



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

FROM PATRIARCHY TO MATRI-MONEY: AN INHERITANCE REVOLUTION

(Legislative Comparative Analysis of Women's Inheritance Rights
between India and Bangladesh)

AUTHORED BY - VIDUSHI SINGHANIA

ABSTRACT

In South Asia's agrarian landscapes, women's land inheritance and succession rights become an essential topic for legislative comparative research, since arable land is of **great economic, political, and symbolic worth**. A stable source of income and prosperity, fertile land has long been associated with **social standing and political influence**. Women's rights to inherit and succeed to land are an important topic to study since they have **a direct bearing on social justice, economic empowerment, and cultural identity preservation**.¹ Land ownership's longevity and permanence heighten the importance of women's access, therefore it is critical to examine national legislative frameworks of the countries in order to promote gender justice and guarantee women's fair participation in rural economies.

Keywords: *Bangladesh, India, Inheritance, Rights, Succession, Women.*

INTRODUCTION

"Her father protects her in childhood, her husband protects her in youth and her sons protect her in old age; a woman is never fit for independence."

- Manusmriti

Throughout history, women have faced **unequal rights** and **limited access to remedies** in various aspects of life, *both globally and within different realms*. This disparity has persisted for centuries, resulting in *deprivation of their fundamental needs and desires*.²

¹ Halder, D., & Jaishankar, K. (2008). Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India. *The Journal of Law and Religion*, 24(2), 663–687. <https://doi.org/10.1017/s0748081400001740>

² Ibid.

One area of study pertains to the disparity in property inheritance between women and men, as these financial assets significantly influence the lives of those who acquire inherited property.

In South Asia, **LAND**³ is considered as one of the *most important asset* a man can own and derive *not only* economic and social but also political gain. It is more than often the **medium** for women to *gain economic, social and political freedom*.⁴

In this research, the author will undertake a legislative comparative analysis of two South Asian countries - **BANGLADESH AND INDIA**. This study critically examines the status of women, as well as **the rights and remedies available** to them, by considering the social, political, and economic conditions of these nations, together with the **relevant statutory and customary laws** governing inheritance problems in these countries.⁵

The assertion posits that despite the granting of *some rights* to women, the **actual execution** of these rights **remains a significant challenge**. This study assesses the extent of societal and legal obstacles that women will need to surpass in order to assert their rights to equitable ownership of land and property.

Background/History of Legislation

India

During the 19th century, many individuals known as social reformers, such as **Raja Ram Mohan Roy**⁶ and **Ishwar Chandra Vidyasagar**⁷, actively questioned and contested prevailing societal conventions. Simultaneously, the **British colonial** authority created a **favourable atmosphere** for facilitating transformation.⁸

³ Shambhavi. (2022). Women's Inheritance Rights to Land and Property in South Asia A Comparative Analysis of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka. *International Journal of Law Management & Humanities*, 5, 1588-[cxxxviii].

⁴ Begum, A., & Saha, N. (2017). Women's access to justice in bangladesh: constraints and way forward. *Journal of Malaysian and Comparative Law*, 44(2), 39-58.

⁵ Ibid.

⁶ Htun, M., & Weldon, S. (2011). State power, religion, and women's rights: comparative analysis of family law. *Indiana Journal of Global Legal Studies*, 18(1), 145-166.

⁷ Ibid.

⁸ Emilia David, *What Life was like in Ancient India*, GRUNGE, (Oct 30, 2023, 02:06 PM) <https://www.grunge.com/>.

The evolutionary trajectory of inheritance laws in India is a **multifaceted narrative** influenced by a range of personal laws. The enactment of the *Hindu Succession Act, 1956*⁹ represented a significant

In 2005, a **significant turning point** transpired with the *introduction of laws* that bestowed equal rights to daughters in ancestral property, therefore challenging long-standing gender disparities. Simultaneously, the *Muslim Personal Law* establishes guidelines pertaining to inheritance for Muslim women, encompassing provisions for *financial protection and considerations connected to divorce*.

milestone in the pursuit of gender equality, as it acknowledged and affirmed the inheritance entitlements of women.

