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# Analyzing Hindu Women's Right to Property in Bangladesh: Absolute Interest versus Limited Interest

Ferdousi Begum\*

## Abstract

*Hindu women living in Bangladesh are deprived of inheritance in comparison to their male counterparts. They exercise a limited interest in the property while their male counterparts have an absolute interest in the property except in case of Stridhan. This feature gives a scenario of male dominating society in Bangladesh. If alienation is possible in case of Stridhan property, it ought to be applicable in case of getting properties through the way of inheritance as well; but it is not clear at all. There is no reason behind having such kind of discrimination. Therefore, this paper argues that as a Hindu woman can handle her property like a man in case of Stridhan property, she should, absolutely instead of enjoying it limitedly, enjoy all of her properties including the properties which she gets by way of inheritance as well.*

## Introduction

Hindus constitute the largest religious minority group (about 9.2%<sup>1</sup>) in Bangladesh, and Bangladesh is the place of third largest Hindu population in the world numerically. 'Hindu law is regarded as the most ancient legal system in the world'.<sup>2</sup> Generally what is meant by law is a statutory law but Hindu law in Bangladesh is more or less a customary law in the sense that the traditional customary Hindu law is still applicable in Bangladesh as no codification of this law has been made to give it to a statutory form after 1947.<sup>3</sup> There is no judicial modification of this law even after being independent in 1971. Nonetheless a few enactments have been made regarding this.<sup>4</sup> For not having proper statutory law in Bangladesh, Hindu women

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<sup>1</sup> Bangladesh - Population and Housing Census, 2011, Bangladesh Bureau of Statistics.

<sup>2</sup> John D Mayne, *A Treatise on Hindu Law and Usage*, 7<sup>th</sup> edition, Higginbotham & Co., Madras, 1906, p. 3; See Dr. Tahir Mahmood, *Introduction to Hindu Law: Personal Law of Hindus, Buddhists, Jains and Sikhs*, 3<sup>rd</sup> edition, Universal Law Publishing Co., Delhi, 2014, p. 3; B M Gandhi, *Hindu Law*, 4<sup>th</sup> edition, Eastern Book Company, Lucknow, 2008, p. 1; Noshirvan H Jhabvala, *Principles of Hindu Law*, 20<sup>th</sup> edition, C. Jamnadas & Co., Mumbai, 2009, p. 43; Dr. U.P.D. Kesari, *Modern Hindu Law*, 5<sup>th</sup> edition, Central Law Publications, Elahabad, 2015, p. 5; Zakir Hossain Khan, *Hindu Law of Bangladesh*, 1<sup>st</sup> edition, Law Book Company, Dhaka, 2010, p. 1; Sadiqul Islam Sagar & ABM Ehsan Ullah Khan, *Outlines of Hindu Law*, 1<sup>st</sup> edition, Shaurov Publishers & Distributors, Dhaka, 2015, p. 2.

<sup>3</sup> Hindu Family Law: An Action Study on Proposed Reform of Hindu Family Law, BNWLA, NY. This is a study conducted on selected districts of all six divisions (then) of Bangladesh by Bangladesh National Women Lawyers Association (BNWLA).

<sup>4</sup> Werner F. Menski & Tahmina Rahman, 'Hindus and the Law in Bangladesh', vol. 8, *South Asia Research* p. 111, 1988, p. 113.

are deprived of their right to property which makes their positions vulnerable in the society.<sup>5</sup>

Women development is a pre-condition to national development as women constitute a great majority in Bangladesh. It is imperative to establish equal opportunities and rights to women as guaranteed by the Constitution of Bangladesh and also through various laws and policies to ensure national development.<sup>6</sup> But in reality, the Hindu women face discrimination at personal life by not having absolute interest in their inheritance. Therefore, Hindu women's right to get absolute interest in inheritance is of great necessity. Only then, they can alienate the property whatever way they want to ensure their economic liberty. The aim of this study is to bring out the major characteristics of the Hindu laws in Bangladesh in the context that Hindu women are not getting the absolute ownership in their property. It analyzes the discrimination against the right to hold property absolutely by Hindu women in Bangladesh. It tries to find out the existing legal obstacles to get absolute interest in the property by Hindu women. While doing so, it tries to examine the constitutional provisions and other legal provisions in this regard. An evaluation of the existing customary law relating to the issue has been made. It suggests of legislative amendments to smooth the procedure of getting absolute interest in the property by Hindu women in Bangladesh.

