

# "Inherited Inequality: The Limited Rights of Hindu Women over Property – A Comparative Analysis"

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## ABSTRACT

The inheritance rights of Hindu women have long been a topic of legal and social discourse, revealing deep-seated gender biases within inheritance laws. Hindu women continue to encounter significant restrictions in inheriting and managing ancestral property, particularly in terms of their limited authority to dispose of inherited assets. This article critically explores these constraints from a comparative perspective, examining the legal frameworks of Muslim Law and Indian inheritance laws. It also sheds light on the gap between statutory provisions and their practical implementation, emphasizing how patriarchal norms curtail women's control over inherited property. By drawing parallels with progressive legal developments in other jurisdictions, the article advocates for a more just inheritance system that upholds gender equality in property rights.

**Keywords:** Hindu Law, Inheritance, women, Limited Rights, Disposal, Ownership, Patriarchy.

## INTRODUCTION

Traditionally Hindu law is believed to be of divine origin which is revealed by God himself to the great Hindu sages who by their prayer attained sublime religious status. The two main sources of Hindu law are Smriti i.e. what was heard: the divine source and Smriti i.e. what was remembered and recorded by the sages in their own words. Due to the emergence of various commentaries on these two main sources, two main schools of thought emerged which are,

### The Mitakshara School:

This school of thought was developed by *Vijnaneshwara*<sup>1</sup>, through his commentary on the *Yajnavalkya Smriti*. This school is followed in most parts of India, including North, West, and South India and is based on the principle of Survivorship.

### The Dayabhaga or the Bengal School:

Developed by *Jimutavahana*<sup>2</sup>, this school prevails in the Eastern India, including Bengal, Assam and Odissa and is based on the principle of religious efficacy or the power to offer spiritual benefit to the deceased.

### Succession under Hindu Law in Bangladesh:

The succession under Hindu law in Bangladesh is governed by the Dayabhaga School under which only those who can offer greatest spiritual and religious benefit to the deceased and his ancestors are entitled to succeed. Depending on the authority to perform the Pravara Shraddha Ceremony<sup>3</sup> or this power to offer greatest spiritual benefit to the deceased, there are three primary classes of heirs:

<sup>1</sup> A 12th-century Indian scholar

<sup>2</sup> A 12th-century Indian scholar and jurist known for his contributions to Hindu law

<sup>3</sup> a specific type of *Shraddha* ritual in Hindu tradition, performed to honor deceased ancestors by offering food and prayers.

- i. **Sapinda:** Sapindas are those who are bound to offer a pinda or an entire piece of cake to the deceased on his or her death and on whose death the deceased was bound to offer a pinda;
- ii. **Sekula:** Sakulya are those who are bound to offer a pinda lepa to the deceased on his death and on whose death the deceased was bound to offer a pinda lepa;
- iii. **Samanodokas:** Samanodokas are those who are bound to offer libation of water to the deceased and on whose death the deceased was bound to offer libation of water.

### Hindu Women's right to property:

A Hindu women has right over two types of properties which differ in various aspects. These are,

- a. **Stridhan** i.e. a woman's property, that is to say, properties over which she gets absolute power of disposal.
- b. **Inherited Property** i.e. the properties over which a woman gets limited right that can be exercised only during her life time.

### Stridhan:

‘Stri’ means woman and ‘Dhana’ means property. Thus, Stridhan refers to property that legally belongs to a woman and over which she has full ownership rights. As enumerated by Manu<sup>4</sup>, the following are considered as Stridhan in the hands of a woman be it a maiden, married women or widow:

- i. Gifts made to a woman before nuptial fire;
- ii. Gifts made to a woman at the bridal procession;
- iii. Gifts made in token of love by father-in-law, mother-in-law;
- iv. Gifts made by the father;
- v. Gifts made by the mother;
- vi. Gifts made by the brother.

