



DISSERTATION

ON

**Women's Right to Inheritance under Muslim, Hindu, and Cristian
Laws: A Comparative Legal Study**

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This Dissertation is Dedicated

To

“My Deceased Father”

Adv. Hassan Seraj Suja

&

“My Beloved Mother”

Mst. Selina Khatun (L.L.B)

DECLARATION

I, **Md. Sirajus Sayafin Saif**, bearing Student Id: **2016-3-66-047**, hereby solemnly declare and affirm that I have done this research work and that the entire or limited portion of this research paper has not been submitted or published by any journal or any newspaper or any article. I have completely created this Dissertation paper. The materials used for this research work has been acknowledged duly, and a list of references and footnote has also been provided.

Contents

CHAPTER: 01	7
Introduction	7
1.1 Object of the Study	7
1.2 Methodology	8
1.3 Literature Review	8
1.4 Research Question	9
1.5 Limitation of the Study	10
CHAPTER: 02	11
Conceptual Development and Inheritance Rights of Women	11
2.1 Background	11
2.2 Definition of Inheritance	12
2.3 Definition of Women’s Right	13
CHAPTER: 03	14
Women’s Right to Inheritance in Different Religions	14
3.1 Inheritance of Women in Different Religions	14
3.2 Inheritance of Women under Muslim Law	15
3.3 Inheritance of Women in Hindu Religion	18
3.4 Inheritance of women in Christians Religion	20
CHAPTER: 04	22
Law and Practice Regarding Women’s Rights to Inheritance	22
4.1 Constitutional Framework	22
4.2 International Conventions	24
4.3 How far the Rights of Women in Inheritance is Given	26
4.4 Bangladeshi society is based on property sharing	27
4.5 Comparative Analysis between Bangladesh and India	29
4.6 Reasons of Inequality in Inheritance	30
4.7 Case Analysis	33
CHAPTER: 05	34
Findings and Recommendations	34
5.1 Findings	34

5.2 Recommendations	35
CHAPTER: 06	38
Conclusion	38
Bibliography	39

Abstract

The idea of inheritance is as old as the history of mankind. Women's inheritance rights are one of the most significant determinants of their status. Most of the societies have been essentially patriarchal, where women have less liberation to enjoy the rights of inheritance. The prime reasons for this are: the shortcomings and ineffectiveness of laws, women's inability to access legal proceedings, the traditional and cultural negative views about women's inheritance right. The existing laws of inheritance, patriarchal values and social practices in Bangladesh society are inclined towards consolidation of discriminatory attitude. This study examines "Women's Right to Inheritance under Muslim, Hindu and Christian Laws: A Comparative Study"

This study aims to create protection of women's inheritance rights by recommending remedies and discussed about the rights of inheritance according to different religions. The women's right of inheritance as guaranteed are not implemented properly. The study ends with a number of specific recommendations for ensuring women's rights of inheritance through strengthening the legal and enforcement mechanisms in Bangladesh.

CHAPTER: 01

Introduction

National constitutions are becoming more likely to guarantee gender equality, but many also acknowledge the authority of parallel legal systems based on tradition, religion, or ethnicity. Regrettably, the legislation in our country has not kept pace with the developments. Inheritance is not only a problem of human rights, but it also has a negative impact on the economic and financial situation of women. Women account for approximately half of the population of Bangladesh. In every sector of life, however, women's position remains lower than men. Women's equal right to inherit is a hot topic in our society right now, and it's one of the most talked about issues. On this topic, several policies have emerged, both globally and domestically. Despite these the women of our country still lag behind in their right to inheritance.

Discrimination against women regarding their right to inheritance almost as old as human history itself and is peculiar within any society. This research is an attempt to identify certain issues that discriminate against women from inheritance. It must be said that while the Constitution of Bangladesh and other related laws are guaranteed equality of all sexes before the law, it appears that it does not have embracing provision to protect women against discriminatory practices with regards to inheritance. Property ownership and inheritance are usually unequal, especially under customary law. The goal of this study is to offer solutions to safeguard women's inheritance rights.

1.1 Object of the Study

The study's major goal is to identify legal provisions concerning women's inheritance rights and to investigate the issues that lead to discrimination against women in this area. Moreover, there are some specific objectives of the study as follows:

- To assess women's inheritance rights under Islamic, Hindu, and Christian law in Bangladesh and to attempt a comparative analysis. To prescribe how far the rights of women in inheritance is applied.
- To determine lack of existing personal laws.
- To suggest the necessary reformations for making equal rights of inheritance under Muslim, Hindu and Christian Laws.

1.2 Methodology

This research is based on an examination of current Muslim personal law, Hindu law, Christian law, theory, and institutional records, as well as literatures on women's inheritance equality. Analytical technique is used. The research is conducted using both primary and secondary data. Observations and case studies on inheritance laws are included in the original source. The secondary source contains published resources such as books, current legislation, journals, web-based information or internet materials, newspapers, and so on. By way of footnotes, the sources used are acknowledged.

1.3 Literature Review

Many books and journals about women's right to inheritance under Muslim, Hindu, and Christian laws can be found in various libraries, but none of them contain enough information about what recite need to know briefly on the topic of "Women's Right to Inheritance under Muslim, Hindu, and Christian Laws." Following are some of the important research works:

ASAF A.A.FYZEE, in his book he generally focused on concept of Islamic Law of Inheritance, general principles of inheritance and rights of women in property. He suggested that both male and female should have equal rights in inheritance. Later he prescribed about the importance of women's right to inheritance.¹

He covered most of the matter relating to my dissertation but his work didn't cover the present scenario. He did not discuss about the defect of Islamic Inheritance Law. In my work I will try to show the present scenario and try to show the defect of existing Islamic Inheritance Laws.

