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**DISSERTATION
ON
LEGAL PROTECTION AND RIGHT TO PROPERTY OF
PERSONS WITH DISABILITIES UNDER HINDU LAW**

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Declaration

I, Avizit Ghosh, bearing student ID: 2020-2-66-041, hereby declare that this dissertation titled “LEGAL PROTECTION AND RIGHT TO PROPERTY OF PERSONS WITH DISABILITIES UNDER HINDU LAW” was entirely prepared by me under the supervision of Dr. Nabaat Tasnima Mahbub, Honorable Chairperson and Associate Professor of East West University. This is my original work, and all the contents and materials used in this paper are acknowledged duly and cited properly. This paper has not been published in any journal, newspaper, or article.

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ABSTRACT

The Persons with disabilities remain frequently deprived and marginalized when it comes to the matter of legal protection and right to property. However, persons with disabilities are inseparable parts of society. Living with inherent dignity requires enjoying certain legal rights duly. Any discrimination based on disabilities undermines human dignity and human rights of a person. However, the existing provisions of Bangladeshi laws are not enough favorable to them. Consequently, their suffering does not end. This paper provides a critical overview on the Legal Protection and Right to Property of persons with disabilities under Hindu Law. The purpose of the study is to examine existing provisions of laws, identify and analyze the gaps, and propose possible solutions. This study reveals the current legal status of persons with disabilities, and right to legal protection including right to property under existing legal framework is insufficient and weak. Hence, Bangladesh needs comprehensive reformations of Hindu Law and procedural loopholes of disability laws with effective enforcement protecting the persons with disabilities.

LIST OF ABBREVIATIONS

CRPD	Convention on the Right of Persons with Disabilities
RPPD Act	Right and Protections of Person with Disabilities Act
AD	Appellate Division
DLR	Dhaka Law Report
DHLR	Dhaka Law Review
WHO	World Health Organization
UNGA	United Nations General Assembly

CHAPTER 1

Introduction

1.1 Background of the Study

The Persons with disabilities in Hindu law are one of the neglected and disregarded on the matter of legal rights. Hindu community in Bangladesh has been governed by Hindu Law in their personal matters including the right to inherit property. Hindu Law is one of the oldest legal systems existing in the world which is mostly uncodified. The rules and principles of Hindu Law are based on its religious Scriptures (i.e. Shrutis, Smritis etc.), customs and usages, commentaries, parliamentary laws, and the judicial precedents.¹

In the primary sources of Hindu Law, Shrutis, which have been heard by the Vedic Sages, is considered as the original source. But the Smriti, which has been remembered long and afterwards handed down by various Sages (i. e. Manu, Yajnavalkya, Narada etc.) over the generations.² The customs play a special role, which is clear proof of usages, will even outweigh the written text of law. The text of Narada is progressively stated that custom is powerful which overrides the text of sacred laws.³ In the era of commentaries on the various Smritis, the inhabitants of Bengal region have followed the Dayabhaga School, the commentaries of Jimuthvahana who prioritize the Code of Manu⁴, although this school of thoughts is the digest of all Codes.⁵ It is generally presumed that Bangladeshi Hindus are followed by the Dayabhaga School⁶, one of the sub-school of Mitakshara School.⁷

In the matter of Succession under Hindu Law, the persons with disabilities, physical or mental defects, are incapacitated to perform sacrifices and religious ceremonies, those are excluded from inheriting property on the grounds of disqualifications. But the religious motive or philosophy of such exclusions has been unfounded.⁸ In the way of exclusion from inheritance, it is important to show that these defects of an heir are incurable and congenital.⁹ However, if a

¹ D F Mulla, *Hindu Law*, (21st edn, LexisNexis 2013) 99, paras 8–10

² M Shah Alam, 'Review of Hindu Personal Law in Bangladesh: Search for reforms' (2004) 8:1&2 Bangladesh Journal of Law 22 <<https://www.scribd.com/document/401453754/Dr-M-Shah-Alam>> accessed 15 September 2025

³ *ibid* 24

⁴ Mohammad Ataul Karim, *Hindu Law in Bangladesh* (1st edn, Eha Prokash, 2023) 70

⁵ D F Mulla (n 1) 100 para 11.3

⁶ Mohammad Ataul Karim (n 4) 76

⁷ *ibid* 69

⁸ Sree Mridulkanti Rakshit, *The Principles of Hindu Law*, (7th edn, Kamrul Book House, 1964), 280

⁹ Sree Mridulkanti Rakshit (n 8) 281

person is excluded from the inheritance due to such disabilities, such persons with disabilities shall be entitled to get his or her maintenance from the lawfully bounded persons under Hindu Law. For example- a person of Hindu Joint family is disqualified from inheritance because of disabilities; he or she shall get maintenance from that joint family.¹⁰ As Hindus in Bangladesh are mostly adhered to the Dayabhaga School, the persons with physical or mental impairments in any forms are precluded from the acquisitions of proprietary rights under Hindu law of inheritance. In the way of parliamentary reformation, these disqualifications have been removed by the Hindu Inheritance (Removal of Disabilities) Act, 1928. However, this Act of 1928 is not applicable to those people who are governed by the Dayabhaga School.¹¹

1.2 Research Questions

To what extent the right to property of the persons with disabilities has been protected under Hindu Personal Law and Statutory Laws of Bangladesh?

- a) What is the current status of the right to property of disabled people in Hindu personal law?
- b) To what extent the statutory laws of Bangladesh have addressed the right to property of persons with disabilities?
- c) What reforms are necessary in the Hindu personal law to protect the rights to property of persons with disabilities?

1.3 Research Justification

The research on this legal work is justified as it is intended to identify the gaps on the existing relevant laws in Bangladesh regarding the research questions and to show the current status of the Disabled people on the legal protection and right to property under Hindu Law. And to recommend the reformation of Hindu personal law and to address what extent the statutory laws provide the legal protection on these issues in Bangladesh. This legal work is justified as it is contributed to ensure on the point dignity and rights of disabled people as normal humans.

¹⁰ Mohammad Ataul Karim (n 4) 211

¹¹ The Hindu Inheritance (Removal of Disabilities) Act, 1928, s 1(3)

1.4 Research Methodology

The research has followed a qualitative research method to complete the research which includes relevant theories, different opinions of individuals or a group. In the way of the mentioned method, the researcher adds his own hypothesis while addressing the research questions and conducts the research describing the matter to what extent it exists and has also tried to find out the new perspectives. Here are primary sources as well as secondary sources which have been used to conduct detailed analysis. Primary sources consider only statutory laws and judicial decisions and secondary sources include books, journals, articles, newspaper, and online databases etc.

1.5 Literature Review

There are numerous opinions and writings which talk regarding the proprietary rights and legal protections of the persons with disabilities and the conflicting issues of ensuring equality in rights as normal human beings between the Constitution and Hindu Personal Law in Bangladesh. Due to insufficiency of time, few books and papers in relation to the contemporaneous opinions and literature concerned have been reviewed.