### Person considered being a Hindu in Bangladesh

'The term "Hindu" is a general term embracing all those who are commonly so known'.<sup>7</sup> The scope of acceptance as to who is a Hindu is very wide. 'Hindu denotes all those persons who prefer Hindu religion either by birth or by conversion to Hindu faith'.<sup>8</sup> 'Hindus are therefore born as well as made'.<sup>9</sup> 'In a number of cases, it has been held that Hindus are those who profess any form of this religion'.<sup>10</sup> In Bangladesh, Hindu law applies to the following persons, i.e. Hindus by birth and also Hindus by religion (i.e., converts to Hinduism),<sup>11</sup> illegitimate children whose both parents are Hindu,<sup>12</sup> illegitimate children whose father is a Christian and mother is a Hindu and those children brought up as Hindu,<sup>13</sup> Jains, Sikhs, Buddhists and

<sup>5</sup> Asma Bint Shafiq & Tanzina Alam Chowdury, 'Ensuring Right to Property for Hindu Women in Bangladesh: Problems and Prospect', vol. XVIII, *the Chittagong University Journal of Law* p. 64, 2013, p. 65.

<sup>6</sup> Mahua Zahur, 'Hindu Women's Property Rights: Bangladesh Perspective', vol. XI, *Brac University Journal* p. 79, 2016, p. 85.

<sup>7</sup> Mayne (n 2).

<sup>8</sup> Ibid; See *Perumal v Ponnuswami*, AIR, 1971, SC, p. 2352 cited at B M Gandhi, *Hindu Law*, 4<sup>th</sup> edition, Eastern Book Company, Lucknow, 2008, p. 11.

<sup>9</sup> Ibid; See *Morarji v Administrator-General of Chennai*, 52 Mad, 1960: 11 IC, p. 364 cited at Zakir Hossain Khan, *Hindu Law of Bangladesh*, 1<sup>st</sup> edition, Law Book Company, Dhaka, 2010, p. 4.

<sup>10</sup> Mridul Kanti Rakshit, *The principles of Hindu law - the Personal Laws of Hindus in Pakistan and Bangladesh*, 3<sup>rd</sup> edition, CPC, Chittagong, 1985, p. 3.

<sup>11</sup> *Jowala v Dbaram*, 10 MIA, 1866, p. 511 cited at Dr. U.P.D. Kesari, *Modern Hindu Law*, 5<sup>th</sup> edition, Central Law Publishing Co., Elahabad, 2015.

<sup>12</sup> *Daitatraya Taty v Matba Bala*, IIR, 58 Bom., 1934, p. 119 cited at Noshirvan H Jhabvala, *Principles of Hindu Law*, 20<sup>th</sup> edition, C. Jannadas & Co., Mumbai, 2009.

<sup>13</sup> *Moyna Boyee v Octaram*, 8 MIA, 1861, p. 400 cited at Mridul Kanti Rakshit, *The principles of Hindu law - the Personal Laws of Hindus in Pakistan and Bangladesh*, 3<sup>rd</sup> edition, CPC, Chittagong, 1985.

*Nambudri Brahmas* (excepts so far as such law is varied by custom) and *Lingayats* who are considered as *Sudras*,<sup>14</sup> Reconverts (a Hindu by birth having renounced Hinduism has reverted to it after performing the religious rites of expiation and repentance or even without a formal ritual of reconversion when he was recognized as a Hindu by the community),<sup>15</sup> *Brahmas*, *Arjo Samajists* and Santhals (except so far as it is not varied by custom) and a Hindu who departs from the orthodox ideas in matter related to diet and ceremonial observances.

Generally there are two main Schools of Hindu law, i.e., *Mitaksbhara* School of law and *Dayabhaga* School of law. Different legal opinions are prevalent in these two schools. The *Dayabhaga* School is a reformed School of Hindu law which is known as the Bengal School of Hindu law. In Bangladesh, the rules of *Dayabhaga* School of law are applied. 'In cases, where there is no express rule in *Dayabhaga*, the rule of *Mitaksbhara* shall apply'.<sup>16</sup>

### Position of Custom as a Source of Hindu Law

The study of any legal system requires an analytical examination of its fundamental elements which make the contents of that law. 'The term sources of Hindu law means from which we derive the matter of Hindu law'.<sup>17</sup> The study of the sources of Hindu law is the studies of various phases of its development. It gave it new drives and enabled it to conform to the changing needs to sub-serve the needs of modern welfare society. The sources of Hindu law are classified into two parts, i.e., ancient or traditional sources of Hindu law and modern sources of Hindu law. The traditional sources of Hindu law are four in number, the *Sruti*, the *Smriti*, the Commentaries or *Nibandhas* and Customs. Among the modern sources of Hindu Law, the followings are important, i.e., Legislation, Judicial Precedents, *Factum Valet* and lastly Justice, equity and good conscience.

Hindu law custom is regarded as an important source which sometimes prevails over any other sources. Custom is so important that in a long series of cases decided by the Privy Council, the rule has been accepted as that, 'Custom can override any text of *Smriti*'.<sup>18</sup> In *Abdul Mannan alias Kazji v Sultan Kazji*, the validity of the adoption of a Hindu orphan was questioned and the Court said that, 'Such an adoption was not valid except where it is established by custom'.<sup>19</sup> Therefore, custom plays an important role

<sup>14</sup> *Taikangauda v Shivappa*, ILR, Bom., 1943, p. 706 cited at Zakir Hossain Khan, *Hindu Law of Bangladesh*, 1<sup>st</sup> edition, Law Book Company, Dhaka, 2010.