Women's Estate and Stridhana are mentioned by **B.M Gandhi**. He stated that a female could not become the complete owner of a property unless there was stridhana and under circumstances.²

¹ ASAF A.A.FYZEE, *Outlines of Muhammadan Law*, Oxford University Press, 1974.

² B.M Gandhi, *HINDU LAW*, EASTERN BOOK COMPANY, 2008.

He discussed most of the things relating to Women's Right in Inheritance in his book. But I will discuss those issues more specifically and more broadly.

SUNDERLAL T. DESAI elaborated on the subject of 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.³

He discussed all those relating issues by his own motion. Apart from this I will show the conflict between the Hindu Law of Inheritance and the Constitution of People's Republic of Bangladesh.

Dr. Muhammad Ekramul Haque described about concept of inheritance and the rights of women in inheritance. He also discussed about the women rights in Quranic shares, Rules, and calculation of distributions. He further focused on some miscellaneous issues.⁴

He did not, however, address the reasons for women's discrimination in property rights or the significance of equal inheritance rights. In my work, I'll examine the causes for this and try to provide some recommendations on the subject.

1.4 Research Question

To what extent the law of Bangladesh guarantees/protects women's right to inheritance?

* What are the laws in Bangladesh protecting the rights of women in case of inheritance?

* Whether the existing laws sufficiently protect women's right to inheritance?

³ SUNDERLAL T. DESAI, MULLA PRINCIPLES OF HINDU LAW, N.M Tripathi Private Limited, 1990.

⁴ Dr. Muhammad Ekramul Haque, Islamic Law of Inheritance, London College of Legal Studies, 2009.

1.5 Limitation of the Study

There is certain limitation on the supervised dissertation as the study has not covered the whole area of Women's Inheritance Right rather it focused on Bangladeshi women's perspective with a comparative discussion. There are some theoretical works rather than the practical work. Due to research constraint, time constraint accession constraint and I don't have enough books, articles, and journals available for the study. This study will show the legal effect. The study's major goal is to uncover legal provisions concerning women's inheritance rights and to determine why women's inheritance rights are discriminated against. There may be errors in my work, so please accept my apologies for my limits.

CHAPTER: 02

Conceptual Development and Inheritance Rights of Women

Women are an important pillar of society. They are the lifeblood of civilization. We can't ignore their significance in today's world. A body without a heart is unimaginable. Similarly, a society improvement cannot be imagined without the participation of women. We know from the Bangladesh Bureau of Statistics (BBS) that women make up about half of the population, hence women's right to inheritance should become a basic component of state law. Bangladesh has ratified a total of 14 international human rights agreements and has implemented a few official programs to improve women's inheritance rights.⁵ Despite these facts, Bangladeshi women continue to fight for their right to inherit, subject to a few good improvements.⁶

This chapter consists of background and the conceptual issues for getting clear knowledge about this topic. The discussion begins with the background study.

2.1 Background

Prior to Islam, male descendants were the only ones who could inherit on the Arabic peninsula. Women were not only denied a portion of the inheritance, but they were also inheritable. Half-brothers and half-sisters from the mother's side were absolutely eliminated. In contrast, pre-Islamic nations had a wide range of inheritance laws.

The Hindu Succession Act, 1956 governs the Hindu Law of Inheritance. Various ways or systems of Hindu property devolution existed in the Indian Subcontinent prior to the establishment of the Hindu Succession Act.⁷ Until the middle of the nineteenth century, the Hindu Law of Inheritance remained in force in its old and customary form. Old ideas had given place to new and there be a pressing demand for change due to exigencies of changing needs of society. The Hindu Succession

⁵ Afroza Begum, 'Protection of women rights in Bangladesh', Phd Thesis, University of Wollongong, 2004, p. 03.

⁶ Ibid.

⁷ B.M. Gandhi, HINDU LAW, Eastern Book Company Lucknow, 2008, p. 371.

Act is the climax of this demanding for change for a more consistent, coherent, and equitable system.⁸

In this section, the laws controlling inheritance among Christians on the Indian Subcontinent have been explored. All other religions, including Christians, are included under the Succession Act of 1925. In the case of Christians, some customary practices have an impact on inheritance principles and have been reviewed by the courts.

2.2 Definition of Inheritance

The act of passing on property is known as inheritance. Law of inheritance is an important branch of knowledge which deals with the rules to calculate and distributed the property of a deceased person among the heirs.⁹

MACMILLAN Dictionary mentioned that “property or money that you receive from someone when he/ she dies called Inheritance”.

Generally inheritance covers two things:

- Bequests and intestate succession are examples of property received via bequest or intestate succession.
- The act of receiving such property.

RUMSEY:

"The Muhammadan Law of inheritance comprises beyond question the most refined and elaborates system of rules for the devolution of property that is known to the civilized World".

FITZGERALD:

"To Muslims the Sharia law of inheritance is ideally perfect; founded on the sure rock of divine

⁸ Ibid.

⁹ Dr. Muhammad Ekramul Haque, Islamic Law of Inheritance, London College of Legal Studies, 2009, p. 11.

revelation & worked out in the utmost detail by that mental ingenuity which God gave man for the purpose of the understanding revelation. The logical strength of the system is beyond question...."

2.3 Definition of Women's Right

Women's rights are described as women's freedoms, liberties, and opportunities, particularly the ability to be regarded equally to men and to enjoy the same legal rights as men.¹⁰ In its simplest form, women's rights relate to a collection of rights that are solely enjoyed or rather enjoyed by women, to the exclusion of males. In a strict sense, the term refers to just those rights that are recognized by a single state.¹¹ The definitional forms of rights, which are the socio-economic-cultural-religious and legal contexts of a specific nation in which women live, are relevant in this respect.¹²

¹⁰ C Bunch, 'Women's Rights as Human Rights', Human Rights Quarterly, vol. 10, 1990, p. 485.

