
Hindu Marriage Act 1955 and other Contemporary Laws of India: Gender Friendly Reforms and Comparing the Situation to Bangladesh

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Abstract

The laws enacted during the colonial period are still applicable to the Hindus of Bangladesh and were never revised in the post-independence period while at the same time our neighboring country India have radically changed the Hindu law and completely reformed the law in a gender friendly process, particularly in the case of Hindu marriage such reformation is strongly evident, which can be observed in The Hindu Marriage Act of 1955. In this article, the laws and principles applicable to Hindu marriage in India and related concepts such as divorce, polygamy, maintenance, marriage registration etc. will be discussed in comparison with the situation of Bangladesh. The areas of gender inequalities of Bangladeshi Hindu Law will be identified here which is being perpetuated by the ancient rules as existed in our country. In consistence with the reformed Hindu Laws of India several recommendations are made in this article for incorporating it in possible Hindu Family Law of Bangladesh.

Keywords: Hindu Marriage, Women, Divorce, Gender Discrimination, Reformation.

1. Introduction

The present article deals with the reformation of Indian Hindu law which was brought during 1955-1956 period. Such reformation is much more gender friendly and Indian Hindu women now gets equal rights with their male counterpart in marriage and other related concepts, e.g. divorce, maintenance, adoption, property rights etc. Though this article attempts to explore the provision of modern Hindu Law applicable for Indian Hindu women regarding marriage and related concepts, the main focus of the article is on the discriminatory status of Bangladeshi Hindu women who are still guided by the ancient shastric rules. The purpose of the study is to present a comparative view of the situation of Hindu women of India and Bangladesh on the basis of the legislative reforms made in India after partition of 1947. It appears from historical study that progressive changes are essential features of

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the development of Hindu law. While there were regressive turns and obstructions caused by various facts of history, it is not difficult to identify these changes which indicate a general movement forward. Hindu law as it presents itself today in Bangladesh or in India or in any other country is the result of such changes.² Now if we think about such changes in Hindu Law we can observe through the present study, Bangladesh is lagging behind than India. The law applicable for Hindu community in Bangladesh is much more gender discriminatory as the Hindu women are not entitled to get equal rights with Hindu men in comparison with our neighboring country India regarding marriage and related concepts.

It has been imagined that the Hindu laws in Bangladesh, where most of the people are Muslims, are not reformed because of the politicization of religion while radical changes have been brought in India in response to the changing trends of society, where the majority of the population is Hindus.³ In Bangladesh after 1947 there was no particular law for Hindu people till the year of 2012, when the Hindu Marriage Registration Act, 2012 was enacted. The Act of 2012 only deals with the issue of registration and rest of the matter such as marriage, conditions of valid marriage, divorce, maintenance, etc. are still unreformed while India with the passing of Hindu Marriage Act, 1955 brought a significant reformation in such matters. This article will demonstrate such reformations and it is suggested through this article that Bangladesh should bring such reformation in the existing Hindu Law as this country is significantly lagging behind in bringing the justice system in line with the demands of time in this area of law.

2. Development of Hindu Family Law

a. The Sources of Hindu Law

Śrutis as the divine revelations are the original sources of Hindu law. All others are derivatives from *śrutis*. In this sense *śrutis* are formal sources of Hindu law, from where law derives validity. All other sources are material sources of law. Literally *śrutis* mean that what were heard from above or the words of God.⁴

Smritis are primary material source of law. Literally *smṛiti* means that which was remembered. In fact, *smritis* are also divine utterances and instructions which have been heard and remembered long afterwards and handed down by the *rishis* from generation to generation and compiled in book forms by many

² Dr. M. Shah Alam, 'Review of Hindu Personal Law in Bangladesh: Search for Reforms' (2004) 8(1&2) Bangladesh Journal of Law 15.

³ Sharmin Akter and Abu Syead Muhammed Abdullah, 'A Comparative Study on Hindu Law between Bangladesh and India' (2007) 29(4) Asian Affairs 61.

