Protection of Right to Divorce for Hindu Woman

Md. Ashabur Rahman¹

Abstract

In Bangladesh the Hindu women are suffering greatly to seek divorce. As like as India and Nepal, Bangladeshi Hindu women cannot divorce as there exists no such legal provisions. But the situation is different in India because they have already adopted the Hindu Marriage Act, 1955 which lays down the procedure for Divorce. In Bangladesh the Hindu women are also suffering greatly to seek divorce or to claim compensation from husbands. However, specific law on these issues is necessary.

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¹ He is an apprentice lawyer of the Supreme Court of Bangladesh.
1. Introduction:

Divorce is a procedure whereby the married couple decides to separate and break all the vows that were taken during the sacred ceremony of a marriage. In Bangladesh the Hindu women are suffering greatly to seek divorce or to demand compensation from husbands. As like as India and Nepal, Bangladeshi Hindu women cannot divorce as there exists no such legal provisions. Thus there was an element of inherent injustice on the wife in Hindu law. To counter such inequalities among spouses and to protect the sacramental aspect of marriage, Hindu Marriage Act, 1955 was enacted which provided certain matrimonial remedies. The most of the Hindu communities in Bangladesh follows the centuries-old Dayabhaga law. According to that law, a Hindu woman does not have the right to divorce her husband.

2. Methodology:

This article covers practical aspects of Hindu marriage dissolution. The data gathering for the factual description of the article included collecting and reviewing secondary sources, such as academic literature, analytical reports, publicly available data which meet the criteria of being available online in English. It is based on sources that are reliable and relevant. Though this study is primarily qualitative in nature, both qualitative and quantitative approaches have been used for validity and reliability.

3. Facts Regarding Dissolution of Hindu Marriage:

Ancient Hindu law does not allow dissolution of marriage however painful cohabitation may be. Although, in some communities divorce is allowed by custom and the courts enforced such custom provided they fulfilled the requisites of a valid custom. It can be said that there are some

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2 “Irretrievable Breakdown of Marriages in India - Divorce.”
3 “Irretrievable Breakdown of Marriages in India - Divorce.”
4 Sankaralingam Chetti vs Subban Chetti And Anr., ILR 17 Mad 479.
grounds in which Hindu law allows separation or desertion. But it can’t have the effect like divorce or dissolution of marriage tie completely. Besides, unsoundness of mind of either party for a number of years or suffering from any virulent or incurable form of disease or renouncement of the world would not be a ground for divorce.5

4. Case Study on the Lacking of Dissolution Provision:

An article titled “Suffering for Absence of Marriage Registration” was published on June 27, 2004 in the Daily Star by Shanchita Sharma. In that article Shanchita Sharma presented a fact of a Hindu woman of Bangladesh who suffered for absence of divorce provision. The fact was about Minati Karmakar. She suffered at her husband’s house for inability to bring dowry. Minati’s husband tortured her, as she could not bring dowry money for him. Being Fed up, one day she left her husband’s house and returned to her parents. But even after this her husband did not give her the scope to be free from his torture and the harassment was too much for her to bear. In this situation Minati wanted to terminate the marriage. She went to court and found herself surprised when she came to know that the existing Hindu law of Bangladesh could not help her through divorce. It happens to thousands of Hindu women in Bangladesh. As per “Hindu Women’s Right to Separate Residence and Maintenance Act, 1946” Hindu women can file cases with courts to only regain the rights to conjugal life. But they can’t ask for divorce. They have limited scopes to ask for separation. But they can neither divorce nor remarry.

5 AFP, “Bangladesh’s Hindu Women Fight for Divorce Rights.”
6 “Suffering for Absence of Marriage Registration.”
7 “Suffering for Absence of Marriage Registration.”
8 “HINDU MARRIED WOMEN’S RIGHT TO SEPARATE RESIDENCE AND MAINTENANCE ACT, 1946. ACT No. XIX OF 1946.”
9 “HINDU MARRIED WOMEN’S RIGHT TO SEPARATE RESIDENCE AND MAINTENANCE ACT, 1946. ACT No. XIX OF 1946.”
On the other hand, Hindu women can file cases under the Family Courts Ordinance, 1985\textsuperscript{10}, Dowry Act and Prevention of Women & Children Repression Act 2000. But these laws are too inadequate to protect the Hindu women’s rights in this regard. The President of “Bangladesh Metropolitan City Universal Puja Committee” Swapan Shaha consents with enacting such laws and said: “There should be laws to guide Hindu marriage, including rights to divorce because Hindu women are sometimes forced to leave their husbands houses. In such a case, a woman should be able to obtain legal divorce and take another husband”. Another article titled Plight of Hindu women in Bangladesh\textsuperscript{11} was published on February 05, 2014 in the Daily Star written by a Hindu woman whose name withheld by request\textsuperscript{11}. She was a university educated Hindu woman and got a prestigious scholarship on my own merit to do Ph.D. in a foreign university in 2008. She taught at a university college in Dhaka and got married under pressure from my family and relatives after my BA Honours. She had no choice but had to live with this man for long 5 years and every day of it was hell for her\textsuperscript{12}. Her husband had other women and it was normal for him to beat her without any rhyme or reason. She mentioned that she had never made love and her husband regularly raped her. When she was pregnant one day he punched on her backbone. On examination, the doctors found that her spinal cord was damaged and said that the injury may never be healed. Quite surprisingly, her husband did not regret what he did and continued his brutal behaviour\textsuperscript{13}.

