics show that compared to men, women enjoy fewer property rights from context ownership and land tenure security, which, on average, account for less than 20 % of global landholders.¹¹

Gender equity cannot be achieved without ensuring equal rights to property for women since it benefits individuals, families, and society as a whole. Women have access to equal property rights, which enables them to become financially independent, consequently, they acquire economic power and can engage in enterprises, obtain loans, and amass riches when they can own, inherit, and manage property. Having absolute property rights is crucial for minimizing the vulnerability of women to poverty, especially in situations including divorce, widowhood, or abandonment. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) highlights the significance of advancing equal property rights for eradicating segregation and attaining gender parity. Besides, it can subvert the long-standing, discriminatory customary practices that marginalize women in many countries.

Bangladesh is showing an analogous tendency toward discriminatory practices. According to the Women, Business and the Law Index 2021, Bangladesh scores 49.4, lagging behind its neighboring nations, Nepal, Maldives, Pakistan, and India.¹² The Index analysis also reveals a decreasing trend in gender parity.¹³ In the Assets indicator of the Index, which investigates gender disparity in property and inheritance tenets, Bangladesh scores 40.¹⁴ There is a perceived disparity in gender in Bangladesh across

5 Tess Lowery, "13 Shocking Facts About Gender Inequality Around the World," Global Citizen, 2023, <https://www.globalcitizen.org/en/content/shocking-facts-gender-inequality-international-wom/>, Global Citizen, 2023,

6 Lowery."URL": "https://www.globalcitizen.org/en/content/shocking-facts-gender-inequality-international-wom/"

7 Mekala Krishnan et al., "Ten Things to Know about Gender Equality," McKinsey & Company, 2000, <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/ten-things-to-know-about-gender-equality>.

8 World Economic Forum, *The Global Gap Report 2022*, 18. ed (Geneva: World Economic Forum, 2023).

9 World Economic Forum.

10 World Economic Forum.

11 Alda Facio, "Insecure Land Rights for Women Threaten Progress on Gender Equality and Sustainable Development" (United Nations Human Rights Special Procedure, 2017), <https://landportal.org/library/resources/insecure-land-rights-women-threaten-progress-gender-equality-and-sustainable>.

12 World Bank, *Women, Business and the Law 2021* (The World Bank, 2021), <https://doi.org/10.1596/978-1-4648-1652-9>.

13 World Bank.

14 World Bank.

all domains, including religion.¹⁵ The Hindu community is the largest minority group in Bangladesh, where women perceive discriminatory customary rules and traditions.¹⁶ The property rights of a Hindu woman are largely disregarded by traditional Hindu law in Bangladesh.¹⁷ These rights are crucial for women's financial autonomy and are closely linked to their cultural identity, political authority, and ability to participate in decision-making.

In exploring the literature on the multiple issues of Hindu women's property rights, this study found scholars like *Mahua Zahur*, *M. Shah Alam*, *T Mansoor*, *Ataul Karim*, *Sadia Afrin*, and *B.M. Gandhi*, who all meticulously reiterated the customary and statutory inheritance practices of the Hindu community. All these works of literature are used to get ideas on the discriminatory inheritance norms impacting the property rights of Hindu women. To ensure gender equality, some of them advocate for significant changes to the current inheritance-related laws. The scholarship of *Nasrin Sultana* and *M. Shah Alam* has outlined gender-equal legislative measures to safeguard the proprietary interest of a Hindu female.¹⁸ *Mahua Zahur* plainly explained the existing legal norms respecting the discriminatory property rights of Hindu women in our country.¹⁹ Additionally, she anchored the religiously discriminatory outlook towards women under the Hindu religious scriptures.²⁰ However, she focused on the recent legislative developments brought by our neighboring country, India, and inadequately addressed the contemporary issues of the discriminatory property rights of Hindu women.²¹ *T Mansoor*, in her paper,²² mentioned the violation of egalitarian principles in a limited way. *Mansoor* demonstrated a comparative discussion on age-old religious family law and state-sponsored, partially updated family laws. However, a broad analysis of contemporary issues of discriminatory Hindu women's property rights missed their significance there.²³

The term *Stridhan* first appears in *Smritis* and literally means property of women. The term *Stridhan* denotes 'Stri', which means women, and 'Dhan' means property. In Sankrit books, this phrase got a large space of significance, and the followers of *Smritis*, especially the *Mitakshara* school and other authorities, preferred the term to include all kinds of properties belonging to women irrespective of the extent of their rights on those.²⁴ Considering the restrictive view, *Jimutavahana* stuck this term only for those properties upon which women had absolute rights. Though women's absolute rights over any kind of property were critically and technically denied by *Manu*, *Gautama*, and *Apastamba*, who advocated in favor of women's right to succession of separate property and right to own property, having formed the textual relationships of *Stridhan*.²⁵ Principally, the

15 Md Asaduzzaman et al., "Gender Inequality in Bangladesh," *Journal of Women's Entrepreneurship and Education* 3, no. 4 (September 25, 2015): 54–64.

16 Shahnaz Huda, "Combating Gender Injustice: Women and the Hindu Law of Personal Status in Bangladesh: A Comparative Analysis," in *Revisiting Personal Laws in Bangladesh*, ed. Faustina Pereira, Shahnaz Huda, and Sara Hossain, vol. 14, 2 (Brill Nijhoff, 2019), 58–144, https://doi.org/10.1163/9789004357273_004.

17 Zahur Mahua, "Hindu Women's Property Rights: Bangladesh Perspective," *BRAC University Journal* 11, no. 1 (2016), <https://core.ac.uk/download/pdf/74352207.pdf>.

18 Dr M Shah Alam, "Review of Hindu Personal Law in Bangladesh: Search for Reforms," *Bangladesh Journal of Law* 8, no. 1 (2004): 15–52.

19 Mahua, "Hindu Women's Property Rights: Bangladesh Perspective."

20 Mahua.

21 Mahua.

22 Taslima Mansoor, "Women and Development of Family Law," *Bangladesh Journal of Law* 1, no. 2 (1997): 24.

23 Mansoor.

24 K. Ashra Shifaya, "Property Rights of Women under Hindu Law: A Critical Study," *Rights of Women under Hindu Law: A Critical Study*, *International Journal of Law Management & Humanities* 4 (2021): 2999–3008.

25 Shifaya.

term *Stridhan* includes six-fold property given before nuptial fire, during bridal procession, as a token of love, by her father, by her mother, and by her brother.²⁶

Women's Estate and *Stridhana* are also explored by B.M. Gandhi. He stated that a female could not become the complete owner of a property unless there was a *stridhan* under the circumstances.²⁷ Ataul Karim, in his books²⁸ on Hindu Law, elaborately penned on the discriminatory issues of Hindu women's property rights. He also recommended some prospective suggestions in a separate chapter. However, he did not go on to the current issues concerning the violation of egalitarian principles. Nasrin Sultana Shuvorna²⁹ determined the current state of women's property rights based on how two major faiths in Bangladesh are seen. Like other authors, she also tried to launch some arguments in favor of some possible solutions to decline the prevailing discriminatory situation of women in personal laws apropos property rights.³⁰ Sadia Afrin³¹ tried to establish that over the ages, women's standing gradually declined from being highly regarded by the Hindu religion, which is now perceived as the religion that subjugates them the most. On the other hand, M. Shah Alam advocated for the reformation of Hindu personal laws to establish equal property rights for Hindu women in Bangladesh.³² On this note, Alam also argued for a robust voice in favor of codifying Hindu private law in the concerned law commission report when he was an active member of the National Law Commission in Dhaka, Bangladesh.