D F Mulla opined that historical study reveals that progressive changes are necessary aspects of the evaluation of Hindu Law. When the regressive turns has been caused by the facts of history, it is not hard to identify that is general movement.¹² Dr. Mridulkanti Rakshit stated in the discussion of Exclusion from Inheritance that religious motives on the grounds of disabilities appear to be unfounded.¹³ Dr. Shahnaz Huda explained in her article¹⁴ the personal laws including Hindu Law govern family matters belonging to various religious denominations which are created harshly the gender inequality in Bangladesh. Those seem inconsistent with the universal human rights which are laid down in various international conventions ratified by Bangladesh. Sigrid Graumann addressed in her article¹⁵ that ‘human dignity’ requires social conditions including protection. This inserts not only negative rights but also positive rights, is institutionally anchored. It refers to the fact that help and care for weaker and dependent persons in society ought to be guaranteed.

¹² D F Mulla (n 1) 1–98

¹³ Sree Mridulkanti Rakshit (n 8) 280

¹⁴ Faustina Pereira, Shahanaz Huda, and Sara Hossain (eds), ‘Revisiting Personal Laws in Bangladesh: Proposals for Reform’ (Brill Nijhoff, Leiden; Boston 2019) p 60 <<https://lccn.loc.gov/2018012186>> accessed 9 October 2025

¹⁵ Sigrid Graumann (ed), *Human dignity and people with disabilities* (CUP 2015), p 490 <<http://dx.doi.org/10.1017/CBO9780511979033.061>> accessed 2 October 2025

Prof. T.Sita Kumari & Dr.G. Indira Priyadarsini explained in their article that property rights have been well-recognized fundamental civil rights from long period of time. Property which can be self-acquired or inherited in one's lifetime.¹⁶ Mohammad Ataul Karim opined that although Bangladeshi Hindus are governed by their personal law, the major rules of exclusion have been removed by the Rights and Protection of Persons with Disabilities Act (hereinafter RPPD Act), 2013. As this legislation is applicable to all citizens, Hindus in Bangladesh have been included by this enactment.¹⁷ Paul Harpur explained in his journal¹⁸ that UN Convention on the Rights of Persons with Disabilities talks about the existing rights and afterwards creates incidental rights to ensure that existing rights are realized. Md. Zahidul Islam and Asma Jahan showed in their journal¹⁹ that the Hindu Inheritance (Removal of Disabilities) Act, 1928 has failed to exclude the person with intellectual disabilities in respect of the follower of Mitakshara School in Bangladesh. Although the RPPD Act of 2013 covers that disabilities, but the Survey report concerns the lack of implementation of the provision when the persons with disabilities, especially women, seeks to exercise his or her inheritance right.

Asma Binte Shafiq explained in her journal²⁰ that the RPPD Act, 2013 has been guaranteed the right to inheritance to the persons with disabilities, but due to unspecific guidelines of implications, the inheritance rights of persons with disabilities belonging to Hindu Community is ineffective practically under this Act of 2013. M. Shah Alam has explained in his journal that the persons with disabilities, physical or mental defects, are excluded from Hindu law of inheritance, as the healthy and clean persons would the property protect and utilized properly for worldly as well as spiritual purposes according to the primitive thoughts, but such reasoning may not fit and hold good under the modern era. With the blessings of modern medicine, such persons with disabilities could reasonably live good life and contribute the

¹⁶ Prof T Sita Kumari & Dr. G. Indira Priyadarsini, 'Concept of Property - Jurisprudential Perspective' (2019) 1 GLS Law Journals <<https://doi.org/10.69974/gslslawjournal.v1i2.9>> accessed 7 October 2025

¹⁷ Mohammad Ataul Karim (n 4) 210, 215

¹⁸ Paul Harpur, 'Embracing the new disability rights paradigm: the importance of the Convention on the Rights of Persons with Disabilities' (2012) 27:1 Disability & Society 1 <<https://doi.org/10.1080/09687599.2012.631794>> accessed 03 November 2025

¹⁹ Md. Zahidul Islam and Asma Jahan, 'Disability Rights: Challenges and Opportunities in Bangladesh' (2023) 4(2) Journal of Asian and African Social Science and Humanities 50 <<https://www.aarcentre.com/ojs3/index.php/jaash/article/view/191>> accessed 17 October, 2025

²⁰ Asma Bint Shafiq, Towards Achieving Substantive Equality: A Critical Overview of Disability Law in Bangladesh (2025) 26(1) Australian Journal of Asian Law 103 <<https://search.informit.org/doi/abs/10.3316/informit.T2025041400007601335352083>> accessed 25 October, 2025

mankind.²¹ Abu Bakar and Ali Morsad expressed concerns in their journal that as the personal laws (i.e. Christian, Hindu, Muslim etc.) govern a person based on his religious faith and Hindu personal law does not give recognition the right to property of persons with disabilities, they are precluded the proprietary rights. As mostly adherence of the Dayabhaga School, many disabled people are denied taking inheritance, although the statutory law in Bangladesh allows.²²

1.6 Scope and Limitations

This critical assessment is mainly based on the existing provisions of Hindu Law as well as Statutory Laws in Bangladesh regarding legal protection and right to property of Disabled People. It has been showing some criticism about the existing system of Bangladesh. Legal rights of persons with disabilities on these issues under the International legal framework have been taken into consideration when discussing this legal work. The critical analysis on these legal issues might be able to get a better output if there is no period of limitation. This paper is mostly focused on the existing provisions of Hindu Personal Law and Statutory Laws of Bangladesh.

1.7 Outline of the Dissertation

Chapter Two is titled the persons with disabilities and their legal protections which explain the definition of persons with disabilities, their rights guaranteed in the Constitutional framework, and their special rights and privileges. This chapter has included the jurisprudential discussions on these legal issues. Chapter Three explains the right to property of the disabled people under the statutory law which includes the relevant theories of proprietary rights, existing statutory legal provisions for the disabled people as well as the judicial decisions in these regards.

Chapter Four discusses the right to property of persons with disabilities under the existing Hindu personal law which focuses Hindu law of inheritance, exclusions from inheritance due to physical and mental disabilities. Chapter Five contains the concluding statement which shows findings on the gaps and provides recommendations.

²¹ M Shah Alam (n 2) 50

²² Md. Abu Bakar Siddiq and Md. Ali Morsad Kazem, Property Rights of Persons with disabilities in Bangladesh: An Appraisal of Legal Implementations and Challenges (2023) 5 Jagannath University Journal of Law 52 <https://jnu.ac.bd/journal/assets/pdf/5_0_560.pdf> accessed 25 September 2025

CHAPTER 2

Persons with Disabilities and Their Legal Protection

2.1 Introduction

The legal protection of persons with disabilities is a critical aspect of modern Human rights jurisprudence. Disability has been perceived for a long time through the lenses of dependency and charity. But in contemporary legal views, it is an issue of equality, human dignity, and justice. Historically, persons with disabilities have been considered as one of the most marginalized groups who are excluded from their legal rights as human beings in religious and customary laws. However, the Constitution of Bangladesh, as well as some international conventions has been provided guarantees in the matters of legal protections of persons with disabilities.