Apart from these, four other items were included in the list of stridhan by Vishnu<sup>5</sup>. These are:

- vii. Gifts made by the husband on the occasion of taking another wife;
- viii. Gifts made after marriage by a woman's husband's relations or parent's relations;
- ix. Sulka i.e. a present to induce the bride to go to her husband's house<sup>6</sup>;
- x. Gifts from sons and relations.

### Classification of Stridhan:<sup>7</sup>

Stridhan may be divided into two classes in regard to rights of a female Hindu over her stridhan:

**Saudayika Stridhan:** Saudayika means gifts acquired before marriage, at the time of marriage and after marriage from parent and parent's relations or husband or husband's relations made through affection by a female Hindu.

**Non Saudayika Stridhan:** Non saudayika means gifts from strangers and property acquired by mechanical arts.

### Rights of Hindu woman over her stridhan:

1. **Right over stridhan during maidenhood:** There is no limitation to the power of a Hindu female of her stridhan during maidenhood. The rights can be summarized in the following words:

<sup>4</sup> An ancient Hindu sage who is traditionally regarded as the first lawgiver of humanity in Hindu mythology.

<sup>5</sup> Author of the ‘Vishnu Smriti’ or the ‘Vishnu Dharma Shashtra’.

<sup>6</sup> D.F. Mulla, Principles of Hindu Law (18<sup>th</sup> edn. LexisNexis 2001) 265.

<sup>7</sup> Md. Azizul Haque, *Hindu Law in Bangladesh: Theory and Practice* (3rd edn, University Publications 2017) 96.

- Whatever be the character of the stridhan i.e. saudayika or non saudayika, if the female is not a minor, she can dispose of her stridhan at her pleasure during the maidenhood.
  - So long she is a minor she cannot alienate her stridhan except through her guardian.
2. **Right over stridhan during the subsistence of marriage:** This right of a Hindu woman in such case can be summarized in the following words:
- A female Hindu has absolute power of disposal over her saudayika stridhan i.e. she can dispose it by way of sale, gift, will or any other means without the consent of her husband;
  - As regards the non saudayika stridhan, she has no power to dispose it without the consent of her husband during the subsistence of her marriage and it is subject to her husband's control.
3. **Right over stridhan during the widowhood:** A widow can dispose of her stridhan of every description at her pleasure, whether acquired before or after husband's death.

### Inherited Property:

As discussed earlier, heirs under the Dayabhaga School are divided into three main classes and each class of heir comes before the other and excludes the subsequent class. The first among them are the Sapindas, i.e. persons by and to whom pindas are offered.

Sapindas are 53 in number and among them only 5 are female who can succeed as heirs. They are:

- a. Widow;
- b. Daughter;
- c. Mother;
- d. father's mother or the grandmother; and
- e. father's father's mother or the great grandmother.

Son's daughter, daughter's daughter and sister were added to this list by the Hindu Law of Inheritance (Amendment) Act, 1929. Moreover, by virtue of the Hindu Women's Right to Property Act, 1937, the widow of a predeceased son and the widow of a predeceased son of a predeceased son are among the heirs to a Hindu's separate property in all the schools.

Nevertheless, discrimination prevails in various forms with regard to women's right over such inherited property. One such issue, which creates discrimination to a large extent, is 'the limited right of the women' over her inherited property.

### The Concept of 'Limited Right over Inherited Property':

A male succeeding as heir whether to a male or to a female, takes the property absolutely. Conversely, under the Bengal, Benares, Mithila, and Madras Schools<sup>8</sup>, any female heir, regardless of whether she inherits from a male or a female, holds only a limited estate in the inherited property.<sup>9</sup>

Thus, a widow's estate is generally characterized by its limited nature, restricting her power to alienate the property. Upon her death or surrender, the property reverts to the heirs of the last male owner. So, in the absence of an express grant, a woman is presumed to acquire only a limited estate in property received through partition or inheritance.