¹¹ Ibid, p. 486.

¹² Ibid.

CHAPTER: 03

Women's Right to Inheritance in Different Religions

Both Muslim and non-Muslim women in Bangladesh have almost no ideas about the content of the inheritance laws. In Bangladeshi society, current inheritance laws, patriarchal norms, and social behaviors all tend to reinforce discriminatory attitudes. Muslims, Hindus, and Christians each have their own inheritance systems. This chapter discusses women's inheritance rights in many religions, as well as the religious laws that must be followed. The Muslim law of Inheritance is also a Quranic rule that stipulates a certain portion in the property left by a deceased person for everyone close relatives, including female heirs. Within the bounds of each class of heirs, the closer in degree excludes the more distant. In Hindu Law, on the other hand, there are two inheritance systems. The first is the Mitakshara system, and the eleventh is the Dayabhaga system. The Hindu inheritance system in Bangladesh is governed by the Dayabhaga school of law. Only a life stake in the property is given to Hindu women. A Hindu woman can deal with her property in any way she wants when it comes to stridhan (women's property). Christians, on the other hand, are governed by the Succession Act of 1925 when it comes to inheritance.¹³

3.1 Inheritance of Women in Different Religions

The person who can't divide his property before death, his property is divided after his death among the legal persons. This legality is limited by the religion of that person. This divided process is called inheritance. And the persons, among whom the property is distributed is called inheritor. Inheritance of women has different from in different religions:

- Inheritance of women in Muslim Religion.
- Inheritance of women in Hindu Religion.
- Inheritance of women in Christian Religion.

¹³ <http://bdlaws.minlaw.gov.bd/act-138/part-details-152.html> (Accessed 21 April 2022)

3.2 Inheritance of Women under Muslim Law

Because Muslims account for 95 percent of the country's population, it's time to revisit the religion's specified inheritance rights. Al-Faraid is the Islamic rule of inheritance. The Holy 'Quran and Sunnah' are what make up Faraid.¹⁴ The Successors of deceased person according to the nearness can be categorized into three segments. These categories have been done for the better interest of distribution. 'Faraid' mentioned in the Quran (Source: The Holy Quaran Suratun 'Nisa', verses 4: 11, 12, 176) that every inheritor's share in different cases these are as follows.¹⁵

- Sharer or Zabi-ul-furud.
- Residuary or Asaba.
- Distant kinderd Zabi-Arham

Describe those shares under the follows:

a) Sharer or Zabi-ul-furud:

The first set of heirs is known as sharers, and their names and shares are referenced in the Holy Quran.¹⁶

Before the advent of Islam, only the agnatic heirs could enjoy and inherit the property of the deceased. In the Holy Qur'an it is described as Zabilfurud which means "Holder of specific sharer". This group of heirs is considered as a superior group.¹⁷ Under Muslim Law women get property in many ways:

1. Wife:

¹⁴ABMSA Chowdhury, The Problem of Representation in the Muslim Law of Inheritance, Islamic Studies Publications, 1964, p. 375.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Dr. Muhammad Ekramul Haque, Islamic Law of Inheritance, London College of Legal Studies, 2009, p. 43.

If there are no entitled descendants (children/grandchildren), the wife will get 1/4 of the inheritance. If there are any eligible descendants (children/grandchildren), the wife is entitled to 1/8 of the inheritance.

(Note: Entitled Descendants= Sons, Daughter, Son's Son, Son's daughter. But daughter's children are not entitled).¹⁸

2. Mother:

If there are any eligible descendants or brothers/sisters, the mother shall get one-sixth of the inheritance. If there are no eligible descendants (no brothers/sisters or husband), the mother will get 1/3 of the inheritance. If a mother has a brother or sister, a father, or a spouse, she will receive 1/3 of the remaining money.¹⁹

3. Consanguine (Sister from same Father but different Mother):

Consanguine sisters inherit only when there is no son or son's son and no father and no full brother.

If only one full sister and no consanguine brother, then consanguine sister (if only one) gets 1/2. Consanguine sister (if two or more) get 2/3.²⁰ If one full sister and consanguine brother then consanguine brother: sister = 2:1.²¹

4. True Grandmother:

True Grandmother is defined as the one whose line of connection with the deceased is not interrupted by a male between two females. They are entitled only if the father or mother do not exist (e.g; Mother's Mother, Father's Mother, Mother's Mother (True Grandmother) = 1/6).²²

5. Daughter:

¹⁸ Ibid p. 50.

¹⁹ Salena Akter, A.N.M. Ariful Rahman and Md Jahid Hossain Dolon, Muslim Law, Nilkhet Publication, 2012, p. 342.

²⁰ Ibid 348.

²¹ Ibid.

²² Above n 20.