This significant legislative action **effectively eliminated persistent gender-based discrimination**, thereby allowing women equal rights to inherit family property.¹⁰ The transition from historical inequalities to present-day legislative protections highlights the progress of society and its dedication to achieving gender equality.

Additionally, **Article 15(3)** provides for the special provisions for the protection of women, which stems directly from our *Constitution's Preamble* objectives of securing Equality of status and opportunity and promoting fraternity; assuring the dignity of each individual. This is just one of many constitutional protections given for the interest of women. In a similar vein are the new provisions included in **India's Constitution's Part-IV, Part-IV-A**.¹¹

Bangladesh

The inheritance laws of Bangladesh are intricately intertwined with Islamic beliefs, hence reflecting the cultural and religious framework of the nation. The *Muslim Personal Law (Shariat) Application Act, 1937*¹² establishes guidelines for inheritance, granting daughters some entitlements while taking into account socio-religious conventions. **Amendments** serve to recognise and respond to the current societal requirements, specifically by addressing the financial risks faced by women who are divorced

⁹ Hindu Succession Act, 2005.

¹⁰ Radhika Kapur, *Status of women in ancient India*, RESEARCHGATE, (Oct 30, 2023, 2:06 P.M) <https://www.researchgate.net/>.

¹¹ INDIA CONST. Part-IV.

¹² Muslim Personal Law (Shariat) Application Act, 1937.

or widowed.

Purpose of Legislation /Aim or Objectives

The idea of **Faraid**, which involves the allocation of shares to heirs based on their financial responsibilities and relationships, demonstrates the **presence of gender inequities**. In many instances, women, particularly daughters, frequently receive less portions in comparison to their male counterparts. Despite the efforts made by the **Muslim Family Law Ordinance of 1961** to address these regulations, notable disparities continue to exist.

The discussion surrounding gender equality and women's rights has become increasingly prominent in recent decades due to the **success and economic growth** observed in emerging nations worldwide, **particularly in South Asia**.

India

The inheritance laws in India, influenced by a diverse set of personal laws, reflect a progressive endeavour towards achieving gender equality. The **Hindu Succession Act**, which **underwent amendments in 2005**, is notable for its explicit objective of addressing past disparities by providing daughters with equal entitlements to ancestral property. The **legislative purpose** is evident: to deconstruct deeply ingrained gender prejudices and ensure that women receive a fair and substantial portion of familial assets.

Furthermore, within the framework of the **Muslim Personal Law**, there exist laws pertaining to dower rights and safeguards aimed at addressing the financial vulnerabilities that women may encounter following a divorce. The legal framework in India aims to address both historical inequities and present-day obstacles encountered by women in situations related to inheritance.

