

Hindu Women's Right to Property: A Religious Deprivation and the Responsibility of the State as an Actor

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Abstract

The debate for Hindu Law reformation in Bangladesh is not new. Equality before law has remained a constitutional mandate for Hindu women only. In reality the status of Hindu women in this country is not that much satisfactory. A Hindu woman in Bangladesh is deprived not only by their religion but also left insecure by the state by not amending Hindu Law. Basically, Hindu women are the most vulnerable victim of the un-amended Hindu Law. The political position of Hindus and the unchangeable mind of their political representatives also made their position weak and thereby vulnerable to different kinds of violence. This paper aims to analyze the loopholes in the existing Hindu Laws regulating the rights of Hindu women as well as to compare the matrimonial law and proprietary law of India and Bangladesh by digging into the amended matrimonial laws and proprietary laws of India. Quantitative methodology has been applied in this article. For conducting the study relevant articles, statistics, recent news, national and international documents, case laws, international data survey and other relevant literature covering the area has been examined. The paper will also examine the responsibility of the government for reformation of Hindu Laws of Bangladesh in constitutional and international mandate.

Key words: Hindu Law, Hindu women, reformation, Indian laws.

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I. Introduction:

Bangladesh as one of the developing countries and one of the signatories' countries of CEDAW has grossly failed to give equal rights to its female citizens. Here the right of inheritance is regulated by the personal laws of the subjects. Those personal laws in no case admit the equal right of man and women in ancestral property. Although Muslim Personal laws do not deny women's right of inheritance and give a right of inheritance to her ancestral or husband's property but the portions are not equal. Hindu Law is another major personal law that deals with the personal rights and duties of not only of Hindus in Bangladesh but also of Buddhists. Hindu Law does not recognize complete ownership in any property she has inherited either from her father or from her husband. She only has limited ownership over those properties. She cannot transfer it nor could her successors inherit for her. The only right that is granted to her is the right of enjoyment. This deprivation is a historical deprivation from times immemorial. But the Government of Bangladesh has a duty towards her not only because it is a signatory of CEDAW but also this denial is a denial of her constitutional right. Law should be equal of all (The Constitution of The People's Republic of Bangladesh, 1972, Chapter III, art. 27) and it is a constitutional right of every citizen of Bangladesh and again the state has the responsibility of ensuring equal right of man and women (The Constitution of The People's Republic of Bangladesh, 1972, Chapter II, art. 19). But the state has failed to give Hindu Women her constitutional right. The only law dealing with her right in matrimonial sector is Hindu Married Women right to Separate Residence and Maintenance Act. But as a neighboring country Indian has drastically changed its matrimonial laws to protect the rights of a Hindu Women.

Position of Hindu Women under Hindu Law:

Existing Hindu Matrimonial Laws in Bangladesh:

Hindu matrimonial laws are basically regulated by Hindu personal laws enshrined from Hindu Religion. But some of the existing provisions of Hindu marriage, more specifically legal status of a married woman, differential treatment of man and woman in respect of inheritance, guardianship, adoption and the restrictions imposed by the caste system are not in tune with the broader outlook of Hindu philosophy which is one of the richest spiritual and cultural heritages of mankind (Alam).

