

Stridhana and Hindu Women's Property Rights in Bangladesh: A Legal Analysis of the Dayabhaga Tradition

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Abstract: *This article explores the concept of stridhana within the Dayabhaga school of Hindu law for its historical, legal, and contemporary relevance in relation to the property rights of Hindu women in Bangladesh. It traces the evolution of stridhana from the Vedic to Smriti periods, highlighting its recognition as women's exclusive property through Jimutavahana's Dayabhaga. The article further examines the classification, acquisition, and control of stridhana, contrasting Dayabhaga's liberal approach with the more restrictive Mitakshara school. It further touches on some contemporary issues facing Hindu women in Bangladesh: patriarchal control, inconsistencies in the judiciary, and a lack of codified law. The article looks at court decisions and reform proposals and calls for a codified Hindu personal law and a gender-sensitive judicial approach. It contributes to the discourse on Hindu women's property rights in Bangladesh offering a pathway in which the law can be reformed to bring greater gender equality.*

Keywords: Stridhana, Dayabhaga, Hindu law, Hindu women's property rights, Gender equality in Bangladesh

1. Introduction

The term 'stridhana' denotes a woman's property in Hindu law.¹ The concept of stridhana is ancient and complex and carries profound implications for property rights of Hindu women worldwide.² Under modern Hindu law, *Stridhana* refers to property that a woman owns independently, which she acquires through gifts, inheritance, purchase, or self-earning, and over which she has absolute ownership and control. According to classical Hindu legal literature, stridhana encompasses

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¹ Prakash Chand Jain, 'Women's Property Rights Under Traditional Hindu Law and the Hindu Succession Act, 1956: Some Observations' (2003) 45(3-4) *Journal of the Indian Law Institute* 509.

² Ludo Rocher and JD Derrett, 'A Critique of Modern Hindu Law' (1972) 32 *The Journal of Asian Studies* 202-203.

property that a woman acquires through gifts given at different stages of her life.³ According to Dayabhaga, she has the full right to dispose of it, including a sale, gift or will.⁴ The research on stridhana is important for understanding the historical evolution of women's property rights as well as for addressing contemporary legal issues related to gender justice related to inheritance and property ownership in countries like Bangladesh.⁵

The meaning and application of stridhana vary significantly across various schools of Hindu law.⁶ This paper focuses on the Dayabhaga school, which predominantly applies in today's Bangladesh, West Bengal, Tripura, and Assam in India. Since the partition of India in 1947 and the subsequent stagnation of Hindu law in Bangladesh, stridhana has been the primary means of property acquisition for Hindu women. Therefore, realizing the concept of stridhana within the Dayabhaga tradition is essential to address the current challenges that Hindu women in Bangladesh face when claiming their property rights.

In ancient India, stridhana was primarily regarded as a woman's property received as a gift before her marriage. Gradually, it encompasses gifts given on or after the marriage as well as property inherited from her parents.⁷ However, debate remains about the property acquired through personal labour and skills during coverture.⁸ With the development of Hindu law, two major schools of thoughts namely the Mitakshara and the Dayabhaga emerged. The Dayabhaga

³ The definition of stridhana as referenced by commentators mainly draws from the Smriti texts of eight key sages: Manu, Narada, Vishnu, Katyayana, Apastamba, Vyasa, Devala, and Yajnavalkya. According to these sages, stridhana primarily includes gifts received by a woman from her relatives, as well as her ornaments and apparel. Gifts from strangers are considered stridhana only if they are presented before the nuptial fire or during the bridal procession. Gifts from strangers at other times, as well as any properties acquired through her own labor and skill, do not qualify as stridhana.

⁴ See Dayabhaga, IV.1.18.

⁵ Halder D and Jaishankar K, 'Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India' (2008) 24(2) *Journal of Law and Religion* 663; R ARS, 'Stridhan: A Study on the Women's Property under Hindu Law' (Our Legal World, April 14, 2024) <<https://www.ourlegalworld.com/stridhan-a-study-on-womens-property-under-hindu-law/>> accessed 10 January 2025.

⁶ The two main schools of Hindu law are the Mitakshara School and the Dayabhaga School. Mitakshara is prevalent across most of India. Dayabhaga School is followed in the greater Bengal region including today's Bangladesh, and West Bengal, Assam and Tripura of India. These two schools differ primarily in the principles of inheritance and property rights. See Shrestha M, 'Stridhan and Women's Estate: Empowering Women's Right in India' (Lawyersclubindia, 19 March 2024) <<https://www.lawyersclubindia.com/articles/stridhan-and-women-s-estate-empowering-women-s-right-in-india-16529.asp>> accessed 30 August 2024.

⁷ K Asra Shifaya, 'Property Rights of Women under Hindu Law: A Critical Study' (2021) *International Journal of Law Management and Humanities* 2999, 3004.

⁸ S A Desai (ed), *Principles of Hindu Law* (20th edn, LexisNexis 2007) 241-242.

has significantly greater influence in the Bengal region, including present-day Bangladesh, while the Mitakshara law prevails in other parts of India.⁹

Dayabhaga is attributed to Jimutavahana, a Bengali jurist of the twelfth century. It differs significantly from the Mitakshara in respect of inheritance and women's property rights.¹⁰ According to Dayabhaga, sons are supposed to inherit most of the property upon the death of the father.¹¹ Although daughters often receive no share of the family property, they have greater control over their stridhana.¹² Although women's notions of property ownership are relatively emancipatory, social, and cultural factors and legal restrictions for women consistently prevent the actual realisation of these rights.¹³

There is a noticeable gap in modern scholarship that addresses the specific challenges that Hindu women in Bangladesh face in asserting their property rights. This article provides a legal analysis of stridhana under the Dayabhaga tradition applicable in Bangladesh and aims to bridge this gap. However, the paper is not free from limitations. While the paper attempts to offer a comprehensive legal analysis, the predominant focus of this article is on the ownership of stridhana. It acknowledges that the real-world implementation of stridhana rights is influenced by extra-legal variables such as socio-cultural norms and economic circumstances, which cannot be properly addressed within this article.

This article adopts a multidisciplinary approach, combining historical analysis with legal research to provide a comprehensive understanding of stridhana within the Dayabhaga tradition. This article makes a contribution to legal scholarship by addressing a significant gap in the understanding of Hindu women's property rights in Bangladesh, particularly in relation to stridhana under the Dayabhaga school.

The article begins with an Introduction that explains what stridhana is, and how it applies under Hindu law in general and under the Dayabhaga tradition, specifically its relevance to women's property rights in Bangladesh. In

⁹ ibid 88.

¹⁰ S S Setlur, 'The Origin and Development of the Bengal School of Hindu Law' (1907) 23 *Law Quarterly Review* 202; Fatima T, 'Women's Rights and Hindu Law of Inheritance: The Approach of Rammohun Roy' (2009) 70 *Proceedings of the Indian History Congress* 643

¹¹ Ludo Rocher, *Studies in Hindu Law and Dharmasastra* (Anthem Press 2012) 195, 311, 534.

¹² A woman has full control over her saudayika stridhana, even while married. She can sell, gift, or will it as she wishes, without needing her husband's permission. Her husband has no authority over this property and cannot use it without her consent. See Desai (n 8) 247-248.

¹³ 'Breaking Down Barriers to Women's Land Rights Starts in Our Homes' (22 March 2024) <<https://www.globalissues.org/news/2024/03/22/36300#:~:text=Deeply%20rooted%20traditional%20and%20social,including%20being%20denied%20rightful%20inheritance.%E2%80%9D>> accessed 30 August 2024.

the second part, it briefly traces the historical evolution of stridhana from the Vedic to Smriti period, focusing on its definition in key texts like Manusmriti and Yajnavalkya Smriti, and underlines how stridhana evolved from patriarchal control to women's independent property. The third part contains the core of this article. It focuses on the concept of stridhana in Dayabhaga law encompassing discussions on the definition and classification of stridhana by Jimutavahana, the modes of its acquisition and control by women, and the restrictions imposed by the marital status of the woman and the nature of the property. Part four analyses the application of Dayabhaga principles by Bangladeshi courts debates a few landmark court decisions, and also deliberates on the hardships a Hindu woman faces while trying to claim her rights over stridhana. In the proposals for legal reform, the paper advocates the codification of Hindu personal law in order to protect stridhana rights, which requires gender-sensitive judicial interpretation, coupled with specific judicial training, providing legal aid for Hindu women, and large-scale awareness programs on women's property rights.