Bangladesh

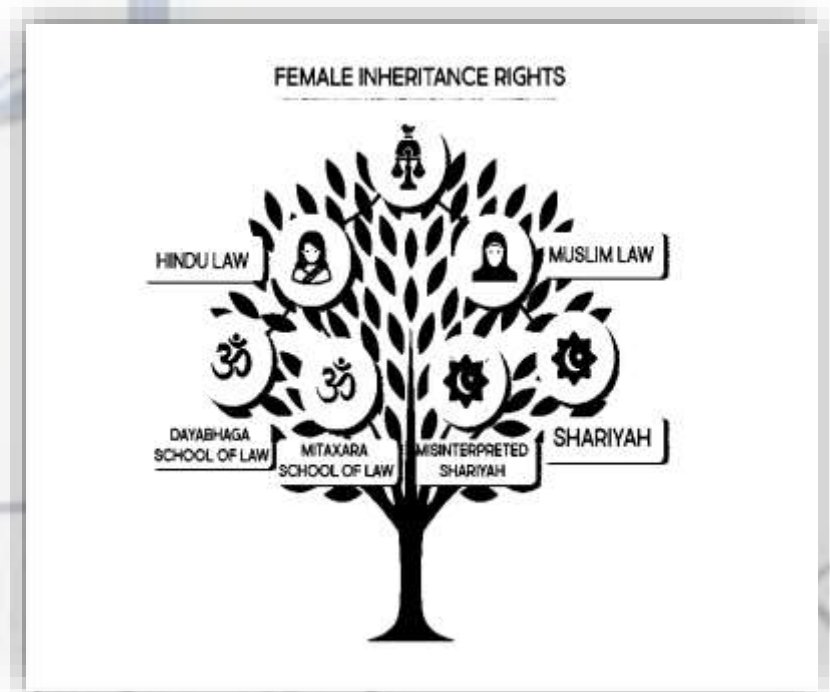
In the context of Bangladesh, where legal frameworks are significantly influenced by Islamic ideas, the legislation concerning women's inheritance rights demonstrates a **dual goal**. First and foremost, the legal framework aims to harmonise with Sharia principles while simultaneously accommodating the evolving requirements of modern society. The **primary objective** is to **establish an equitable and**

morally sound allocation of familial resources while adhering to religious principles.

The legal provisions aim to address the financial vulnerabilities experienced by women, particularly those who are divorced or widowed. These laws strive to *offer a certain level of economic stability*, recognising the wider societal implications associated with women's financial empowerment.

SALIENT FEATURES AND COMPARATIVE ANALYSIS

The inheritance rights of women in both Bangladesh and India are **intricately connected to personal laws**, primarily derived from religious ideas. The present analysis examines prominent characteristics of inheritance laws pertaining to women in the aforementioned nations, with a specific emphasis on the legal structures, gender inequalities, and sociocultural obstacles.¹³



The topic of discussion pertains to the inheritance rights of women in **Bangladesh**, a nation characterised by its secular

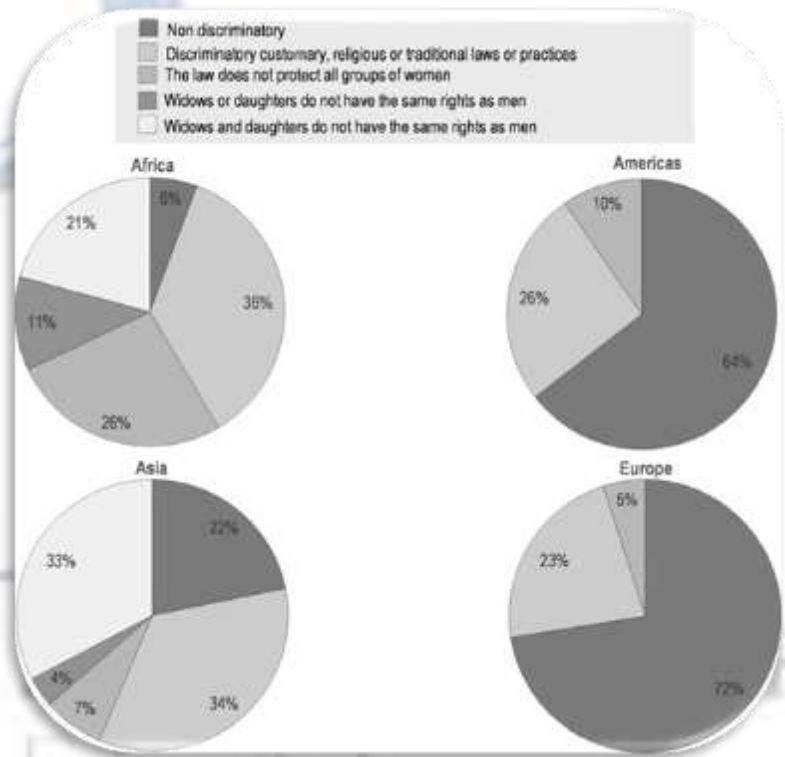
governance structure that regulates familial affairs through personal laws. In addition, it is worth noting that the **Dayabhaga school of Hindu law**¹⁴ is responsible for regulating the process of inheritance among Hindu individuals. The *doctrine of exclusion* results in a restricted allocation of inheritance rights for numerous Hindu women. The **Women's Estate and Stridhana** provisions give certain rights while concurrently upholding an imbalanced level of authority.