⁴ R.K. Agarwala, *Hindu Law* (Central Law Agency 2012) 14.

eminent sages over several hundred years which came to be known as *smritishastra* or *dharmashastra*.⁵

Commentaries on *smritis* are the next important source of Hindu law. *Smritis* are now practically replaced by commentaries. Authors of the commentaries modified and supplemented the rules of *smritis*, in part by means of their own reasoning and in part in the light of usages and customs that were in vogue in a particular time at a particular place. In fact, they frequently created new rules of conduct to meet the changing ideas of the people,⁶ and the commentaries following the progressive traits of the later *smritis* (Narod, Brihashpati) made rational use of the doctrine of long usages and the principle of equity to meet the practical needs of the people.⁷

Customs have a special place in the system of sources of Hindu law. It is not only one of the most important sources as under Hindu law clear proof of usage will outweigh the written text of law.⁸

These sources remain mainly uncoded. Besides the uncoded sources, there are coded sources which include legislative enactments and precedents.

b. Hindu Law in British Colonial Period

The Colonial Government of India had the legislative authority to change the personal laws of the Indians and they used this power in several cases. Several enactments had come into force with the advent of British rule in India. These legislative enactments which declare, abrogate or modify the ancient rules of Hindu Law, thus form an additional modern source of Hindu Law.⁹ Combined effect of the legislations accomplished during two centuries of British rule, therefore, was rather meager to have any major impact on the traditional Hindu law. Yet many progressive changes especially those relating to women's rights brought about during this period cannot be denied to have taken place, Hindu Law achieved a higher level of reforms by the time the British quitted India.¹⁰

⁵ *ibid* 15.

⁶ Sri Dinesh Chandra Devnath, *Hindu Ain* (Srimati Benu Devnath 1982) 3.

⁷ Mridul Kanti Rakshit, *The Principles of Hindu Law* (5th edn, Kamrul Book House 2005) 25, 56-57.

⁸ *Collector of Madura v Mootoo Ramlinga*, (1868) 12 MIA 397.

⁹ Zakir Hossain Khan, *Hindu Law of Bangladesh* (1st edn, Law Book Company 2010) 16.

¹⁰ Alam (n 2) 31.

It is to be noted that all legislations relevant to Hindu women were enacted in the British colonial period,¹¹ namely:

- ❖ The Hindu Widow's Remarriage Act, 1856;
- ❖ The Hindu Women's Right to Property Act, 1937;
- ❖ The Hindu Women's Right to Separate Residence and Maintenance Act, 1946.

At the end of colonial rule, after partition in 1947 the development of Hindu law experienced dual fate. The meaning of this expression has been described under the following two sub headings:

c. Hindu Law of Bangladesh after Partition in 1947

Codification of Hindu Law, which is applicable to Bangladeshi Hindus, was done during the British period. The name of such laws has been mentioned in 'Hindu Law in British Colonial Period'. The mentioned laws remained in force after partition in 1947 and no legislative changes had been made in the then Pakistan and the same trend still continuous after the independence of Bangladesh. The Hindu law of Bangladesh thus, generally remains at the position the British left it in 1947.¹² Without those enactments in all other cases the ancient shastric law, which is based on scriptures and philosophies and which arises out of the ancient and primary sources of Hindu law, applies in Bangladesh.

d. Hindu Law of India after Partition in 1947

India, albeit being a Hindu majority country, true to their commitment to secularism and equality, continued with their social reforms through legal enactments even after the British left.¹³ As it has been expected, removal of the shackles of colonialism paved the way for true reforms of Hindu law in India, and reforms were effected. Indian reforms depicted not only modern norms of human rights, but also the nature of changes inherent in Hindu law itself, by blending the progressive elements of various of its schools. The enactments through which the Hindu Law of India has been entirely reformed are as follows:

- ❖ The Hindu Marriage Act, 1955;
- ❖ The Hindu Adoptions and Maintenance Act, 1956;

¹¹ Shah Ali Farhad, 'Reform of Laws on Hindu Marriage and Related Areas in Bangladesh: A 'Legal' Take on a very 'Social' Issue' 2.

¹² Werner F. Menski and Tahmina Rahman, 'Hindus and the Law in Bangladesh' (1988) 8(2) South Asia Research 111-131.

¹³ *ibid* (n 11) 2.