Sunderlal T. Desai elaborated on the subject of the Hindu Law of Inheritance and the process of a Hindu woman inheriting property in his book. He stated that most Hindu laws are founded on custom.³³ Exploring more deeply, he also categorized multiple types of women's property under the Sastric Hindu law as well as under statutory laws such as the Hindu Succession Act, 1956, with all its amendments. In summing up, he illustrated that the Mitakshara school of Hindu law follows the doctrine of Propinquity while the Dayabagha school follows the doctrine of Religious Efficacy in applying their own succession laws. As this tries to cover almost all the updates on Hindu succession laws, it has become more like one and a half volumes than the former one.³⁴ Though, till now his work is considered as one of the master piece on hindu law for the law academics, students, bar and bench, it is porn to various criticisms. Scholar Werner Menski expressed his critical view on Desai's exposition of Hindu law with its frequent references to European thought and models, which restrict the indigenous evidence from speaking for itself.³⁵ In a review, J. Duncan M. Derrett opined that though Desai did exemplary research on Hindu law with its recent judicial opinions, it could not cover all the latest cases on succession, having the capacity to provoke new thought in this field. However, his work could not pay attention to discrimination as a distinguished issue in the text and its overall consequences in the socio-economic life of Hindu women. Abul

26 Shifaya.

27 Bhanuprasad Manilal Gandhi, *Hindu Law*, 3. ed (Lucknow: Eastern Book Co, 2008).

28 Ataul Karim, *Hindu Law: Intersecting Religion, Tradition and Law*, 2nd ed. (Dhaka: Iha Prokash, 2023).

29 Nasrin Sultana Shuborna, "Women's Property and Inheritance Rights: Application of Laws from the Perspective of Two Major Religions in Bangladesh.," *Law and Humanities Quarterly Reviews* 3, no. 4 (December 30, 2024): 14–25, <https://doi.org/10.31014/aior.1996.03.04.131>.

30 Shuborna.

31 Sadia Afrin, "The Status of Hindu Women from Antiquity to (Early) Modernity: A Downward Graph," *International Journal of Management and Humanities* 5, no. 7 (March 30, 2021): 16–21, <https://doi.org/10.35940/ijmh.G1255.035721>.

32 Alam, "Review of Hindu Personal Law in Bangladesh: Search for Reforms."

33 Sunderlal T. Desai, *Mulla Principles of Hindu Law* (N.M Tripathi Private Limited, 1990).

34 V Ramaswami, "Principle of Hindu Law, 12th Edition by Dinshah Mulla and Sundarlal T Desai," *Journal of the Indian Institute* 1, no. 1 (1959): 323–27.

35 Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (New Delhi ; New York: Oxford University Press, 2003).

Bashar Mohammad Abu Noman and Saeed Ahsan Khalid, in their paper,³⁶ appraised the initiative as an attempt to adopt a uniform family code for the multicultural society in Bangladesh.

The contemporary works of literature are mostly based on three different contexts: (a) the historical context of the codification of Hindu personal law, (b) the prevailing gender-biased legal and customary norms emphasizing the principles of inheritance for Hindu women, and (c) literature based on gender-neutral ameliorative legal measures concerning customary Hindu law. However, there is a gap in making a comprehensive assessment of the equality status of Hindu women from the perspective of the enjoyment and exercise of property rights from all dimensions including intestate and testamentary norms of property rights, distribution principles of property rights, self-acquired property, property under the management of guardianship, and the undeniable effects of gender inequality in other facts, for example- education, family planning etc. Thereby, this study strives to fill the prevalent literature gap by examining gender disparity in the context of exercising and enjoying property rights in all of their manifestations. By doing this, the current study brings a new perspective to the body of present scholarship from three different contexts: demonstrating the holistic aspect of property rights for Hindu women, briefly outlining the social impact of exercising unequal property rights, and showcasing the intersection of theory, legal analysis, and customary practice relating to the property rights of Hindu women. It, therefore, will assist future scholars in examining the ways in which unequal property rights affect women's autonomy, empowerment, and socioeconomic status. Through this study, policymakers will be able to identify discriminatory property rights laws and take the necessary action to rectify the issue. In addition, the study will create awareness within the community and will open the door for vulnerable Hindu women to raise their voices against unequal property rights to harness them with other development spectrums.

The context mainly focused on the intra-religious customary, and legal norms and practices, viz, how the property rights of Hindu women be exercised and enjoyed, viz, how the property rights of Hindu women be exercised and enjoyed. To achieve the said objectives, the study analyzes the prevailing customary laws and practices of the Hindu community. Also, a theoretical understanding of discriminatory property rights has been made to investigate the countermeasures for establishing a gender-neutral property rights-based norm within the Hindu personal law domains. One of the reasons to choose Hindu women is that they represent the largest minority group in Bangladesh and often face discrimination in enjoying their basic rights.³⁷

To meet the intended objectives of the study, the authors have applied the doctrinal research method. Under this method, a five-step process has been followed: identifying the research problem, collecting legal sources, evaluating those sources, analyzing the legal sources, and synthesizing legal principles. In the end, a conclusion has been drawn through a discussion process. The examination of the study object is based on two fundamental questions: (a) what forms of discriminatory laws and customs persist that affect a Hindu woman's ability to exercise her property rights? and (b) How do those discriminatory practices impact her other rights? The second step is collecting data sources relating to legal and customary practices prevailing within the Hindu religious community. The data relating to the legal sources are gathered from

³⁶ Belā Nabī, ed., *Uniform Family Code: The Proposal of Bangladesh Mahila Parishad*, Current translated edition (Dhaka, Bangladesh: Bangladesh Mahila Parishad, 2015).

³⁷ Within the geographical area of Bangladesh, women who belong to the Hindu religion are commonly known as Hindu women. The Hindu religion forms the largest religious minority group in this region. According to the 2022 Census of Bangladesh, the Hindu population constitutes 7.95 % of the total population. Of them, half of the Hindu population is composed of Hindu women.

pertinent laws, judicial rulings, customary rules, and statutory standards; on the other hand, customary practices are observed by analyzing theoretical sources and prevalent traditions collected from multiple secondary data sources like journal articles, books, daily journals, etc. The evaluation and analysis of sources are based on standard criteria relating to her enjoyment of different aspects of the property rights dimension including the comparison of the distribution principle of Hindu women's right over her *stridhan* (six-fold property of women having during marriage and from her father, mother and brother before or after marriage), and devolution of self-acquired property. To analyze the second question of the study objective, her religious autonomy, family participation, and right to education and employment are investigated. The discussion section largely draws conclusions based on the examination of legal sources and customs.

2. ANALYSIS AND DISCUSSION

2.1 Conceptual Framework of Predominant Property Rights of Hindu Women in Bangladesh

2.1.1 What Does a Hindu Woman's Property Mean?

Hindu women's property is a generic term, and it encompasses all categories of property belonging to a Hindu woman.³⁸ Hindu women can acquire property through inheritance, partition, or gifts.³⁹ The properties of Hindu women fall into two categories: (a) *stridhan*, and (b) the widow's estate.⁴⁰ In the former case, a Hindu woman possesses absolute ownership, whereas the status of the widow's estate is restricted by a limited interest or life interest.⁴¹

Stridhan

The expression '*stridhana*' is made up of two Sanskrit words '*stri*', which means women, and '*dhan*', which denotes property. Hence, *stridhan* literally translates to women's property.⁴² Three tenets are taken into consideration while ascertaining the categories of *stridhan*: (a) the sources of acquisition, (b) the status of the woman (e.g., married, unmarried, or widow) at the time of acquiring the *stridhan*, and (c) the school of Hindu law.⁴³

Based on the sources of acquisition, the *Dayabhaga* School of Hindu Law categorizes them into three groups: (a) *Yautaka* which means gifts made during the nuptial fire, (b) *Anvadheyaka* refers to gifts and bequests the father gave her after she got married, and (c) *Ayataka*, which refers to 'gifts and bequests' offered before the wedding by the father and other relatives.⁴⁴ The *Dayabhaga* School of Hindu Law also enlists the '*inclusion*' and '*exclusion*' clauses while categorizing *stridhan*. The aforementioned School holds that *stridhan* encompasses all gifts given by family members as well as gifts given by outsiders, whether they are given before the wedding fire or during the bridal procession. However, it excludes the following properties from the status of *stridhan*: (a)

38 Sri Mridulkanti Rakshit, *The Principles of Hindu Law*, 7th ed. (Kamrul Book House, 2012).

39 Rakshit.

40 Sathiyabama, "Gender Equality in Property Rights: The Position of Hindu Women – Historical Perspective."

41 Mahua, "Hindu Women's Property Rights: Bangladesh Perspective."

42 Naureen Hera and Asif Pasha, "Stridhan: The Misunderstood Concept of Women's Property PROPERTY," *Supremo Amicus* 32 (2023).