- **No divorce is allowed:** Divorce is foreign to Hindu Law as marriage is considered as a holy union made by the divine and it creates an indissoluble tie between husband and wife. As the law has not been amended until now no divorce is allowed amongst Hindus. (Mulla, 2016) As a result, the couples have no other option but continue a marriage although the marriage is not a satisfactory one. Women are the most violent victim of such rule. Although, the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 tries to remedy women for separate residence still the act does not sever the tie of marriage and neither it provides any provision for damages to women.
- **No right of mutual exclusive succession for women in case of death of husband:** under pure Hindu law any women could inherit from her husband. Not only that under Dayabhaga school of Hindu law no immoveable property could be transferred to the wife by way of gift or will (Mulla, 2016). Even a father could not validly transfer any immoveable property to his daughter.
- **No second marriage while the husband is alive:** Although the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 is a remedy for women to get maintenance from the husband while she is separated from her husband but it does not legalize any second marriage of the wife. A woman under pure Hindu Law can only get married once in her life and cannot marry again while her husband is alive (Mulla, 2016).
- **Women cannot adopt:** Under *Sastric* Hindu law a women cannot adopt any child for her. She could only adopt when her husband gives her authority to adopt a son for him. So literally unmarried women cannot adopt any son for her and even when she is married she needs the approval of her husband for adopting. As the law remained unchanged here in Bangladesh a Bangladeshi Hindu women cannot adopt any child without her husband's consent to it.

Proprietary Deprivation:

Hindu women are deprived off her rights from ancient times when 'Manu' versed that "women must be kept in dependence by the males" (Manu, n.d., Chapters 9, verse 2). Dayabhaga law deprives women not only from succeeding her husband's property but also from her ancestral property. Although, over some properties women could exercise exclusive ownership popularly known as *stridhana*, Dayabhaga School has a very strict meaning of *stridhana* to such extent that it literally denied women's control over such properties (Mulla, 2016). Orthodox Hindu law divides properties inherited by women into two categories

- Property inherited by women and
- *Stridhana*

Any property inherited by women whether from men or women are included in the category of Property inherited by women having a special feature that women does not have any exclusive ownership over such property and she is not the absolute owner of the properties inherited by her. She cannot thereby transfer such property, the only right she has over such property is limited interest or life interest (Mulla, 2016). Under the Dayabhaga School, there are only five females who can succeed as heirs to a male, namely, the widow, daughter, mother, father's mother and father's father's mother. To this list three more were added by The Hindu Law of Inheritance (Amendment) Act, 1929, namely, the son's daughter, daughter's daughter and sister and they are entitled to rank in the order of succession next after a father's father and before a father's bother (Mulla, 2016). Then again, the right of inheritance granted to women is not an equal one. There is a priority line. According to all the schools when there is the presence of a son a daughter is totally deprived off any kind of portion on her father's property. The unmarried daughters have the right to have their fathers' properties first; then the married daughter who has or likely to have male issue. Daughters who are barren or widows without male issue or are mothers of daughters only are excluded from inheritance (Mulla, 2016). The daughter takes a limited interest in the estate of her father. On her death the estate passes not to her heirs, but to the next heir of her father (Mulla, 2016).

The wife is in the fifth line of *sapinda*, but the right of wife is secured by the Act of 1937 (The Hindu Women's Rights to Property Act, 1937), the Act is only a qualified one it also does not go beyond the scope of life or limited interest. The thing the Act does is only creates a partition on the property of her deceased husband with her sons. But again the right of succession of a widow is encroached when she is unchestate. Although the passing of Hindu Widow's Remarriage Act 1856 ended the age long ban on widow remarriage practiced throughout British India (Zahur, 2016), it has become a mystery to the women who is contracting a second marriage. According to this Act the properties of a deceased husband will be forfeited if the widow marries again (Hindu Widow's Remarriage Act 1856, 1856). While the constitution of Bangladesh ensures equal rights and equal protection of law regardless of their religion, cast, race etc. Hindu women face discrimination because of their cast and religious status. (Karim, 2020).

But over *stridhana* women has exclusive right of ownership according to all the schools of Hindu Law (Mulla, 2016). In such kind of property women has the right to transfer such property without her husband's consent and she is the full owner of such property. The main difference between women property and *stridhana*

is that women have the full ownership over such property and after her death the property goes to the *stridhana* heirs. *Stridhana* is identified from the source from which she received the property.

The number of legislations and amendments are very tremendous in nature. The reason being that, the whole law of Hindus has remained unchanged after British realm. As part of that law the matrimonial laws also remained unchanged in most of the parts. The laws regulating Hindu marriage and divorce are discussed below.