¹³ Singh, D. (2021). Feminist justice by way of women's Rights to property: An Indian approach after Independence. Social Science Research Network. <https://doi.org/10.2139/ssrn.3819134>

¹⁴ Knaplund, K. S. (2008). The evolution of women's rights in inheritance. *Hastings Women's Law Journal* , 19(1), 3-52.

The legislative framework in Bangladesh presents avenues for bettering gender inequities. The legal concepts of **Wasiyah and Hiba**¹⁵ provide women with alternative means to establish and safeguard their property rights. Nevertheless, the progress of these improvements is impeded by societal resistance, which is deeply ingrained in patriarchal ideologies.

The progression of inheritance rights for women in **India** exemplifies a steady advancement. The **Hindu Succession Act of 1956** was the early acknowledgment of the issue at hand, while certain constraints continued to exist. The rights of women were strengthened through **amendments in 1986 and 2005**, which granted them equal entitlements to ancestral property. The **Hindu Succession (Amendment) Act of 2005**, which pertains to the distribution of property, made substantial progress in promoting gender equality. Notwithstanding these legislative gains, persistent issues arise as a result of insufficient understanding and entrenched patriarchal ideologies.



In contrast, the *inheritance rights of Muslim women* in India are governed by **Shariah law**. The observed *discrepancy in the distribution of shares* among male and female heirs can be attributed to prevailing conventional ideologies.

¹⁵ Shambhavi. (2022). Women's Inheritance Rights to Land and Property in South Asia A Comparative Analysis of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka. *International Journal of Law Management & Humanities*, 5, 1588-[cxxxviii].

1. Order of Heirs

INDIA: *Section 8*¹⁶ of the **Hindu Succession Act of 1956** exhaustively describes *the sequence of heirs in circumstances of intestate succession*. This part is critical in defining the order of relatives who are eligible to receive the deceased's property, as well as bringing clarity and structure to the inheritance process.

BANGLADESH: *Section 2*¹⁷ of the **Muslim Family Law Ordinance of 1961** identifies *heirs and their proportionate portions* in accordance with the Faraid principles. The sequence of heirs is governed by Islamic inheritance laws based on the Quran and Sunnah. The **Faraid concept** establishes the *order based on financial obligations and relationships* with the departed.

2. Daughter's Inheritance Rights

INDIA: The **Hindu Succession (Amendment) Act of 2005**, *Section 6*¹⁸, assures *daughters are coparceners by birth, marking a watershed moment* in gender equality. This gives them equal inheritance rights as sons, defying conventional gender conventions and fostering more equitable inheritance distribution.

BANGLADESH: According to Islamic inheritance laws, daughters may receive a smaller portion than sons. The distribution is frequently based on a **2:1 ratio**, with a *girl receiving half of what a son receives*. Despite efforts to modify these regulations, old gender norms endure. The **Quranic notion of Al-Faraid**, which serves as the foundation for calculating portions, is mirrored in parts dealing with the inheritance of daughters.

3. Alienation of Property

INDIA: *Section 24*¹⁹ of the Hindu Succession (Amendment) Act of 2005 describes "**alienation**" of property, curtailing certain rights, *particularly those of female heirs*. By regulating property transactions, this section seeks to protect the rights of successors, particularly women.