2.2 Who are Persons with Disabilities

Persons with disabilities means the person with disabilities, who can usually be referred to as the person who is unable, physically or mentally, to perform his or her daily tasks or conducts as an ordinary person. In the view of Hindu customary law, the term ‘disabilities’ with a person, who has certain defects, inabilities or infirmities whether physical or mental, and has incapacitated to exercise the religious ceremony and to perform sacrifices and depended upon societal superstitions.²³ In the view of the World Health Organization (WHO), it defined the term ‘disability’, which has covered impairments, activity limitations, and participation restrictions. Impairment is an issue in relation to the function or structure of the body, activity limitation is an issue of an individual during executing a work or action; a participation restriction when an individual has a problem experienced in life circumstances.²⁴ In wider sense, the views of International legal framework, the United Nations implemented an international Convention on the Rights of Persons with Disabilities 2006 states that the expression 'disability' has codified as during interactions between persons with impairments, attitudinal and environmental barriers which interrupts their full and effective participation equally with others in society. It emphasizes that persons who have long physical, mental, intellectual or sensory impairments in interaction

²³ Sree Mridulkanti Rakshit (n 8) 281

²⁴ Disabilities’ (World Health Organization) <<https://www.afro.who.int/health-topics/disabilities>> accessed 1 November 2025

with barriers which may lead to interrupting their full and effective participation on the equal basis with others in society.²⁵

In Bangladesh the Rights and Protection of Persons with Disabilities Act, 2013 has provided a definition of disabilities which includes twelve types of categories such as autism or autism spectrum disorders, physical disability, mental illness leading disability, visual disability, speech disability, intellectual disability, hearing disability, deaf blindness, cerebral palsy, down syndrome, multiple disability and other disability.²⁶ The term other disability covers any other unusual physical and mental characteristics which leads to obstructing the normal life.²⁷

2.3 Rights of Persons with Disabilities under the Constitution of Bangladesh

The dignity and liberty of individuals are the basic notions behind all fundamental rights²⁸ enshrined in Part III of the Constitution of Bangladesh, the Supreme law of land.²⁹ The preamble of the Constitution speaks the fundamental aim that a society in which rule of law, fundamental Human rights, freedom, equality and justice in politically, economically and socially will be secured for all citizens of the State. These aims have been secured as obligations of the State in Part II and Part III of the Bangladesh Constitution, although the rights provided in Fundamental principle of state policy are not enforceable as of the rights of Part II.

Right to equality is the foundation of all fundamental rights. The Constitution primarily tries to deal with the right to equality under articles 27, 28, 29, 31 and 19. Article 27 of Bangladesh Constitution comprises the principles of equality and non-discrimination.³⁰ Under this article, all citizens are entitled to get equal protection of law. It obviously includes the citizens with disabilities. However, this provision does not provide the guarantee of absolute equality wherein law treats all persons alike. There will be a greater inequality if law provides unequal treatment as equal. In terms of nature or circumstances, not all persons are in same position, the different classes of persons have to require treatment differently in accordance with the varying needs. The principle of equality requires no one shall be denied the same protection of laws that are exercised by other persons or other classes of persons in circumstances of their

²⁵ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, UNGA A/RES/61/106) (CRPD) art 1

²⁶ Rights and Protection of Persons with Disabilities Act, 2013, s 3

²⁷ *ibid.* s 15

²⁸ Constitution of People's Republic of Bangladesh, arts. 26–47A

²⁹ *ibid.* art. 7

³⁰ M Jashim Ali Chowdhury, *An Introduction to the Constitutional law of Bangladesh* (4th edn Book Zone Publication 2021) 177

lives, liberty and property.³¹ Thus, that equal protection shall be applied to the persons with disabilities, but may be exercised differently as their circumstance demands. Article 28(1) prohibits the discrimination in any matter on the grounds of religion, race, caste, sex, and place of birth. The provision is, however, silent in the grounds of disabilities. But clause 4 of this article confers the enabling power to the State that parliament may make laws for backward sections of its citizens who are not accorded to others. These reservations for the backward section of citizens will not be discriminatory,³² but no mandamus can be issued to provide in this respect.³³ Therefore, the Constitution directs to make legislation in the way of positive classification. The Rights and Protection of Persons with Disabilities Act, 2013 has been enacted for the persons with disabilities as a recent initiative.

On the other hand, the protection of law is an inalienable right for the citizens and residents of Bangladesh. Article 31 states that no action shall be taken in the matter of detriment to life, liberty, body, reputation or property unless and otherwise according to law. The meaning of 'law' in this provision is law of the land as provided definition in article 152 and does not include the personal law.³⁴ The word Life in article 31 is something better than just animal existence, rather includes living with human dignity and decency consistently where is existing right to the basic necessities of life namely, food, clothing, shelter, education and medical cares with fellow human beings. Right to life and personal liberty is also inalienable human right specially enshrined in Article 32 of Constitution which states "no person shall be deprived of life and personal liberty, save in accordance with law". The expression 'right to live' which refers right to livelihood in wider sense as a person cannot live without a meaningful living of life. That includes right to security of life, right to unadulterated food, right to health's protection, right to pollution free environment and development of environment.³⁵ And the expression 'personal liberty' shall in narrow interpretation have meaning freedom from bodily restraint.³⁶

³¹ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn Mullick Brothers 2020) 146-148 para 2.26

³² *ibid* 213 para 2.75

³³ *Unni Krisnan v State of A P*, [1993] AIR SC 2178

³⁴ Mahmudul Islam (n 31) 231 para 2.94

³⁵ *ibid* 256 para 2.111A

³⁶ *ibid* 134, 2.11

2.4 Right to Property and Persons with Disabilities

As a legal term, property is eminent in many doctrines and statutes. Property in wide term covers anything that has a value and can exercise the right of ownership. In a comprehensive term, property includes all legal rights of a person but excluding his personal rights.³⁷ Right to property is the inherent right of human beings to lead a life with human dignity and meaningful life. No one gives this right to any person as all human rights are the birthrights of human beings. Human rights cannot be taken away because of those legal and ethical rights which are claimed by any person irrespectively as the reason of a human being. These rights come when a person is born irrespectively of their race, religion, caste, political ideology, nationality, or social thoughts.

In the Universal Declaration of Human Rights (hereafter UDHR), Article 17 declares the right to property, as follows “(1) Everyone has the right to own property alone as well as in association with others, (2) No one shall be arbitrarily deprived of his property. However, this right to property is absent in the latter two treaties, the International Convention on Civil and Political Rights, 1966 (hereafter ICCPR) and International Convention on Economic, Social, and Cultural Rights, 1966 (hereafter ICESCR). The UDHR considers right to property provided article 17 as customary in nature whereas article 1 and 17 of the ICCPR connected the right to property under the periphery of self-determination. This is considered an alienable right of a person. The ICESCR treats the right of property as an equipment of right, which is a better standard of living of a person.³⁸ The Convention on the Rights of Persons with Disabilities, 2006 (hereafter the CRPD) is introduced to address concern about the persons with disabilities and the purpose of this instrument is to protect, promote, and ensure the full and equal enjoyment of all human rights and fundamental freedoms to the persons with disabilities. It specifies all rights are guaranteed to all and includes a broad range of protected human rights in civil, political, economic, social, and cultural.³⁹

2.5 Special Rights and Privileges of Persons with Disabilities

The word ‘Disability’ is to be understood and experienced in sense of oppression by social structures and practices. To ensure the persons with disabilities’ integration and dignity into the mainstream of society, the special rights and privileges are essentially addressed in the legal