Hindu Law reformations in India:

The fruits of Hindu Code Movement initiated during British regime in India which was later materialized during 1955-56 in Independent India were not tested by the Hindus in Bangladesh (Mamahud, 1974). 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 (Alam). India with the largest Hindu community has successfully amended its law to a large extent. After partition in 1947 while there were major legislative changes in India as regards Hindu law there were close to none in the then East Pakistan. For Hindus it was a situation of 'double colonialism' (Alam). After independence of Bangladesh, this trend continues and significant legislative reforms to Hindu laws are negligible (Huda, 1988). The years of 1955 and 1956 saw placed 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 (Alam). Those bills are the results of the Hindu Law Bill prepared by the Hindu Law Committee which was formed in 1941 to examine various aspects of Hindu law. And the following changes are brought in Indian Hindu law:

- In India any male or female can adopt a child. The provision that on women could adopt under pure Hindu Law has been grossly removed through the Hindu Adoption and Maintenance Act, 1956. According to this Act any male and female could adopt a child whether they are married or not.
 - In India the provision for divorce has been introduced through section 13B of Hindu Marriage Act 1955. Any spouse could legally divorce each other where the parties have been separated from each other for a period of one year (Hindu Adoption and Maintenance Act, 1956).
 - The amount of alimony a wife would get in case of divorce is also set by the Supreme Court of India and it is now a settled rule in there. According to that rule if the alimony is being paid on monthly basis, 25% of the monthly salary has been set as the benchmark payment. But there is no such benchmark for net payment. Usually, the amount ranges between 1/3rd to 1/5th of the husband's net worth (Hindu Marriage Act 1955).
 - Hindu Succession Act 1955 ensures equal right of men and women in coparcenary. Women are equally entitled to a share in her father's property as that of her brother (Hindu Succession Act, 1955). So, it is a landmark towards Hindu women's right to property.
 - Succession to *stridhan* under traditional law varied according to a woman was married or unmarried, and if married, according to the form of marriage. It also varied according to the sources of the *stridhana*. All these distinctions have now been abolished and the new law lays down a uniform scheme of succession to the property of a female Hindu who died intestate.
 - The long list of natural guardians existing under traditional Hindu law has been reduced under the new law to only three- (i) father (ii) mother and (iii) in case of a married girl - husband.
 - Under the new law, not only son, but also a daughter can be taken in adoption
- The above changes clearly indicate that those changes are brought to improve the legal position of the women in India and the legislatures are more caring about the weaker segment of the society

Constitutional and international mandate for equal right:

Our constitution on article 27 ensures equality of all citizens and equal protection of law for all its citizens (Constitution of the People's Republic of Bangladesh). While discussing the issue of discrimination of Hindu law, the principles of secularism and equality before law as reflected in constitution come into play and various instances of this discrimination can be found to a great extent (Karim, 2020). The state has impliedly denied the right of equality to Hindu women. The law as it stands now is contrary to the secular nature of our constitution and non-reformation of Hindu law is an historic injustice done towards its Hindu population (Huda, 1988). Article 28 and 29 declares principles of non discrimination on the ground of religion, sex, race, caste etc. (Constitution of the People's Republic of Bangladesh). So it is obvious that Bangladesh is under an obligation to enact law or to frame such policies that will eradicate all sorts of discrimination on any ground, as it is guaranteed by the supreme law of the land (Zahur, 2016). Hindu law as it stands now is also discriminatory comparing to the women of other religion as Muslim and Christian women inherits their father's as well as husband's property to some extent. So ultimately there exist two different kinds of law for equal subjects. According to article 19 clause 2 the state is under an obligation to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic (Constitution of the People's Republic of Bangladesh).

