

Discrimination of Hindu Women in Bangladesh within the Legal  
Framework

United Nations General Assembly

Human Rights Council

Forum on Minority Issues

Forth Session Geneva, 29-30 November 2011

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This article presents a brief discussion on particular personal law relating to Hindu women in Bangladesh. Comparative reference is made to the law applicable to Indian Hindu women. The article shows that 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 comparing the reforms made in India. It also tells that in Bangladesh matters such as, divorce, marriage, maintenance, custody, adoption and so forth are governed by Muslim law for Muslims and by Hindu law for Hindus. The same rule applies in the case of other religions because there is no uniform family or personal law. Because of the lack of "uniform family code" there is a chance of discrimination between Muslims and Hindus in Bangladesh and in reality we observe this discrimination affects Hindu women in their socio-economic life.

In fact, Hindu Women in Bangladesh suffer due to the presence of ancient shastric law and the absence of "uniform family code". Practically there is a long time demand for the introduction of a "uniform family code" which may be applicable to all communities of Bangladesh irrespective of religion. The reasons behind the non-introduction of such a Code may be the probable negative impact on Muslim religious sentiment, the possibility of loosing the vote bank and strong opposition from the religion based political parties and have restrained any Govt. to pursue the adoption of such a law. In this regard it has to be mentioned that the situation of Muslim women in Bangladesh is widely discussed while at the same time the circumstances of Hindu women in Bangladesh are not subjected to the same amount of scrutiny. This article tries to critique the Hindu law as it is applied in Bangladesh while at the same time comparing the reforms effected in India.

Ancient Hindu law does not allow dissolution of marriage however painful cohabitation may be. However, in some communities divorce is allowed by custom and the courts enforced such custom provided they fulfilled the requisites of a valid custom (Sankaralingam Vs Subban 1894ILR17Mad.479). So practically divorce is unknown to Hindu law. Change of religion or loss of caste or the adultery of either party or the fact of wife deserting her husband and becoming a prostitute does not operate as dissolution of marriage.

**Polygamy:** In Bangladesh a Hindu male may marry any number of wives though he has a wife or wives living. But only one husband at a time is allowed under the Bangladeshi Hindu law for Hindu women. So polygamy is permitted for Hindu men while polyandry is prohibited.

**Proof of marriage:** In Bangladesh Hindu marriages are solemnized merely through some religious rituals. There is no marriage registration system for Hindu people in Bangladesh.

It is surprising that there is also no Hindu marriage law or Hindu marriage register in the country. So when the Hindu women want to come out of bad marriages they are in trouble.

**Widow remarriage:** In Bangladesh remarriage of widow is permitted by the "Hindu Widow's Remarriage Act, 1856". According to this Act, no religious ceremonies are necessary in the case of marriage of widow. Again if a widow marries for the second time, she can't retain the property of her previous husband (Nurunnabi Vs Joynal Abedin 1977 29 DLR SC 137). Even if custom allows, a Hindu widow by such remarriage forfeits her right to her deceased husband's property (Sowdamini Ray Malakar Vs Narendra Ch.

**Maintenance:** A Hindu husband has the personal obligation to maintain his wife, minor children and aged parents. This obligation does not depend on the possession of property, ancestral or otherwise. I have already mentioned that divorce is unknown to Hindu law in Bangladesh. So the question of post divorce maintenance does not arise. However, a Hindu wife in Bangladesh under some specific grounds can live separate from her husband and be entitled to maintenance. Under the "Hindu Women's Right to Separate Residence and Maintenance Act, 1946" as applied in Bangladesh a married Hindu woman may seek separation and the husband is under responsibility to maintain her if she can prove that her husband is suffering from some loathsome disease not contracted from her or is guilty of cruelty which renders it unsafe or undesirable for her to live with him or deserts or abandons her or marries again or converts to another religion or keeps a concubine or for any other justifiable cause.

**Property rights:** We know that in ancient society there was no question of inheritance. Then the society was divided into several small gotras. The members of the gotra enjoyed the property equally. In course of time the idea of inheritance has been established and like other religions Hinduism also recognizes the idea. From the viewpoint of morality ancient gotra system is better than that of the latter because in the former society all the humans enjoyed the goods, property equally irrespective of sex. But in Hinduism as applicable in Bangladesh a large number of women are excluded from inheritance. It is argued that Hinduism makes this in the interest of joint Hindu family system or in order to prevent the breakdown of the joint Hindu family system. But in fact the conservative male counterparts of the society have done this for their own interest considering the females as the worst class of society. Theoretically only five classes of women inherit according to Dayabhaga School of Hindu law. They are according to preference: wife, daughter, mother, father's mother, and father's father's mother. I have already mentioned that women are excluded from inheritance and here I am presenting that they are also entitled to inheritance. The former is correct in the sense that they have only limited rights to the property. Here for the purpose of discussion I want to refer two kinds of property that a Hindu woman may possess:

**Adoption:** Adoption is permitted under the Hindu law in Bangladesh. An adopted son is considered to occupy for all purposes the same position as a natural son (Anath Bandhu Guha vs. Sudhansu Sekhar Dey 31 DLR 1979 312). The aim of adoption under the Shastric Hindu law that applies in Bangladesh is two-fold. The first is religious, that is, to obtain a son able to take part in the funeral ceremonies of the father and the second is secular, that is, to carry on the family name. Under the Shastric Hindu law as applied in Bangladesh, only a male can be adopted and 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, that is, he must not be a boy whose mother his adoptive father could not have married. Besides, he should not suffer from any physical infirmity or be an orphan. Under the law only a man can adopt unilaterally. A wife can't adopt without the consent of her husband if he is alive and able to give such consent. A widow under the Dayabagha School may adopt if her husband gives implied or express consent before he died. Besides that, under this law a maiden can't adopt. Though the above Shastric uncodified Hindu law relating to adoption still remains in force in Bangladesh, but in India several changes to the law regarding adoption have been made. Under the "Hindu Adoption and Maintenance Act, 1956" (applicable only in India) the aim of adoption only is secular and this Act gives a woman rights almost equal to that of a man. A married Hindu male can't adopt without the consent of his wife. A Hindu woman, unmarried, widow or divorcee can adopt but a married woman can't adopt even with her husband's permission. The husband must adopt with her consent. The Act reduces the male's exclusive right of adoption and now under this Act both boys and girls may be adopted. Identity of caste of adoptive parents and children, which was under the Shastric Hindu law, has also been abolished by the Act.

#### **Legal Frame work**

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**Property rights:** In ancient society there was no question of inheritance, society was divided into several small gotras (community). The members of the gotra enjoyed the property equally. In course of time the idea of inheritance has been established and like other religions Hinduism also recognizes the idea. From the viewpoint of morality ancient gotra system is better than that of the latter because in the former society all the humans enjoyed the goods, property equally irrespective of sex. But in Hinduism as applicable in Bangladesh a large number of women are excluded from inheritance.

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In the context of Bangladesh, participation of minority women in mainstream politics are far beyond the reality where majority Muslim has limited access to politics mainly because of religion, social, cultural, educational and economic conditions. Out of 330 Parliament Members only one Hindu women are the MP and she is nominated not elected. In local government there are very few number minority women are either elected or nominated but absence of government policy discourage the women to get into the politics.

Religious and cultural point of view minority women are rarely welcome to the politics, economic and socio-cultural activities. In Bangladesh 60% national GDP growth is contributed by the women where minority women's contribution are almost not countable. Unfortunately, out of that 60% economic contribution only 2% women has the right to their own earnings. This is the reality in Bangladesh.