2. The Pre-Dayabhaga Concept of Stridhana

The term stridhana is made up of two Sanskrit words: 'stri' (woman) and 'dhana' (wealth). Therefore, stridhana refers to wealth or property that accrues to a female.¹⁴ Its earliest references can be found in the Vedic texts, which, though primarily concerned with ritual and religious duties, also contain implicit references to the property rights of women.¹⁵

It is often claimed that women were not acknowledged as independent property owners during the Vedic period. The early Indian patriarchal society rendered property ownership a privilege of the male head of the household.¹⁶ However, some practices such as giving gifts to the bride during the marriage (*yautaka*) provided the basis for what later became known as stridhana.¹⁷ Such gifts were from the bride's family, the groom, or other relatives. It was meant to confer financial security on the woman, especially in widowhood or separation. Vedic texts indicate that women exercised some control over such gifts, at least those received from the natal family.¹⁸ Although vague and generally sporadic

¹⁴ P. V. Kane, *History of Dharmasastra (Ancient and Medieval Religious and Civil Law)*, vol 1 (Bhandarkar Oriental Research Institute 1974) 650-651; Shifaya (n 7) 3004.

¹⁵ Shifaya (n 7) 3001.

¹⁶ B Agarwal, 'Who Sows? Who Reaps? Women and Land Rights in India' (1988) 15(4) *The Journal of Peasant Studies* 531; B Agarwal, 'Gender and Command Over Property: A Critical Gap in Economic Analysis and Policy in South Asia' (1994) 22(10) *World Development* 1455.

¹⁷ S Bhattacharji, 'Economic Rights of Ancient Indian Women' (1991) *Economic and Political Weekly* 507-512; S Dixit, 'Social and Economic Status of Indian Women: A Comparative Approach in its Generic Context (600 BC-100 AD)' (January 2005) *Proceedings of the Indian History Congress* (Vol 66, Indian History Congress) 70-84.

¹⁸ See MD, Pradeep, 'Study on the Mobility in Status of Women: Evolutionary Phases towards

in nature, these references bring out one salient point: early recognition of the right of a woman to property – to possess and possibly control in her own right, although within the larger framework of familial and marital relations.¹⁹

In the post-Vedic and Smriti periods, the Dharmasutras, Dharmashastras laid down formal regulations for Hindus on various matters, including property rights.²⁰ The Manusmriti, Visnumriti, Naradasmriti, Yajnavalkyasmriti and Parasharasmriti were particularly influential in defining stridhana.²¹ All the smritis characterized it as property that a woman acquires before the marriage, during her marriage, or after the marriage.²² As per the Manusmriti (9.194), stridhana comprises gifts from kin (like those from her father, mother, or brothers upon marriage), presents from her spouse (such as jewellery and other valuables), the wealth generated through her own labour and skills, inheritance from deceased family members, and gifts received out of affection from friends or even strangers.²³ The Manusmriti bestowed upon stridhana a unique property of women. It is protected from any claims or usage by her husband or other in-law members. It confirms a woman's entitlement to manage, dispose of, or bestow the property as she sees fit. In no way, can her husband or other relatives intervene in the process.²⁴

3. Stridhana in the Age of Dayabhaga

In medieval India, the concept of Stridhana further developed and became more regional. Hindu law itself grew in regional codification during this period.²⁵ Regional schools of Hindu law, such as the Mitakshara and Dayabhaga, began producing various regional treatises and interpretations of women's property rights.²⁶

Empowerment in India' (2018) 3(2) *International Journal of Management, Technology, and Social Sciences* 73-86.

¹⁹ See R Patel, 'Hindu Women's Property Rights in India: A Critical Appraisal' in *The Politics of Rights* (Routledge 2013) 81-94.

²⁰ LR Penna, 'Traditional Asian Approaches: An Indian View' (1980) 9 *Australian Yearbook of International Law* 168.

²¹ See Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 1999) 14-18; Also see Desai (n 8) 226-228.

²² Desai (n 8) 226-228.

²³ *ibid* p. 226; Shifaya (n 7) 3004.

²⁴ See Dayabhaga IV.1.18.

²⁵ See D Ludden, 'History Outside Civilisation and the Mobility of South Asia' (1994) 17(1) *South Asia: Journal of South Asian Studies* 1.

²⁶ SC Mitra, 'Origin and Development of the Bengal School of Hindu Law (Continued)' (1906) 22 *Law Quarterly Review* 50; J Pathak, 'Daughters' Right to Property: Breaking Rigid Patriarchal System & Upgrading Women's Rights' (2022) 5(1) *International Journal of Law, Management*

This period saw several commentaries and digests on the Smritis. The Dayabhaga of Jimutavahana and Mitakshara of Vijnaneswara may be specifically mentioned. These two have utmost importance in guiding the comprehension and application of stridhana.²⁷ The Mitakshara school went on to dominate in most of India. It tended to be restrictive in its interpretation of stridhana, especially in the context of a woman's power to alienate that property.²⁸ Provisions of Mitakshar regarding stridhana include its definition, nature, and types (Chapter II, 143-144), alienation (Chapter II, 145), husband's authority in distress (Chapter II, 142) etc. On the other hand, the Dayabhaga school emerged as a predominant school of thought in Bengal. Dayabhaga accepted a relatively more liberal interpretation and accorded women greater power in managing their stridhana.²⁹ Provisions of Jimutavahana's Dayabhaga regarding stridhana include its definition, nature, and types (Chapter IV, Section 1), the rules governing its partition (Chapter IV, Section 2), and the inheritance of stridhana when a woman dies without offspring (Chapter IV, Section 3). The *Dayabhaga* is considered more liberal than the *Mitakshara* on *stridhan* as it recognizes a broader range of women's property as *stridhan*, including gifts from strangers and property inherited from non-relatives. In the later years, the formal legal status granted to stridhana as an independent category of property under Hindu law was shaped by both indigenous legal concepts and the pressures of British colonial governance.³⁰

3.1. What Constitutes Stridhana in The Dayabhaga Law

While writing the *Dayabhaga*, Jimutavahana conducted a thorough study of the views propounded by several great jurists such as Manu, Narada, Vishnu, Katyayana, Yajnavalkya and others. Through his engagement with these ancient exponents of Hindu jurisprudence, Jimutavahana clarified and refined the concept of stridhana, adapting it to the socio-legal context of his time. Therefore, to understand what constitutes stridhana, we must examine the definitions provided by the ancient sages as mentioned in the *Dayabhaga* itself.

According to Manu, stridhana includes items given before the nuptial fire (*adhyagni*), gifts given during the bridal procession (*adhyavahanika*), tokens of love (*priti-datta*), and gifts from a brother, mother, or father. Manu asserts that

and Humanities 2014.

²⁷ See Kishwar, Madhu, 'Codified Hindu Law: Myth and Reality' (1994) *Economic and Political Weekly* 2145.

²⁸ Narayanan S, 'Historical Background of Gender Equality and Succession Right of Hindu Women's Right of Property in Tamil Nadu' (2016) 4 *Intellectual Property Rights* 162.

²⁹ Rankin George, 'Hindu Law Today' (1945) 3rd ser 27 *Journal of Comparative Legislation and International Law* 1.