If there is just one daughter and no sons, she will receive half of the inheritance. If there are two or more daughters but no sons, the daughter receives two-thirds of the inheritance (To be shared equally between all of them). (Son: Daughter = 2:1) if both sons and daughters leave).²³

6. Son's Daughter:

If one of the sons has a daughter (or if none exists), the daughter of the son receives half of the inheritance. If son's son exists, son's daughter will get half of son's son's share (i.e., son's son share: son's daughter share= 2:1).²⁴ If two or more sons' daughters exist, son's daughter equals 2/3; if no daughter exists, son's son equals 1/3; if no son's son exists, son's son equals 1/3; if no son's son exists, son's son equals 1/3; if no son's son exists, son's son equals 1/3; if no son's son exists, son's (equally between them). If a son's son exists, the daughter receives half of the son's son's share (i.e., son's son share: son's daughter share= 2: 1, gets 1/2 if one exists, 2/3 if two or more exist).²⁵

7. Full Sister:

If there is no full brother and no female eligible descendant (daughter, Son's daughter, etc.) and the dead is a man, the full sister receives 1/2 of the inheritance (if only one). If there is no full sister and no female qualified descendant, the full brother gets 1 if the dead was female (if only one). If there are two or more brothers and sisters, whole sister equals 2/3 (divided evenly between them), and full brothers and sisters equals 2:1.²⁶ If there is no full brother but a female eligible descendant (daughter, Son's daughter, etc.), full sisters = 1/6. (if only one). If there is a female descendant, complete sisters and brothers equal 1/3 of the total (share equally).²⁷

b) Residuary or Asaba:

²³ Dr. Muhammad Ekramul Haque, *Islamic Law of Inheritance*, London College of Legal Studies, 2009, p. 54.

²⁴ Ibid 83.

²⁵ Ibid.

²⁶ Ibid 67.

²⁷ Ibid.

The second class of successors is known as the 'Asabat,' which translates to "near male agents." After the sharers' distributions, 'Asaba' is the group of second-grade heirs who will get property.²⁸ If no sharers exist or if a residue remains after fulfilling their claims, the whole inheritance or the residue, as the case may be, is descended upon residuary in the sequence given out in the table of reliquaries. Though from the perspective of order of distribution of property it apparently seems that they are inferior in status in comparison to the sharers, the impression will be changed when the quantum of the property allocated to them is looked into. Because in most of the cases a major portion of the property goes to the 'Asaba' after distribution of the property among the sharers, due to the existence of different rules of total and partial exclusion. In comparison to the as bah and 'dhawi-al-arham' beneficiaries, the 'Ashab al-furred' group is the most significant group of beneficiaries and comes first in inheritance distribution and receipt.²⁹

c) Distant kindred or Zabi arham:

They are all those relations by blood who are neither sharers nor residuary. They inherit when there are neither sharers nor residuary. Distant kindred or remote relatives are popularly believed to include the relatives who are connected with the deceased through a female link.³⁰ They are known as remote heirs, this is also not true in the sense that there may be some distinct heirs who are even nearer to the deceased than some other sharers and asaba.³¹ For example full brother's daughter, a distinct kindred heir who is obviously closer to the deceased in comparison with full brother's son's son, an asaba heir. However, remote in the sense of priority may be an appropriate use but it is not popularly used from this dimension.

3.3 Inheritance of Women in Hindu Religion

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Dr. Muhammad Ekramul Haque, *Islamic Law of Inheritance*, London College of Legal Studies, 2009, p. 211.

Since Hinduism is one of the world's oldest religions, it is known as "Santana Dharma." It embraces all areas of human existence, including a woman's rights, responsibilities, and obligations, just like all other faiths.³² Hindu women rely on their parents as children, their husbands as adolescents, and their children as adults. As a result, Hindu family rules are believed to need to be altered in order to improve the situation of Hindu women. Women in the Hindu religion are not entitled to anything from their father's estate, but they are entitled to their husband's estate. As long as Husband is alive, Hindu women have the right to enjoy his possessions.³³ In the Hindu law the woman has no right to inheritance. They get property for life time enjoyment only. After her death the property goes to her husband's hair.³⁴ Women, on the other hand, have property rights and inherit rights under Islamic law. She also has the option of running her own company. A Muslim lady has the ability to transfer ownership of her hair. In general, a Hindu woman does not have the ability to appeal a property division for her own portion of the property. When that property is split and distributed among the sons, the wife receives a portion of it equal to a son.³⁵ The Hindu wife will get possession of her share of the property for enjoyment for her life-time. These are as follows:

1. Right of a Hindu Widow:

When a spouse does not have a son, the widow automatically inherits his property. She holds the promissory right to the entire property in this way.³⁶ She does, however, become the sole owner of the land for the rest of her life. She has no legal right to sell, but she can sell a small portion if she has a pressing need.

³² Md. Anwar Hossain, *The Hindu Law*, Hira Publication, 2014, p. 324.

³³ Ibid.

³⁴https://core.ac.uk/display/74352207?utm_source=pdf&utm_medium=banner&utm_campaign=pdf-decoration-v1> (Accessed 21 April 2022). Mahua Zahur, 'HINDU WOMEN'S PROPERTY RIGHTS: BANGLADESH PERSPECTIVE', *BRAC University Journal*, vol. 01, 2016, p. 79.

³⁵ Ibid.

³⁶ Ibid.

2. Right of a Hindu Mother:

In the Hindu society, both a mother and a widow have the right to claim a portion of their sons' property. A widow mother is automatically entitled to her husband's portion of property under section 18 of the Hindu Act of 1937. She and her son are also joint heirs to the property. She is entitled to an equal portion of her boys' inheritance.³⁷ A Hindu mother gets her dead son's property inherently like her son's son but that property is not treated as stridhana.³⁸

3. Right of a Hindu daughter:

Unmarried daughter gets one fourth share of a son. The mother of the sons is entitled to get an equal share and the daughters to a one fourth share. The unmarried daughter takes one-fourth share and the son takes the remaining three fourths in the case of the property being small.³⁹

4. Property right:

Hindu women are only given a small portion of a property, according to Hindu law. For their survival, they have been stripped of their father's and husband's rights to property. A Hindu woman has no right to challenge the property division for her own part, and if her husband has no son, a widow inherits his property. For her life interest, a Hindu woman receives restricted property, which she is unable to transfer.⁴⁰

3.4 Inheritance of women in Christians Religion

All property possessed by a person in the Christian religion is considered as self-acquired property, regardless of how it was gained Christian widow inherits one-third of her husband's inheritance in the presence of male lineal descendants; in the absence of lineal descendants and the presence of her husband's male relatives, she receives half of the estate. She receives the whole estate in the

³⁷ Hindu Act 1937, s 18.