³⁷ Raichand v. Dattatrya [1964] AIR Bom. 344

³⁸ Md. Abu Bakar Siddiq (n 22) 45

³⁹ Frederic Megret (ed), *The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?* (Human Rights Quarterly 2008) 499 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1267723> accessed 18 November 2025

framework. Activists and advocates of the disabilities raises the voice about the violation of human dignity of persons with disabilities regarding ‘involuntarily institutionalization’ which means placing persons with disabilities in institutions without their free consent violates their right to liberty, autonomy, and community inclusion, ‘exclusion from education’ refers to denying access to education, social participation, ‘medical care without consents’ means to give medical treatment without consent and undermines personal integrity and dignity, ‘want of assistance’ means to fail to give necessary support the persons with disabilities to exercise their rights, ‘poverty risk’ refers to vulnerability of poverty, absence of respect in matter of privacy, home and family refer to degrading privacy or family life, as well as the ‘experience of humiliations and disregard’ refers to humiliation and social exclusion.⁴⁰ Human dignity is to be understood that it is addressing not only individual attribute or a special right, but also as founding moral principle of an adequate human rights framework which is inclusive and universal. Thus, it recognizes the specified needs and living conditions of the persons with disabilities.⁴¹

In recent development, international human rights bodies United Nations adopted the Convention on the Rights of Persons with Disabilities (hereafter CRPD), 2006 to follow the needs and concerns of persons with disabilities who claim their rights and participate irrespectively in national and international affairs in accordance with equal basis with others. Article 1 of CRPD 2006 emphasizes the general purpose of Convention to promote, protect, and ensure human rights and fundamental freedom which are fully and equally enjoyed by all persons with disabilities. States must comply ultimately with three obligations, ‘promote’ indicates foster recognition, protect indicates the prevention of interference and ensures the realizations of human rights and fundamental freedom of persons with disabilities. Article 2 refers to five keys terms repeatedly throughout the Convention which are communication, language, discrimination on the grounds of disability, reasonable accommodation and universal design. Reasonable accommodation refers to essential and appropriate adjustments and modifications which do not create a disproportionate or undue burden ensuring to enjoy and exercise all human rights and fundamental freedom based on equally with others. Notably,

⁴⁰ Sigrid Graumann (n 15) 484

⁴¹ *ibid* 484

discrimination based in disability directly includes the refusal of providing reasonable accommodation.⁴²

Article 5 speaks equality and non-discrimination which provides obligations to the states ensuring that reasonable accommodation. The incorporation of State obligation may be the most fundamental instrumental element of the Convention. Article 3 to 9 of CRPD talks the general obligations. Article 3 includes inherent dignity, non-discrimination and effective participation in society. Article 4 creates binding to the State parties for incorporating the terms of Convention into their national laws. Article 6 and 7 implies special notions about the women and children with disabilities respectively for the implementation of UNCRPD rights on equal basis. However, Article 8 & 9 states two challenges. Art 8 speaks to change societal attitude fostering respect and dignity and Article 9 speaks to ensure accessible to that independent and participatory environment for persons with disabilities.⁴³

Article 10 to 23 and 29 are based on civil and political rights. These articles emphasize right to life, protection, rights to traditional equality before law, right freedom from all forms of exploitation, violation abuse, right to Liberty etc. Article 24 to 28 and 30 are based on civil political rights. These articles emphasize inclusion, participation in education, labor market, right to health, work, and social security. Article 31 to 40 set out for monitoring the implementation of the Convention on national and international level.⁴⁴

2.6 Conclusion

The legal protections of the persons with disabilities are to be guaranteed in the legal framework and ought to ensure effectively ensure the enforcement of their legal rights as human beings. As human rights are birthrights, those cannot be taken away or deprived of them mere the grounds of race, religion, political ideology, caste, social structure. The special rights provided to them can eradicate inequality in the name of equality as the difference between human beings needs to access the right in different ways for the purpose of equalization. This protection is not a matter of compassion; rather it is the principles of equality, human dignity, good conscience, and justice.

⁴² Rosemary Kayess and Phillip French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities* (2008) 8(1) Human Rights Law Review 26-27 <<https://doi.org/10.1093/hrlr/ngm044>> accessed 1 December 2025

⁴³ Ibid 28

⁴⁴ Ibid 28-31

CHAPTER 3

Right to Property of Persons with Disabilities and Statutory Law

3.1 Introduction

Right to property emphasizes that essential civil right which connects with human dignity and a meaningful life. This right implies to own, hold, transfer, or alienate the property, which humans have exercised from ancient times. Any discrimination based on disabilities amounts to a denial of dignity and human rights. The statutory laws of Bangladesh recognized the right of property. Any citizens including the citizens with disabilities have right to exercise the right to property. The initiatives through legislation have been taken to remove the barriers and to protect persons with disabilities guaranteeing their inalienable human rights.

3.2 Theories Relevant to Right to Property

The term 'Property' refers to a person's access to and control of things such as land, natural resources, means of production, manufactured goods and covers, in a wider sense, texts, ideas, inventions and other intellectual products.⁴⁵ In the background, there are several scholars who explain the concept of property. In the primitive era, according to the words of Cormac McCarthy, 'there were woods that no one owned.' Humans did not know the owning of things and had no idea of possessiveness. But they did keep the soils and the curators of trees. After the passing of time, humans became more civilized in nature and thoughts. In this way, the idea of property has been explained by Thomas Hobbes, John Locke, and so on. In the words of Hobbes, the proprietary things are to be dearest to man, which are his own life and limbs and next comes conjugal affection, and afterwards the riches and means of living. Thus, those matters are considered as matters of things which can be owned. According to John Locke, "Every man has a property in his own person, every individual has a right to preserve his property, that is, his wife, liberty, and estate."⁴⁶ Therefore, man started to claim his property as his right. In words of James Madison, since a man is told to have a right over his property, perhaps he will be said equally to have a property in his rights.⁴⁷

⁴⁵ Prof T Sita Kumari & Dr.G. Indira Priyadarsini (n 16) 9

⁴⁶ V D Mahajan, *Jurisprudence and Legal theory* (1st edn 1987) 399

⁴⁷ Prof T Sita Kumari & Dr.G. Indira Priyadarsini (n 16) 7

According to Austin, the property can be used to denote the greatest right of enjoyment. Property means the whole of assets with inclusion of both *rights in rem*, right against the thing and *rights in personam*, right against person. According to W. Salmond, property has been classified in various senses, like Legal rights, proprietary rights, corporeal property.⁴⁸ There are certain specified characteristics in Property rights, that characteristics are not in possession by other kinds of duties and rights. By way of sale, exchange, or gift, a owner of the property transfers his property and also transmits it from one generation to next. Property indicates to expand the right of ownership over living and non-living things. In a wider sense, it refers to inclusion of all those rights which a person can be exercised. For example, right to life, personal liberty, reputation and all those rights what can be exercised against others. In other words, those things or material objects that are essential for a person to live.⁴⁹

3.3 Constitution and Right to Property

The word 'property' is such a legal term which gives more interpretations. It connects not only intangible things of one's ownership but to everything that may have an exchangeable value. In the interpretation of Article 31, the term 'property' includes the rights and taken independently which are capable of acquisition, holding, or disposal of as property.⁵⁰ Right to property has been guaranteed in article 42 for the citizens of Bangladesh in the matter of acquisition, holding, transfer or otherwise disposal, but subject of restriction imposed if any. The term 'restriction' in clause (1) has to interpret not to include 'prohibition' and 'extinction', or otherwise the component in clause (2) referring to acquisition or nationalization will constitute surplusage.⁵¹ In the other words, the right to property under article 42 is subject to reasonable restrictions and acquisition by government. The property of its citizens shall not be acquired by the government without authority of law and paying compensations.⁵²