<sup>8</sup> In the Bombay state, a female inheriting from another female receives absolute ownership. While inheriting from a male, female heirs who, through marriage, have joined the gotra(family) of the deceased hold a limited estate, whereas other female heirs inherit the property absolutely.

<sup>9</sup> Mridul Kanti Rakshit, The Principles of Hindu Law: Personal Law of Hindus in Bangladesh and Pakistan (7th edn, 2012).

The heirs of the last full owner, who would be entitled to succeed to the estate of such owner on the death of a widow or other limited heir, if they be then living, are called 'reversioners'. The interest of a reversioner is not a vested one, rather an interest expectant on the death of a limited heir. It is a 'spes successionis' or a mere chance of succession within the meaning of section 6 of the Transfer of Property Act 1882. It cannot, therefore, be sold, mortgaged or assigned, nor can it be relinquished.<sup>10</sup>

Thus, the widow or other limited heir is not a tenant for life. The whole estate is for the time vested in her and she represents it completely. Her position is that of an owner but her powers are limited. Nevertheless, subject to the restriction on alienation, she holds the property absolutely and she completely represents it. She is entitled to its beneficial enjoyment, its rent and profits and income which is her own and not liable for her husband's debts.<sup>11</sup> Thus, the restriction on alienation is on the property only and not on the income arising out of such inherited property.<sup>12</sup> There is no doubt that a limited owner such as a widow, under the Hindu Law, can dispose of the income that may come to her hand from the assets of her husband's property in any way she likes.<sup>13</sup>

In short the concept of limited right over property can be summarized in the following words,

1. A woman having a limited right over property cannot take the property absolutely; rather she is entitled only to the income of the property;
2. She can neither use and dispose of her property absolutely nor can transfer or alienate it according to her wish except for legal necessity or with the consent of the next reversioners;
3. She cannot be a 'last full owner' of property or a 'fresh stock of descent' i.e. who held the property absolutely at the time of his death. This means, on her death the property will not vest on her heirs, rather on the next heir of the deceased from whom she succeeded.
4. On her remarriage she must return the property inherited from her previous husband.

The basic difference between widow's estate and stridhan is that stridhan of every description belonging to a woman passes to her own heirs on her death. But her other property which is not her stridhan and in which she has only a widow's estate is inherited by her husband's heirs.<sup>14</sup>

Stridhan belonging to woman is her property in absolute right. She can dispose of it at her pleasure, if not in all cases during coverture, in all cases during her widowhood. But it is not so in respect of property in which she has only a widow's estate. She is only a limited owner of such property and takes only a limited interest the nature and extent of which depend on the character of the property. Therefore, the estate taken by every other limited heir e.g. by any other female in the property inherited by her or obtained by her on partition was similar in its incidents to a widow's estate, it being not her stridhan i.e. absolute estate. She is entitled to its possession and income but cannot alienate it except in special cases.

### **Conditions concerning alienation:**

As a general rule, a limited owner is not entitled to alienate the immovable property inherited by her rather may transfer all or any portion of estate for her life or until her estate is determined earlier e.g. by surrender or by her remarriage. Therefore, if she alienates the property, it must be proved that,

- a. That the alienation was for religious purpose or legal necessity;
- b. That the alienator after reasonable enquiry as to the necessity has acted honestly;

<sup>10</sup> Dinshaw Fardunji Mulla, Mulla Principles of Hindu Law (Justice ST Desai ed, 16th edn, 1990, reprint 2010) [188].

<sup>11</sup> Rakshit (n 10) 460

<sup>12</sup> Ibid.

<sup>13</sup> Kula Chandra Dey Sarker Vs. Mahim Chandra Mondal and Others 10 DLR 312

<sup>14</sup> 29 DLR 140S 1998

- c. That there was such consent of the next reversioner to the alienation as would raise a presumption that the transaction was a proper one;
- d. In case of surrender, that it was a surrender of her whole interest in the estate in favor of the nearest reversioner or reversioners at the time of alienation;

A widow has no right to dispose of by will property inherited by her whether it be movable or immovable.<sup>15</sup> Nevertheless, the entire estate being vested in her, she is entitled to manage the same. But she must manage it as a prudent owner would do.