³⁰ Agarwal B. 'Bargaining', Gender Equality and Legal Change: The Case of India's Inheritance Laws' in *Routledge Readings on Law and Social Justice* (Routledge India 2022) 273.

these constitute the six-fold separate property of a married woman.³¹ He also notes that the ornaments of a woman should not be divided among the heirs of her husband. According to Manu, doing so is considered sinful.³²

The definition of Narada is similar to that of Manu but explicitly includes the husband's donation (*bhartridaya*) instead of a general token of love.³³ According to Narada, items given before the nuptial fire, gifts given during the bridal procession, the husband's donation, and gifts from a brother, mother, or father constitute the six-fold property of a woman.³⁴

Therefore, it is clear that the definition of stridhana by Manu is much broader. It encompasses gifts given in love by any relative. On the other hand, Narada specifies gifts given by the husband. Both definitions form the foundation of legal discussions on stridhana.³⁵

Visnu outlines the types of property considered stridhana. It includes items given to a woman by her father, mother, sons, or brothers. These may be received before the sacrificial fire at marriage. Also, it includes those given by relations as subsequent gifts. Visnu also includes her marriage fee as stridhana.³⁶ He emphasises that ornaments worn by wives should not be divided by heirs while their husbands are alive; doing so would result in social ostracism.³⁷ Vishnu's enumeration of stridhana expands on Manu by including gifts from sons and kindred, gifts on supersession, and a woman's marriage fee.

Katyayana mentions the same six types of stridhana as Manu and elaborates them, by including additional categories enumerated by Vishnu. According to Katyayana, stridhana includes gifts given to women before the nuptial

³¹ Manusmriti, IX.194

³² "*Such ornaments as women wear during the lives of their husbands, the heirs (of those husbands) shall not divide among themselves; they who divide it among themselves fall deep into sin.*" Manusmriti, IX, 200.

³³ "*Property given to her by her husband, through pure affection, she may enjoy at her pleasure after his death, or may give it away, except land or houses.*" See, Colebrooke's Digest, Book V, 476.

³⁴ Naradasmriti, XIII.8.

³⁵ Gooroodass Banerjee, *Hindu Law of Marriage and Stridhan* (Thacker, Spink and Co 1879) 275-276.

³⁶ "*That which has been given to a woman by her father, mother, sons, or brothers, that which she has received before the sacrificial fire (at the marriage ceremony), that which she receives on supersession, that which has been given to her by her relations, her fee, and a gift subsequent, are called woman's property.*"- Vishnumsmriti, XVII, 18

³⁷ "*Those ornaments which the wives usually wear should not be divided by the heirs whilst the husbands (of such wives) are alive; if they divide them, they become outcasts.*" Vishnumsmriti, XVII. 22

fire, called *adhyagni*, and gifts received during the bridal procession, termed *adhyavahanika*. Commentators such as Vijnaneswara, Kulluka, Devanda Bhatta, Nilkantha, Jimutavahana, and Srikrishna could not agree on the interpretation of *adhyavahanika*. Some interpret it broadly to include gifts from anyone during the bridal procession. Others restrict it to gifts from the woman's family only.³⁸

According to Katyayana, property acquired through arts like painting or received from friendships outside of kinship belongs to the husband. He considers all other property as *stridhana* and belongs exclusively to the wife.³⁹ Apastamba specifies that ornaments are the wife's sole property. Other lawmakers stipulate gifts given by relatives or friends as *stridhana*.⁴⁰ Vyasa describes the bride price as a personal right of the wife. He emphasises it as her perquisite. He also mentions gifts bestowed to ensure her cheerful integration into her husband's household.⁴¹ Devala asserts that food, clothing, ornaments, perquisites, and properties received from any source constitute her *stridhana*. Her husband has no claim except in extreme distress.⁴²

The definition given by Yajnavalkya has sparked extensive debates among scholars. According to him, *stridhana* includes gifts given by the father, mother, husband, or brother. He also includes gifts received before the nuptial fire or on her husband's marriage to another wife.

*"What was given (to a woman) by the father, the mother, the husband, or a brother, or received by her before the nuptial fire, or presented to her on her husband's marriage to another wife (adhivedanika), and the rest, is denominated stridhana. So, that which is given by kindred, as well as her fee and anything bestowed after marriage."*⁴³

This version, accepted in the Mitakshara and subsequent commentaries, broadens the scope to encompass gifts from relatives, her fee, and anything received after marriage. However, Jimutavahana slightly narrowed down the definition to explicitly named properties.⁴⁴

None of the earlier texts gives us a clear-cut definition of *stridhana*. Instead, they discuss and detail different forms of *stridhana* without organizing them

³⁸ See Banerjee (n 35) 277-278.

³⁹ Katyayana, referred to in Dayabhaga, IV.1.19.

⁴⁰ See, Colebrook's Digest, Book V, 472.

⁴¹ *ibid* 471.

⁴² *ibid* 478.

⁴³ Yajnavalkyasmṛiti, II.143.144.

⁴⁴ See Dayabhaga, IV.I.13.

systematically. While some sources hint at there being about six types, there's no definitive consensus on this count. Importantly, in all these discussions, 'stridhana' is not just about property owned by a woman in a straightforward sense; it carries a distinct legal significance.⁴⁵

The definitions of stridhana derived from ancient texts are crucially interpreted by commentators of various legal schools. These commentaries and digests serve as authoritative guidelines for the courts unless overridden by any subsequent judicial interpretations. Vijnaneswara in his *Dayabhaga* emphasizes that the definition of stridhana aligns with its literal meaning and should not be narrowly construed.⁴⁶ There is the objection that categorization of six types of stridhana by Manu limits its broader application. To address this objection Jimutavahana argues that the intention of Manu was not to restrict but to deny fewer categories. He cites Manu explicitly listing types of stridhana and clarifies that it encompasses various forms, not a limited set.⁴⁷ Moving to Yajnavalkya, Vijnaneswara discusses gifts from kindred, fees, gratuities, and post-marriage endowments. Kindred refers to both maternal and paternal relatives. Gratuity denotes gifts given for a girl's marriage.⁴⁸ *Dayabhaga* also highlighted the definition of subsequent gifts by Katyayana.⁴⁹

3.2. Significance of Dayabhaga in the Context of Hindu Women's Property Rights

The *Dayabhaga* of Jimutavahana stands as a seminal text in the history of Hindu legal tradition in Bengal.⁵⁰ Its significance is manifold. It is not limited to its progressive stance on women's property rights in comparison with the Mitakshara school.⁵¹ The *Dayabhaga* system recognizes the rights of women to

⁴⁵ Banerjee (n 35) 284. 281-282.

⁴⁶ "The term stridhan conforms in its import with its etymology, and is not technical: for, if the literal sense be admissible, technical interpretation is improper."- Mitakshara, II.11.3.

⁴⁷ Mitakshara, II.11.4.

⁴⁸ *ibid*, II.11.6.

⁴⁹ Banerjee (n 35) 284.

⁵⁰ The *Dayabhaga* school of Hindu law is primarily followed in the Bengali-speaking regions of South Asia (Bangladesh, West Bengal, and parts of Assam and Tripura). This has been a distinct legal tradition within the broader framework of Hindu jurisprudence. This school can be said to have originated during the 12th century with the formulation of the *Dayabhaga* text by jurist Jimutavahana. This was an ambitious legal treatise intended to bring a semblance of order and reason to many questions of Hindu law, in particular, those concerning inheritance and property rights.