<sup>15</sup> *Rani Bhagwan Koer v Bose*, ILR, 31 Cal., 1903, p. 11: 30 IA, p. 249 cited at B M Gandhi, *Hindu Law*, 4<sup>th</sup> edition, Eastern Book Company, Lucknow, 2008.

<sup>16</sup> *Binanda Kisbore Tarafdar v Debendra Dutta*, BLD, 1981, p. 542 cited at Sadiqul Islam Sagar & ABM Ehsan Ullah Khan, *Outlines of Hindu Law*, 1<sup>st</sup> edition, Shaurov Publishers & Distributors, Dhaka, 2015.

<sup>17</sup> Khan (n 2).

<sup>18</sup> *Madura v Mootoo Ramalinga*, 12 MIA, 1868, p. 397; See, *Shiba prashad Singh v Rani prayg Kumari Debi*, 59 IA, 1932, p. 33 cited at Zakir Hossain Khan, *Hindu Law of Bangladesh*, 1<sup>st</sup> edition, Law Book Company, Dhaka, 2010.

<sup>19</sup> *Abdul Mannan alias Kazji v Sultan Kazji*, 34 DLR, 1982, p. 236.

in Hindu Law. 'In Bangladesh, as family Laws are governed by the personal customary laws of each community, the right to property of Hindu women is governed by the customs prevailing in the respective community'.<sup>20</sup> 'Those customs come from the Holy Scriptures like *Sruti*, *Smriti* etc. for which reason it has been believed by the Hindu community that these customs could not be changed'.<sup>21</sup> 'Hindu society reflects a deep rooted adherence to values based on the precepts and fundamental principles of the religion'.<sup>22</sup> 'Religion clearly has a positive function in Hindu society, as norms and values derived from it affect the everyday lives of Indian women in very tangible ways'.<sup>23</sup> It is also applicable for Hindu women residing in Bangladesh.

'The conceptions and propositions contained in the various *Shastras* or *Smritis* continue to operate, be understood and propagated even after centuries have passed'.<sup>24</sup> Some Hindus fear that breaking of such traditional customary values may destroy harmony in the family and joint family system can also be broken. But the traditional principles of Hindu law of inheritance in Bangladesh lack equality among men and women.<sup>25</sup> Gender justice cannot be ensured if it will be followed for the sake of establishing the value of custom in the society. It has been found that 'sometimes court also interferes by amending those customary laws if necessary, i.e. Muslim Family Laws Ordinance, 1961 by which the children of the predeceased son of a deceased person can get property though it is impossible under the Muslim *Sharia* law'.<sup>26</sup> Therefore it will not be a problem for the government of Bangladesh to amend the customary law of Hindu community by which it can ensure the absolute right of Hindu women in their ancestor's property. It has been rightly pointed out that,

'Hindus, Muslims, Christians, *Parsis* and other communities are governed by personal laws which may be codified or uncodified. These personal laws were essentially based on customs and usages and existed prior to the enactment of constitution. Since all laws have to abide the mandate of constitution after its enforcement, therefore the personal laws, even though based on custom, must be construed to be law in force and expressly be accepted to be placed under the ambit of constitution'.<sup>27</sup>

<sup>20</sup> Shahnaz Huda, 'Personal Laws in Bangladesh: the need for substantive Reforms', vol. 15(1), *DUS Part-F* p. 103, 2004.

<sup>21</sup> Shahnaz Huda, 'Combating Gender Injustice: Hindu Law in Bangladesh', *South Asian Institute of Advanced Legal and Human Rights Studies(SAILLS)*, Dhaka, 2011, p. 13.

<sup>22</sup> Reena Patel, 'Hindu Women's Property Rights in India: A Critical Appraisal', vol. 27 (7), *Third World Quarterly*, 2007.

<sup>23</sup> A. Parasher, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality*, 1<sup>st</sup> edition, SAGE Publishing, India, 1992.

<sup>24</sup> Patel (n 22).

<sup>25</sup> The present scenario shows inequality between a Hindu man and a Hindu woman while getting property from a deceased ancestor in Bangladesh. For example, in the presence of a son, a daughter will not get property from her father. Also a woman will not get absolute rights in her ancestor's property whereas a man will get so. There are fifty three *Sapindas* who can get property by way of inheritance in *Dayabhaga* School of law prevailing in Bangladesh out of which five are female and the rest of them are male.

<sup>26</sup> Patel (n 22).