¹⁶ Hindu Succession Act, 2005, sec. 8

¹⁷ Muslim Family Law Ordinance, 1961, sec. 2

¹⁸ Hindu Succession Act, 2005, sec. 6

¹⁹ Hindu Succession Act, 2005, sec. 24

BANGLADESH: The Muslim Family Law Ordinance of 1961 covers alienation and distribution issues through alternate methods such as *Wasiyah and Hiba*. **Sections 5²⁰ and 6²¹** of the Muslim Family Law Ordinance, 1961, *deal with gifts and wills*, which allow people to distribute property outside of the customary inheritance structure.

4. Intestate Succession

INDIA: Section 15²² of the Hindu Succession Act of 1956 *outlines extensive regulations for intestate succession that apply to both males and females*. In the absence of a legal will, this section provides a **systematic and equitable transfer** of the deceased's inheritance.

BANGLADESH: Sections 4²³ and 8²⁴ of the Muslim Family Law Ordinance, 1961, describe *property allocation in the event of intestacy*.

5. Equality Provisions

INDIA: Section 6²⁵ of the Hindu Succession (Amendment) Act of 2005 is a **landmark provision** that *promotes gender equality in inheritance*. It declares daughters to be coparceners by birth, granting them the same rights to ancestral property as sons.

BANGLADESH: Section 3²⁶ of the Muslim Family Law Ordinance, 1961, aimed to *reform several areas of Shariah legislation concerning inheritance*, but cultural resistance posed a difficulty. Despite the fact that the Muslim Family Law Ordinance of 1961 aimed to alleviate gender discrepancies, **imbalances exist**.

6. Personal Laws and Customary Practices

INDIA: Personal laws and customary practices control inheritance in India's legal landscape. Religious variances, such as Hindu, Muslim, and Christian laws, contribute to a complicated yet comprehensive

²⁰ Muslim Family Law Ordinance, 1961, sec. 5

²¹ Muslim Family Law Ordinance, 1961, sec. 6

²² Hindu Succession Act, 2005, sec. 15

²³ Muslim Family Law Ordinance, 1961, sec. 4

²⁴ Muslim Family Law Ordinance, 1961, sec. 8

²⁵ Hindu Succession Act, 2005, sec. 6

²⁶ Muslim Family Law Ordinance, 1961, sec. 3

legal structure.

BANGLADESH: Over 90% of Bangladeshis practise Islam, and Muslim personal laws have a strong influence on family problems, especially inheritance. The multiplicity of personal laws for diverse populations, including as Hindus, Christians, Buddhists, and indigenous tribes, adds to the legal landscape's complexity. Therefore, a mix of Islamic and Hindu personal laws impacts inheritance practises, with Hindu women confronted with unique obstacles under the Dayabhaga school of law.

Landmarks Cases Shaping Women's Inheritance Rights

The Supreme Court, led by *Justices Madan B. Lokur* and *U. U. Lalit*, expressed their disappointment with the **lack of progress** in improving the **plight of widows in Vrindavan**¹ despite previous directives. The court stressed the desperate situation of widows in shelter houses and the *necessity for significant improvements* in public facilities.

A three-judge court led by *Justice A.K. Sikri* noted conflicting judgements regarding the retrospective implementation of modifications to Section 6 of the Hindu Succession Act (2005). The case of *Prakash v. Pulavati*¹ decided that if the coparcener (father) passed away before September 9, 2005, daughters had no access to coparcenary property. *Danamma v. Amar*¹, on the other hand, ruled that daughters were entitled to an inheritance even if their father had passed away in 2001.

*Vineeta Sharma v. Rakesh Sharma & Ors.*¹ was referred to a three-judge bench because of the intricacy of the law involved. Due to delays caused by conflicting decisions, the Supreme Court ruled that daughters cannot be denied equity under Section 6 of the Hindu Succession Act, 2005. The judge, Justice Arun Mishra, emphasised a daughter's eternal status and ordered all pending cases to be resolved within six months.