At the same time Bangladesh as a signatory of CEDAW is under an international obligation to give equal right to its female citizens. Bangladesh like any other member of UDHR is bound to ensure all rights enumerated therein to its citizens irrespective of sex and religion which is spelled out in Article 7 (Zahur, 2016). Because, progress in Hindu law is supposed to be the reflection in the progress of human rights (Karim, 2020). Reforms in the larger Hindu Community in India reflect this progress. Norms of human rights sing the melody of divinity which must also be the essence of Hindu Law. Bangladesh is one of the signatories of International Covenant on Economic, Social and Cultural Rights which imposes on each state party to take steps to eliminate discrimination against women Article 2(2) of the same covenant imposes the duty on the state to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (International Covenant on Economic, Social and Cultural Rights).

Recommendation for reformation:

We must bore in mind that Hindu law is not a rigid one and it has always welcomed changes and reformation. Customs and *Dharmas* cover the largest part of its source and those are the result of changing usages and interpretations of Dharma scholars. But the growing nature of that law has been stopped after the British realm (Alam). So, it is not unacceptable for Hindus to reform its laws and adopt new law. Hindu law as originated from Veda has most of its legal rules in Dharma. Law as understood by Hindu is a branch of Dharma (Mulla, 2010, p. 1). Generally, Dharma is a wide expression to include social, religious, moral and legal duties (Mulla, 2010, p. 1).

Peculiar socio-economic conditions in Bangladesh may legitimately compel the Hindu law reformers to be more cautious and undertake certain social security measures if any particular reform tends to lead to any adverse social consequences (দারিদ্র্য). Socio-political problems of the Hindus in Bangladesh undoubtedly need to be resolved, the state and the Hindu community need to seriously consider what reforms of their personal laws could be beneficial to the members of the community. But reforms all together cannot be stalled, for they relate to realization of more fundamental individual rights necessary for individual self-development which is the demand of Supreme Being (Alam). And of course reform will provide more rights and freedoms to Hindu women. It is the duty of our state as an actor to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic (Constitution of the People's Republic of Bangladesh). The following reformation in Hindu Law is a demand of time

- Registration of Hindu marriage should be made compulsory. Earlier lack of Hindu marriage certificates for Hindu marriages, made it very difficult to prove the relationship under legal perspective. Hindu Marriage Registration 2012 finally paved the way for Hindu marriage registration. But this Act did not make registration mandatory for Hindus as a result the Act remain a soldier without a weapon.
- Although there is provision for widow remarriage as there is no provision for divorce there does not exist any provision for remarriage of Hindu women once married.
- The provision for divorce should be enacted. There exists substantial debate among Hindus that if the provision for divorce is enforced the number of divorce will increase and family tie will break down frequently. But it is fair enough to say that a happy couple will never go for divorce (Alam). Today as there is no provision for divorce many unhappy couples are forced to live together for there is no other way open for them. Nonetheless women become more vulnerable to family violence.
- Provision for damages in case of divorce or alimony after the divorce should also be ensured. It cannot be denied that the financial position of women has made them weaker.
- Women should be allowed to take in adoption.
 - The system of inheritance need to be changed at a large scale. In Vedic period women was substantially engaged in working force (Alam). There exists substantial authority of opinion that women during the period of *Rig-ved* enjoyed a very high position and honor in the society. There was no considerable difference between man and woman in the exercise of family and social rights. So, it is not uncommon for Hindu women to inherit from the husband or from her father. Most Hindu women are vulnerable to violence due to the fact that she is not financially strong. Bangladesh as a state has seen a large scale improvement in women empowerment. But Hindu women are debarred from inheriting from father or from her husband as a result all she has is the income achieved from her own source.

We must understand that women's right should be the primary and fundamental concern for Hindu law reform. Without improvising the condition of Hindu women a static and sustainable development of Bangladesh is not possible. The government of Bangladesh is under constitutional and international obligation to equalize the position of Hindu women. So, it is suggestible to amend and to codify Hindu law, but not as it has been done in India, splitting the law into several of its branches and enacting separate legislation for each branch.

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