43 Mahua, "Hindu Women's Property Rights: Bangladesh Perspective."

44 Mahua.

gift of immovable property from her husband, (b) property that a woman has inherited, (c) property that she acquired during the partition, (d) gift from a stranger, excluding such given at the wedding ceremony or prior to the nuptial fire, and (e) property gained through individual skills or the application of mechanical works.⁴⁵

On the flip side, the *Mitakshara* School of Hindu Law divides *stridhan* into two categories depending on her authority of disposal.⁴⁶ The first category is *Saudayika Stridhan*. Either a married or unmarried woman can acquire this kind of property from her parents at their home or her spouse at his. A Hindu woman gets absolute power of disposal over her *Saudayika*. The second group, referred to as *Non-Sauyadika*, includes all the other forms of *Stridhan* over which a Hindu woman is excluded from exercising her absolute power of disposal. The consent of her husband is required for the disposal of the second category of *stridhan*.⁴⁷ From the context of the source of acquisition, the *Mitakshara* School of Hindu Law includes *stridhan* obtained by inheritance, purchase, partition, adverse possession, and findings.⁴⁸

Widow's Estate

An alternate term for a woman's estate is a widow's estate.⁴⁹ The assets a Hindu widow receives after her husband dies are referred to as a widow's estate or a woman's estate. A Hindu widow only has a life interest over her 'widow's estate'.⁵⁰ Like the limited status of the widow's estate (life interest), property inherited by a female with the status of a daughter, mother, true grandmother, or true great-grandmother enjoys the same interest.⁵¹ Therefore, in a broad sense, the term 'widow's estate' refers to all kinds of property that a woman inherits, not just that which she receives from her deceased spouse.⁵²

2.1.2 How Does a Hindu Woman's Right to Property Govern?

Hindulaw primarily comprises two authoritative sources: (a) the *Mitakshara* School of Hindu Law and (b) the *Dayabhaga* School of Hindu Law.⁵³ Of them, the *Dayabhaga* School is the primary source of governance of the Hindu community of Bangladesh.⁵⁴ However, of late, several statutes have been enacted to regulate the private affairs of Hindus. Therefore, a combination of legislative rules and customary traditions controls Hindu women's property rights in Bangladesh.

2.2 Dimensions of Discriminatory Property Rights for Women from Egalitarian Principle Context: A Theoretical Viewpoint Highlighting Hindu Religious Community

Ensuring women's property rights, in particular, advances gender parity and human rights protection, while the advancement, in general, promotes economic prosperity for all.⁵⁵ However, there are still legal frameworks functioning around the globe ignoring

45 Rakshit, *The Principles of Hindu Law*.

46 Mithun Kumar, "Streedhan: A Critical Study," *Journal of Emerging Technologies and Innovative Research* 6, no. 3 (2019): 701–8.

47 Kumar.

48 Rakshit, *The Principles of Hindu Law*.

49 Hera and Pasha, "Stridhan: The Misunderstood Concept of Women's Property PROPERTY."

50 Hera and Pasha.

51 Rakshit, *The Principles of Hindu Law*.

52 Karim, *Hindu Law: Intersecting Religion, Tradition and Law*.

53 Alam, "Review of Hindu Personal Law in Bangladesh: Search for Reforms."

54 Mahua, "Hindu Women's Property Rights: Bangladesh Perspective."

55 Carol Rabenhorst and Anjali Bean, "Gender and Property Rights," *Urban Institute. United States of America*, July 2011, 1–28.

women's equal rights when it comes to acquiring, holding, or managing property rights. Even in situations where the national legal framework upholds equality for all, the implementation of these legal standards is hindered by customary norms, putting women in an unenviable position. Hence, women cannot frequently assert their rights when faced with social, legal, and financial constraints.⁵⁶ And it transcends all legal norms when the issue of equality for the enjoyment and exercise of property rights comes up. For instance, due to ongoing claims of theological supremacy over one another based on variations in constructional and ideological techniques, the notion of property rights varies between various groups of religions.⁵⁷ This continuous conflict, including customary practices and age-old legal frameworks, led to serious deprivation of property rights for women in many jurisdictions across the globe.⁵⁸ In an effort to understand and overcome gender differences, with particular attention to the enjoyment of property rights, a number of theories and statutory frameworks have evolved.

2.2.1 Patriarchy and Women's Subordination

Typically, the expression 'patriarchy' refers to 'male dominance' or a condition in which 'women are kept subordinate' throughout the public and private domains of life.⁵⁹ It is one of the key hindrances to women's advancement and development. Feminist scholars are the main forerunners in defining this discriminatory custom in society. By patriarchal tradition, feminists are attempting to figure out the realities of women within the community.⁶⁰ Frederick Engels, one of the prominent Feminist scholars, gives a broad account of the origin of the idea of patriarchy.⁶¹ According to him, the emergence of private property rights marked the beginning of women's subjugation. When private property first appeared in society, men desired to hold onto their wealth and power and pass it down to their offspring.⁶² To affirm their succession rights, the mother rights were overthrown. In addition, to uphold the patriarch's privilege, women ought to be kept subjugated and domesticated, and their sexuality regulated and controlled.⁶³

On the other hand, contemporary feminist scholars are attempting to justify women's subordination within the patriarchal social system.⁶⁴ They argue that since men perceive women as wholly different from themselves, women are devalued to the status of the second sex and are, therefore, subordinate.⁶⁵ Furthermore, they contend with the fact that women belong to a relegated sex group under patriarchal supremacy.⁶⁶ As a result, men occupy all positions of authority inside families as well as throughout the community at large. Because of patriarchy, women lack the ability to fully exploit their legal entitlements and liberties. This male-dominated norm also limits women's

56 Amalia Blandino, Gabriele Figlia, and Letizia Coppo, "Gender Equality in the Different Fields of Private Law," in *Gender-Competent Legal Education*, ed. Dragica Vujadinović, Mareike Fröhlich, and Thomas Giegerich, Springer Textbooks in Law 15 (Cham: Springer International Publishing, 2023), <https://doi.org/10.1007/978-3-031-14360-1>.

57 Ifran Hossain Mollah, "Hindu Women's Right to Property at the Crossroads: The Tension between Human Rights and Cultural Relativism," *Journal of Society and Change* 8, no. 4 (2015): 11.

58 Mollah.

59 Abeda Sultana, "Patriarchy and Women's Subordination: A Theoretical Analysis," *The Arts Faculty Journal, University of Dhaka* 4, no. 1 (2011): 1–18.

60 Sultana.

61 Sultana.

62 Friedrich Engels, *The Origin of the Family, Private Property, and the State*, ed. Dona Torr, trans. Alick West, Paperback Edition, vol. 3 (London: Verso Books, 2021).