⁵¹ M Shah Alam, 'Review of Hindu Personal Law in Bangladesh: Search for Reforms' (2004) 8(1-2) *Bangladesh Journal of Law* 26.

inherit property which was almost absent in most of the contemporary codes.⁵² During the colonial regime, the Dayabhaga was adopted as the authoritative guide on matters of inheritance and family law in Bengal. The British endorsement of the Dayabhaga elevated its status, thereby cementing its principles within the legal fabric of the region.⁵³

In the context of women's property rights, Dayabhaga holds particular significance. It clearly defines and establishes the concept of female property or stridhana. Dayabhaga first recognises full ownership of property by women.⁵⁴ Under the Dayabhaga School, the interest in ancestral property passes to the heir by succession. It allows widows to inherit even in the presence of sapindas.⁵⁵ Dayabhaga also recognises the daughter, mother, grandmother and great-grandmother as sapindas. This contrasts with the Mitakshara law, where the interest in ancestral property passes to coparceners by survivorship.⁵⁶

According to Dayabhaga, stridhana is distinct from other forms of property. It includes properties acquired through arts, and crafts, or received as tokens of affection from outsiders.⁵⁷ This designation identifies women's rights to specific properties within the larger framework of inheritance and partition of property.

The Dayabhaga school of Hindu law is particularly significant for women's property rights in terms of inheritance and ownership. The Mitakshara school primarily follows the concept of coparcenary and survivorship. The Dayabhaga school focuses on individual ownership and succession.⁵⁸

Furthermore, the Dayabhaga addresses the issue of ownership and control over female property.⁵⁹ It specifies that if a woman acquires property through her own efforts or through gestures of goodwill, such property goes to the husband. Dayabhaga grants the husband the right to utilise it as he deems fit.⁶⁰

Jimutavahana's interpretation of *daya* in the Dayabhaga presents a unique perspective on women's property rights compared to earlier dharma texts. Unlike

⁵² Sarita Kumari, 'Women Inheritance Rights in India: Some Reflections' (2019) 6(1) *IJRAR-International Journal of Research and Analytical Reviews* 7.

⁵³ Ludo Rocher, *Jimutavahana's Dayabhaga: The Hindu Law of Inheritance in Bengal* (OUP 2002) 28-32.

⁵⁴ Desai (n 8) 234.

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ See, Rocher (n 53) 107-108.

⁵⁸ Desai (n 8) 234.

⁵⁹ Rocher (n 53) 121.

⁶⁰ Rocher (n 11) 705.

traditional dharma literature, which imposes restrictions on women's inheritance (*daya*) prescriptions, Jimutavahana reinterprets *daya* as something akin to a gift, thereby nullifying strict inheritance rules for women and opening up possibilities for them to receive more wealth.⁶¹ This redefinition of *daya* as a gift benefits women by providing them with a legal framework that allows for more flexibility in property rights within the domestic sphere.⁶² Furthermore, Jimutavahana's understanding of *daya* as a gift, which has no restrictions in Sanskrit dharma literature, contrasts with earlier texts that impose limitations or restrictions on women's *daya* prescriptions.⁶³

Moreover, the discussion on the concept of inheritance within the context of women's property (*stridhana*) further showcases his efforts to balance legal rights for women within the domestic realm.⁶⁴ Jimutavahana analyses the compound terms such as *bhartridaya* and *bhartridatta*, and challenges existing restrictions on women's property rights. By this, he presents a more inclusive approach towards inheritance and gift-giving.⁶⁵

The Dayabhaga is noteworthy for its refined approach to the inheritance rights of women. Although this right is still limited, it offers a degree of financial autonomy and security to women.⁶⁶ Otherwise, the concept of women's property rights would be absent in the patriarchal society of the time. The Dayabhaga also recognises the right of a widow without male issue to inherit the property of her deceased husband.⁶⁷ This is a significant stride towards gender equality in property rights. This legal acknowledgement of women's rights was a radical inclusion for its era. It reflects a transformative perspective on the social roles and entitlements of women.⁶⁸

Additionally, the Dayabhaga school provides women with the advantage of succession. This is available even in cases where sapindas and others are living.⁶⁹ This means that widows can inherit property from a deceased male relative. The

⁶¹ Manomohini Dutta, 'Dāya: The Conceptual Understanding of Inheritance and Gift in the Dāyabhāga' (2019) 47 *Journal of Indian Philosophy* 122.

⁶² *ibid.*

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Ann Clara Tomy, 'Property Rights of Women under Hindu Law: From Vedas to Hindu Succession (Amendment) Act 2005' (2019) 10 *Supremo Amicus* 24.

⁶⁷ Kumari (n 52) 7.

⁶⁸ *ibid.*

⁶⁹ S Vencatachariar, 'Dayabhaga Theory of Sapindaship in Hindu Law' (1908) 5 *Allahabad Law Journal* 273.

existence of any other sapinda, sakulya or samanodoka will not impede her. Accordingly, this ensures their right to inherit independently.⁷⁰

The treatment of Dayabhaga towards female property reflects broader social norms and legal frameworks. By defining and regulating the rules of stridhana, the Dayabhaga contributes to shaping the discourse around gender, inheritance, and property rights in Bengal.

4. Legal Status of Hindu Women's Rights to Stridhana under Dayabhaga

The legal status of ownership over Stridhana under the Dayabhaga school is characterized by significant autonomy for women. Unlike other schools of Hindu law, where a woman's rights over her property might be limited or subject to male control, the Dayabhaga school provides women with the legal authority to manage, control, and dispose of their Stridhana independently.⁷¹

4.1. Absolute Ownership and Control

According to the Dayabhaga, a woman is the absolute owner of her Stridhana. This ownership does not depend upon the approval of her husband or any other male members of the family. Absolute ownership means that the woman enjoys full legal rights to manage her property as she thinks fit.⁷² These may include:

- Sale or Transfer of Property: She can sell, mortgage, or transfer her Stridhana to anyone. She does not need to seek permission from her husband or other male relatives for this.⁷³
- Gift or Bequeath Property: The woman can gift her Stridhana to anyone, including her children, relatives, or charitable causes. She can also bequeath her property through a will. She can also determine how it will be distributed after her death.⁷⁴
- Use of Property for Personal Benefit: The woman can use her Stridhana for personal benefit. This may include using it to generate income or for consumption.⁷⁵

⁷⁰ Desai (n 8) 234.

⁷¹ See Anantdeep Singh, 'Women, Wealth and Law: Anglo-Hindu and Anglo-Islamic Inheritance Law in British India' (2017) 40(1) *South Asia: Journal of South Asian Studies* 40.

⁷² Rahul Jain, 'Comparative Analysis Between Mitakshara and Dayabhaga: Ancient Schools of Indian Jurisprudence' (2023) 9(2) *E-Journal of Social and Legal Studies*; Sachin Drall, 'Succession under Classical Hindu Law: A Comparative Study between Dayabhaga and Mitakshara Schools, and the Significance of the Hindu Will Act, 1870 and Hindu Women's Right to Property Act, 1937' (2022) Issue 2 *Indian Journal of Legal & Legal Research* 4.

⁷³ Shumbhoo Chunder Dey, 'Stridhana or Woman's Peculium' (Concluded from p. 68) (1915) 13 *All India Law Journal* 85.

⁷⁴ Desai (n 8) 202.

⁷⁵ Tomy (n 66) 24.

This principle of absolute ownership marks a significant departure from the Mitakshara school as it often limits a woman's control over her property, especially concerning immovable property.⁷⁶

4.2. Protections against Alienation by Others

The Dayabhaga school also provides legal protections of Stridhana against unauthorized alienation by others. This means that the husband, in-laws, or other male relatives cannot claim or dispose of a woman's Stridhana.⁷⁷ Her explicit consent may be an exception in this case. Such protections were crucial in safeguarding women's property rights in a patriarchal society where men typically dominate property control.

- **Legal Remedy for Women:** Women under the Dayabhaga school have the right to seek legal remedy if their Stridhana is wrongfully alienated.⁷⁸ This could involve filing a lawsuit to reclaim the property. Seeking compensation for its unauthorized sale or transfer was another alternative.⁷⁹
- **Restrictions on the Access to Husband:** Dayabhaga allows husband's access to his wife's Stridhana in certain rare circumstances, such as during the famine or extreme financial crises.⁸⁰ In no way this access is absolute. This use of Stridhana is conditional and subject to the consent of the wife. He must return it on time with interest.⁸¹
- **Protection of Inheritance:** Upon a woman's death, her Stridhana goes to her own heirs.⁸² If she leaves a will, that must be respected. This inheritance protection reinforces the principle of women's exclusive ownership of their Stridhana.⁸³

⁷⁶ Aditya Suswaram, 'The Discrimination and Anomaly in the Property Rights of Indian Women' (2024) 45(1) *Statute Law Review* 2.