³⁸ Ibid.

³⁹ Above n 34.

⁴⁰ NOSHIRVAN H. JHABVALA, Principles of Hindu Law, Mukta Law Book House, 2003, p. 250.

absence of both lineal descendants and kindred. If there is a widow and no other siblings or lineal descendants, her daughter is entitled to two-thirds of the inheritance. In the absence of a widow, siblings, or lineal descendants, the whole estate is passed down to a daughter.⁴¹ The Succession Act of 1925 governs Christian succession.⁴²

If the dead husband leaves children, the widow in Bangladesh obtains a predetermined part of one-eighth of his property under Islamic law. Not all a man's daughters are equally eligible to inherit, according to Hindu law. Daughters who are unmarried or married with boys are eligible to inherit. Daughters who are childless, widowed, or without a son are not eligible.

⁴¹ Ibid.

⁴² The Succession Act 1925.

CHAPTER: 04

Law and Practice Regarding Women's Rights to Inheritance

The discriminatory attitude toward women's inheritance rights, which stems from the family and extends to the state level, must end. Bangladeshi women are generally unaware of their rights due to constraints imposed by the family, society, and the government.⁴³ Personal laws encompass inheritance laws. In Bangladesh, most women endure disparities, such as lesser inheritance than men. When it comes to property ownership, Sharia law doesn't really treat men and women equally. According to Hindu law, women do not inherit any land.⁴⁴

In this chapter, I'll try to demonstrate the constitutional and international safeguards pertaining to women's inheritance rights. And try to describe about the present scenario of Bangladeshi women in respect of their right to inheritance also pointed out some reasons of inequality with comparative discussions.

4.1 Constitutional Framework

Women's rights are preserved under the People's Republic of Bangladesh's Constitution by the broad and universal ideals of equality and participation. These concepts are stated in the Constitution's Articles.⁴⁵

⁴³ Md. Raisul Islam Sourav, 'Unjust Land Right of Women in Bangladesh' International Research Journal of Interdisciplinary & Multidisciplinary Studies (IRJIMS), 2015, <<http://oaji.net/articles/2015/1707-1438672823.pdf>> (Accessed 21 April 2022)

⁴⁴ Ibid.

⁴⁵ The Constitution of People's Republic of Bangladesh 1972.

Women must be included in all forms of public life, according to Article 10 of the Constitution.⁴⁶

According to Article 19 (1), the state must make every effort to guarantee that all people have equal opportunities.⁴⁷

According to Article 27, all citizens seem to be equal before the law and have the right to equal protection under the law.⁴⁸

According to Article 28 (1), the state shall not discriminate against any individual merely on the basis of religion, race, caste, sex, or place of birth.⁴⁹

Women must enjoy equal rights with males in all aspects of the State and public life, according to Article 28 (2).⁵⁰ This last clause signifies that all constitutional rights, such as the right to life, personal liberty, ownership, right to freedom, freedom of opinion, and freedom of particular trade, apply equally to women in Bangladesh.⁵¹

In Bangladesh, inheritance is governed by personal law, As a result, most of women's inheritance is uneven and unfair. This has necessitated the creation of a unified and neutral family law to address not just the question of inheritance, but also concerns like as marriage, separation, and custody.⁵²

⁴⁶ Ibid Article 10.

⁴⁷ Ibid Article 19(1).

⁴⁸ Ibid Article 27.

⁴⁹ Ibid Article 28(1).

⁵⁰ Ibid Article 28(2).

⁵¹ Ibid.

⁵² The Commonwealth Youth Programme, Bangladesh: Women and the Distribution of Inherited Property, 2011, <http://www.yourcommonwealth.org/uncategorized/bangladesh-women-and-the-equal-distribution-of-inherited-property/> (accessed 21 April 2022)

4.2 International Conventions

Some international conventions guaranteed the women's equal right in inheritance. These conventions are:

Convention on the Elimination of All Forms of Discrimination Against Women:

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), sometimes known as a global bill of rights for women, was approved by the United Nations General Assembly in 1979. It includes a preface and 30 sections that define what constitutes discrimination against women and provides a national ambitious agenda to eliminate such hostility.⁵³

Despite the fact that Bangladesh is a party to the Agreement on the Elimination of All Forms of Discrimination Against Women (CEDAW), it has doubts about Article 13 (a) of the convention, which provides women equal rights to family inheritance.⁵⁴

Universal Declaration of Human Rights:

Article-1

Every person is born with the same inherent dignity. They have reason and compassion, and they should act in a brotherly manner toward each other.⁵⁵

Article-2

Everyone has equal access to all of the rights and freedoms outlined in this Declaration, regardless of ethnicity, coloring, sexuality, dialect, religion, political or other beliefs, national or cultural origin, property, birth, or other status.⁵⁶ Moreover, no difference shall be made on the basis of the political, territorial, or global status of the country or territories to which an individuals belong,

⁵³ Convention on the Elimination of All Forms of Discrimination against Women 1979.

⁵⁴ Above n 56.

⁵⁵ Universal Declaration of Human Rights Article 01.

⁵⁶ Ibid Article 2.

whether that country or territory is autonomous, trust, quasi, or subject to any other kind of sovereignty limitation.⁵⁷

The International Covenant on Civil and Political Rights (1966)

Articles 2, 3 and 27 established gender-neutral rights.

Article 23 stipulates that women's property rights, both during and after marriage, shall be safeguarded in the same way as men's are.⁵⁸

The International Covenant on Economic, Social and Cultural Rights (1966)

Men and women are guaranteed equal rights under Article 3 of the Constitution.⁵⁹

African Charter on Human Rights

Under article 14: “the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws”.