Learning for the countries

Bangladesh

The journey uncovers important insights while studying Bangladesh's inheritance rules. A key takeaway is the ***transformative impact of legal reforms on societal norms and advancing gender equity and justice***. Policymakers are advised to align legislative frameworks with growing gender justice ideals. The analysis emphasises ***societal resistance to alternate routes*** such as **Wasiyah** and **Hiba**, emphasising the importance of comprehensive and fundamental policy responses. Understanding ***the interconnectedness of religious, cultural, and legal concerns*** emerges as a **crucial conclusion**, prompting legal discourse to take a more holistic, context-specific approach.

Women empowerment through ***legal literacy*** emerges as a pivotal effect. The learning emphasises ***education's transformative significance*** in securing legal rights and advocates for comprehensive legal literacy activities. This insight emphasises the need of educational endeavours that empower women not just via legislation modifications but also through a thorough comprehension of legal complexities for prospective lawyers.

India

When we consider India's history, particularly post-independence, we find ourselves on the position of **unable to form any conclusions** women in India. Women's journeys in India appear to be filled with both ***fascination and frustration***.²⁷

The **gender gap** in property ownership in India *contributes greatly* in increasing inequities in economic well-being and empowerment. This highlights the **crucial significance of land ownership** in moulding ***women's socioeconomic standing***.²⁸ While increased **employment** prospects are desirable, they **cannot replace** the critical role of property rights.

²⁷ Khubber, N., & Singh, P. (2021). Women and land-holding rights in india: gener discrimination riddled with agony. Indian Journal of Law and Justice, 12(2), 193-210.

²⁸ The Gender Inequality Index (GII) is an index for measurement of gender disparity that was introduced in the 2010 Human Development Report 20th anniversary edition by the United Nations Development Programme (UNDP).

The *nuanced implementation of legal reforms* in the Indian context is of great importance. The emphasis shifts towards the *transformative capacity of policy reforms* in moulding the gender dynamics. This understanding provides pathway for subsequent legislative initiatives, highlighting the importance of developing strategic policies that truly strive for gender equality.

It is imperative that legal academicians acknowledge the **profound impact** that *legal education* can have on women's lives and encourage its incorporation into more comprehensive academic curricula. A critical insight emerges when one comprehends community dynamics and the significant impact that community leaders wield. By engaging in informed discourse, the learning outcome encourages legal advocates to foster gender-equitable and inclusive community attitudes.

Divergences in personal laws emphasise the **criticality** of promoting legal uniformity. The analysis emphasises on promoting a dialogue of *Legal harmonization* and consideration of *cultural diversity* in the pursuit of a **Uniform civil code**.

This methodology ensures the uniform application of gender justice in a variety of cultural settings, an essential factor for legal scholars involved in advocacy.

Conclusion

“Women constitute half the world's population, perform nearly two-third of its work hours, receive one-tenth of the world's income, and less than one-hundredth of the world's property.”

Source: **United Nations Report, Program of Action for the Second Half of the UN Decade for Women, 1980**

When comparing the laws protecting women's inheritance in India and Bangladesh, it quickly became clear that there were **significant differences** between the two countries' legal systems.

Potential redressal can be found in legal processes like Wasiyah and Hiba in Bangladesh, where personal laws are firmly based in religious diversity. However, the fact that social norms are resistant shows how vital it is to have more extensive efforts for legal literacy. The takeaway message stresses the **importance of culturally and religiously sensitive policies** that advance the status of women.

However, despite *positive developments* in the law regarding succession rights in India, the country still faces difficulties, such as a lack of education and a continuation of traditional patriarchal values. This realisation is *a turning point*, one that should motivate a *reevaluation* of law curricula to **incorporate full gender justice components**.

The study emphasises the *need for legal uniformity* in the face of differing personal laws, calling for a **uniform civil code to advance gender fairness** without stifling cultural uniqueness. This study, conducted from the perspective of a law student, highlights the **complex relationship** between *law*, *public opinion*, and the *transforming power of legal education*. It calls upon policymakers, legal experts, and campaigners to traverse this challenging terrain with sensitivity, encouraging a more fair future anchored in both legislative changes and societal shifts.

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