63 Engels.

64 Sultana, "Patriarchy and Women's Subordination: A Theoretical Analysis."

65 Simone de Beauvoir and Howard Madison Parshley, *The Second Sex*, Repr (Harmondsworth: Penguin, 1981).

66 Kate Millett, *Sexual Politics*, Repr (London: Rupert Hart-Davis, 1971).

freedom of movement outside of their homes.⁶⁷ The classical religious text of the Hindu community demonstrated a male-dominated picture. Furthermore, within Hindu religious practices, inheritance principles prioritize men's ownership of property, with daughters receiving no share or a limited share of the property.⁶⁸

Hindu society has traditionally been patriarchal, with property rights heavily favoring men.⁶⁹ The male-dominated social structure of Bangladesh depicts an unequal picture regarding the enjoyment of human rights.⁷⁰ For example, following a child's birth in Bangladesh, the male issues are perceived as an asset of the family, whereas the girls are perceived as a liability.⁷¹ Besides, there is an age-old traditional orthodox belief that males ought to deal with 'public works' whereas women belong in 'private or domestic life', and since land or property lies under the 'public' domain, it can be predominantly governed and regulated by the male member of the family.⁷² In addition, it becomes a customary norm for a sister to surrender her inheritance right in favour of her brother on the rationale that a woman's inheritance will ultimately transmit to her in-laws or husband and be lost to another family.⁷³ Therefore, the patriarchal social structure in Bangladesh, along with the unequal customary standards found in Hindu holy texts, places a Hindu woman in a subservient and subjugated position.

2.2.2 Classical Approach

The classical Hindu sacred scripture that served as the basis for Hindu law was traced during the Vedic and post-Vedic eras.⁷⁴ The texts of the Vedic period (3000 BC – 1000 BC) or the classical religious texts are considered the formal sources of Hindu law, whereas the sacred compilations during the post-Vedic era (age of *dharmashastra*) are the material sources of Hindu law. These two are jointly shaped as the main basis of Hindu law.⁷⁵ Though the Vedic scripture does not account for women having an inferior status to men, the status deteriorated during the post-Vedic period.⁷⁶ Patriarchy became very powerful during the post-Vedic era, and it started to limit the authority of women.⁷⁷ The Manusmriti, one of the authoritative codes codified during the post-Vedic era, also echoed the dependent character of a female.⁷⁸ With each passing century, the birth of a daughter became increasingly unwelcome. There was a time when having a girl child was thought to be unlucky for the family.⁷⁹

In the context of enjoying property rights for women, some scholars have argued that the classical scriptures of the Vedic period denied absolute property rights to a

67 Pranab Kumar Panday, *Women's Empowerment in South Asia: NGO Interventions and Agency Building in Bangladesh*, Women in Asia Series 47 (London ; New York, NY: Routledge, Taylor & Francis Group, 2016).

68 Kamrun Nahar et al., "Assessment of Women Empowerment of Hindu Religion: Case of Rural Bangladesh," *European Journal of Social Impact and Circular Economy* 1, no. 1 (July 17, 2020): 66–73, <https://doi.org/10.13135/2704-9906/4293.no.1> (July 17, 2020).

69 Mahua, "Hindu Women's Property Rights: Bangladesh Perspective."

70 Farah Deebea Chowdhury, "Theorising Patriarchy: The Bangladesh Context," *Asian Journal of Social Science* 37, no. 4 (2009): 599–622, <https://doi.org/10.1163/156853109X460200>.

71 Sarah C. White, *Arguing with the Crocodile: Gender and Class in Bangladesh*, 1. publ (Dhaka: Univ. Pr, 1992).

72 Sohrab Hossen, "Patriarchy Practice and Women's Subordination in the Society of Bangladesh: An Analytical Review," *Electronic Research Journal of Social Sciences and Humanities* 2, no. 3 (2020): 51–60.

73 Najma Chowdhury, "Bangladesh: Gender Issues and Politics in a Patriarchy," in *Women and Politics: World-wide*, ed. Barbara J. Nelson and Najma Chowdhury (Oxford University Press, 2008), 832.

74 Alam, "Review of Hindu Personal Law in Bangladesh: Search for Reforms."

75 Alam.

76 Afrin, "The Status of Hindu Women from Antiquity to (Early) Modernity."

77 Afrin.

78 Manu Smriti 5:147-8 citing Afrin, "The Status of Hindu Women from Antiquity to (Early) Modernity," 18.

79 Afrin, "The Status of Hindu Women from Antiquity to (Early) Modernity."

Hindu woman.⁸⁰ However, others hold an opposite view and contend that equal status can be observed during the said age.⁸¹ They claim that unmarried girls received a share of their fathers' assets during the Vedic era. In the event that her father had no son, a daughter would have maintained complete legal control over his possessions. And, when the mother passed away, her properties were divided evenly amongst her sons and her unmarried daughters.⁸²

On the other hand, the post-Vedic era portrayed unequal and discriminatory property rights for Hindu women.⁸³ Manusmriti denied the property rights of three categories of persons, e.g., wife, son, and slave.⁸⁴ Manusmriti further pointed out that the person on whom they depend owns the property they earn.⁸⁵ Girls had no share in the dowry, which was a piece of the father's property given to the groom upon marriage. If a married woman did not have a male heir, her suffering and her daughters' suffering would know no limits since her late husband's belongings were divided among the closest male relatives, including brothers, nephews, and so on; married women also had no claim on their late husband's property. As a result, the main basis for denying women the privilege to inherit is found in the Vedic texts. Later, however, it gained traction due to patriarchal attitudes and male chauvinistic approaches to the interpretation, implementation, and execution of Smriti scriptures, customs, and usages.⁸⁶

2.2.3 Cultural Relativism

Cultural relativist thinkers have believed that every culture and tradition has their own identity and moral basis.⁸⁷ They further contended that the determination of moral principles can not be evaluated by comparing them with other cultures or traditions.⁸⁸ William Graham Sumner, one of the pioneering scholars of the cultural relativist school of thought, has aptly remarked that there is no universal yardstick by which to judge the virtues of customs, so they cannot be labeled 'correct' or 'incorrect'.⁸⁹ He further asserts that the norms of one's society serve as the only yardstick for determining what is right and wrong.⁹⁰ Therefore, even though there is an apparent conflict between the normative principles of Hindu theological legal ordinance and the universal conception of equal property rights, one can't unilaterally shrug off the application of ancient sacred scriptures for the Hindu religion to uphold the universal notion within the framework of the overall rights regime.

The cultural relativist thinker believes that every culture has equal worth and merit in and of itself. Based on relativist reasoning, it is therefore neither reasonable nor expected to advance the standard of universality in opposition to the Hindu society's long-standing conviction in equal treatment of property rights for women.⁹¹ However, the argument put forth by proponents of cultural relativism presents a quandary for a

80 Mollah, "Hindu Women's Right to Property at the Crossroads: The Tension between Human Rights and Cultural Relativism."

81 Afrin, "The Status of Hindu Women from Antiquity to (Early) Modernity."

82 Afrin.

83 Afrin.

84 Afrin.

85 Afrin.

86 Mollah, "Hindu Women's Right to Property at the Crossroads: The Tension between Human Rights and Cultural Relativism."

87 Melville J. Herskovits, *Man and His Works: The Science of Cultural Anthropology* (New York: Alfred A. Knopf, 1949).

88 John J. Tilley, "Cultural Relativism," *Human Rights Quarterly* 22, no. 2 (2000): 501–47.

89 James Rachels, *The Elements of Moral Philosophy*, 4th ed (Boston, Mass.: McGraw-Hill, 2003).

90 Rachels.

91 Mollah, "Hindu Women's Right to Property at the Crossroads: The Tension between Human Rights and Cultural Relativism."

secular country whose constitution mandates equality as one of its basic principles.⁹² Though religious extremism is rising in a secular nation, the principle of cultural relativism is worthless in establishing gender equality because it discriminates against women.⁹³ Both Bangladesh and India have secular constitutions along with additional laws that uphold equal property rights for women. In addition, they are both signatories to the International Bill of Rights, which seeks to create a system of equal rights regardless of a person's ethnicity, religion, sex, or color. Thus, in terms of the rights regime, the constitutional mandate, coupled with international obligations, prompted an ideal of right and wrong that remains culture-neutral.