- ❖ The Hindu Succession Act, 1956;
- ❖ The Hindu Minority and Guardianship Act, 1956; and
- ❖ The Special Marriage Act, 1954.

3. Hindu Marriage Act, 1955 and other Contemporary Laws

The years of 1955 and 1956 saw placing before the Indian Parliament four separate bills on Hindu law which were duly passed ushering in radical changes of the law relating to marriage, inheritance, maintenance, adoption and guardianship. The Hindu Marriage Act by an Act of the Parliament of India enacted in 1955. The main purpose of the Act was to amend and codify the law relating to marriage among Hindus and others. Besides amending and codifying Shastric Law, it introduced separation and divorce, which did not exist in Shastric Law. This enactment brought uniformity of law for all sections of Hindus.¹⁴ The other three important Acts are: Hindu Succession Act, 1956; Hindu Adoptions and Maintenance Act, 1956; and Hindu Minority and Guardianship Act, 1956. All these enactments are applicable in India and not in Bangladesh. The changes brought in India through those enactments were the reflections of the modern notions and norms of human rights, one of the fundamental elements of which is equality between man and woman.¹⁵

Now some key factors such as, marriage, conditions of valid marriage, divorce, registration of marriage, adoption, maintenance, property rights of Hindu women etc. as are applied in Bangladesh are compared here with the situation of India on the basis of its gender friendly reformation:

3.1 Hindu Marriage

There are two main schools of Hindu law: a) Mitakshara and b) Daya-bagha. The Hindu laws on marriage as applied in Bangladesh are principally based on the Daya-bagha school. Marriage is a very important concept in Hinduism. Unlike Muslim law, where marriage is considered to be a contract, marriage in Hindu law is a sacrament.¹⁶ In accordance with the ancient and Bangladeshi Hindu law, Hindu marriage is the last of the ten sacraments for men and perhaps the only sacrament for females.¹⁷ It's a matter of gender discrimination between Hindu men and women. According to the Shastric Law Hindu marriage cannot be regarded as contract because there is no dissolution of marriage. As Hindu marriage is not regarded as contract in

¹⁴ <https://en.m.wikipedia.org/wiki/The_Hindu_Marriage_Act,_1955> accessed 30 January 2019.

¹⁵ Alam (n 2) 31.

¹⁶ *Tikait Munmohinti v Basant Kumar*, ILR 28 Cal. 758.

¹⁷ Aktar and Abdullah (n 3) 64.

Bangladesh, there is no necessity that the parties must have attained the age of majority. So, ultimately there is no bar to the marriage of minors.

On the other hand, in India after the passing of the ‘Hindu Marriage Act, 1955’, Hindu marriage is now like a civil contract. Because it is now a condition of valid marriage, that the bridegroom must have completed the age of 21 years and the bride 18 years.¹⁸ Besides that, Hindu marriage is now a civil contract in the sense that after the passing of the Act either the husband or the wife has the opportunity to get the marriage dissolved. So, radical changes have been brought in India as regards Hindu marriage.

3.2 Conditions for the validity of Hindu Marriage

In India, the ‘Hindu Marriage Act, 1955’ provides certain conditions of a Hindu marriage. According to the Act, a marriage to be valid has to fulfil the following conditions:

i) Age of Marriage

The bridegroom should have attained the age of 21 years and the bride 18 years at the time of marriage. [Section 5(iii)];

While in Bangladesh, there is no minimum age of marriage according to the Shastric Hindu law. So child marriage is allowed under Hindu Religious Law. Though, according to the Child Marriage Restraint Act, 2017, a marriage between a male under 21 years age and a female under 18 years age is a punishable offence but the marriage itself is not invalid.

ii) Capacity and Consent

At the time of marriage, the parties should be capable of giving a valid consent to the marriage. A person who is of a sound mind shall be considered to be a person capable to give a valid consent. Neither party, though capable of giving a valid consent should be suffering from mental disorder of such kind or to such an extent as to be unfit for marriage and procreation of children. Neither party should be suffering from recurrent attacks of insanity or epilepsy.¹⁹

In Bangladesh, according to ancient Hindu traditions, the purpose of marriage is considered to be the acquiring of a male heir who has the capacity to confer spiritual benefit upon the deceased at the funeral ceremony,²⁰ which is a matter of gender discrimination. This objective of marriage coupled with the fact that a Hindu marriage is a sacrament and not a contract, makes it apparent

¹⁸ The Hindu Marriage Act 1955 (India), s 5(iii).