⁵⁷ Ibid

⁵⁸ The International Covenant on Civil and Political Rights 1966.

⁵⁹ The International Covenant on Economic, Social and Cultural Rights 1966.

4.3 How far the Rights of Women in Inheritance is Given

Provisions	How far women’s right to inheritance is given.
Women enjoy equality with males in all aspects of the Government and public life, according to Article 28 (2) of the People's Republic of Bangladesh Charter. ⁶⁰	In Bangladesh, inheritance is handled by personal law, which has resulted in a lot of uneven and discriminating inheritance practices for women. ⁶¹
While Bangladesh is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, it is not a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). ⁶²	It has misgivings about Article 13 (a) of the agreement, which guarantees women's equality in terms of family inheritance. ⁶³
Inheritance property is divided into predetermined parts for women. ⁶⁴	Women's property rights are founded on religion and cultural traditions, hence equal

⁶⁰ The Constitution of People’s Republic of Bangladesh 1972.

⁶¹ The Commonwealth Youth Programme, Bangladesh: Women and the Distribution of Inherited Property, 2011, <<http://www.yourcommonwealth.org/uncategorized/bangladesh-women-and-the-equal-distribution-of-inherited-property/>> (Accessed 21 April 2022)

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

	rights are being violated as well as discriminated against. ⁶⁵
Both men and women are subject to the very same Christian inheritance and succession laws.	Women are often deprived. They do not even get their respective share.
Hindu women, as according to Hindu law, have complete control over their stridhana. As a consequence, she now owns the property completely.	As Hindu religion based on custom, some local customs exclude the women from their absolute ownership.
A guy is required to give a woman a marital present.	On numerous occasions, the woman's family is expected to provide a bridal gift to the man.

4.4 Bangladeshi society is based on property sharing

Women's discrimination is a popular issue. Women have always been treated with less respect than males.⁶⁶ Women's rights in Bangladesh's inheritance are commonly ignored by social conventions and culture. In regarding financial assets, women are worse off than males. Experts suggest that parents prefer the birth of boys because they believe that sons would aid and offer financial support in their later years.⁶⁷

⁶⁵ Mahua Zahur, 'HINDU WOMEN'S PROPERTY RIGHTS: BANGLADESH PERSPECTIVE', BRAC University Journal, vol. 01, 2016, p. 81.

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<<https://www.sciencepublishinggroup.com/journal/paperinfo.aspx?journalid=202&doi=10.11648/j.ss.20130202.11>> (Accessed 21 April 2022) Noor Mohammad, 'Islamic Law and Women Rights in Bangladesh' Science Publication Group, vol. 02, 2013, p. 61.

⁶⁷ Ibid.

Daughters, on either hand, are seen as a burden and a transient family member.⁶⁸ In Bangladesh, inheritance is governed by either personal law or the law of the person to whom it pertains. Inheritance is a Muslim rule that specifies certain portions for each individuals personal closest relatives. In most cases, a male inherits more assets than a woman. The Dayabhaga School is in charge of the Hindu inheritance system in Bangladesh. In Bangladesh, a Hindu woman's inheritance rights are practically non-existent. The right to inherit under the Dayabhaga law is based on the heir's ability to save the souls of paternal and maternal ancestors via those who survive.⁶⁹ Unmarried daughters and girls with sons are allowed to inherit, but widowed, sonless, or childless daughters are not. Only a life estate to the deceased's property is transferred to a widow, and this is seen to constitute her legacy.⁷⁰

Share Received by the Female Members of the Family

S.L	Frequency	Percentage
No Share	14	29.8
1 to 50 Percent	02	4.3
51 to 80 Percent	12	25.5
81 to 90 Percent	01	2.1
100 Percent	18	38.3
Total	47	100.0

Table: 01

⁶⁸ Ibid.

⁶⁹ Above n 70.

⁷⁰ The Commonwealth Youth Programme, Bangladesh: Women and the Distribution of Inherited Property, 2011, <http://www.yourcommonwealth.org/uncategorized/bangladesh-women-and-the-equal-distribution-of-inherited-property/> (Accessed 20 April 2022)

Barrister Jennifer Ashraf Kashmi performed the survey analysis.⁷¹

4.5 Comparative Analysis between Bangladesh and India

The chart below summarizes Bangladesh's as well as India's official inheritance rules:

Country	Bangladesh	India
Inheritance Laws	<ul style="list-style-type: none"> ▪ Muslim Personal Law. ▪ Hindu law of inheritance (amendment) Act of 1929. ▪ Succession Act of 1925. 	<ul style="list-style-type: none"> ▪ Hindu Succession Act of 1956 ▪ Indian Succession Act of 1925 (portions) ▪ Indian Succession Act of 1925 (portions)
Source	<ul style="list-style-type: none"> ▪ Islamic law ▪ Hindu dayabhaga system ▪ Common law 	<ul style="list-style-type: none"> ▪ Hindu religion ▪ Islamic Law ▪ English common law
Wives' and daughters' intestate succession rights	<p>Women inherit in the same proportion as males (as wives, sisters, grandparents, or children), but not evenly</p> <p>Unmarried daughters and daughters with sons inherit from their mother; married daughters with daughters as well as childless daughters do not.</p>	<p>Widows receive one share, sons, daughters, and deceased mother receive one share apiece, and heirs of predeceased sons and daughters receive one share each.</p> <p>In most cases, women (as spouses, daughters, sisters, or grandparents) inherit half of their male predecessor's share.</p>