⁷⁷ Khan, A Kumar, 'Right of Inheritance of Hindu Women in Ancient India: Analysis of 'Stridhan' in Ancient Hindu Texts' (2021) 12(3) *Turkish Online Journal of Qualitative Inquiry*.

⁷⁸ Katyayanasmruti, 912.

⁷⁹ Shahnaz Huda, 'Combating Gender Injustice: Women and the Hindu Law of Personal Status in Bangladesh: A Comparative Analysis' in *Revisiting Personal Laws in Bangladesh* (Brill Nijhoff, 2019) 97.

⁸⁰ See Dayabhaga, IV.1.24.

⁸¹ *ibid*.

⁸² Dayabhaga, IV.2.23.

⁸³ Shifaya (n 7) 2999.

4.3. Restrictions and Limitations⁸⁴

Restrictions on a woman's rights over her stridhana depend on her marital status and the nature of the property. She always has absolute power of disposal over certain types of property, no control over others, and restricted power during coverture over yet another class. Under certain exceptional circumstances, her husband may have a qualified right to use her stridhana.⁸⁵ These distinctions require detailed consideration, especially regarding the woman's status and property.

4.3.1. Restrictions Depending on the Status of Women

4.3.1.1. Maidenhood

During maidenhood, a Hindu woman faces no other incapacity regarding her control over her stridhana, except for being underage. Her father and other relatives have no authority over her stridhana except in the role of guardian. Jagannatha argues that the wealth acquired by a woman before marriage could be claimed by her father based on interpretations of ancient texts.⁸⁶ However, this argument is countered by authoritative sources such as Manu. He emphasizes that such appropriation of women's fortunes by male relatives is akin to theft. He also observes that persons involved in such appropriation should be punished by a just king. Leading commentaries from various schools of Hindu law explicitly state that fathers and other male kin have no rights over a woman's stridhana.⁸⁷

4.3.1.2. Coverture

During coverture, a woman's rights over her stridhana are subject to certain restrictions. Ancient texts like Manu assert that a wife cannot possess wealth exclusively of her own. According to him, her acquisitions belong to her husband.⁸⁸ Apastamba expresses a similar view. But he suggests a more equitable recognition of her rights over the husband's property as well.⁸⁹ However, these restrictions have been moderated by subsequent legal interpretations.

According to commentators, the absolute dominion of the husband over

⁸⁴ Information in this part has predominantly derived from the Tagore Law Lectures of 1878 by Sir Gooroodass Banerjee, *Hindu Law of Marriage and Stridhan* (Thacker, Spink and Co, 1879), pp. 275-321.

⁸⁵ LS Deodhar, 'Concept of the Right of Stridhan in the Smṛtis' (2010) 70 *Bulletin of the Deccan College Research Institute* 349.

⁸⁶ Ludo Rocher, 'The Theory of Matrimonial Causes According to the Dharmaśāstra' in JN Anderson (ed), *Family Law in Asia and Africa* (Routledge 2021) 90.

⁸⁷ Mitakshara, II.11.88; Vyavahara Mayukha, IV.10.10; Smṛiti Chandrika, IX.2.27.

⁸⁸ See Manusmṛiti, VIII.4.16.

⁸⁹ Apastamba Sutra, Prasna II, Patala VI, Kanda XIV, vv. 16-18.

the property of the wife is limited to certain types. In other cases, he only has a qualified right. This also applies only under specific circumstances defined by law. For instance, Yajnavalkya states that a husband is not liable to restore his wife's property if taken during famine, for performing duties, during illness, or under restraint.⁹⁰ Devala affirms that items like food, clothing, ornaments, and wealth received by a woman from her relatives are her own. The husband can use them only in extreme distress. If misused, he must repay their value with interest. Also, he may have to pay a fine to the king.⁹¹

Katyayana emphasizes that neither the husband, nor the son, father, or brother, has the authority to use or dispose of a woman's legal property without her consent. If they do so against her wishes, they are liable to repay it with interest and a fine. The law also requires repayment if the husband uses such property for relief during his own distress or for supporting a distressed son.⁹²

Vijnaneswara's commentary on Yajnavalkya clarifies that 'duty' refers to essential religious obligations. The husband is obliged to repay his wife's property taken in these specific circumstances.⁹³ The text specifies that the husband is not exempt from repayment only if he is genuinely unable to repay due to poverty or similar reasons. However, if he is capable, he must repay regardless of the circumstances in which he took the property.⁹⁴

In the Vivada Chintamani, the interpretation of Yajnavalkya's text differs slightly, specifically interpreting "*or during illness which prevents the husband from following his avocations.*" Devala's use of "*distress*" is explained in the Viramitrodaya as "*pain caused by lack of food and similar necessities,*" with "*and*" indicating that the husband can dispose of or use the wife's separate property

⁹⁰ "A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint." - Yajnavalkya, II.147.

⁹¹ Colebrooke (n 33) 478

⁹² "Neither the husband, nor the son, nor the father, nor the brother, has power to use or to alienate the legal property of a woman. And if any of them shall consume such property against her own consent, he shall be compelled to pay its value with interest to her, and shall also pay a fine to the king. But if he consume it with her assent, after an amicable transaction, he shall pay the principal only, when he has wealth enough to restore it. Whatever she has put amicably into the hands of her husband afflicted by disease, suffering from distress, or sorely pressed by creditors, he should repay but with his own free will. Yet more; if he have taken a second wife, and no longer give his first wife the honour due to her, the king shall compel him, even by violence, to restore her property, though it was put amicably into his hands." - Katyayana, referred to in Colebrooke's Digest, Book V 475, 477, 481; Banerjee, supra note 35 at 326.

⁹³ "But if he seizes it in any other manner [or under other circumstances] he must make it good." - Mitakshara, II.11.32.

⁹⁴ See, Banerjee (n 35) 326-327

without her permission in other financial difficulties.⁹⁵ The Smriti Chandrika specifies that the distress must be of a nature that cannot be alleviated except by using stridhana.⁹⁶

The term “son” in the same context is explained in these commentaries to refer to any dependent member of the family. While maintaining dependent family members is not always a legal duty, it is considered a moral obligation in Hindu law. This broad interpretation aligns with the general spirit of Hindu legal principles.⁹⁷

A notable difference between the Dayabhaga and the Mitakshara schools is highlighted. Vijnaneswara indicates that a husband’s right to take his wife’s property is restricted in all circumstances,⁹⁸ whereas Jimutavahana, following Katyayana’s text, asserts that property acquired by the wife through gifts or mechanical arts is always subject to the husband’s authority, even without distress.⁹⁹

Subject to the differences in interpretation noted earlier, the texts of Yajnavalkya, Devala, and Katyayana have been accepted by all schools of law on the subject.¹⁰⁰ It is established that a husband can use his wife’s *saudayika* stridhana without her consent only in cases of distress, and repayment is optional if he is poor. If used without her consent, he is obliged to restore it with interest; with consent, he must repay the principal when able. Even with consent, neglecting the wife for another wife requires him to restore her property. Property acquired by the wife through gifts or mechanical arts is always under the husband’s control.¹⁰¹

According to the Smriti Chandrika, the husband has no independent power over any type of stridhana belonging to the wife.¹⁰² This implies that while the wife has ownership due to marriage, the husband lacks both independent power and ownership over her stridhana. Marriage thus enhances the proprietary rights of the wife more favourably than the husband.¹⁰³

⁹⁵ ibid 327

⁹⁶ “The distress referred to must be of such a character as it is impossible to get rid of except with the use of stridhan.” Smriti Chandrika, IX.2.18.