<sup>27</sup> Archana Mishra, 'Rights in Separate Property for Hindu Female –Autonomy, Relationality and the Law'

## General Principles of Law of Inheritance Applicable to Hindu Women under *Dayabaga* School

The guiding principle of law of inheritance under the *Dayabaga* School of law, which prevails in Bangladesh, is the doctrine of religious efficacy. Religious efficacy means capacity to confer spiritual benefit upon the deceased person. Under this school of law, the term *Sapinda* refers to those persons who are connected with each other by the doctrine of religious efficacy. There are only five female *Sapindas* out of fifty three *Sapindas* namely, mother, daughter, father's mother, widow and patriarchal great grandmother. The Hindu Women's Right to Property Act, 1937 added two women in this list namely, 'widow of a pre-deceased son and widow of a pre-deceased son of a pre-deceased son'.<sup>28</sup> The Hindu law of Inheritance (Amendment) Act, 1929 added three women namely, 'sister, son's daughter and daughter's daughter'.<sup>29</sup>

'Succession' is the mode of devolution of property under the *Dayabaga* system. There is no right by birth to the members of the *Dayabaga* joint family. A member can hold his share in quasi-severalty. It passes upon his death to his heirs as if he was a separate owner of the property and not to the surviving coparceners as under the *Mitakshara* law. The rule of succession under the *Mitakshara* law applies to the separate or self-acquired property of a coparcener and to the property held in absolute severalty as opposed to quasi-severalty by the last full owner. The last full owner of a property is one who holds the property absolutely at the time of the death of the deceased and the last full owner is always a male except in case of *Stridhan* properties. It is only a last full owner, who can become a fresh stock of descent. Except as aforesaid, since a female cannot become the last full owner of the property, she cannot become a fresh stock of descent. If the property of a male devolves to a female, she does not become a fresh stock of descent and upon her death it passes not to her heir, but to the heirs of the last male holder, ultimately it falls upon a male.

'Male succeeding as heir (whether from a male or a female) takes an absolute interest in that property and upon his death the property devolves to his nearest heirs but female succeeding as heir (whether from a male or a female) takes a limited interest in the property inherited by her'.<sup>30</sup>

Limited interest means she can use the property. But she cannot alienate the property except in two cases; legal necessity and benefit of the estate.

'In *Joyanta Bijoy Chakraborty v Gopesh Chandra Chakraborty*, the question was whether there could be a valid contract if legal necessity for the alienation had not been shown. Since, the man, who would otherwise

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*Bepress*, 2015 available at [https://works.bepress.com/archana\\_mishra/2/](https://works.bepress.com/archana_mishra/2/) accessed on 10 December 2017.

<sup>28</sup> *The Hindu Women's Right to Property Act*, 1937, Bangladesh, s 3 (1).

<sup>29</sup> *The Hindu Law of Inheritance (Amendment) Act*, 1929, Bangladesh, s 2.

<sup>30</sup> D. F. Mullah, *Principles of Hindu Law*, 15<sup>th</sup> edition, NMTPL, Mumbai, 1986 as in Mahua Zahur, 'Hindu Women's Property Rights: Bangladesh Perspective', vol. X1, *Brac University Journal* p. 79, 2016.

have inherited the property, had consented to the alienation; it was held that there was a presumption of legal necessity'.<sup>31</sup>

The general rule of inheritance is that once a property is vested upon anyone, it will not be divested. But in case of Hindu women, getting limited ownership in the property is contradictory to this general rule as the property will revert back to the heir of the owner. Only in case of *Stridhan* property, it reverts back to the nearest heirs of the female who was the owner of that property. It is to be noted that succession to *Stridhan* property is held absolutely by a female. Thus, various discriminations have been made in these general principles of getting inheritance between a male and a female.

There are some principles upon which an heir can be excluded from inheritance and that is also applicable to Hindu woman. There is unequal status among Hindu daughters in case of eligibility to inherit. Daughters not yet married can inherit as well as married daughters having son/s too can do so. But some of them are also excluded like widowed daughter/s having no son, daughter/s having no son, daughter/s with probability to have no son. Also a daughter can be excluded in the presence of a son or son's son or son's grandson. 'The importance is placed upon a male offspring'.<sup>32</sup> Also widow inheriting properties from the husband may also be excluded on the ground of unchastity.

The practical situation reveals the truth that whenever the husband of a Hindu female dies, the *Karta* tries to exclude her from the property. If she is a barren widow, the principle of unchastity gets played as a weapon. For the fear of being framed as an unchaste, Hindu female never wants to get her proper share in her husband's property. 'Huda conducted a study in fourteen districts having the highest Hindu population in Bangladesh where (81%) of the total respondents said that they would want daughter's inheritance to be insured in presence of a son'.<sup>33</sup> In *Nurunnabi Mondol v Joynal Abedin Khondkar*, it has been held that, 'Every Hindu widow, on remarriage, loses her rights in the deceased husband's property'.<sup>34</sup> Though the Hindu Widow Remarriage Act, 1856 legalized the remarriage of widows, it has the effect of divesting the estate inherited by her from her first husband. 'By her second marriage, she forfeited her interest taken by her in her first husband's estate, and it passed to the next heirs of her husband as if she was dead'.<sup>35</sup> On the date of the succession, if she gets married, she is not entitled to succeed. Moreover, if there are more widows than one, then the widows altogether will have only one share.

<sup>31</sup> *Joyanta Bijoy Chakraborty v Gopesh Chandra Chakraborty*, 35 DLR, 1983, p. 319.