⁷¹ Jennifer Ashraf Kashmi, 'The Glaring Distinction between Law and Reality of Women's Rights', International and Comparative Law Journal, vol. 01, 2014, p. 47. <<https://www.legacylegalcorporate.com/index.php/welcome-from-jennifer-ashraf.html>> (Accessed 21 April 2022)

	One-third goes to the widow, and two-thirds goes to lineal descendants (sons and daughters). ⁷²	One-third goes to the widows, while the other two-thirds goes to the lineal descendants (sons and daughters). Widows and offspring (son and daughter) divide the inheritance equally. ⁷³
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4.6 Reasons of Inequality in Inheritance

Although the constitution and other laws and the international laws made a safeguard against inequality but in case of inheritance rights women does not get equal shares like a men. There are some reasons behind this:

1. Religious Pressure:

The Islamic or other religious inheritance rules still apply to women's right to inherit. The family rules in our nation are governed by each individual's faith. Despite the fact that civil society has pushed for the adoption of a worldwide family law with equal rights, the UN Convention on the Elimination of All Forms of Inequality Against Women's Articles 2 and 16.1 (c) have been restricted (CEDAW).⁷⁴ The Bangladesh government made it plain to the CEDAW committee during this review that the limits on Article 2 and 16.1 (c) will not be lifted.⁷⁵ Pressure from religious organizations, according to the government's interim report, was the reasons for the limitations not being lifted. Estate allocation is based on religious criteria, according to the

⁷² Rural Development Institute (RDI), Women's Inheritance Rights to Land and Property in South Asia, RDI REPORT, 2009, P. 9.

⁷³ Ibid.

⁷⁴ Md. Nur Khan and Tamanna Haque Riti, 'Rights of Our Girls and Women', The Daily Star (Bangladesh), 27 February 2017, p. 6.

⁷⁵ Ibid.

government.⁷⁶ Despite assurances to remove the protest at times during the CEDAW committee review or at the national level, the government has made no such commitments this time, distressing us all. The government's inability to take any good actions due to fear of repercussions from religious organizations, on the other hand, is not a valid reason.⁷⁷ However, leaving the CEDAW convention's restrictions in place is a clear breach of Bangladesh's constitution and the state's duty to defend women's rights.

2. Depends upon Old Islamic Law:

The issue of inheritance receives a lot of attention in Islamic law. According to history, Islam's prophet Muhammad (sm) suggested learning and teaching the law of inheritance since it is half of valuable knowledge.⁷⁸ Many writers have looked at Islamic family law and women in many jurisdictions, however there are few studies on the law of inheritance and women. Here, an effort is made to analyze the problem's actuality.

Females and cognates, who were previously not entitled to inherit, are now included as sharers of the property of the sense of right and wrong under sharia law. The fact that a female is often allocated half of a male's share has sparked great debate. Women under Islamic family law, on the other hand, plainly want gender equality rather than full sexual equality. In certain Muslim majority nations, such as Turkey or Albania, official law has departed from sharia inheritance, and they have withdrawn from Islamic personal law. However, because all of the exact specifics of inheritance law are basically described in the Holy Quran, there is always the risk of disequilibrium if reforms are not implemented.

3. Hindu Law based on Custom:

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Syed Khalid Rashid, *Muslim Law*, Eastern Book Company, 2009, p. 362.

There have been no modifications to Hindu personal law since the British colonial period. As a result, Hindu women's property rights in Bangladesh are still governed by antiquated rules that do not match current needs.⁷⁹ As one of the human rights criteria, every society has some responsibility to guarantee gender equality. When the issue of reforming Hindu law in general, including women's property rights, it is always dismissed on religious grounds.⁸⁰

4. Lack of Awareness of Women:

The majority of women are completely uninformed of their fundamental inheritance rights. They don't even grasp how socioeconomic and cultural factors influence them. Because of their ignorance and cluelessness, they tolerate all forms of discriminatory behaviors that exist in our family and community.

5. Social Customs, Beliefs and Practices:

Social conventions, attitudes, and behaviors do not discriminate against women. Women's duties are primarily confined to the domestic realm under the conventional joint family structure, which assigns them an inferior position, authority, and power in comparison to males.⁸¹ The propensity for boys over daughters is a complicated phenomena that exists in many areas. Sons, particularly in the business community, are valuable assets in terms of economics, politics, and ritual. Women are thought to play merely a supporting role in the home, tending towards the hearth.

⁷⁹ Above n 79.

⁸⁰ Mahua Zahur, 'HINDU WOMEN'S PROPERTY RIGHTS: BANGLADESH PERSPECTIVE' ([2016]) 11 (01) BRAC University Journal 79, 83.

https://core.ac.uk/display/74352207?utm_source=pdf&utm_medium=banner&utm_campaign=pdf-decoration-v1
(Accessed 21 April 2022)

⁸¹ Ibid.

4.7 Case Analysis

In the case of *Sheikh Ibrahim vs. Nazma Begum*,⁸² it was held that, the question raised in this leave petition relates to interpretation of sec.04 of the Muslim Family Laws Ordinance, 1961. The date of death of the daughter of the propositus, whether it was before or after the coming into force of the ordinance, is immaterial. It is the date of the opening of succession which is material importance.

It appears that it is the date of opening of succession which is of material importance. The propositus died in 1984, whereupon succession to his property opened, and had his daughter Zabeda Khatn been alive at that time, she would have inherited the share, whether it was before or after the coming into force of the ordinance is immaterial, Interpretation of section 04.

In Bangladesh, women are mostly engaged in live off the land activities that contribute to household subsistence. Women are traditionally active in agriculture post-harvest processing, cattle and poultry animal husbandry, and household gardening. Poor rural women make money by lending their little savings to a variety of lucrative rural businesses.

⁸² *Sheikh Ibrahim vs. Nazma Begum* (1992) 276 DLR (AD) p. 44.