⁹⁷ Banerjee (n 35) 328.

⁹⁸ Mitakshara, II.9.31.

⁹⁹ Dayabhaga, IV.1.20.

¹⁰⁰ Mitakshara, II.11.31-32; Vyavahara Mayukha, IV.10.10-11; Smriti Chandrika, IX. 2.10-23; and Dayabhaga, IV.1.4 & IV.1. 25.

¹⁰¹ Banerjee (n 35) 329.

¹⁰² Smriti Chandrika, IX.2.13.

¹⁰³ Banerjee (n 35) 329.

Property earned by mechanical arts or received as gifts from strangers is said to be subject to the husband's dominion.¹⁰⁴ This means that although such property belongs to the wife and she can enjoy it, she cannot alienate it without her husband's consent, and he can use it at his discretion.

The right to use a woman's stridhana is personal to her husband. It means, others, including creditors or family members in distress, cannot seize or use it without her husband's permission.¹⁰⁵

4.3.1.3. Widowhood

During widowhood, a woman's rights over her stridhana become more extensive. Her sons have no right to use her stridhana. On her husband's death, her right to use and enjoy it becomes unrestricted. She can now freely alienate the movable properties given by her husband. During widowhood, property acquired by a woman through her skill and labour or by gift is universally considered her stridhana.¹⁰⁶ Even if similar property acquired during coverture would have been under her husband's control, it unequivocally belongs to her on his death.¹⁰⁷

4.3.1.4. Unchaste Woman

The Hindu law stipulates that a woman may forfeit her stridhana if she violates her duties of obedience and fidelity to her husband. Katyayana's text asserts that a wife who maliciously harms her husband, lacks shame, destroys his property, or is unfaithful forfeits her separate property rights.¹⁰⁸ In Bengal, authorities like Raghunandana¹⁰⁹ and Jagannatha¹¹⁰ cite Katyayana's text, with Jagannatha leaning towards Vivada Chintamani's explanation. The rule's vagueness and moral injunctions make it challenging to enforce strictly as law. Courts historically have not enforced it rigorously; later cases, like *Massamat Ganga Jati v. Ghasita*,¹¹¹ have interpreted it narrowly. Judges in the case have argued that the rule applies specifically to property received from the husband and does not extend universally to all types of stridhana.¹¹²

¹⁰⁴ Colebrooke (n. 33) 470; Dayabhaga, IV.1.18.

¹⁰⁵ Smriti Chandrika, IX.2.17.

¹⁰⁶ Vyavahara Mayukha, IV.10.8-9; Smriti Chandrika, IX. 210-12; Dayabhaga, IV.1.23.

¹⁰⁷ Banerjee (n 35) 332.

¹⁰⁸ Colebrooke (n. 33) 484.

¹⁰⁹ Dayatattwa, IX.6.

¹¹⁰ Colebrooke (n. 33) 484.

¹¹¹ I. L. R. I, All. 46.

¹¹² Banerjee (n 35) 344-345.

4.3.2. Restrictions Depending on the Nature of Property

4.3.2.1. Gifts

Gifts of affection from relatives, known as *saudayika stridhana*, constitute a woman's absolute property. She has independent authority to alienate it at all times, while her husband retains only a conditional right to use it during periods of distress.¹¹³

4.3.2.2. Gifts from the Husband

Immovable property given by a woman's husband doesn't grant her absolute authority. During coverture, she cannot alienate it, and after his death, her right is absolute only over movable property. Gifts with explicit alienation rights grant her unrestricted disposal powers. The question arises about the control of the immovable property from the husband after his death. Unauthorized alienation by her would likely be valid only during her lifetime, with heirs having control akin to reversioners over a widow's estate.¹¹⁴

4.3.2.3. Gifts from the Strangers

A woman gets qualified ownership over any gift she obtains from a stranger. Citing Manu (IX.199), the Viramitrodaya and Mayukha argue that women generally require consent from their husbands to dispose of property, except for *saudayika stridhana*.¹¹⁵ "A woman should never expend money belonging to her family, which is common to (her and) many, nor even her own (separate property), without the consent of her lord."¹¹⁶ This consent requirement is typically applicable during coverture. The Viramitrodaya specifies that during the husband's lifetime, he has the authority to dispose of such property.

According to the Smriti Chandrika and Dayabhaga, gifts from strangers are not considered *stridhana* and remain under the husband's control. However, in maidenhood or widowhood, a woman's ownership over gifts from strangers would be absolute.¹¹⁷

4.3.2.4. Property Acquired by Personal Exertions or Purchase

Katyayana restricts a woman's ownership equally to properties acquired

¹¹³ *Gosain Chand Koberaj v. Mussammat Kishen Mune*, 6 Sel. Rep., 77. Referred to in Banerjee, supra note 35 at 333.

¹¹⁴ Banerjee (n 35) 333-334.

¹¹⁵ Vyavahara Mayukha, IV.10.7-8.

¹¹⁶ Manusmriti, IX.199.

¹¹⁷ Smriti Chandrika, IX.1.16; Dayabhaga, IV.1.20.

through mechanical skill or purchase.¹¹⁸ However, a widow has absolute authority over property earned through her personal efforts.¹¹⁹

These restrictions do not affect property acquired using assets over which a woman has full disposal rights. In the case of *Luchmun Chuder Geer Gosain v. Kallichurn Singh*, the Judicial Committee ruled that if a married woman buys immovable property with her stridhana, she can sell it.¹²⁰

Furthermore, when a widow gains ownership through adverse possession, she has unrestricted authority to dispose of such property.¹²¹

4.3.2.5. Property Acquired by Inheritance

The inheritance of property by women is subject to varying interpretations under Hindu law. According to the Bengal school, property inherited by a woman, whether from her husband, father, or any other male relative, does not automatically qualify as her stridhana. Instead, her rights over such property are qualified in nature. This principle is derived from interpretations text of *Katyayana* by *Jimutavahana*. It suggests that the restrictions on alienation applicable to widows also apply to daughters and other female heirs.¹²²

In the case of *Bhoobun Mohun Banerjee v. Muddun Mohun Singh*, this rule was affirmed, extending its application to inherited stridhana. Despite originating in a chapter primarily addressing male property succession in the *Dayabhaga*, Justice Romesh Chunder Mitter argued for its broader application.

*“If we adopt this limited construction, we must then conclude that, according to the Dayabhaga, there are no restrictions on the powers of alienation for women inheriting properties from deceased male owners, except in the case of widows. It is now too late to argue for such a interpretation of the law. Repeated decisions have settled this issue unequivocally. Therefore, it is clear that the paragraph in question applies broadly to women inheriting properties, encompassing the entire rule stated in paragraph 55.3 of Section I, Chapter XI of the Dayabhaga.”*¹²³

¹¹⁸ See *Dayabhaga*, IV.1.19.

¹¹⁹ *Venkata Rama Rau v. Venkata Suriya Rau*, I. L. R., 1 Mad., 285.

¹²⁰ 19 W. R. 292 referred to in *Banerjee* (n. 35) 335.

¹²¹ *Banerjee* (n. 35) 335.

¹²² *Dayabhaga*, XI.2.30-31.

¹²³ See, *Banerjee* (n 35) 337.

This interpretation clarifies that, under Dayabhaga, there are generally no restrictions on a woman's power to alienate inherited property. There are exceptions in specific cases like that of a widow.