### Understanding 'Religious Purpose':

Religious or charitable purposes may be divided into two classes:

- i. **Performance of the funeral and Shraddha ceremonies of the deceased owner and the payment of debt:** This class relates to acts which are essential and obligatory.
- ii. **The performance of religious ceremonies of persons, whose ceremonies the deceased owner was bound to perform:** This class relates to acts which though not indispensable or obligatory, are still pious purposes, which conduce to the benefit of the soul of the deceased.

The Supreme Court of India has observed in the case of *Kamala Devi vs Bachu Lal Gupta*<sup>16</sup> that in the case of essential obligatory acts, if the income of the property or the property itself is not sufficient to cover the expenses, the widow is entitled to sell the whole of the property; but for acts which are pious and which conduce to the bliss of the deceased husband's soul, she can alienate a reasonable portion of the property.<sup>17</sup>

### Legal Necessity: The Justification behind Property Restrictions:

The widow is also entitled to alienate property which she has inherited from the deceased for legal necessity. Legal necessity refers to circumstances that compel the widow to transfer the property to fulfill essential and unavoidable obligations. The concept ensures that property is alienated only when absolutely required, preventing arbitrary disposals.

Transfer by a Hindu widow of the property of her husband without legal necessity is not valid and the reversioner can get the restoration of the same.<sup>18</sup> The following purposes have been held to amount a legal necessity for which an alienation may be made<sup>19</sup>:

- i. Costs of taking out Probate or Letters of Administration or a Succession Certificate in respect of the estate of deceased owner;
- ii. Payment of arrears of Government revenue and of decrees or rent accrued due after the death of the deceased owner;
- iii. Maintenance of herself and of persons whom the deceased owner was bound to maintain;
- iv. Marriages of relations of the deceased owner;
- v. Gift by a widow to her daughter on the occasion of her marriage and of the other like nature;
- vi. Performance of funeral and Sradha ceremonies of the last full owner;
- vii. Payments of debts by her husband;
- viii. Cost of litigation for preserving the estate.

To repay the debts and perform religious rituals for the salvation of the departed soul are recognized as legal necessity in the case of *Jitendra Mistry Vs. Abdul Malek Howlader and others*.<sup>20</sup> To justify the transfer in case

<sup>15</sup> 55 Cal 918

<sup>16</sup> [1957] INSC 6.

<sup>17</sup> Rakshit (n 10) 468-469.

<sup>18</sup> Sekandar Ali Shaikh (Md) and others Vs. Sree Dilip Kumar 3 MLR (AD) 69

<sup>19</sup> Ibid 471

<sup>20</sup> 7 MLR (AD) 174

of legal necessity it must be shown that there was a pressure on the estate and that the transferee was compelled to part with the estate for the safety and well-being of the estate as has been held in **Ranjit Kumar Roy and other Vs. Nagendra Nath Halder and other.**<sup>21</sup>

### **Alienation by Widow for the benefit of the Estate:**

Apart from legal necessity or religious purpose a widow or other limited heir may alienate the estate for the benefit of such estate. The Court in Karimuddin Vs. Gobind Krishna<sup>22</sup> held that an alienation of property to meet the costs of litigation necessary for preserving the estate is an alienation for the benefit of the estate.