The property right is not only deemed a constitutional right but also a human right, and that constitutional right cannot deprive any citizen in matter of hold, dispose, and utilize the property in accordance with the law. Living a meaningful life as human being, the Constitution of Bangladesh covers irrespectively for its citizens with disabilities to exercise the right to property absolutely. But there are some barricades remaining still ambiguities for exercising the

⁴⁸ V D Mahajan (n 46) 401-402

⁴⁹ Prof T Sita Kumari & Dr.G. Indira Priyadarsini (n 16) 10, 15

⁵⁰ Mahmudul Islam (n 31) 267-268 paras 2.114

⁵¹ ibid 377 para 2.213

⁵² Immovable Property Acquisition and Possession Act, 2017, s 9

right to property. As per Hindu Personal Law, the persons with disabilities are not entitled to get property. This is a contradictory situation between personal law and constitution. In this situation, a disable person may be hirer and may spend his whole life without dignity and property rights.⁵³ As the Constitution speaks all citizens have right to enjoy their life with human dignity, fundamental human right and social equality, in light of constitution, the parliament and government of Bangladesh has taken initiatives making new enactments, rules for the persons with disabilities.⁵⁴

3.4 Existing Statutory Laws for Protection of Right to Property of Persons with Disabilities

The Rights and Protection of Persons with Disabilities Act, 2013 (Hereinafter referred to as RPPD Act, 2013) repealed the Bangladesh Persons with Disabilities Welfare Act, 2001 and has inserted some salient features to reach that standards as enshrined in the UNCRPD 2006. At present, the RPPD Act 2013 and the Rights and Protections of Persons with Disabilities Rules (RPPD Rules), 2015 mainly deal regarding the disabilities in national level of Bangladesh. The RPPD Act has addressed twelve kinds of syndromes of disabilities⁵⁵ and recognizes twenty-one types of rights including right to property and equal protection of law.⁵⁶ It further inserts mentionable steps which are remedies for the violations of rights of persons with disabilities and a provision for compensations.⁵⁷ If anyone whatever a person, company, authority or institution discriminates against those rights, the persons with disabilities will able to seek compensation following procedure mentioned in section 36. Persons with disabilities may seek compensation from the District Committee headed by Deputy Commissioner (DC). In case of any grievance by such order, an appeal can be filed to National Executive Committee (NEC) within 30 days. After receiving appeal, within 45days, the NEC shall rule in this regard.⁵⁸

The Act of 2013 has stipulated to form five kinds of committees such as, National Coordinating Committee⁵⁹, National Executive Committee⁶⁰, District Committee⁶¹, Upazila

⁵³ Md. Emdadul Hasan, Rights of Disable Persons: Law and Practice in Bangladesh (2018) RUCL Institutional Repository 142-143 <<http://rulrepository.ru.ac.bd/handle/123456789/98>>accessed 20 November, 2025

⁵⁴ *ibid* p 156

⁵⁵ Rights and Protection of Persons with Disabilities Act, 2013, s 3

⁵⁶ *ibid* s 16

⁵⁷ Asma Bint Shafiq (n 20) 100

⁵⁸ Md Abu Bakar Siddiq (n 22) 48

⁵⁹ Rights and Protection of Persons with Disabilities Act, 2013, s 17

⁶⁰ *ibid* s 19

⁶¹ *ibid* s 21

Committee⁶² and City Committee⁶³ to function the administration with mandates transparency, accountability in protection of the persons with disabilities'. Invoking the facilities for utilization under this Act, the upazila committee and city committee deal to provide the Disabled Identification Card to the person with disabilities and it is required the persons with disabilities to register themselves, or any legal guardians, agencies or non-governmental organization on behalf them. The chairman of upazila committee or city committee verified the application of registration and provides an identity card. If deny providing, then an appeal against the rejection can be filed to the chairman of district committee within 30 days.⁶⁴ All of committees shall hear the applicant and decide the issue.⁶⁵ The RPPD Rules, 2015 clearly explains the working matters of different committees, and talks about the resolving matters of complaints, and the determination of compensations.

However, the provisions of Act and Rules lack some procedural issues regarding compensation and fail to respond to challenges. The issue of reasonable and standard compensation has been left to be ascertained as the discretion of the committee which remains so problematic in absence of statutory guidelines. The RPPD Act has been guaranteed the right to inheritance to the persons with disabilities who deprived of inheritance under Hindu Personal Law, but in practical there are procedural flaws. There is nothing to mention how this right of inheritance can be ensured towards those excluded heirs of Dayabhaga School,⁶⁶ and those persons with intellectual, psycho-social disabilities belonging to Mitakshara School in existence of the Hindu Inheritance (Removal of Disabilities) Act, 1928.⁶⁷ However, if anyone prevents a person with disabilities to receive inheritance or a proportionate share of property or access to the protections of laws, the 2013 Act considers it as punishable offence which is liable to imprisonment for up to 3years in maximum or a fine up to 5 lakh or both.⁶⁸

⁶² *ibid* s 23

⁶³ *ibid* s 24

⁶⁴ *ibid* s 31

⁶⁵ Md Abu Bakar Siddiq (n 22) 49

⁶⁶ Asma Bint Shafiq (n 20) 103

⁶⁷ Md. Zahidul Islam and Asma Jahan (n 19) 50

⁶⁸ Rights and Protection of Persons with Disabilities Act, 2013, ss 37(2) and 37(1)

3.5 Judicial Decision

BLAST and others v. Bangladesh,⁶⁹ where the Rights and Protection of Persons with Disabilities Act 2013 has been challenged under articles 27, 28, 31, 32, 36, 38, 40 and 42 of the Constitution of Bangladesh. In fact, the Right and Protection of Persons with Disabilities, 2013' has enacted to establish the rights, protections and participation in social and state activities for removal of all kinds of discrimination against persons with disabilities. But this Act requires a valid ID card under section 1(2)(a), 1(2)(b) for the establishment of the persons with disabilities' right provided under section 31 and 36. But according to Section 31 and 36 of the mentioned Act, the respondents are collectively responsible for publishing the official gazette notification to the announcement the application date for ID card and other formalities and also forming the rules under section 41. The said Act of 2013 has been enacted by repealing the Disability Act, 2001, thus the issuance of ID card has stopped to form the date to execute this Act. As the procedure of issuance of ID card is not defined, section 31 and 36 do not come into force consequently. The Court issued Rule Nisi upon all the respondents to show cause as not publishing a gazette notification for the activation of section 31 and 36 and forming a committee as required under section 17, 19, 21, 23 and 24. The Court directed to issue upon all the respondents for framing Rules under section 41 of the said Act of 2013.

In BLAST v. Bangladesh and others,⁷⁰ a government circular declaring only 10% quota regarding the persons with disabilities for 3rd and 4th class posts whereas in the other cases, 10% quota allotted for all posts, which has been challenged. In the judgment, it emphasizes that this circular has violated articles 27, 29, 31 and 42 of the constitution of Bangladesh, which clearly demonstrated the discriminatory attitudes towards the persons with disabilities in all spheres of life. In Ramesh Chandra Adhikari vs. Bulbuli,⁷¹ the Court held that time has come to think the parliament finding the solution of issues correctly in way of enactment or codification regarding Hindu law of Succession and Marriage. A uniform and well-structured legal framework for all Hindus evaluated throughout insights from prominent scholars, researchers, and the Law Commission ought to be correctly resolved the rules on marriage and succession.