When a woman inherits property from her husband, whether under the Mitakshara or Dayabhaga law, she doesn't have complete ownership over it.¹²⁴ Some rules limit how she can sell or give away this property. These rules are the same whether she's married or not.¹²⁵

4.3.2.6. *Share on Partition*

There are debates about what rights a woman has over the share she receives through partition. Some argue she should have absolute control over it, like a gift from her son. On the other hand, some see it more like property received from her husband, which limits her rights. The latter view seems more reasonable because a woman's share in the partition is not simply a gift from her sons. She can claim it independently, even if her sons disagree during the partition.¹²⁶

4.3.2.7. *Stridhana Promised by the Husband*

In Hindu law, a woman has the right to receive gifts from her husband. She can also legally demand the property promised by him. According to Katyayana, if a husband promises something to his wife, he must give it to her. This becomes mandatory only if she stays with his family instead of her own.¹²⁷ Devala further asserts that such promised property is akin to debts owed by the husband and must be fulfilled by his sons.¹²⁸ This includes grandsons and great-grandsons, as explained in the commentary of Viramitrodaya.

¹²⁴ *The Collector of Masulipatam v. Cavalry Venkata Narainapah*, 2 W. R. (P. C.), 61; *Mussamut Thakoor Dayhee v. Rai Balak Ram*, 10 W. R. (P. C.), 23; *Bhugwandeem Doobay v. Myna Baee*, 9 W. R. (P. C.), 23.

¹²⁵ The judgment of the High Court in the case of *Chotay Lall v. Chunnoo Lall* (22 W. R., 196) discussed the nature of property inheritance under the Mitakshara law. Subsequently, the Privy Council affirmed this judgment, ruling that the estate inherited by a daughter from her father under the Mitakshara is restricted and qualified, similar to that of a widow.

¹²⁶ Banerjee (n 35) 341-342.

¹²⁷ "What has been promised to a woman by her husband, as her exclusive property, must be delivered by her sons, provided she remains with the family of her husband, but not if she lives in the family of her father." See Colebrooke (n 33) 483; Smriti Chandrika, IX.2.211.

¹²⁸ See Devala: "Property promised by a husband to his wife must be paid by his sons just as his debts."

5. Contemporary Relevance and Challenges

5.1. Relevance of Dayabhaga Principles of Stridhana in Contemporary Hindu Law of Bangladesh

In the Bengal region, the Dayabhaga School of Hindu Law has significantly impacted Hindu women's property rights, especially regarding *stridhana*. The Hindu community in Bangladesh largely adhere to Dayabhaga principles. Understanding the current application of these principles is essential for them.¹²⁹ Even though legal systems and social norms have changed, the basic ideas of Dayabhaga still shape how *stridhana* is understood and protected under modern Hindu law in the country.

Historically, the Dayabhaga approach of *stridhana* stood out as more progressive, especially when compared to the Mitakshara school.¹³⁰ Dayabhaga allowed a wider range of property to be considered *stridhana*, including gifts a woman received on, before or after her marriage. She has full control over all these properties during her lifetime. It also permitted women to pass on their *stridhana* freely. This right is not consistently recognized under the Mitakshara system.¹³¹ These principles provided women with greater autonomy over their property, contrasting sharply with the more restrictive inheritance rights in other Hindu legal traditions.

In present-day Bangladesh, Dayabhaga principles continue to hold relevance, *albeit* within a complex legal framework shaped by statutory reforms and socio-cultural changes.¹³² Despite the absence of codified Hindu personal laws, courts in Bangladesh frequently rely on traditional Dayabhaga principles in *stridhana* cases. This reliance underscores the enduring influence of Dayabhaga in safeguarding women's property rights within a predominantly patriarchal society. However, the application of these principles faces challenges, such as the lack of a clear statutory definition of *stridhana* and the tension between customary practices and formal legal principles. This can lead to inconsistent court rulings, which can undermine the fairness and predictability of legal decisions.

Ongoing debates about gender equality and women's rights have sparked debates about reforming the application of Dayabhaga principles.¹³³ While

¹²⁹ Werner F Menski and Tahmina Rahman, 'Hindus and the Law in Bangladesh' (1988) 8(2) *South Asia Research* 111.

¹³⁰ Setlur (n 10) 202.

¹³¹ Jain (n. 72) 911.

¹³² Menski & Rahman (n. 129) 111.

¹³³ Nilay Das Nayan and Tanushri Das, 'Perspectives on the Property Rights of Hindu Women in Bangladesh: An Analysis' (2023) 2(1) *International Journal of Advanced Research & Higher*

Dayabhaga offered women more rights than the Mitakshara system, critics argue that it still doesn't fully align with the ideals of modern feminist thought.¹³⁴ Issues such as the unequal distribution of *stridhana* in joint family properties and the limited recognition of women's contributions to family property acquisition point to the need for a more refined legal approach. Legal scholars and activists in Bangladesh advocate for reinterpreting religious principles in light of contemporary understandings of gender justice, which could lead to more equitable outcomes for Hindu women.¹³⁵

5.2. The Ongoing Legal Challenges and Reforms Needed

Hindu women in Bangladesh face significant legal challenges to their property rights.¹³⁶ A key problem is the absence of any codified Hindu law in the country. Hindu personal law in Bangladesh is largely derived from ancient religious texts and customs.¹³⁷ Interpretations of these texts often vary by court and legal experts.¹³⁸ This inconsistency of interpretation leads to different understandings and applications of the rules of *stridhana*. As a result, many Hindu women risk losing control over their female property. The continued patriarchal interpretation of Hindu law has exacerbated the problem. The courts often favour male relatives over women in property disputes, reinforcing traditional gender bias.¹³⁹ Existing social practices make the situation worse, as many women are discouraged from claiming their property rights for fear of social stigma or family conflict.¹⁴⁰

Traditional *shastriya* inheritance law presents another significant challenge. In Bangladesh, women are often treated unequally in Hindu personal law on the question of inheritance. Although they are lawfully entitled to the rights of

Studies 42-43.

¹³⁴ Rochona Majumdar, 'Self-Sacrifice' versus 'Self-Interest': A Non-Historicist Reading of the History of Women's Rights in India' (2002) 22(1) *Comparative Studies of South Asia, Africa and the Middle East* 20; Soma Chaudhuri, 'The Fight for Property Rights: How Changes in Movement Actors and History Brought About the Changes in Frames in a Single Movement' (2010) 30(3) *Comparative Studies of South Asia, Africa and the Middle East* 633.

¹³⁵ Jinat Hossain and Ishtiaq Jamil, 'Negotiating Gender-Equal Inheritance Rights: The Rise of Islamic Politics and the Global Feminist Landscape in Bangladesh' (2023) 51(2) *Religion, State & Society* 174.

¹³⁶ Shahnaz Huda, 'Double Trouble: Hindu Women in Bangladesh—A Comparative Study' (1998) 9(1) *Dhaka University Studies Part F* 111.

¹³⁷ *ibid* 112-114.

¹³⁸ See Domenico Francavilla, 'Hindu Law: The Sources' in Silvio Ferrari and Rinaldo Cristofori (eds), *Routledge Handbook of Religious Laws* (Routledge 2019) 134.

¹³⁹ Srimati Basu, 'Cutting to Size: Property and Gendered Identity in the Indian Higher Courts' (2024) Special Issue 4 *Gender in the Making: Indian Contexts* 41.

¹⁴⁰ Taslima Monsoor, *From Patriarchy to Gender Equity: Family Law and Its Impact on Women in Bangladesh* (PhD thesis, University of London, School of Oriental and African Studies 1994) 6.

stridhana, they often face difficulties in inheriting property from their parents.¹⁴¹ Unlike the shastriya order, male heirs often claim a share of stridhana, and the existing judicial system does not consistently protect women's rights in this regard.¹⁴²

Additionally, there is a lack of awareness and legal aid available to Hindu women. Many are unaware of their rights or lack the resources to take legal action. This is particularly true for rural women.

A number of reforms are urgently needed to address these challenges. First, Hindu personal law should be codified in Bangladesh.¹⁴³ A clear legal framework that clearly defines and protects women's rights in stridhana will help remove the inconsistencies and ambiguities that currently exist.