¹⁹ *ibid*, s. 5(ii).

²⁰ John Dawson Mayne, *Treatise on Hindu Law and Usage* (7th edn, Higginbotham 1906).

that although there is an element of physical capacity involved, infancy or mental incapacity is however, irrelevant.²¹

As regards consent, though we find a difference between Bangladeshi and Indian law as regards the necessity of consent to marriage, both jurisdictions are however, agreed in one respect. That is, if the consent is obtained by fraud or force, then the marriage is invalid.²²

Without these two major conditions there are other three conditions mentioned in section 5 of the Act of 1955 such as- neither party can marry again having a living spouse;²³ marriage can't be solemnized among prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;²⁴ the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two.²⁵ These conditions must be fulfilled for a valid marriage in India.

3.3 Inter Caste Marriage

The ancient Hindu rules, as applied in Bangladesh, provide a barrier in marriage between members of different castes. Hindus are barred from marrying outside their caste and hence, inter-caste marriages are invalid in the eyes of law. Thus it has been held that a marriage between a *Brahmin* bridegroom and a *Kayastha* bride is invalid.²⁶ However, The Hindu Marriage Registration Act, 2012 indirectly abolish the bar on inter caste marriage as section 6 of the Act mentions that a Hindu marriage is completed if it is done according to Hindu religion, principles and rituals there is no requirement of same caste.

On the other hand, in India there is no bar on the inter caste marriage. As Section 5 of the Hindu Marriage Act, 1955 states that a marriage may be solemnized between two Hindus and Section 29(2) of the said Act declares that marriage solemnized before the commencement of the said Act, shan't be deemed to be invalid by reason only of the fact that the parties thereto belonged to different castes or divisions of the same caste.

It is difficult to imagine that even in the 21st century concepts such as caste division have managed to survive in Bangladesh.²⁷ According to the survey carried out by South Asian Institute of Advanced Legal and Human Rights

²¹ Farhad (n 11) 4.

²² *ibid.*

²³ The Hindu Marriage Act 1955, s 5(i).

²⁴ *ibid.*, s 5(iv).

²⁵ *ibid.*, s 5(v).

²⁶ Aktar and Abdullah (n 3) 72.

²⁷ Farhad (n 11) 6.

Studies (SAILS), among a total number of 175 people, 104 voted for abolition of the rule prohibiting inter caste marriages, 65 voted for retaining the rule and 6 people gave no responses.²⁸ Thus, in line with the general public opinion, it has been suggested that the law should remove the bar on inter-caste Hindu marriages.

3.4 Polygamy

In Bangladesh, Hindu men too, do not have the option to divorce. However, this relative disadvantage is far outweighed by the one sided prerogative bestowed only to the men folk under Hindu laws. Men are permitted to engage in polygamy. Simultaneously, they can take as many wives as their heart desires. There is no condition precedent, neither is there any cap on the highest number of wives they can take. There is however, no corresponding right to polyandry. Women are not given the chance to take more than one husband.²⁹ So we can again observe the matter of gender discrimination in the ancient Hindu Law which is applicable in Bangladesh.

Polygamy amongst the Muslims is also permitted and polyandry is prohibited and punishable by criminal law. However by virtue of the Muslim Family Laws Ordinance 1961, restrictions have been introduced to the right of polygamy amongst the Muslims and a man wanting to marry again during the subsistence of a marriage must take permission from the appropriate authorities.³⁰ Unlike the 1961 Act restricting the Muslim mans' right of polygamy to a certain extent, a Hindu man in Bangladesh wishing to marry during the subsistence of his marriages, faces no restrictions whatsoever. Thus in case of Bangladeshi Hindu law the situation becomes especially hard for Hindu women since divorce is not allowed.