⁶⁹ Writ Petition No.5025 of 2015

Public Interest Litigation (PIL) <<https://bdpil.org/2023/11/29/wp-5025-of-2015/>> accessed 25 November, 2025

⁷⁰ Writ Petition No. 1783/98, K. M. Ashbarul Bari and Nusrat Jahan, A Legal Assessment of the Rights of the Persons with Disability: Bangladesh Perspective (*DHLR blog*, 31 July, 2015)

<<https://dhakalawreview.org/blog/2015/07/rights-persons-with-disability-901>> accessed on 22 November, 2025

⁷¹ Ramesh Chandra Adhikari vs. Bulbuli (2014) 66 DLR (AD) 104

3.6 Conclusion

The disabilities laws in Bangladesh try to provide various measures and disabled friendly regarding rights of persons with disabilities including right to property i.e. inheritance. Right to property is recognized as human right. No one has the right to deprive which guaranteed by the statutory law. But there are some procedural flaws, lacks of awareness, social negative attitudes which cannot be enforced to attain the rights effectively. Existing a disability law as international standard is better than remaining nothing at least. If the flaws and issues of non-enforcement can be removed, the rights will be enforced properly and equitably.

CHAPTER 4

Right to Property of Persons with Disabilities and Hindu Personal Law

4.1 Introduction

The rules of inheritance under Hindu Personal Law are too much harsh to the persons with disabilities. Since Hindu Law is one the oldest legal system, there are many traditional rules related rights and approaches, which become obsolete and outdated towards its followers and create the discriminations and disabilities. After demise of a person when succession opens, his property or estate devolves to his heirs in many ways. But the law does not permit a persons with disabilities as an heir, s/he has been excluded from the right of deceased's property promoting rigidity.

4.2 Hindu Law of Inheritance

The Hindu law of Inheritance is an important embranchment of the religious rites and conducts with doctrinal theories which are connected its root with the ancient scriptures, customs, and usages of the male-dominated society.⁷² Inheritance, in Sanskrit 'Daya' derived from the word 'Dea' to give, is an expression which is referred to denote the devolution of property, whatever separate or self-acquired from a person to another as his heir. In the other words, the property passes on death and new rights are acquired.⁷³ The rules related to Hindu Inheritance are mostly uncodified and remained same as traditional and customary domain of Law, though a small numbers of rules are codified and reformed by the enactments of parliament. To explain the matter of Hindu Inheritance, some important principles of inheritance regarding as follows:

4.2.1 Joint and Undivided Family System

The normal family condition of Hindu society is the joint and undivided family system, rooted by the ancient historic past. A famous proposition regarding the joint and undivided family is that 'A family is not mere joint in estate but in foods and worship'. Although, both schools of Hindu law, Mitakshara and Dayabhaga, recognize the joint family system, but there are different conceptual views. The Dayabhaga School recognizes that the joint family property refers almost quasi-severalty, meaning almost separate, unlike Mitakshara School.

⁷² Sree Mridulkanti Rakshit (n 8) 180

⁷³ ibid 181

4.2.2 Two Guiding Principles of Inheritance

The Dayabhaga School, mostly followed by Bangladeshi Hindu and Bengalis across the world, has followed the term ‘religious efficacy’ as the guiding principle of Inheritance. The principle ‘religious efficiency’ refers to the issues of religious benefits to the deceased person. The person, who can confer the most spiritual benefits to the deceased person, will be entitled to prioritize getting inheritance. On the other hand, under Mitakshara School, the guiding principle of inheritance is ‘consanguinity’, which means the nearer blood of the deceased. In other words, this school believes the concept of nearer blood relationship as guiding principle to be followed in the distribution of the deceased’s property.⁷⁴

4.2.3 Different Inheritance Rules for Male and Female

Under Hindu Personal Law, a Hindu male inherits the property as absolutely whereas, in general, a Hindu female gets a limited interest in the property, in other words this limited interest is called life interest. However, there is an exceptional situation, such as the case of Stridhan, when a Hindu female can inherit absolutely like a male heir. In case of death of a male, the property devolves upon his nearest heirs, while in the case of a female it reverts to the next heirs of the person from whom she inherited the property.⁷⁵ For example- A Hindu male died leaving behind a widow and a brother. Firstly, the widow will inherit property of her deceased husband as a limited owner, and secondly, after the death of the widow, that brother will, if alive then, inherit the property absolutely due to being a male owner and nearest heir of the deceased.

4.2.4 Modes of Devolution of Property

Under two schools, there are different modes of devolution of property. The Mitakshara School has been recognized to follow two modes of devolution, which are i) Survivorship, and ii) Succession, regarding two kinds of property. The method of survivorship has exercised the property of a joint family, whereas the method of succession has applied to property which was held in absolute severalty by the last owner.⁷⁶ The Dayabhaga School has been recognized to follow only one mode of devolution in respect of all kinds of properties, either separate or joint. Under this school, a member of the joint family holds his property as quasi-severalty, which refers to almost separate. In the case of demise of a person, his property devolves to his heirs by the mode of ‘succession’ as if he was a separate owner of the property. The mode of

⁷⁴ Mohammad Ataul Karim (n 4) 199

⁷⁵ ibid 200

⁷⁶ D F Mulla (n 1) 110 para 24

Survivorship is not recognized under the Dayabhaga School.⁷⁷ Under the Dayabhaga School, three (03) kinds of heirs are capacitated to inherit the deceased's property, as follows:

i) Sapindas:

Sapindas refers to the person who is connected to offer the 'pindas' or undivided oblations. Sapindas include both Agnates and Cognates who are relevant to the common oblations. They are 53 in numbers.⁷⁸

ii) Sakulyas:

Sakulyas refers to the persons who are connected to offer pinda-lepa. In this group, all are males who are 33 in numbers.⁷⁹

- a) 4th, 5th, 6th paternal male ancestors of the owner,
- b) 4th, 5th, 6th male descendants in the male line
- c) six male descendants in male line of the 4th, 5th, 6th paternal male ancestors,
- d) 4th, 5th, 6th male descendants in the male line of his father, grandfather, and great grandfather.

iii) Samanodakas:

Samanodakas refers to the persons who are connected to offer the liberation of water. In this group, all are males like Sakulyas. They include all agnatic relations from 8th to 14th degree and are 147 in numbers.⁸⁰

4.2.5 Female Heirs

Under the Customary Hindu Law, there are five female heirs who are entitled to inherit from male, as follows:

- i) Widow,
- ii) Daughter,
- iii) Mother,
- iv) Father's mother,
- v) Father's Father's mother.⁸¹

⁷⁷ Mohammad Ataul Karim (n 4) 202

⁷⁸ D F Mulla (n 1) 196-199 para 81-82

⁷⁹ ibid 199, 84

⁸⁰ ibid 200, para 85

⁸¹ ibid 204 para 93

However, in the inheritance rights of women, the Hindu Women's Right to Property Act, 1937 has some tremendous changes which are included two more female heirs,⁸² which are-

- i) Widow of a predeceased son,
- ii) Widow of a predeceased son of a predeceased son (Widow of predeceased grandson)