Finally, with my father's help she gained some courage and divorced him against uproar and protest from my relatives, many of them with university degrees. But my problems were not really over. She was regularly lectured by her so-called educated relatives who constantly asked here to return to her husband knowing well how brutish he was and how unfaithful he had been. She claimed that “We have ‘Bangladesh Hindu Bouddha Christian Oikyo Parishod\textsuperscript{14}’ to fight for political rights for minority communities in Bangladesh, but did they ever give any attention to the centuries-old evils that prevail in Bangladeshi Hindu society?” Hiren Biswas, the president of the Samaj Sangskar Parishad group, commented on these issues saying: “We don't mind optional

\textsuperscript{10}“The Family Courts Ordinance, 1985.”
\textsuperscript{11}“Plight of Hindu Women in Bangladesh.”
\textsuperscript{12}“Plight of Hindu Women in Bangladesh.”
\textsuperscript{13}“Plight of Hindu Women in Bangladesh.”
\textsuperscript{14}“Bangladesh Hindu Buddhist Christian Unity Council.”
registration because Hindu couples sometimes need the marriage certificate when they travel, but we won't accept mandatory registration, or divorce and inheritance rights to women because our scriptures and customs don't allow them.”

5. Indian Perspective of Hindu Marriage:
But the situation is different in India because they have already adopted the Hindu Marriage Act, 1955 which lays down the procedure for Divorce in India where there is an option for the Hindu married couple to approach the Courts of law for separation procedure. Section 13 of the said Act, the accepted grounds for seeking divorce includes cruelty, adultery, desertion, insanity or incurable disease and so forth. Section 12 provides the additional ground available to a wife, that being impotency of the husband and section 13(2)(4) provides that a Hindu wife can seek divorce on the ground that her marriage was solemnized before she attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining the age of 18 years. In the Indian perspective, section 2 of the Hindu Marriage Act, 1955 says: This Act applies –

✓ to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahma, Prarthana or Arya Samaj;
✓ to any person who is a Buddhist, Jain or Sikh by religion; and
✓ to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

15 Kusum, “IRRETRIEVABLE BREAKDOWN OF MARRIAGE : A GROUND FOR DIVORCE.”
16 “The Hindu Marriage Act, 1955.”
6. Existing System for Dissolution of Hindu Marriage in Bangladesh:
The pre-condition for divorce for Hindus is that the couple should be living separately for at least one year then to file an application for divorce. One is "by mutual consent" and the other is "by contest". The divorce application "by mutual consent" is easier as it takes lesser time as both husband and wife agrees for the grounds on which separation is sought. If the application is made "by contest" it leaves room for the counter party to contest the application and drag the case for years together without a valid reason. Thus, it is quite clear that compared to India, the law regarding divorce for a Hindu woman in Bangladesh is rife with unfairness and it requires modernization. Bangladesh Government should enact divorce law for Hindu husband and woman. Gender equality is one of the fundamental principles of the law of human rights. But when exceptions occur and the wife and husband cannot live together anymore without doing harm to each other, dissolution of marriage would actually serve the purpose of indissolubility by paving the way for the parties to the marriage to seek harmony and love in divorce and remarriage.

Divorce would only come as a panacea for any insurmountable hazard that unfortunately may befall the marriage bond. For a long time different NGOs, civil society, women’s rights groups are creating pressure upon the Government to enact the law of divorce for Hindu women. Recently on 20 January, 2015 the High Court Division of Bangladesh Supreme Court has issued a rule on the Government asking it to explain the reason why a Hindu woman would not be allowed to divorce her husband as there exists no right to do so in the Hindu personal laws. Following a writ petition filed by Bangladesh Human Rights Foundation’s chief executive Alena Khan and aggrieved Aapita Das for enforcement of her fundamental rights. The petitioner mentioned that the Hindu laws on marriage and divorce are inconsistent with the provision of the citizen’s fundamental rights which are guaranteed in the articles 26(1), 27, 28, 31 and 32 of the

18 Dr. M. Shah Alam, 45.
19 Dr. M. Shah Alam, 45.
Constitution of Bangladesh as well articles 3, 5, 7 and 16(1) of the Universal Declaration of Human Rights\textsuperscript{20}.

Law Commission of Bangladesh has recommended some important matters after long study in favour of enacting of divorce provisions. The reasons for which Hindu women are acknowledged to live separately, most of them can be considered as reasonable cause for divorce. Law Commission has also recommended that only in specific reasons divorce can be given through Court and remarriage needs be allowed\textsuperscript{21}.

7. Conclusion:
According to the Convention on the Elimination of All forms of Discrimination against women, the State Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women where the State Parties can take necessary steps depending on Article 11 of the convention\textsuperscript{22}. Hindus consider marriage to be a sacred bond. Prior to the Hindu Marriage Act of 1955, there was no provision for divorce\textsuperscript{23}. The concept of getting divorced was too radical for them but due to necessity it is happening. On the other hand, article 16(1)\textsuperscript{24} of the convention has focused on the same rights and responsibilities during marriage and at its dissolution for both men and women\textsuperscript{25}. So the Government should enact a complete law with necessary divorce provisions to establish the Bangladeshi Hindu women’s divorce rights.

\textsuperscript{20} “Universal Declaration of Human Rights.”
\textsuperscript{21} Lawyerinfos, “Reform of Hindu Family Law in Bangladesh.”
\textsuperscript{22} “OHCHR | Convention on the Elimination of All Forms of Discrimination against Women.”
\textsuperscript{23} kudrat, “Divorce Under Hindu Law.”
\textsuperscript{24} “OHCHR | Convention on the Elimination of All Forms of Discrimination against Women.”
\textsuperscript{25} “Hindu Women’s Divorce Rights.”
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Sankaralingam Chetti vs Subban Chetti And Anr., ILR 17 Mad 479 (1894).