In India after the passing of the 'Hindu Marriage Act, 1955', it is now a condition of marriage that the bridegroom must not have another wife living at the time of marriage. So by virtue of this Act monogamy has been established and bigamy is punishable both for the male and female. Section 5(1) of the Indian Hindu Marriage Act thus prohibits not only polyandry but also polygamy. Section 11 of the Act makes a bigamous marriage null and void and section 17 makes it a penal offence for both Hindu males and females under sections 494 and 495 of the Indian Penal Code.³¹

²⁸ Dr. Shahnaz Huda, 'Combatting Gender Injustice: Hindu Laws in Bangladesh' (2011) South Asian Institute of Advanced Legal and Human Rights Studies (SAILS).

²⁹ Farhad (n 11) 5.

³⁰ Section 6 (1) of the Muslim Family Laws Ordinance, 1961 states: No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract, another marriage, nor shall any such marriage be registered under the Muslim Marriage and Divorces Registration Act 1974 (LII of 1974).

³¹ Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency 1993) 106-108.

The fact that polygamy is no longer a desirable in Bangladesh as well as popular entitlement is made abundantly clear by the field survey carried by SAILS, where among 56 questioned, 41 were against polygamy, 6 supported its continuation and 3 had no responses.³²

3.5 Hindu Marriage Registration

Before the year of 2012, in Bangladesh Hindu marriages were solemnized merely through some religious rituals. There was no marriage registration system for Hindu people in Bangladesh. Now according to the Hindu Marriage Registration Act, 2012, a Hindu marriage can be registered on an optional basis,³³ as the marriage registration is not compulsory if a marriage is not registered then a Hindu woman will be more affected rather than a man. So the registration of a Hindu Marriage should be compulsory.

There was an overwhelming public support favouring a compulsory registration mechanism. The survey carried out by SAILS³⁴ shows that of a total of 175 questioned, 118 were supporting a compulsory move towards registration, whereas 29 were against and 28 gave no responses.

Regarding Marriage Registration, Indian Hindu Marriage Act, 1955 also provides the same provision. As per section 8 of the Act registration of marriage is optional in India but the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the marriage registration shall be compulsory in the State or in any part thereof.³⁵

3.6 Divorce

For the Hindus the marital bond is eternal and unbreakable. The sacramental marriages amongst Hindus have three characteristics:³⁶

- ❖ It is a permanent and indissoluble union;
- ❖ It is an eternal union;
- ❖ It is a holy union.

Shastric Hindu law does not allow dissolution of the marital tie, however painful cohabitation may be.³⁷ However in some communities the custom of divorce obtained and the courts enforced such custom provided they fulfilled

³² Huda (n 28).

³³ The Hindu Marriage Registration Act 2012 (BD), s 3(1).

³⁴ Huda (n 28).

³⁵ The Hindu Marriage Act 1955 s 8(2).

³⁶ Dr. Shahnaz Huda, ““Double Trouble”, Hindu Women in Bangladesh - A Comparative Study.....’ (1998) IX(1) Part-F The Dhaka University Studies 119.

³⁷ *ibid.*

the requisites of a valid custom.³⁸ Since Bangladesh predominantly follows Shastric Hindu law, divorce is practically not permitted here and in reality many Hindu women in Bangladesh lead lives of abject misery in case of abandonment by the husband who can marry as many times as he wishes.³⁹

But in India, under section 13 of the Hindu Marriage Act of 1955, either husband or wife may seek divorce on grounds of cruelty, adultery, desertion, insanity or incurable disease and so forth. This Act also grants the wife additional grounds for dissolution of marriage.⁴⁰ Section 12 of the Act provides that marriages may be voidable and may be annulled by a decree of nullity on grounds of impotency of the respondent. Like the traditional concept of option of puberty for the Muslims recognized by section 2(vii) of the 'Dissolution of Muslim Marriage Act, 1939', the Indian Act of 1955 by Section 13(2) (iv) provides that Hindu wife may petition for dissolution of her marriage on the ground:⁴¹

'that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.'