4.2.6 'Last Full Owner' and 'Fresh Stock of Descent'

The last 'full' owner of the property is to be that person who holds the property absolutely at the time of his death. And a fresh stock of descent refers to one who can devolve the property to his heirs. Without exceptions i.e. Stridhan etc., the last full owner is always a male. As a female usually cannot inherit property absolutely and cannot be the last full owner, she will not be a fresh stock of descent.⁸³

4.2.7 Inheritance never in Abeyance

As per the cardinal principle of transfer of property, once a property is vested, that cannot be divested. On the demise of a Hindu, the person is his nearest heir at time of death is entitled at once to property left by the deceased. The right of succession vests in him immediately. Where the estate of a Hindu has vested to the nearest heir at the time of his death, it cannot be divested. There are two matters of exceptions which are if a preferable heir, i.e. son or daughter was conceived before or at time of his death, and if an adopted son of deceased remains, then this rule will be exercised.⁸⁴

4.2.8 Spes Successionis

It refers to a mere chance to get the inheritance which does not confer any right to the property. It's not a vested interest; thus he can't make a valid transfer of it. However, an agreement which is entered by him regarding it cannot bind any person who actually inherits when succession opens.⁸⁵

4.2.9 Doctrine of Representation

According to the rules of inheritance, succession opens only after the demise of the person who is the owner. In other words, no one is taking the property by way of inheritance if succession never opens. In circumstances, where a son, a grandson whose father has passed away, and a great-grandson whose father and grandfather have both passed away, all will succeed

⁸² Section 3(3), The Hindu Women's Right to Property Act, 1937

⁸³ D F Mulla (n 1) 111 para 27

⁸⁴ Mohammad Ataul Karim (n 4) 206

⁸⁵ D F Mulla (n 1) 113 para 30

simultaneously as one heir to separate and self-acquired property of their paternal ancestors. It is the only context in Hindu law when the doctrine of representation exercises. However, this rule is not applicable to daughters and nephews. And in addition, this rule is applied to four degrees from the person whose property is distributed.⁸⁶

4.2.10 Rule Regarding Co-heirs

While two or more persons inherit together, they are referred to as co-heirs and may do so as tenant-in- common or joint tenants. A tenant-in common refers to that kind of tenant who has a defined share in joint property. This property devolves upon his death to his own personal heirs as the joint tenants have a unity of ownership in the joint property. Thus, the interest of the deceased merges to other joint owners, but not with his heirs.⁸⁷

4.2.11 Successions ‘Per Stirpes’ and ‘Per Capita’

The persons of same relationship to the deceased are usually entitled to take as successions of ‘Per Capita’ which refers to the property of the deceased is divided into as many shares as the number of heirs who receives one portion. But there are two exceptions when the heirs receive as succession of Per Stirpes, which is applied to the number of heirs who belongs to different branches getting a share from the deceased’s estate.⁸⁸ This rule applies in the following situations, which are:

- a) On a partition, the sons, grandsons, and great grandsons receive the property of a deceased Hindu male as Per Stirpes
- b) In matters of Stridhan, the son’s son, daughter’s son and daughter’s daughter receive the deceased’s property as Per Stirpes⁸⁹

4.3 Exclusion from Inheritance

As the Hindu Community has been governed by their Personal Law in the matter of inheritance, there are certain grounds for the rules of exclusions where a Hindu has been disqualified from taking inheritance under Customary Hindu Law. These grounds of exclusions regarding inheritance would be categorized in three matters⁹⁰ in wider sense, which are, i) Moral and religious grounds, ii) grounds of Physical issues, and iii) grounds of Mental issues.

⁸⁶ Mohammad Ataul Karim (n 4) 208

⁸⁷ ibid 209, 210

⁸⁸ D F Mulla (n 1) 115 para 32

⁸⁹ Mohammad Ataul Karim (n 4) 210

⁹⁰ ibid 211

4.3.1 Moral and Religious Grounds

Due to the reasons of moral or religious issues, a Hindu would be disqualified from the right to inheritance. As these moral and religious grounds are mainly based on the philosophies related to the religion, and if any heir who may have such issues, thus it is justified to exclude him or her from the right of Hindu Inheritance. However, while any person falls under the rules of exclusions from the inheritance right, s/he will be entitled to receive the maintenance from the legally bounded persons.⁹¹

4.3.1.1 Unchastity

The issue of unchastity is one of the grounds to exclude a widow from the inheritance because of her incapability to confer the spiritual benefits of her husband.⁹² However, once the property of the deceased husband has divested in her when she was chaste at the time of husband's death, that cannot be divested by her unchastity subsequently.⁹³ There are differences of opinions between two schools. Under Mitakshara School, a widow is excluded from inheritance due to the reason of unchastity, whereas, under Dayabhaga School, this disqualification applies not only to the widow but also all female heirs. The unchastity does not disqualify a female from inheriting to a female.⁹⁴ Thus it is not a barrier to inherit the Stridhana property.

4.3.1.2 Murder

A murderer is excluded from taking inheritance to the estate of the murdered man upon the principles of justice, equity, and good conscience. As the murderer is regarded as non-existent, when inheritance of victim opens, he cannot be treated as a fresh stock of descent.⁹⁵ The male descendent of the murderer would not be qualified to inherit, even though he has created an interest by birth in the estate of the deceased (murdered person). In other words, neither the murderer nor any person claiming through him will entitle to get the property of the murdered person.⁹⁶ However, the Bombay High Court stated that if there is no question of the murderer of his son receiving advantage of the murder, there would be no exclusion from inheritance or right to partition.⁹⁷

⁹¹ *ibid* 211

⁹² Shahanaz Huda, *Combating Gender Injustice, Hindu Law in Bangladesh* (2011) 33(1) South Asia Research, 26 <<https://doi.org/10.1177/0262728013475550>> accessed 24 October, 2025

⁹³ *Moniram v. Keri Kolutani*, (1880) 5 Cal 776: 71A 115

⁹⁴ *D F Mulla* (n 1) 208 para 96

⁹⁵ *ibid* 210 para 99

⁹⁶ *Mohammad Ataul Karim* (n 4) 212

⁹⁷ *Adivappa v. Veer Bhadrappa*, (1947) Bom 518

4.3.1.3 Renunciation of Religion or Loss of Caste

Under Hindu Law, when a person changes his/her religion by conversion or being an outcast, s/he will be deprived of the inheritance as a ground of exclusion. Although the Caste Disabilities Removal Act of 1850 had abolished this ground and only protected to actual person who either renounce his religion or has been excluded from the communion of any religion or has been deprived of caste, but this Act XXI of 1850 has been repealed by the Bangladesh Laws (Revision And Declaration) Act, 1973⁹⁸ after the creation of Bangladesh. Thus, while the conversion to another religion is forfeited from inheritance as prevailing the traditional Hindu Law in Bangladesh. When one has changed his religion and his personal law, that law will govern the matter of succession rights to his children.⁹⁹

4.3.1.4 Adoption of Religious Order

When one renounces all matters of worldly affairs entering into religious order, the action by s/he is tantamount to civil death, s/he becomes a Sanyasi. It creates a complete severance of his connection with his family relations and his property,¹⁰⁰ s/he excluded from taking Inheritance.