### **Why such Limited Ownership Results in Discrimination?**

Undoubtedly the concept of limited ownership over inherited property creates discrimination. Such practice restricts women's rights over inherited property compared to men. Such a practice prevents women from using inherited property as collateral for loans or investment and keeps them financially dependent on male family members and therefore, is discriminatory for a number of reasons including:

### **Discrimination on the basis of Constitutionally Guaranteed Rights:**

Article 27 of the Constitution of the People's Republic of Bangladesh, 1972 which incorporates equal protection of law to all citizens as a fundamental right states,

**‘All citizens are equal before law and are entitled to equal protection of law’.**

Moreover, Article 28 and 29 declares principles of non-discrimination on the ground of religion, race, cast, sex or place of birth etc. Therefore, it is obvious that Bangladesh is under an obligation to enact law or to frame such policies that will eradicate all sorts of discrimination on any ground, as it is guaranteed by the supreme law of the land itself.

Whereas, considering the property rights of Hindu women in Bangladesh it can certainly be said that it is not only discriminatory on the ground of sex, it is also a clear discrimination on the ground of religion in comparison to the Muslim or Christian women's right in Bangladesh over their inherited property.

### **Restricted Ownership in Hindu Law: How It Differs from Muslim and Christian Succession Laws?**

A Muslim woman in Bangladesh gets absolute right over her inherited property and can use, dispose, alienate and transfer it according to her wish. This right even remains on her remarriage and on her death it passes to her heirs only. A Christian woman also acquires such absolute right over her property from which a Hindu woman is deprived of.

### **Legal Reforms in Hindu Women's Property Rights: A Cross-Border Perspective (India & Bangladesh):**

Even our neighboring country, India, has already abolished this concept and transitioned towards a more progressive legal framework. The concept of ‘limited ownership of Hindu women’ no longer prevails there after the enactment of the Hindu Succession Act, 1956, particularly after its 2005 amendment.

The Hindu Succession Act, 1956 abolished the limited estate and granted absolute ownership to Hindu women under Section 14(1) which states,

*‘Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.’*

<sup>21</sup> (unreported) BSCD Volume II p. 102

<sup>22</sup> (1909) 31 All 497



By virtue of this section any property acquired by a Hindu woman before or after the enactment of the Act became her absolute property, unless she received it under a restricted condition (e.g., a will or gift specifying limited rights). By the 2005 Amendment daughters were given equal coparcenary rights in ancestral property, just like sons.

Section 6 of the Hindu Succession (Amendment) Act, 2005 provides,

*‘On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and shall have the same rights in the coparcenary property as she would have had if she had been a son.’*

### **Contradiction with International Obligations:**

Bangladesh owes some responsibilities towards the world community as well to ensure equal property rights to women as it has signed and ratified many international treaties which guarantee women's equal economic rights irrespective of sex and religion which includes,

- Article 17 of the Universal Declaration of Human Rights( UDHR) that guarantees the right to own properties by all irrespective of sex and religion;
- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (with reservation on Article 2) that emphasizes that discrimination against women violates the principle of equality of rights and respects for human dignity;
- The International Convention of Economic, Social and Cultural Rights (ICESCR) that imposes on each state party to take steps to eliminate discrimination against women.

Undoubtedly women's limited right over their inherited property is a violation of these international obligation undertaken by the government that results in discrimination. The state mechanism is also reluctant to take any steps to frame such laws that will ensure equal property rights among the Hindu Women and it is more evident from the reservation on Article 2 of the CEDAW, one of the most important Articles of the Convention.

### **Discrimination in Comparison to Domestic Laws:**

The Pita Matar Bhoron Poshon Ain, 2013, applicable to all citizens of Bangladesh imposes an obligation on children, irrespective of their gender, to maintain their parents. Thus equal responsibilities have been imposed on them by the legislature, but equal rights of the daughters are yet to achieve.

## **CONCLUSION**

Undoubtedly, limited ownership over property is a significant barrier to Hindu women's enjoyment of inherited assets. Therefore, the limited right of the women over their inherited property should be abolished. As discussed earlier, India has already changed this situation by the 2005 amendment of the Hindu Succession Act 1956. So, it is high time that Bangladesh should also take steps to enact a new law that put an end to the concept of limited right of Hindu women over their inherited property.

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