<sup>32</sup> Sharmin Akhtar & Abu Syead Muhammed Abdullah, 'A Comparative Study on Hindu Law between Bangladesh and India', vol. 29, *Asian Affairs* p. 61, 2007.

<sup>33</sup> Shahnaz Huda, 'Combating Gender Injustice: Hindu Law in Bangladesh', *South Asian Institute of Advanced Legal and Human Rights Studies (SAILLS)*, 2011 cited at Sharmin Akhtar & Abu Syead Muhammed Abdullah, 'A Comparative Study on Hindu Law between Bangladesh and India', vol. 29, *Asian Affairs* p. 61, 2007.

<sup>34</sup> *Nurunnabi Mondol v Joynal Abedin Khondkar*, 29 DLR, 1977, SC, p. 137.

<sup>35</sup> *The Hindu Widow Remarriage Act*, 1856, Bangladesh, s 15 (2).

'Ruma Halder conducted a study on hundred widows in some villages of Bangladesh to find out the socio-economic condition and to know to what extent they enjoy their limited ownership and the scenario was surprising as 96% of them told that they were dependent on the joint families as they had no right to sell the properties without the consent of other heirs and without establishing legal necessity'.<sup>36</sup>

'Property rights of women within their marital family at present are only available to them as widows. A regime of marital joint property needs to and can only be created with the notion of equality between the spouses'.<sup>37</sup> 'The psycho-social normative clearly entails that for realizing the claim that they should be entitled to a share in their husband's property, it should be asserted that the all widows subsisted not only as widows upon their husband's death but during the entire period of marriage as well'.<sup>38</sup>

### Absolute Ownership in Case of *Stridhan* Property

The word *Stridhan* is derived from the term '*Stri*' which means woman and '*Dhan*' which means property. A Hindu woman may acquire property from various sources. She may acquire property through gifts, inheritance as well as her own skill and labor. However, the term *Stridhan* is used in technical sense; and not all types of property of a woman can be considered as her *Stridhan* property. *Stridhan* according to *Yajnavalkya* (He was one of the prominent philosophers of the Dayabhaga School of Law) is,

'What was given (to a woman) by the father, the mother, the husband or a brother, or received by her before the nuptial knot, or presented to her on her husband's marriage to another wife, and the rest (*Adya*) are denominated as *Stridhan*. So that, it includes what is given by kindred as well as her marriage-fee (*Shulka*) and anything bestowed after marriage'.

There is no uniformity in case of alienation of property in terms of any general property to that of a *Stridhan* property. *Stridhan* of every description belonging to a woman passes to her heirs on her death. The woman is the absolute owner of such property and she may dispose of such property at her pleasure, though not in all cases during coverture but in all cases during maidenhood and widowhood.

In *Venkata v Venkata*, it has been held that, 'Woman has absolute power over her *Saudayika* even during coverture. She may dispose of it in any way she pleases (by sale,

<sup>36</sup> Ruma Halder, 'Socio Economic Conditions of Disinherited Widows', *The Daily Star*, Dhaka, 28 March 2005 cited at Uzma Shukrana, 'Justification of reform of Hindu Inheritance Law: Bangladesh Perspective', *International Conference on Innovative Research and Development*, Thailand, 2018 p.4 available at [file:///C:/Users/Ferdousi%20Begum/Downloads/01\\_uzmashukrana\\_fullpaper.pdf](file:///C:/Users/Ferdousi%20Begum/Downloads/01_uzmashukrana_fullpaper.pdf) accessed on 8 December 2017.

<sup>37</sup> Patel (n 22).

<sup>38</sup> Huda (n 21).



gift, will etc.) without her husband's consent'.<sup>39</sup> A woman forms fresh stock of descents over her *Stridhan* which accordingly devolves on her own heirs. It has been held in *Rai Kishori Shaha v Matleb Ali Pramanik*, that 'A Hindu widow having a life interest in a property is entitled to pre-emption under section 96 of the State Acquisition and Tenancy Act, 1951'.<sup>40</sup> It is to be urged that all properties hitherto excluded from women's absolute ownership are to be given the same scope for legitimacy as obtained for *Stridhan*.

### Obstacles in Getting Absolute Ownership

The existence of the following aspects seems to be the obstacles in getting absolute ownership in the property by a Hindu woman in Bangladesh. First of all, the general principles of customary law prevail in Bangladesh, and it is the utmost obstacle in getting the absolute ownership in inheritance for Hindu women. The identity of a woman as a woman not as a person in her parents' family creates next obstacle. The willingness of sisters not to jeopardize their relations with brothers is another reason. A strong opposition from one part of the Hindu communities has restrained every government to pursue the adoption of any such law in Bangladesh as there is a possibility of losing the vote banks for any ruling party.