2.2.4 Evolution of Legal Reforms: Accelerating Gender Discrimination on Property Rights

Reformist feminist scholars have argued that statutory reformation is an effective method to reduce gender disparity. The phases of legislative reformation, however, exacerbate inequality rather than eliminate it in the context of Bangladesh's Hindu community, especially concerning Hindu women's property rights.

Gender inequality has been chronicled throughout the classical Hindu religious texts.⁹⁴ The following decade of the classical era (the age of commentators) witnessed an upward trend in implementing equal rights for women, partly due to the development of two major schools of thought, *the Mitakshara* and *the Dayabhaga School of Hindu Law*.⁹⁵ The evolution shaped a new phase by introducing the diversity of doctrines in different fields.⁹⁶ However, the rising trend of Hindu family law had its first setbacks when British rule over India emerged in the middle of the eighteenth century. While they (colonial authority) did not try to reform personal laws, they did rely on the guidance of Hindu *paundits*.⁹⁷

The demise of imperial rule in 1947 brought a dual fate to the rise of Hindu personal law.⁹⁸ India, which formed a Hindu-majority state, made a remarkable contribution through progressive changes in Hindu personal law; on the contrary, Hindus became a religious minority class in Pakistan and drifted into an increasingly harsh situation, which unequivocally had an adverse impact on the evolution of Hindu law.⁹⁹

The situation of the Hindu population in Pakistan deteriorated as a result of a number of discriminatory laws that were implemented on Pakistani soil (Bangladesh was then a part of the province of Pakistan in the name of East Pakistan). Of them, the East Bengal Evacuees (Administration of Property) Act of 1949 and the Enemy Property Act of 1965 significantly impacted the property rights of Hindus; in particular, such legislative changes severely limited the ability of Hindu women to exercise their property rights. The East Bengal Evacuees (Administration of Property) Act, 1949, allowed the government to take over property left by Hindus who migrated to India post-Partition. Later, a Restoration Act was passed in 1951,¹⁰⁰ which was intended to restore property to returning evacuees. But the law, along with customary norms, ignores Hindu women from claiming their property rights. Hindu inheritance in East Pakistan was governed by the Dayabhaga school of Hindu law, which excluded married daughters from inheriting ancestral property and gave widows only a life estate (limited

92 Mollah.

93 Mollah.

94 See Classical Approach.

95 Alam, "Review of Hindu Personal Law in Bangladesh: Search for Reforms."

96 Alam.

97 Alam.

98 Alam.

99 Alam.

100 "East Bengal Evacuees (Restoration of Possession) Act" (1951).

rights, no ownership or sale). As a result, Hindu women were rarely recognized as ‘legal heirs’ under inheritance law and, thus, not seen as rightful claimants to the evacuees’ property. Even if a Hindu woman remained in East Bengal (now Bangladesh) and lived on the family property, she was not legally recognized as the owner if her father or husband had fled to India. The Enemy Property Act, 1965 (and 1968 Rules), which was promulgated during the India–Pakistan war of 1965, was another discriminatory legal step targeted at the Hindu community disproportionately, especially those with relatives or business links in India. Women were most vulnerable, especially widows without male family members, and unmarried daughters living alone on ancestral land. The act did not recognize the inheritance rights of Hindu women if their male relatives had migrated or were declared enemies.¹⁰¹ Aside from the above, Hindu personal law remained uncoded during the Pakistani era and relied mainly on the Dayabhaga School of Hindu Law, which gave no coparcenary or equal inheritance rights to daughters, granted widows a life estate, not absolute ownership, and denied inheritance to married daughters.

The situation remains static even after the emergence of Bangladesh from Pakistan in 1971. Instead of enacting statutory norms for Hindu personal laws, the age-old customary Dhayabagha principles were followed. As well as the unlawful process of acquiring and regulating enemy property persisted, but under a different nomenclature: vested property;¹⁰² thereby, for a Hindu woman, the issue stayed the same as it was during the Pakistani regime. Hindu women—especially widows and daughters—were rarely successful in claiming their ancestral vested property as their legal descendants due to patriarchal inheritance traditions (Dayabhaga).¹⁰³ Even though the Constitution of Bangladesh guarantees everyone equal rights in all areas of life, old Hindu customs nevertheless hold sway. Additionally, the patriarchal structure of the community heavily influences their enjoyment of rights as well as Hindu legal norms.

2.3 Hindu Women’s Right to Property in Bangladesh: A Grave Denial of Egalitarian Principles

2.3.1 Distribution of Hindu Women’s Property: An Invidious Approach

The classification of Hindu women’s property based on their marital status seems discriminatory and derogatory.¹⁰⁴ The traditional Hindu personal law divides a Hindu woman’s property into two categories, *stridhan* and the widow’s estate. However, the property of a Hindu male cannot be categorized according to their marital status; instead, all Hindu males have the same rights regardless of their status. As a consequence, the question of why certain classifications are made is frequently asked. It asserts that those classifications are meant to empower women economically, however, specific and convincing evidence or arguments in support of the conviction have not been uncovered yet. This classification reinforces patriarchal norms and gender stereotypes. For example, the concept of *stridhan* has been criticized for confining women’s property rights to certain types of assets, often excluding valuable ancestral property.¹⁰⁵ Additionally, the widow’s estate, while providing widows with some rights to their husband’s property,

101 Alam, “Review of Hindu Personal Law in Bangladesh: Search for Reforms.”

102 Alam.

103 Pranab Kumar Panday and Shuvra Chowdhury, “Women in Bangladesh: A Situational Analysis,” in *Gender Responsive Budgeting in South Asia: Experience of Bangladeshi Local Government*, 1st ed., 3 (London: Routledge, 2021), <https://doi.org/10.4324/9781003148661>.

104 Gobinda Chandra Mandal, “Born to Be Unequal? An Assessment of the Rights and Status of Hindu Women in Bangladesh,” *Dhaka University Law Journal* 35, no. 1 (2024).

105 Rakshit, *The Principles of Hindu Law*.

may not always ensure their financial security or independence because of their limited interest.¹⁰⁶ This gender-led classification can be better observed from four contexts: (a) limited scope, (b) unequal inheritance rights, (c) legal and other complexity, and (d) lack of financial independence.

Firstly, as per the *Dayabhaga* School of Hindu Law, from the context of sources of acquisition, *stridhan* typically includes only gifts received by a woman. Her inherited property is excluded from the purview of *stridhan*. This limited scope can impede women's access to valuable assets akin to land or real estate, which may be considered ancestral or family property. Secondly, while widows may inherit a portion of their husband's property through the widow's estate, their rights are often limited compared to those of male heirs.¹⁰⁷ Widows only receive a life interest in the property, meaning they cannot sell or transfer it, and their rights may be subject to the control of male relatives or legal guardians. Thirdly, restrictive property rights can undermine women's financial independence and economic empowerment. Without access to valuable assets or absolute control over inherited property, women may be economically dependent on male relatives or spouses, limiting their ability to make independent decisions or pursue their own goals. Fourthly, the classification of *stridhan* and widow's estate under Hindu personal laws can create legal complexity and uncertainty, particularly in cases where traditional customs conflict with modern legal principles. Besides, the classification varies between two different schools of thought and from region to region. Consequently, confusion and uncertainty arise for their proper governance, even during the succession process. Women may face challenges in asserting their rights to property or navigating legal processes, especially in the absence of adequate statutory legal resources or support.

Overall, while the classification of *stridhan* and widow's estate may aim to provide women with some degree of property rights, these provisions can perpetuate gender discrimination by augmenting orthodox gender-based stereotypes, qualifying women's access to valuable assets, and undermining their economic independence. Efforts to address these issues require not only legal reforms but also changes in societal attitudes and cultural norms surrounding women's property rights and gender equality.