Thus, it is quite clear that compared to India, the law regarding divorce for a Hindu woman in Bangladesh is rife with unfairness and is badly in need of modernization. There is widespread support for introducing the provision of divorce in Hindu marriages. A survey carried out by the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) shows that of a total of 175 Hindu people interviewed, 125 supported the right to divorce, 45 were against it and 5 had no responses.⁴²

3.7 Essential Ceremonies of Hindu Marriage

Another essential of a Hindu marriage in Bangladesh is that the prescribed ceremonies have to be performed. There are a number of such rituals and ceremonies both preceding and following the actual wedding. However, according to the Supreme Court in *Amulya Chandra Modak v The State*,⁴³ only two requirements are mandatory, which are as follows:

- ❖ *Viva homa*, that is, invocation before the sacred fire; and
- ❖ *Saptapadi*, that is, the taking of the seven steps before the sacred fire by the bride and the bridegroom.

³⁸ *Sankaralingam v Subban*, 1894 ILR 17 Mad 479.

³⁹ Akter and Abdullah (n 3) 76-77.

⁴⁰ The Hindu Marriage Act 1955, s 13(2).

⁴¹ Huda, 'Double Trouble' (n 36) 120.

⁴² Huda, 'Combating Gender Injustice' (n 28).

⁴³ 35 DLR (1986) 160; see also *Utpal Kanti Das v Monju Rani Das*, 50 DLR (AD) 1998 47.

Thus this case has very specifically established that *viva homa* and *saptapadi* must be performed for the validity of a Hindu marriage. Otherwise the marriage is void.

On the other hand, in India the ‘Hindu Marriage Act, 1955’ prescribes no particular form of ceremonies for the validity of marriage. A Hindu marriage may be solemnized according to customary rites & ceremonies of either party thereto.⁴⁴

3.8 Maintenance

Under traditional Hindu Law which is applicable in Bangladesh, the husband has the duty to maintain his wife and minor children. A father is bound to maintain his daughter until marriage. The responsibility to maintain his wife is a personal obligation arising out of the fact that she is his wife and independent of the possession of any property by him. After the Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, a woman may be entitled to maintenance even if she is living separately, based on several grounds.

Under the Hindu Marriage Act of 1955, applicable to India, both parties to the marriage can make an application for maintenance *pendente lite* as well as for permanent maintenance and alimony.⁴⁵ Under the Hindu Adoptions and Maintenance Act of 1956, ‘maintenance’ is defined as including, ‘...provisions for food, clothing, residence, education and medical attendance and treatment...’⁴⁶

The Act makes provisions for civil proceedings to obtain maintenance while under Section 125 of the Indian Criminal Procedure Code, 1973 maintenance is made recoverable by summary proceedings. The above mentioned section also clarifies that ‘wife includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried’. Thus, under the Act a destitute divorced wife may be entitled to maintenance until remarriage.

3.9 Property Rights of Hindu Women

In Bangladesh the kinds of property that a Hindu woman may possess continues to be divided into a) *Stridhan* and b) Property inherited by her and to which she has limited rights. *Stridhan* property is property over which a woman generally has absolute control. So, *Stridhan* means property which a woman has power to give, sell or use independently and which passes on her death to her heirs.⁴⁷

⁴⁴ The Hindu Marriage Act 1955, s 7.

⁴⁵ *ibid*, ss. 24-25.

⁴⁶ S. 3(b)(i).

⁴⁷ Huda, ‘Double Trouble’ (n 36) 120.

When a Hindu man inherits property, whether from a man or a woman, he takes absolutely and becomes the fresh stock of descent i.e. after his death the property passes to his heirs. When however, a female inherits property whether from a male or a female she only takes a limited estate and upon her death the property reverts back to the reversioner, i.e. the next heir of the person she had inherited the property from. The estate inherited by a widow from her dead husband is called widow's estate. Although the woman is entitled to enjoy the estate inherited by her she cannot dispose of such property by gift, sale and so forth.⁴⁸

A daughter's right to her father's property depends, astonishingly enough, upon whether she has or can have a son. Little wonder therefore the importance placed upon a male offspring. The daughter is fifth in line to her father's property. In the absence of a son, son's son, son's sons son, widows the daughter inherits. Preference is given to the maiden daughter who may possibly have a son in the future, then to a daughter who has a son. Barren daughters, widowed daughters who have no children or who have daughters are excluded.⁴⁹

While in India however, after independence, the State, through direct and positive intervention brought about fundamental and radical changes in the law of succession in breaking violently with the past.⁵⁰ In 1956, the Hindu Succession Act was enacted.