Practically, there is a long-time demand for the introduction of a 'Uniform Family Code' that may be applicable to all communities of Bangladesh irrespective of religion.<sup>41</sup> 'Because of the lack of "Uniform Family Code", there is a chance of discrimination between the Muslims and Hindus in Bangladesh; and in reality, this discrimination affects Hindu women in their socio-economic lives'.<sup>42</sup> Also, some people of Hindu community think that polygamy may be increased if men want to marry those women who get more property from their parents. Domestic violence will grow if there is a conflict of interest in the family. Moreover, the customs of Hindu law prevail as norm. Though the traditional approach of Hindu community bears unequal status of property rights between a man and a woman, some scholars fear that the principle of cultural relativism may prevail upon the principle of universalism.<sup>43</sup>

### Statutory Provisions in Bangladesh Regarding Hindu Women's Right to Inheritance

From the above discussion, it is clear that under customary Hindu Law, women do not have any substantial claim in getting inheritance of property, and in the

<sup>39</sup> *Venkata v Venkata*, 2 Mad, 1880, PC, p. 333.

<sup>40</sup> *Rai Kishori Shaha v Matleb Ali Pramanik*, 34 DLR, 1982, p. 181.

<sup>41</sup> Akhtar & Abdullah (n 32).

<sup>42</sup> Ibid; Also Dr. Chitta Ranjan Das had presented the paper titled 'Discrimination of Hindu Women in Bangladesh within the Legal Framework' in the fourth session of the United Nations General Assembly Human Rights Council Forum on Minority Issues in Geneva on 29-30 November, 2011 where he raised the same issue.

<sup>43</sup> Md. Al-Irfan Hossain Mollah, 'Hindu Women's Right to Property at the crossroads: the Tension between Human Rights and Cultural Relativism', vol. VIII, *Society and Change* p. 84, 2014.

remote occasions, where they could inherit, it was only a limited estate. The first statutory enactment to directly impact upon this position of women in the matter of inheritance was the Hindu Women's Right to Property Act of 1937. The effect of the Act was to include the widow, predeceased son's widow and widow of a predeceased son of a predeceased son as entitled to a share in the property of the male. However, this share was only a limited state.<sup>44</sup>

Under the Hindu law in operation, a woman's ownership of property was limited with regard to her rights of disposal by acts *inter vivos* and also her testamentary power in respect of that property. Absolute power of alienation was held only in property obtained from certain sources known as *Stridhan*. 'Her rights over property were understood depending upon her status as a maiden, married woman or widow'.<sup>45</sup> The existing laws hardly reserve any rights to the women. 'There are anomalies and discriminations in these laws and the worst sufferer under the existing law is definitely our Hindu women folk'.<sup>46</sup>

'Bangladesh Law Commission has put forward a list of recommendations for an inclusive amendment on the Hindu family matters under the report titled "Recommendations for reforming Hindu Family Laws" in 2012 with a view to facilitate absolute interest for Hindu women through repealing limited interest'.<sup>47</sup>

One of initiatives undertaken by the Government in legislative reform is Hindu Marriage Registration Act, 2012 which does not make marriage registration mandatory. No initiatives have been undertaken yet to reform laws relating to equal rights to property for Hindu women in Bangladesh.

### Constitutional Provisions of Bangladesh against Gender Discrimination

The Constitution of Bangladesh provides that,

'It shall be a fundamental aim of the State to realize through the democratic process a socialist society, free from exploitation a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens'.<sup>48</sup>

The supremacy of the constitution over all other laws is also ensured. The Constitution of Bangladesh also states that,

'This Constitution is, as the solemn expression of the will of the

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<sup>44</sup> Patel (n 22).

<sup>45</sup> Huda (n 21).

<sup>46</sup> BNWLA (n 3).

<sup>47</sup> Halder (n 36).

<sup>48</sup> *The Constitution of the People's Republic of Bangladesh*, 1972, Bangladesh, preamble, para 3.

people, the supreme law of the Republic and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency be void'.<sup>49</sup>

Furthermore, the principles of equality before the law and equal protection of the law are also incorporated as fundamental rights. It has been stated in the constitution that 'All citizens are equal before law and are entitled to equal protection of law'.<sup>50</sup> One of the fundamental principles of State policy of the Constitution of Bangladesh is that 'The State shall adopt effective measures to secure the equitable distribution of wealth among citizens'.<sup>51</sup> It also states that 'The State shall endeavor to ensure equality of opportunity and participation of women in all spheres of national life'.<sup>52</sup> This shows that women's rights were not at par with the men's so far, but apparently some efforts were made in the Constitution to equalize this disparity.<sup>53</sup>

Formal equality is explicitly enshrined in the Constitution of Bangladesh and various articles reiterate the principle of non-discrimination based on sex, caste, race and other motives.<sup>54</sup> It has been stated that 'The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth'.<sup>55</sup> In case of both a Muslim or a Christian women, while inheriting the property, they get the absolute right over the property having full freedom of disposal; and on their death, the property will pass on to their heirs but not to the heirs of the person from whom they had inherited the property. So, it can be easily said that 'a Hindu woman's property right is discriminatory not only on the ground of sex but also on the ground of religion'.<sup>56</sup> Also, it states that, 'Women shall have equal rights with men in all the spheres of the state and of public life'.<sup>57</sup> It empowers the State to make special provisions in favor of women or children, or for the advancement of any backward section of the society.<sup>58</sup>

The same Constitution also guarantees freedom of religion to all citizens of the country and allows each religious community the freedom to live according to the separate personal laws that have governed their communities since much before the partition of the Indian sub-continent.<sup>59</sup> These laws govern the issues of marriage, divorce, dower, maintenance, guardianship, custody, adoption and inheritance. Private ownership means ownership by individuals within such limits as prescribed

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<sup>49</sup> Ibid, art 7(2).