2.3.2 Gender Discriminatory Intestate and Testate Principles

The primary legal source of the intestate principles of the Hindu community in Bangladesh belongs to the Dayabhaga exponents. The Hindu Law of Inheritance (Amendment) Act of 1919 and the Hindu Women's Rights to Property Act of 1937 have made a few changes to the order of succession to ensure gender equality. In the event of a conflict between a special family or local customs and the Hindu Law of Inheritance (Amendment) Act of 1919, the former will take priority.¹⁰⁸ On the contrary, the Hindu Women's Rights to Property Act of 1937 has priority in the event of a conflict with local customs. As a result, the application of legal pluralism can be perceived within the intestate principle of the Hindu community in Bangladesh.

According to Dayabhaga scholars, the successors of a deceased person are divided into three classes. They are Sapindas,¹⁰⁹ Sakulyas,¹¹⁰ and Samanodakas.¹¹¹ The devolution

106 Rakshit.

107 Hera and Pasha, "Stridhan: The Misunderstood Concept of Women's Property PROPERTY."

108 "Hindu Law of Inheritance (Amendment) Act," § 3 (1919).

109 It indicates the person by whom and to whom pindas (entire cakes) are offered.

110 It suggests the person by and to whom pinda lepa (i.e., remnants of pinda) clinged to the hand while mixing the ingredients of which the pindas were composed, as cited in Rakshit, *The Principles of Hindu Law*, 203

111 It indicates the person by and to whom libations of water are offered, citing Rakshit, *The Principles of Hindu Law*, 203

of property among three classes of heirs is consecutive, and Sapindas is the first in line, followed by Sakulyas, and the last claim is from Samanadokas.¹¹² The hierarchy governs the descent of heirs within the class, and one excludes another subject with some exceptions.¹¹³ Within the first class (Sapindas) of the hierarchy, there are about fifty-five (55) heirs.¹¹⁴ If we observe the number based on the gender of heirs in the first class of the hierarchy, only five female members (widow, daughter, mother, grandmother, and true great-grandmother) represent the class. However, in line of succession in the first class hierarchy, the widow and daughter are placed in the fifth and sixth orders, respectively, followed by the mother in the eighth order.

Based on the nature of property interest after devolution, the male heirs get absolute interest over inherited property; in contrast, the female legatee, e.g., widow, daughter, or sister, receives limited interest.¹¹⁵ Her limited interest expounds that while she can use the property, she is not allowed to sell, transfer, or own it unless extraordinary events render it necessary to secure the land for subsequent descendants. Once she passes away, these belongings will be returned to the surviving descendants as she acquired them from the deceased.¹¹⁶

In addition to the above, a discriminatory practice is also evident in her testamentary rights. While Hindu men have full testamentary powers to dispose of their self-acquired or inherited property, Hindu women's rights to will property are conditional and limited;¹¹⁷ particularly if the property was inherited through her husband or if she is holding property as a life interest holder, rather than as an absolute owner. On the above occasion, she cannot bequeath the property through a will, and the property reverts to the husband's heirs upon her death, reinforcing male control over family assets. Even when it comes to her *Stridhan* property, which she controls absolutely, if it falls under the *Non-Sauyadika Stridhan* category, husband's approval is required for making a will.¹¹⁸

2.3.4 Rights of a Daughter over Ancestral Property

A daughter only receives inheritance when her predecessors are not present, making her the fifth in the hierarchical order of succession to her father's property. However, she has limited interest, and on her death, the heir of her father succeeds to the estate, not her own. The unmarried will get priority in case of inheritance over the married daughter. The daughter who is incapable of having children or who is a widow with no male offspring will not be eligible for heirlooms.¹¹⁹

The inclusion of widows within the order of first-class hierarchy (Sapindas) was made by the Hindu Women's Right to Property Act of 1937. To examine a Hindu woman's right regarding her widow's estate, the discussion can be based on the following four aspects: (a) intestate principles of the widow, (b) nature of interest after devolution, (c) intestate principles on the widow's estate following her death, and (d) impact of widow remarriage on succession's order. The intestate principle of the widow is governed by statutory legislation.¹²⁰ Under the Act, a Hindu widow(s) will succeed to her husband's property if he dies intestate.¹²¹ In the event that there is more than

112 Rakshit, *The Principles of Hindu Law*.

113 Rakshit.

114 Rakshit.

115 Karim, *Hindu Law: Intersecting Religion, Tradition and Law*.

116 Karim.

117 Rakshit, *The Principles of Hindu Law*.

118 Kumar, "Streedhan: A Critical Study."

119 Desai, *Mulla Principles of Hindu Law*.

120 "The Hindu Women's Rights to Property Act," § 2 (1937).

121 "Hindu Women's Right to Property Act" (1937).

one widow, their combined portion will be equivalent to that of a son.¹²² Furthermore, even when a predeceased son leaves no son behind, the widow's and the son's shares will be equal. The widow, however, shall receive an equal portion to that of a son's son. However, if any son or son's son of a predeceased son is still alive, the widow will receive a part equivalent to that of a son's son.¹²³ The second aspect is that the nature of women's estate interest is limited, not absolute.¹²⁴ It means that a Hindu widow(s) only gets a lifetime interest, which prohibits her from alienating the property by any means.¹²⁵ However, alienation is only permissible in cases when there is a legal requirement, e.g., discharging liabilities of her husband, costs for her husband's spiritual performance, and maintenance of the estate.¹²⁶ All alienation conditions (legal necessity) are circumscribed by her dead husband's liabilities and obligations. The third principle states that, upon her death, the widow's assets shall be transferred to her husband's descendants rather than to her own.¹²⁷ How discriminatory it is! Finally, the widow's remarriage and unchastity disentitle her from inheriting her late husband's inheritance.¹²⁸

2.3.6 Widow Remarriage and its Upshot on Inheritance

Of late, a Hindu widow is lawfully allowed to remarry following the death of her husband.¹²⁹ On the other hand, even though it is lawful, remarriage terminates the widow's inheritance rights over her widow's estate. Yet, there are two opposing judicial interpretations respecting the remarried widow's right over her widow's estate. One view is that once a widow remarries, she is barred from exercising her right to her widow's estate under both statutory legislation and customary Hindu law, despite her caste's custom permitting remarriage.¹³⁰ Another interpretation is that if the customary practice allows remarriage, then no relinquishment of her rights over her widow's estate is allowed.¹³¹ However, the relinquishment of her rights can only be possible if the prevalent custom permits the same. Therefore, there is currently no consensus on a Hindu widow's property rights being forfeited following her second marriage.

2.3.7 Hindi Woman's Rights over Her Stridhan and Discrimination

Rights of a Woman over Her Stridhan

The exercising of property rights of a Hindu woman's *stridhan* relies on her status, e.g., maidenhood, coverture, and widowhood.¹³² In her maidenhood and widowhood, a Hindu woman exercises absolute freedom to dispose of her *stridhan* of every description.¹³³ In contrast, the disposal power is not absolute during her coverture. From the context of exercising property disposal power during her coverture, it can be classified into two categories: (a) *saudayika*¹³⁴ and (b) *non-saudayika*¹³⁵. The status of *saudayika*

122 Hindu Women's Right to Property Act.

123 Hindu Women's Right to Property Act.

124 Hindu Women's Right to Property Act.

125 Mahua, "Hindu Women's Property Rights: Bangladesh Perspective."

126 Mahua.

127 Mahua.

128 Mahua.

129 "The Hindu Widow's Remarriage Act" (1856).

130 Saudamini Roy Malakar v Narendra Chandra Barman, 4 DLR 492 (n.d.).

131 Jaynal Abedin Khandakae and Others v Badiuzzaman Mondal and Others, No. Criminal Appeal 1246 (2018).

132 Jaynal Abedin Khandakae and Others v Badiuzzaman Mondal and Others.

133 Jaynal Abedin Khandakae and Others v Badiuzzaman Mondal and Others.

134 Whatever is obtained by a married or unmarried girl, from the husband or parents, at the husband's or father's place, is called *saudayika*.