4.4 Exclusion of Persons with Disabilities from Right of Inheritance (Physical and Mental Grounds)

Under the principles of prominent Smritis, Manu, Yajnavalkya etc., as interpreted by Courts, the disabilities, physical and mental, are good grounds to exclude a person from his right to inheritance.¹⁰¹

4.4.1 Grounds of Physical issues

Physical inabilities or defects like blindness, deafness, and dumbness are good grounds to exclude an heir from inheritance. However, if it is sought to exclude a person on the basis of such grounds, it is essential to show that these disabilities are incurable and congenital.¹⁰² The other physical inabilities like want of any limb or organ which includes a person is lame, or absence of nose or tongue. The physical issue of leprosy or such kind of virulent disease, or any

⁹⁸ Sree Mridulkanti Rakshit (n 8) 289

⁹⁹ (1930) 57 IA 313, AIR 1930 PC 251

¹⁰⁰ Mohammad Ataul Karim (n 4) 213

¹⁰¹ Sree Mridulkanti Rakshit (n 8) 281

¹⁰² Mohammad Ataul Karim (n 4) 214

other diseases which are incurable, renders a person unfit for social interaction is a ground for exclusion from inheritance right.¹⁰³

4.4.2 Grounds of Mental issues

The mental defects like lunacy or insanity are enough good grounds to exclude an heir from inheritance if it exists at the time opening succession. These need not be incurable or congenital. The issue of idiocy is, of course, to be complete, absolute and congenital. Idiocy is enough to exclude someone if he has been and is of such an unsound mind and an imbecile who is incapable of distinguishing between the wrong and right or instructions. It will be enforced only if there is strict proof.¹⁰⁴ When any heir of a deceased is excluded from inheritance and from a share of the joint family due to disabilities, the next heir will succeed. A person belonging to joint family not born as lunatic but becomes a lunatic at time of partition, he is not entitled to claim his share by partition. But after comes in effect of the Hindu Inheritance (Removal of Disabilities) Act, 1928, such person not having been lunacy from birth is entitled to share or inheritance.¹⁰⁵ In general, no difference exists between Mitakshara and Dayabhaga schools in the conceptual view, but the Act of 1928 brought a reformation which protects the persons other than one who is and has been birth lunatic or idiot.¹⁰⁶ But, this Act does not apply to the follower of Dayabhaga School.

4.5 Conclusion

Disabilities have historically carried social and legal stigma in many societies, including Hindu society. Right to property is an inalienable right and necessary for leading a meaningful life. Only because of grounds of disabilities on the basis of traditional rules, the persons with disabilities who become disqualified or incapacitated from inheriting property or succeeding to the estate of the deceased. Many persons with disabilities operates and participates in the advancement of mankind alike ordinary humans. Moreover, some has cured duly in the blessing of medical science. It is not beneficent and relevant for a society to put away a group of persons from the mainstream due to their disabilities.

¹⁰³ D F Mulla (n 1) 209 para 98

¹⁰⁴ Mohammad Ataul Karim (n 4) 214

¹⁰⁵ Sree Mridulkanti Rakshit (n 8) 288

¹⁰⁶ Hindu Inheritance (Removal of Disabilities) Act, 1928, s 2

CHAPTER 5

Conclusion

Disability is still seriously a concerning matter in our society due to social stigma and lack of awareness. Persons with disabilities can be transformed into a valuable resource for society if their dignity and human rights—including the right to property—are fully ensured by the State as well as by individual stakeholders. The persons with disabilities under Hindu Personal Law are more vulnerable than existing statutory law in Bangladesh. Though the government of Bangladesh tries to establish rights following the international human rights standard, it is far behind for the fulfillment of any State's obligation and raising awareness among the individuals of society. Persons with disabilities could get legal protection and right to property through increasing awareness, providing legal assistance and reasonable accommodation, ensuring accessibility, redressing social stigma, responding to negative attitude, enforcement of existing laws, reforming the discriminatory provisions of existing laws, and adopting new policies of government. Law should not merely be enacted, but it must also be effectively enforced.

5.1 Findings (Gaps in existing statutory law and personal law)

1. The Hindu Personal Law in its current form in Bangladesh is insufficient to provide legal protection and dignity of the person with disabilities as they have been treated as isolated in society and family.
2. Due to the reasons of disabilities, he has been prohibited from taking part in religious or social ceremonies which is considered as an important factor for receiving inheritance or getting a share of portion. As these types of stipulations in this 21st century, it seems how much the persons with disabilities neglected and marginalized.
3. As the existing Hindu Personal Law speaks the maintenance of persons with disabilities as their right, which somehow creates a notion as a burden of family. This clearly failed to provide the right of meaningful and dignified life of an individual guaranteed by Constitution of Bangladesh.
4. The Constitution of Bangladesh speaks about non-discrimination. But the Constitution does not expressly address the 'disability' as a ground in the provision of 'Non-discrimination'.

5. The Constitution of Bangladesh speaks to make legislatures for the backward citizens of society for their betterment and advancement. Although persons with disabilities are considered a vulnerable group, whereas only a legislature RPPD Act, 2013 is enacted by parliament.
6. The existing Hindu Personal Law deprives the legal heirs of a deceased Hindu on the ground of disability. In contrast, the Rights and Protection of Persons with Disabilities (RPPD) Act recognizes and guarantees the right to inheritance for persons with disabilities. In such a situation of conflicting laws, there is no clear example of enforcement to determine which law will prevail.
7. After enactment of RPPD Act 2013, more than one decade has gone, however, there is nothing visible to enforce the rights of persons with disabilities. Hence, it cannot be said that this Act has enough accessibility. Consequently, judicial precedents upon this Act of 2013 are not availed.
8. As the Hindu Inheritance (Removal of Disabilities) Act, 1928 provides the protection for Mitakshara School from birth lunatic, but excludes the intellectual disabilities from inheritance, then how the right will be ensured in presence of both Act which is not clear yet.

5.2 Recommendations and Concluding Remarks

1. The rules of Hindu Inheritance Law have to be reformed keeping in view the needs of modern age.
2. The barriers of disabilities ground under Hindu Law ought to be completely abolished as these grounds are so primitive thoughts and unjustified condition to that person who has no interference of his own birth. Rather, nowadays, persons with disabilities are taking part in contributing and serve the society and country. Moreover, in the advancement of medical science, many disabilities could be curable.
3. The disabilities, physical or mental ground, under Hindu Law ought to be abolished to uphold the right of equalization and non-discrimination, right to live and personal liberty with human dignity and social justice, right to property etc.
4. The Hindu Inheritance (Removal of disabilities) Act, 1928 should be repealed. An amendment or special interpretation or practice should be provided to resolve the ambiguity for both schools of Hindu Law.
5. The procedures of the RPPD Act 2013 i. e. registration, ID card, and right to accessibility should be accelerated and made free from unnecessary troubles.

6. Raising awareness and ensuring access to information among the public, including persons with disabilities, are key factors in promoting awareness, responsiveness, and the effective exercise of the rights of persons with disabilities. Both government and non-governmental agencies should take proactive steps to improve their situation through awareness-raising initiatives such as road rallies, television and radio programs, newspapers, and other mass media platforms.

7. In Bangladesh, since the right to property is a fundamental right, an aggrieved person may seek its enforcement by filing a writ petition before the High Court Division of the Supreme Court of Bangladesh.

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