<sup>50</sup> Ibid, art 27.

<sup>51</sup> Ibid, art 19(2).

<sup>52</sup> Ibid, art 19(3).

<sup>53</sup> Taslima Monsoor, 'Rights of Bangladesh Women in International and Municipal law', vol. VI, *Dhaka University Studies* p. 71, 1995.

<sup>54</sup> Huda (n 21).

<sup>55</sup> Constitution of Bangladesh (n 48), art 28.

<sup>56</sup> Mahua (n 6).

<sup>57</sup> Constitution of Bangladesh (n 48), art 28(2).

<sup>58</sup> Ibid, art 28(4).

<sup>59</sup> Ibid.

by law.<sup>60</sup> Article 42 of the Constitution of Bangladesh has stated that ‘Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law’. The first part deals with the right in respect of property subject only to restrictions imposed by law.<sup>61</sup>

In *Chittaranjan v Secy. Judicial Department*, it has been held that, ‘An unreasonable restriction put on the right to transfer property may be violation of Article 42’.<sup>62</sup> One of the two essential issues to give economic empowerment of the women is to give women the rights to wealth and resources earned through income, succession, loan/credit, land, and market management.<sup>63</sup> Therefore, Hindu women’s not getting absolute interest on their property may be considered as an unreasonable restriction made by the custom.

The Constitution of Bangladesh, government policy documents as well as the state’s commitments under international laws collectively impose upon government a duty to strive to achieve justice for all citizens. Therefore, as part of the human rights discourse and of the state’s guarantees of equal protection of law to all citizens and non-discrimination on any ground such as gender, caste, race etc., the need of reforms in Hindu law cannot be ignored. One cannot deny the fact that ‘there are many anomalies and inconsistencies in Hindu Family Law in regards of constitutional rights given to the womenfolk as a whole’.<sup>64</sup>

### **Obligation of Bangladesh under the Provisions in International Legal Instruments**

‘Bangladesh has actively participated in almost all the forums in the international arena and involved in the global thoughts in the matter of women development by signing important international charters and documents’.<sup>65</sup> The separate personal laws which still govern the family lives of the citizen of Bangladesh reflect the perception of gender inequality that remains prevalent in the current Bangladeshi society. The laws are inconsistent with the universal human rights as laid down in the international human rights treaties ratified by Bangladesh. ‘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’.<sup>66</sup> Bangladesh signed the Convention on the Elimination of All Forms of Discriminations against Women

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<sup>60</sup> Ibid, art 13.

<sup>61</sup> Mahmudul Islam, *Constitutional Law in Bangladesh*, 3<sup>rd</sup> edition, MB, Dhaka, 2012, p. 377.

<sup>62</sup> *Chittaranjan v Secy. Judicial Department*, 17 DLR, 1965, p. 451 cited at Mahmudul Islam, *Constitutional Law in Bangladesh*, 3<sup>rd</sup> edition, MB Publishing, Dhaka, 2012.

<sup>63</sup> *The National Women Development Policy*, 2011, Bangladesh, clause 25 (2).

<sup>64</sup> BNWLA (n 3).

<sup>65</sup> Huda (n 21).

<sup>66</sup> Mahua (n 6).

(CEDAW) for the purpose of eradicating all sorts of discriminations against women all over the world.<sup>67</sup>

‘Under Article 5(a) of the CEDAW, Bangladesh is obliged, to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’.<sup>68</sup>

Apart from the CEDAW, which is undoubtedly the most important international instrument relating to women, Bangladesh is also a party to several other treaties which reiterate the principle of gender equality such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 (Bangladesh acceded to the treaty on 5 October 1998) and the International Covenant on Civil and Political Rights (ICCPR) of 1966 (Bangladesh acceded to the treaty on 6 September 2000).<sup>69</sup> Bangladesh has entered reservations to certain articles of all of the above treaties. For example, in the case of the CEDAW, Bangladesh made reservations to Articles 2 and 16 (1) (c). ‘Article 2 can be deemed as the heart and soul of the CEDAW, the article calls for equality of women in all aspects of laws and national policies and to ensure no discrimination policy for women’.<sup>70</sup>

Bangladesh undertakes to adopt legislation to ensure elimination of discrimination through sanction and legal protection. Reservation to Article 2 is based on the fact that the ‘Government of the People’s Republic of Bangladesh does not consider as binding upon the provisions of article 2, as they conflict with *Sharia* law based on the Holy Quran and *Sunnah*’.<sup>71</sup> ‘On a grammatical interpretation of the above, it may not be incorrect to say that in the case of the laws of other communities, Article 2 remains binding’.<sup>72</sup> Non removal of reservation on Art- 2, Art-16 (1) (c) of CEDAW and Art-10 (c) of the Optional Protocol to the CEDAW creating discrimination against women in family life and public life also make it hard to implement it. Although Government’s submission of 4th and 5th periodic report to the UN CEDAW committee cited accordingly that they are actively considering withdrawal of reservations but no steps have been taken yet. Bangladesh attended the review conducted by the UN Committee on CEDAW on 25th January 2011 but did not make any specific commitment to withdraw reservations.