CHAPTER: 05

Findings and Recommendations

The phrase "women's right to inherit" refers to the actual property rights of women and girls. Law, local tradition, and conduct in a community can institutionalize, neglect, or repress rights. For religious reasons, many males oppose women gaining equal rights to men.

5.1 Findings

Women lacked in education and empowerment

One of the findings was that women, compared to males, were less informed of the rules under which they were wedded, particularly those concerning inheritance and succession. Some of the ladies had acquired land or received land as a gift from their parents, and they were devoted to dispersing it evenly among their offspring. After learning about women's and girls' rights, some parents have gone so far as to write property in their children's names as well. As a result, women of all socioeconomic strata should have access to education. Every woman should have learned how to obtain the right to the property.

Legal system and discriminatory laws

Women would not even consider fighting for their rights since the system is so convoluted and unpleasant. Women's equal right to inherit should be acknowledged in our constitution, as it is in other industrialized countries.

The concern of wealth transfer from one family to another was the primary cause for depriving women of their inheritance rights. The offspring of a man's son were his own and members of his family, but the children of a man's daughter were not, since they were members of their paternal grandfather's family. Women should really be aware of their own rights first and foremost.

5.2 Recommendations

Women's equal rights to inheritance are firmly recognized under international law. The problems of inheritance in our Society are not new. But every problem has solution. If we abide by the rules of the Holy Quran, hadiths and Hindu Customary Law, we shall never give up from this problem. Women should be careful about their right to inheritance. But many women in our society are unwilling to take their property.

- In other countries, usually inheritance don't determine by the religion. But In Bangladesh, it does. It make women's inheritance uneven and discriminatory. This has necessitated the creation of a unified, secular family code that addresses not just the question of inheritance, but also marriage, divorce, and guardianship.⁸³
- Bangladesh is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), although it has misgivings about Article 13 (a), which provides women equal rights to inheritance. This CEDAW requirement should be incorporated into the law.
- Without any delay, The Hindu personal laws of Bangladesh need reformations.
- Most of the women in these areas are uneducated and unaware of their inheritance rights.⁸⁴ The results reveal that many women lack the knowledge, courage, expertise, and finances necessary to acquire what they are fully allowed to. As a result, women must be informed of their rights.⁸⁵
- While the constitution states that the government shall not discriminate against any person based on religion, race, caste, sex, or place of birth, it only ensures equal rights for women

⁸³ Late Bela Nobi, Uniform Family Code, Bangladesh Mohila Posishad,1993, p. 42.

⁸⁴Ibid.

⁸⁵Ibid. p. 43.

and men in all aspects of state and public life. As a result, Bangladesh's personal laws must be updated⁸⁶

Women don't demand inheritance due to uncertainties prevailing in their marital life. Parents also don't want to give right to inheritance to their daughters as they have to live with their sons. Such interpretation has resulted in subjecting women to the control of men.

- Most of the women relinquish their right to inheritance to please their family especially parents and brothers. Some females don't demand because they don't want to get their family annoyed from them. Family should support a girl to get her own property instead of getting annoyed.

Some of the ladies have bought land or received it as a gift from their parents. Some parents have even written property into their children's names after becoming aware of their daughters' and sons' rights. Women of all backgrounds should have access to education.

- Women's rights are denied by society as a whole, and they are not seen as social creatures. They are viewed as being mostly reliant on their husbands or male heirs, and it is assumed that women have little need for land. Family and society should support a girl. Family should look at the boy and girls equally. They must not deprive the girl.
- Court has also some responsibilities in this fact. Court is a legal place. But now-a-days many lacking courts can be found. Court must help the women to get the right in the property.
- To provide better justice and social security for women, inheritance rules should be amended. Universal family and inheritance rules must be adopted and enacted as soon as possible.

⁸⁶Ibid.

- Equal rights must be provided for women of Hindu, Muslim, Christian, and other ethnic minorities through altering the individual community's and organizations' customary beliefs and customs

- Getting legal assistance and guidance to women who want to fight their allegations, as well as assisting women with dispute resolution. The majority of the women were terrified of being isolated from their families, and many believed that their parents saw dowry as a substitute for inheritance. Daily paper, television, and radio personnel can arrange various programs to educate women about their rights. As a result, women's understanding is critical for resolving complex inheritance issues.

CHAPTER: 06

Conclusion

Inheritance is a human rights issue, but it also has a negative impact on women's economic and financial situations. However, the current scenario in Bangladesh makes things much more difficult for women. While the constitution states that the government shall not prejudice against any person based on religion, race, class, sex, or place of birth, it also assures that women and men have equal rights in all aspects of state and public life. Women's rights in private and family life are so jeopardized because of this. In Bangladesh, equal rights for women in inheritance are not just a matter of progress for women, but also a basic human right that the government has yet to guarantee.

Women's Right to Inheritance aims to eliminate all types of gender discrimination and ensures equal access to human rights and fundamental freedoms for women. Inheritance prejudice against women and girls should be prohibited by law, and women and girls should be able to inherit property and land on an equal footing with men. Laws governing succession lines should ensure that mothers and fathers, siblings and sisters, daughters and sons, and spouses all have equal standing. The superiority of civil law over conventional rules and practices that discriminate against women should be stated in legislation.

It would be unfair to a woman who is related to the deceased if her right to inherit is denied. The right is still given to women as a safeguard against insecurity or oppression in the event of a dispute. However, if a man and a woman share equally in the ownership of the property, the man will be treated unfairly because he bears more financial responsibility than the woman. We should work together if we want to eliminate gender discrimination. Because the government alone will not be able to solve or mitigate the entire issue of women's equal inheritance rights. However, discrimination is prevalent in our country.

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