Moreover, the judiciary must adopt a more gender-sensitive approach when interpreting Hindu law. Recently the apex court of Bangladesh has shown some progressive attitude. In the case of *Shishubar Dhali v. Chitta Ranjan Mondol and others* (Civil Appeal No. 55 of 2003), the Appellate Division of the Supreme Court of Bangladesh addressed the inheritance rights of Hindu women under the Dayabhaga school of law. The court affirmed that daughters inherit their mother's stridhan (women's property) absolutely, similar to sons, thereby reinforcing the property rights of Hindu women in Bangladesh.¹⁴⁴

Judges and legal practitioners should be trained to identify and address the biases that historically marginalized Hindu women have had in property disputes.¹⁴⁵

It is also important to raise awareness among Hindu women about their rights. Government and civil society organisations should collaborate to educate women about their rights and how to make their claims. Legal literacy campaigns can empower women to stand up for their rights and seek justice.¹⁴⁶

Expanding access to legal aid is another important reform. Many women cannot afford the necessary legal representation to pursue their claims to Stridhana. Providing free or affordable legal services will enable more women to navigate

¹⁴¹ Huda (n 136) 123-124.

¹⁴² Ferdousi Begum, 'Analyzing Hindu Women's Right to Property in Bangladesh: Absolute Interest versus Limited Interest' (2018) 6 *Kathmandu School of Law Review* 110-111.

¹⁴³ Alam (n 51) 43.

¹⁴⁴ 18 SCOB (2023) AD 20. Available in <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.supremecourt.gov.bd/resources/documents/694294_C.A.No.55of2003.pdf>, accessed on December 8, 2024.

¹⁴⁵ Huda (n 79) 69.

¹⁴⁶ *ibid* 87.

the legal recourse and effectively protect their rights.¹⁴⁷

Finally, inheritance law must be reformed to ensure gender equality. Women should have equal rights in inheriting property from their parents. Any legal barriers preventing them from claiming equal inheritance should be removed.¹⁴⁸

6. Conclusion

Studies of Stridhana in the Dayabhaga tradition, and within the wider historical and legal context, are complex and evolving narratives that have the potential to contribute considerably to our understanding of women's rights to property under Hindu law, specifically in Bangladesh.¹⁴⁹ This article tracks the evolution of Stridhana, from the Vedic period, through medieval times to contemporary interpretation, with special emphasis on unique contributions made by the Dayabhaga school to the legal status of women's property in Bengal.

Having gone through a sequence of changes with the passage of time, it was characteristic of related social, economic, and legal changes in society at large over different historical periods.¹⁵⁰ In the Vedic period, stridhana was referred to as the gifts accruing to a woman, which were practically under the control of males, primarily her close relatives. With the evolution of Hindu law into the Post-Vedic and Smriti periods, the concept began to crystallize more and more into something of a legal status, prescribing women's ownership over certain types of property and their control thereupon.¹⁵¹ This process of development continued over the course of the Middle Ages as well, when views on Stridhana were diverse among the various schools of Hindu law. The views forwarded by the Mitakshara and Dayabhaga schools were poles apart.

Over the course of the Middle Ages, for instance, Jimutavahana's Dayabhaga, which had grown to be the principal legal text in Bengal, would have considerable influence in determining. Where the earlier Mitakshara school had a very constricted view regarding women's property rights, the Dayabhaga school gave a liberally construed interpretation that allowed for more autonomy over their Stridhana by women.¹⁵² This becomes important in that it affected not only

¹⁴⁷ Janice H Lam, 'The Rise of the NGO in Bangladesh: Lessons on Improving Access to Justice for Women and Religious Minorities' (2006) 38 *Geo Wash Int'l L Rev* 101.

¹⁴⁸ Huda (n. 136) 111.

¹⁴⁹ Nusrat Hasina, 'Hindu Women's Rights in Bangladesh: A Need to Introduce a Time-Worthy Legal Order' (2023) 6(1) *International Journal of Management & Humanities* 1570.

¹⁵⁰ Sen A, '*Hindu Law through the Ages: Social and Economic Factors*' (1995) 29 *Comparative Legal Studies* 67.

¹⁵¹ Khan (n. 77).

¹⁵² Jain (n. 72).

the actual legal rights of women in the region of Bengal but has contributed to general discourse on gender and property rights under Hindu law.

Under Dayabhaga law, the definition of Stridhana became broader, including many gifts that come from strangers, property acquired through personal exertion, and even a share on partition.¹⁵³ It then broadened the definitions for women in the legal domain, giving them recognition to possess and have control over the property in their right without any male relative.¹⁵⁴ However, this was not absolute, since there were various restrictions based on the woman's marital status and the nature of the property in question.¹⁵⁵ For instance, depending on whether a woman was a maiden, wife, or widow, and depending on the type of property she could possess—gifts from her husband or property acquired through personal means—a woman's ability to alienate her Stridhana was often severely curtailed.

The analysis of these restrictions shows the nuanced and at times contradictory nature of women's property rights under the Dayabhaga school. It is one hand where Dayabhaga law empowers women through legal ownership and control over property, but it at the same time imposes substantial limitations contingent upon patriarchal norms and societal expectations.¹⁵⁶ Such restrictions only underline a fundamental tension within the Dayabhaga tradition: the recognition of women's autonomy and the continued preservation of male control over family wealth and inheritance.

These make the contemporary relevance of the principles of the Dayabhaga, with all such legal challenges and reforms, extremely noteworthy in Bangladesh. With the changing needs of society over time, however, there have been several attempts to modify these principles by modern legislation, such as the Hindu Succession Act. More important, the historical interpretations of Stridhana continue to this day to impact the legal status of women's property rights in the region.¹⁵⁷ In fact, the liberal approach of the Dayabhaga school toward Stridhana has formed one of the theoretical bases to further the argument that, nowadays, a lesser measure of gender equality is required in holding property; nevertheless, its intrinsic limitations also reiterate the constraints on women's complete legal emancipation.

Many contestations are raised against the interpretation and application of Dayabhaga principles in contemporary Bangladesh. While there have been

¹⁵³ Halder and Jaishankar (n 5) 663.

¹⁵⁴ Tomy (n 66) 24.

¹⁵⁵ See Halder & Jaishankar (n 5) 663.

¹⁵⁶ Pushkal Kumar Pandey, *Women's Right: In Reference to Marriage* (Walnut Publication 2020) 23.

¹⁵⁷ Avantika Rawat, 'Property Rights of Hindu Women: Critical Analysis' (2022) 4(1) Indian Journal of Law and Legal Research 1.

some legal developments, the property rights of women are still affected by the patriarchal nature of Hindu law. Other issues are unequal inheritance rights, the alienation of property by male relatives, and disempowerment of women where legal redress or remedies are concerned. Added to the situation are poverty and inaccessibility of legal provisions for Hindu women in Bangladesh.

Such current legal reforms and advocacy of women's property rights in Bangladesh need to engage with a proper critical historical legacy of Dayabhaga law. On the one hand, while the Dayabhaga tradition throws some light on the recognition of the property rights of women, it is essential for their limitations to be addressed and principles made contemporarily relevant. This implies that it is not just changes in the law that are needed, but also broader societal changes that provide a counterweight to patriarchal expectations continuing to permeate and limit women's capacity for legal and economic independence.¹⁵⁸

On this premise, it can be concluded that Hindu women's property rights in Bangladesh are complex as there has been no historical or legal analysis of Stridhana in the Dayabhaga tradition. The contributions of the Dayabhaga school to this discourse, both progressive and limiting, actually drew on broader tensions in the way Hindu law was negotiating questions of gender equality with patriarchal control. Thus, the necessity of having a finer legal reform approach would be realized while Bangladesh has been undergoing such turmoil. Only in this way will the historical legacy of Dayabhaga transform itself into the cornerstone of genuine gender equality in property rights for Hindu women in Bangladesh.

¹⁵⁸ Chowdhury N, '*Beyond Legal Reforms: Addressing Patriarchal Norms in Women's Property Rights*' (2021) 66 *Journal of Gender Law and Policy* 56.