Of the broadest changes made by the Hindu Succession Act, 1956 is the abolition of the limited estate of the female Hindu. A Hindu female had now the right to deal freely with and dispose of in any manner any kinds of property acquired by her. Section 15(1) of the Act states that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

By the 1956 Indian Act the property of a male Hindu devolves in equal shares between his son, daughter, widow and mother. Male and female heirs are now treated as equal without any distinction.⁵¹

3.10 Adoption

Adoption is recognized under Hindu law. The aim of adoption under Hindu law is two-fold. The first is religious i.e. to secure spiritual benefit to the

⁴⁸ *ibid.*

⁴⁹ Huda, 'Double Trouble' (n 36) 124.

⁵⁰ Prem Chowdhry, 'Conjuality, Law and State: Inheritance Rights as Pivot of Control in Northern India' (1993) Special Issue on Feminism and Law INLSJ 106.

⁵¹ Hindu Family Law: An action Study on proposed reforms of Hindu family law; BNWLA, NY 13.

ancestors and to the adopter by having a son for the purpose of offering funeral cakes and libations of water to the manes of the adopter and his ancestors. The second is secular i.e. to secure an heir and perpetuate the adopter's name. In Bangladesh the Shastric uncoded law relating to adoption continues to exist.⁵² Under this law only a male can be adopted. He must belong to the same caste as his adoptive parents and his mother must not be within the prohibited degrees to his adoptive father, i.e., he must not be a boy whose mother his adoptive father could not have married. Under Shastric law only a man can adopt unilaterally. A wife or a widow, in most places, may adopt only with the husband's express consent.

The Hindu Adoptions and Maintenance Act of 1956 has changed, amended and codified the law relating to adoption in India. All adoption in India after 1956 are secular, and to be valid must conform to the requirements of the Act.⁵³ In the case of adoption changes have been made in India which gives a woman rights almost equal to that of a man. A married Hindu male cannot adopt without the consent of his wife [Section 5(1)]. A Hindu woman, unmarried, widow or divorcee can adopt but a married woman cannot adopt even with her husband's permission. The husband must adopt with her permission (Section 8).

4. Why Bangladeshi Hindu Law should be Reformed?

Women enjoy a discriminatory status under all major religions in Bangladesh including Islam, Hindu, Buddhism and Christianity. The condition of Hindu women is worse than the women belonging to other communities in Bangladesh.⁵⁴ All legislations relevant to Hindu women were enacted in the British colonial period and no further laws have been enacted in Bangladesh after the British left, both as part of Pakistan as well as an independent nation. It is as if the issue of social reforms for Hindu women has been forgotten by successive regimes and governments since 1947. But our neighboring country India continued their social reforms for the Hindu women through legal enactments even after the British left.

Though Bangladesh has already been quite successful in formulating legal measures to combat social ills against women, for example, in areas like domestic violence, violence against women and children generally, acid crimes, dowry etc. But unfortunately, the same cannot be said of family laws.⁵⁵ This is one area of law where Bangladesh is still now, significantly lagging behind than other countries particularly India, in bringing the justice

⁵² Huda, 'Double Trouble' (n 36) 122.

⁵³ *ibid* 123.

⁵⁴ Report on Legislative Initiatives and Reforms in the Family Laws, Dhaka, Bangladesh Legal Aid and Services Trust (BLAST) 4.

⁵⁵ Farhad (n 11) 1.

system in line with the demands of time. Although fresh reforms have been effected in personal laws to eliminate gender discrimination in other Countries, the law makers in Bangladesh is yet to demonstrate its success towards any workable initiative to bring about a significant change in its legal system which would establish a society on the basis of gender equality and justice.

When it comes to legislative reforms in Bangladesh, the position of Hindu women has received little attention when compared to the position of Muslim women. Such neglect on part of law has also greatly affected the socio-economic lives of Hindu women. Such a position fails to take into account that Hindus are the largest minority in Bangladesh. They constitute roughly around 9.2 per cent of the population.⁵⁶ After observing the historical development of Hindu law including radical reforms in modern India it is, we believe, expedient to make a critical review of the existing Hindu family law in Bangladesh exploring the possibilities of any reform to move the law from where it had anchored in 1947.⁵⁷ So, it's a demand of time in this 21st century that the discussed areas of ancient, gender discriminatory Hindu Law applicable in Bangladesh have to be reformed immediately.