In the case of the ICESCR, Bangladesh has reservations to Articles 2 and 3 amongst others. These articles deal with the effective implementation of the treaty. Article 3 obligates State parties to ensure the equal right of men and women to the enjoyment of

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<sup>67</sup> Ibid.

<sup>68</sup> Huda (n 21).

<sup>69</sup> Ibid.

<sup>70</sup> Shukrana (n 36).

<sup>71</sup> Huda (n 21).

<sup>72</sup> Ibid.

all economic, social and cultural rights set forth in the present Covenant. Bangladesh's reservation reads as follows,

'The Government of the People's Republic of Bangladesh will implement articles 2 and 3 in so far as they relate to equality between man and woman, in accordance with the relevant provisions of its Constitution and in particular, in respect to certain aspects of economic rights viz. law of inheritance'.<sup>73</sup>

Bangladesh is also a signatory country of the UN Charter. The Charter of the United Nations referred to equal rights of men and women and forbids discrimination on the basis of sex, race, language or religion.<sup>74</sup> Article 1 of the Universal Declaration of Human Rights also proclaims that 'all human beings are born free and are equal in dignity and rights'.<sup>75</sup> It also states that 'Everyone has the right to own property alone and no one shall be arbitrarily deprived of his/her property'.<sup>76</sup> 'A signatory's responsibility does not end just in signing but government has the responsibility to create or reform the socio-economic, political, legal and educational system that would protect women rights as human rights'.<sup>77</sup>

## Conclusion

The Hindu women are deprived of equal rights due to the existence of the non-amended personal law which does not allow equal rights of women in different aspects of life even though constitutionally women are bestowed with equal rights.<sup>78</sup> Inheritance is not only a matter of human rights; it adversely affects women's economic and financial conditions. Having absolute interest in inheritance will strengthen the decision making power of Hindu women and will enable them to make their own position in the society. The world's civilization has always brought about necessary changes in their respective laws and customs to adjust to the changing scenario. But in Bangladesh, 'the scope of freedom of Hindu women is clogged in the crude provisions of *Dayabhaga* School that stands like a wall in the way of advancement and empowerment of Hindu women'.<sup>79</sup> The retention of *Dayabhaga* School of Law reiterates the fundamental division drawn within traditional Hindu Law between males and females in respect of property rights.

Legislation in Bangladesh failed to honor the rights of Hindu women. The law can provide a framework for negotiating the incorporation of new rules which can meet up the needs of the society. The lawmakers should amend discriminatory laws limiting women's ownership in the property. The Government should withdraw the

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<sup>73</sup> Ibid.

<sup>74</sup> Mansoor (n 53).

<sup>75</sup> UNGA, Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (10 December 1948), art 1.

<sup>76</sup> Ibid, art 17.

<sup>77</sup> BNWLA (n 3).

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

reservations made to the CEDAW, its Optional Protocols and other human rights treaties including the ICCPR and CRPD. Policy makers should think twice before enacting any laws as they should enact such laws which can fulfill the needs of the people at large. Adequate legislative reforms should be made to ensure Hindu women's right to enjoy property absolutely. Proper law can eliminate traditional practices and customs among Hindus regarding distribution of their property to their female sharers.

A comprehensive campaign in the society regarding enactment of new law should be done. Proper training and legal education should also be given to the Hindus regarding new laws (if enacted) so that awareness among them will be intact. The government of Bangladesh should create an independent National Hindu Women Commission that can safeguard, implement, and monitor the rights of Hindu women in Bangladesh. We believe this kind of change in inheritance law would bring true welfare and would empower our Hindu women folk.<sup>80</sup> 'Manu's famous verdict about women was, "*Pita rakshati kaumare, bhartta rakshati yauwane, rakshati sthavire putra, na stri swantrya marhati*" and it points out the sacred liability of fathers, husbands and children towards their daughters, wives and mothers'.<sup>81</sup> The traditional law of Hindus had given women a high status within the families.<sup>82</sup> In the light of the above-made observations in this study, we seek to propose that suitable reforms should be made to the Hindu inheritance laws by modifying the existing principles and rules of inheritance so that, it can remove gender based discriminations and harmonize with the ideals of constitution as well.

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<sup>80</sup> Ibid.

<sup>81</sup> Mahmood (n 2).

<sup>82</sup> Ibid.