135 All other properties that are not *saudayika* are called *non-saudayika*.

stridhan gives her absolute power of disposal, whereas her husband's permission is required for the disposal of *non-saudayika stridhan*. Her husband has full control over the property in question, and he is free to use it as he pleases.

Succession Principle to Stridhan

The descendants of the *stridhan* can either be male (sons, sons, sons' sons, etc.) or female (daughters, daughter's daughters, etc.).¹³⁶ When a man inherits *stridhan*, he receives it unconditionally and devolves it to his heirs at his death. In contrast, when a woman inherits *stridhana*, she has a restricted interest in it, and when she passes away, it passes to the next female heir of that *stridhan* instead of her heirs.¹³⁷

2.3.8 Inheritance Rights for Women Across the Dimension of Personal Laws in Bangladesh: To what extent does it ensure gender equality for Hindu Women?

Within the customary and legal framework of the personal laws in Bangladesh, there prevail inter-religious unequal practices respecting the inheritance rights of a woman (Table 1). This often brings up a question that to what extent does it ensure gender equality for a woman.

Table 1: Comparative Analysis of Inheritance Norms Across Different Religious Lines in Bangladesh

Aspects	Muslim Personal Law	Hindu Personal Law	Christian Personal Law
Governing Law	Muslim Personal Law (Shariat)	Hindu Personal Law (Dayabhaga)	The Succession Act 1925
Daughters' Inheritance Rights	Inherit half the share of a son	Unmarried daughters may inherit if no son; married daughters are often excluded	Equal inheritance rights for sons and daughters
Widows' Rights	Entitled to 1/8 (with children) or 1/4 (without)	Limited 'life interest' – no full ownership	Entitled to one-third of the deceased man's property
Right to Parental Property	Yes (but less than brothers)	Not guaranteed – usually excluded if married	Yes
Right to Inherit Ancestral Property	Yes	Usually excluded	Yes

¹³⁶ Dinshah Fardunji Mulla and Sunderlal Trikamlal Desai, *Principles of Hindu Law*, 16. ed. by Sunderlal T. Desai (Bombay: Tripathi, 1990).

¹³⁷ Mulla and Desai.

Widow re-marriage and inheritance rights	No termination of her inheritance rights	The concept is still being developed. However, in practice, it terminates her inheritance rights over her widow's estate	No termination; even conversion to another religion makes no bar on her inheritance rights
Devolution principle	Property passes to her heirs upon her demise rather than to the heirs from whom they inherited it	In case of a Hindu woman's estate, on her death, the property does not pass on to her heirs but to the heir of the last male holder	Property passes to her heirs upon her demise rather than to the heirs from whom they inherited it
Testamentary Rights	A Muslim woman has the right to make a will and bequeath property	A Hindu woman can make a will about their self-acquired property, but ancestral property or a widow's estate is often excluded from her rights of will	A Christian woman has the right to make a will and bequeath property

In contrast to other religious and customary norms, Hindu women in Bangladesh do not have gender-equal inheritance rights, despite the country's constitutional principles of equality (Article 27) and non-discrimination (Article 28). Hindu personal law in Bangladesh remains uncoded and is derived from the patriarchal *Dayabhaga* system, which prioritizes sons and male kin over daughters and female relatives. The absence of codified law, the continued dominance of patriarchal customs, and the lack of reform mean that Hindu women have the least access to property and economic security.

The above comparative study suggests that inheritance rights for Hindu women in Bangladesh are the most unequal compared to other personal laws. Under Muslim personal law, a daughter typically inherits half the share of a son, and a widow receives one-eighth or one-fourth of her husband's estate, depending on whether she has children (Table 1).¹³⁸ Also, a Christian widow is eligible to inherit property alongside her offspring, and inheritance laws do not differentiate between sons and daughters (Table 1).¹³⁹ On the contrary, under Hindu personal law in Bangladesh, which follows the *Dayabhaga* customary practices, inheritance is primarily reserved for male heirs, and married daughters are usually excluded from inheriting parental property.¹⁴⁰ Unmarried daughters may inherit in the absence of sons, but even this is not guaranteed due to patriarchal dominance. Widows, while entitled to inherit their husband's property,

138 Syed Khalid Rashid, *Muslim Law*, 5th ed. (Eastern Book Co, 2009).

139 Joyce Das, "Good Laws, Bad Outcomes: Land Rights and Inheritance Practices for Christian Women in Bangladesh," *The Journal of Legal Pluralism and Unofficial Law* 48, no. 2 (May 3, 2016): 159–85, <https://doi.org/10.1080/07329113.2016.1197512>.

140 Mulla and Desai, *Principles of Hindu Law*.

usually receive only a “life interest”, meaning they can use the property during their lifetime but cannot sell, gift, or bequeath it (Table 1).¹⁴¹

Additionally, under Muslim and Christian inheritance law, the property passes to their heirs upon their demise rather than to the heirs from whom they inherited it.¹⁴² In the case of a Hindu woman, the devolution principle followed just the opposite of Muslim and Christian personal laws, like in the case of a Hindu woman’s estate, on the death of the female owner, the property does not pass on to her heirs but to the heir of the last male holder (Table 1).¹⁴³ It means any property inherited by a Hindu woman generally passes to her sons or other male relatives, who inherit the property under the principle of agnatic succession (passing through the male lineage). In contrast, her daughters typically do not inherit ancestral property. Compared to Muslim women or women with other religious practices, Hindu women have fewer defined inheritance protections and rights under Hindu customary norms. Under Muslim personal law, a widow cannot disentitle her inheritance rights in case of remarriage; the same principle is applicable for a Christian woman. There is a contradictory interpretation regarding the issue of exercising inheritance rights upon her remarriage; however, in practice, remarriage usually disqualifies a Hindu woman from inheritance rights over her husband’s estate.¹⁴⁴

2.3.9 Devolution of Self-acquired Property: A Gray Area

Hindu women are entitled to hold two distinct types of property: *stridhana* and a woman’s estate. Only three categories of acquired property are covered under *stridhana*: gifts given at the nuptial fire, gifts from her natal family either before or after the marriage, and gifts from strangers; thereby, it explicitly excludes the property that Hindu women have obtained by mechanical art or in their personal capacity. The issue at hand finally brings us toward the idea of a widow’s estate, which would accept self-generated wealth in its fullest sense. The property that the woman personally skillfully earned falls under the category of the widow’s estate,¹⁴⁵ as a result, they will be distributed per the Hindu women’s limited ownership law (*Dayabhaga* School of Hindu Law). Thus, a Hindu woman in Bangladesh cannot exert complete authority over the property that she obtains via her efforts or skills.¹⁴⁶

In Bangladesh, the question of self-acquired property by Hindu women remains unanswered, and they are completely shut out of inheritance and are only granted limited privileges for specific reasons. The aforementioned discrimination and deprivation faced by Hindu women led to their socio-legal and economic backlash. Consequently, this repercussion has an apparent impact on the sustainable growth of the nation and ultimately causes it to fall short of its commitment to empowering women in all spheres of life. Is not now the ideal moment to consider issues related to enhancing women’s days ahead? To ensure constitutional equality, we can pursue a significant overhaul of Bangladesh’s laws pertaining to Hindu women’s succession.