5. Conclusion

After analysing the provisions of The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; and The Hindu Adoption and Maintenance Act, 1956 we can imagine that radical changes as regards Hindu laws have been made in India which is more gender friendly and enhance social dignity, security and liberty of a Hindu woman. But in Bangladesh the ancient pre 1947 laws have remained in force and the marriage related matters are regulated by the Orthodox Hindu Law by which the Bangladeshi Hindu women are discriminated to a greater extent.

Although initiative has been taken by some stakeholders, to reform Hindu family laws but it didn't work out successfully. The government recently enacted the Hindu Marriage Registration Act, 2012. This provides for registration of Hindu marriages on an optional basis. Many felt that the registration process should be made mandatory and hence this law has been subject to sustained and cogent criticisms from women's and human rights organizations.⁵⁸

⁵⁶ Bangladesh Bureau of Statistics, 'Bangladesh Population Census 2001' (2004) cited in Bangladesh Bureau of Educational Information and Statistics, *Bangladesh: Country Profile*, <http://www.banbeis.gov.bd/bd_pro.htm> accessed 5 February 2019.

⁵⁷ Alam (n 2) 43.

⁵⁸ 'Law making Hindu marriage registration optional condemned' *The Daily Star* (Dhaka, 21 September 2012) <<https://www.thedailystar.net/news-detail-250684>> accessed 5 February 2019.

The government of Bangladesh ratified CEDAW on 6 November 1984 with four reservations. In 1997, it had partially lifted reservations from Article 13(a) and 16(f) of the CEDAW. Though the Convention provides a comprehensive range of mechanisms and policy measures for combating gender discrimination, the Government of Bangladesh has not ratified CEDAW in full and has retained reservations to Article 2 and Article 16(c) on the grounds that they are in direct contradiction with the *Shariah* and other personal laws.⁵⁹ Bangladesh has not lifted its reservation from Article 16(1)(c) which stipulates for women's equal rights with men in marriage and its dissolution. The problem is exacerbated by the fact that the Constitution also mandates for equal rights for men and women in public life⁶⁰ but remains silent about private life. Consequently, the Hindu women continue to be subjected to discrimination under religious personal laws while claiming their right to marriage, divorce, inheritance and some related matters. I think the reservations on Article 2 and 16(1)(c) of CEDAW together with Articles 19(3) and 28(2) of our Constitution are the main obstacles to reform the family laws of Bangladesh. Thus, the ancient Hindu Law which is much more gender discriminatory is still applicable and has not been reformed like India. But initiative has to be taken as early as possible to remove all kinds of discrimination between Hindu man and woman in their private life. Hindu Marriage, Adoption, Maintenance and Succession related codified Act should be enacted immediately, which will ensure gender equality and justice for the Hindu women in Bangladesh in their private life.

Salient features of a possible Hindu family law bill of reforms may be recommended to consist of the following:

- ❖ Introduction of monogamy and the prohibition of bigamy or polygamy;
- ❖ Dissolution of marriage union by way of divorce or otherwise on the initiative of either parties to the union and its enforcement by the decree of the court on the fulfilment of certain conditions prescribed by law;
- ❖ Remarriage after dissolution of marriage;
- ❖ Registration of marriage should be made compulsory;
- ❖ Absolute ownership of the property of the women as against limited ownership as presently existing;
- ❖ Principles regarding maintenance should be clarified and the issue of post-divorce maintenance provided for;
- ❖ Right of the women, married or unmarried, to adopt a boy or a girl;
- ❖ Right of a female child to be adopted by an adoptive father or mother;

⁵⁹ Report on Legislative Initiatives and Reforms in the Family Laws 10.

⁶⁰ The Constitution of the People's Republic of Bangladesh 1972 (BD), Articles 19(3) and 28(2).

- ❖ Women should have preferential rights regarding guardianship of children; and
- ❖ There should be strict legal requirements for a valid marriage, regarding, age, consent, capacity and form.

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