2.3.10 Guardianship and Adoption: A Gender-Biased Precinct

Though not explicitly, access to property rights plays an integral part in two key domains of Hindu personal law: guardianship and adoption. When it comes to guardianship, it alludes to the minor’s property as well as his guardian. Similarly,

141 Mulla and Desai.

142 Rashid, *Muslim Law*.

143 Mulla and Desai, *Principles of Hindu Law*.

144 Saudamini Roy Malakar v Narendra Chandra Barman, 4 DLR.

145 Karim, *Hindu Law: Intersecting Religion, Tradition and Law*.

146 Karim.

concerning adoption, the adopted child has the same rights of inheritance as a natural child of the property of the adoptive family. Hindu personal law endorses four categories of guardianship: (a) natural guardian, (b) *de facto* guardian, (c) testamentary guardian, and (d) court-appointed guardian.¹⁴⁷ Whether it is natural, testamentary, or *de facto*, the father has the priority role. The mother is the next in line if the father does not appoint anyone else by will.¹⁴⁸ However, the choice of the father has primacy over everyone else, including the mother.¹⁴⁹ On the flip side, only male children can be adopted in Hindu personal law, and adoptees have the same inheritance rights as biological sons.¹⁵⁰ As a result, daughters are entirely excluded from the domain of adoption, which ultimately excludes them from accessing property rights through inheritance as adopted daughters. The situation is even more startling when it comes to the maintenance of Hindu women. Throughout her entire life, a Hindu woman is entirely dependent on the assets of her male counterpart, be it her spouse or father. Although it is not mandated by law, her father-in-law, provided he has adequate assets of his own, has a moral duty to care for her if her husband dies and leaves no property behind.¹⁵¹ The brief is that the daughter cannot access her father's property after marriage, and in the event of her husband's passing, she will only have a little interest in it; however, the interest will cease if she remarries or proves unchastity.

2.4 Certain Contemporary Issues Regarding Women's Discriminatory Property Rights Under Personal Laws in Bangladesh

2.4.1 Discriminatory Personal Laws and Religious Autonomy in Bangladesh

Bangladesh is a secular nation where people are allowed to practice any religion they choose. However, the three main religions that are openly practiced are Islam, Hinduism, and Christianity. The other heterodox religious groups can choose to follow any one of the aforementioned three religions, or they can adopt special laws for individuals who do not practice any religion at all or in situations where two parties practice different religions. Apart from the issue with the said multi-personal laws, there is also an acute problem with personal laws that discriminate against women based not just on their sex but also their faith. This article, therefore, believes that one of the key reasons why women are the most economically vulnerable group in society is because of these discriminatory laws that diminish women's self-respect in our nation. This disrespect for the dignity of our social stakeholders is seriously harming their self-esteem, which in turn affects their overall religious autonomy. Consequently, women are now mostly seen as receptive individuals who cannot speak up on issues pertaining to the home as well as society at large.

2.4.2 Uniform Family Code: Is the Only Way to Address Gender Justice?

In order to ensure gender justice for women, human rights activists frequently push for a uniform family code that is not influenced by spiritual beliefs. If we can establish a unified code in the near future, that will be a truly huge stride, as even in India, where it is mandated by the constitution to set up a consistent family code of all

¹⁴⁷ Huda, "Combating Gender Injustice."

¹⁴⁸ Huda.

¹⁴⁹ Huda.

¹⁵⁰ I Gusti Ayu Aditi et al., "Reexamination of the Concept of Justice in the Inheritance System: A Study on Women's Inheritance in the Traditional Society of Bali in Lombok, West Nusa Tenggara, Indonesia.," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (December 26, 2023): 602–22, <https://doi.org/10.29303/ius.v11i3.1322>.

¹⁵¹ Satish Ch.Pal v Mst. Majidan Begum, No. 10 DLR 271 (1958).

personal laws, they have not been able to accomplish so. Even though they haven't yet implemented a uniform code, they have diligently adopted a number of new statutory laws based on gender equality and made significant equality-based amendments to their various existing family laws. However, even though our nation has some unified laws, such as the Child Marriage Restriction Act of 1929, in many other areas, we continue to abide by rules that were passed down to us from the legal system of the United British Indian Empire. Most frequently, we see that the Hindu population as a whole and all political governments alike are not very eager to modify their personal laws. Occasionally, there is talk of implementing a dual personal law system. The first would be universal and apply to everyone, regardless of faith, but it would be elective. Therefore, everyone who chooses not to abide by the unified code is free to follow their own set of laws. Even the most ardent supporters of the adoption of a unified code have, to some extent, come to the realization that, for social, cultural, and political reasons, such drastic changes are not currently feasible, even though the demand for their adoption has not completely disappeared.¹⁵²

2.4.3 Discriminatory Inheritance Law Jeopardizes Hindu Women's Family Planning

Property rights are distributed according to discriminatory, outdated personal laws under all personal laws, including those of Muslims, Hindus, and some indigenous communities. This effectively prevents women from equal rights to ancestral property and unjustly prevents them from inheriting their paternal property rights, such as Hindu women in Bangladesh under the Dhayabagha Law.¹⁵³ Due to this discriminatory property right, it is frequently the case that a girl child is not welcomed into the family by both the woman and the man. However, they heedlessly assume blame in the hopes of bearing a son who will elevate them in society and inherit their ancestors' possessions. Salma Ali, an advocate and the executive director of the Bangladesh National Women Lawyers' Association (BNWLA), stated that men inherit their father's property at an equal rate while women do not. If there are only two daughters, unless their father makes special arrangements, two-thirds of the property will go to the family.¹⁵⁴ Hindu females in Bangladesh receive nothing in the presence of their brother,¹⁵⁵ which is why many parents these days set up a unique process for their daughters to receive a portion of their property.

2.4.4 Impacting the Right to Education and Employment

As the Hindu women in Bangladesh are not entitled to inherit property from their father's side, their natal family is not very interested in investing in their education and in favoring them for employment opportunities. Even women are not willing to plan a career plan by taking proper education, as they also know that their job's money will be theirs or their natal family someday if they fail to make any specific testament. These issues are discouraging Hindu women from being eligible for their counterparts economically and socially.

¹⁵² Huda, "Combating Gender Injustice."

¹⁵³ Mandal, "Born to Be Unequal? An Assessment of the Rights and Status of Hindu Women in Bangladesh."

¹⁵⁴ Hossen, "Patriarchy Practice and Women's Subordination in the Society of Bangladesh: An Analytical Review."

¹⁵⁵ Afrida Noshin, "Ensuring Protection of Women's Land Rights in Bangladesh: A Way Forward to Achieving Women's Empowerment and Gender Equality," *International Journal of Law Management & Humanities* 6, no. 6 (2023).

3. CONCLUSION

In Bangladesh, Hindu women's property rights are severely restricted, causing them to fall behind in many facets of life and unable to compete with modern women from other communities. The strong campaign to guarantee Hindu women's (equal) rights to property cannot thrive without a number of catalysts. Accordingly, this research suggests that taking the following steps could go a long way toward granting Hindu women in Bangladesh property rights based on gender equality, which will propel our society toward a paradigm of gender justice.

- a) To amend/repeal the existing private religious laws on property rights for a Hindu woman in Bangladesh under Dayabagha School of Law, and adopt statutory legislation incorporating the equality standard to establish gender justice.
- b) Outreach programs promoting equal property rights for women should be planned in order to empower Hindu women about their rights and help them maintain their dignity in a variety of socio-economic and political contexts.
- c) Despite having multiple challenges in its adoption and implementation in Bangladesh, a unified code for family affairs could be an efficient option to reduce discrimination based on gender and personal laws and customs, to ensure justice.
- d) To abolish laws that prohibit women from inheriting property. India serves as an exemplary country in this regard, as its statutory legislation removes all obstacles that prevent women from inheriting property, thereby promoting equality and nondiscriminatory principles.
- e) To create a separate body to monitor the implementation of Hindu women's rights-based laws in Bangladesh.
- f) To comply with international women's rights-based obligations in all domestic programs specially designed for Hindu women.
- g) Ensuring the recording of women's land shares.
- h) Like other cases, free legal aid/assistance should be provided to women seeking property rights under the new gender justice-based property law. Along with legal support, a socio-political supportive culture needs to be ensured to have an all-inclusive environment for women to enjoy their equal property rights without unnecessary hassle.

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