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Minority Deserve Majority Reforms: An In-depth Study Identifying the Areas of Reforms Regarding Hindu Laws in Bangladesh

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ABSTRACT

Hindus living in Bangladesh are mainly Hindus governed by the Dayabhaga school of law. Hindu law is a system of religious regulations that is thousands of years older than the Hindu texts. Hindu law has not altered at all over the years. Being a divine law, Hindus generally embrace it or view it as having a binding impact, hence the Hindu community living here does not welcome significant change. However, any law must be updated to reflect the evolving socio-economic and political environment. In that regard, it is crucial to modify Hindu law, which dates back a thousand years. Hindu personal law has become complicated in several areas, including marriage, maintenance, guardianship, adoption, gift, will, inheritance, and so forth, as a result of a long period of no reform. The socio-economic condition of Hindus won't improve if these problems aren't resolved soon away. In particular, it will seriously hinder women's empowerment and economic freedom. This essay represents a development in the reformation of Hindu law. In addition to presenting the characteristics and shortcomings of Hindu law, this article also provides a brief analysis of the absence of change, its necessity, and some well-articulated reform ideas.

Keywords: *Hindu shastra, Hindu Philosophy, Divine source, Entitlement to Right, Reformation of Law.*

I. INTRODUCTION

In Bangladesh, a country with a majority of Muslims in South Asia, Hindus make up the second-largest religious group. Bangladesh is also the second-largest nation in the world with a *Dayabhaga* Hindu majority.² India only has more *Dayabhaga*-governed Hindus than Bangladesh. Before independence, the Muslim-Hindu ratio was very close but after independence, the number of Hindu population gradually decreased. At present, approximately

¹ Author is a Assistant Professor at Department of Law, Premier University, Bangladesh, India.

² According to the 2022 Census of Bangladesh, Retrieved (Jan. 16, 2022, 08:20 PM), https://en.wikipedia.org/wiki/2022_Census_of_Bangladesh

13.1 million Hindus live in Bangladesh, most of whom follow the *Dayabhaga* doctrine. As a percentage, 7.95% out of the total 161.5 million total population are Hindus.³

Hindu law is created from the commandments of GOD and hence Hindu law is divine law. Being a religious law, it has great acceptance among the common Hindus. For ages, Hindu personal matters such as marriage, maintenance, adoption, guardianship, inheritance, gift, will, and *stridhana* have been governed by Hindu divine law. Until now, the *shastriya* provisions of Hindu law in Bangladesh remain unchanged. Neighboring India has made significant reforms in the last hundred years by enacting new legislations on various issues like 'The Hindu Marriage Act, 1955', 'The Hindu Minority and Guardianship Act, 1956', 'The Hindu Adoptions and Maintenance Act, 1956', 'The Hindu Succession Act, 1956' etc. These changes are very acceptable and timely in the changing socio-economic and political context.

But due to various reasons, significant reform of Hindu law has not been achieved in Bangladesh. Although some of the laws reformed in the undivided Indian subcontinent apply to Bangladesh like 'The Hindu Women's Right to Property Act, 1937', 'The Child Marriage Restraint Act, 1929', 'The Guardians and wards Act, 1890', 'The Caste Disabilities Removal Act, 1850', 'The Hindu Widow's Remarriage Act, 1856', 'The Succession Act, 1925', there has been no significant progress since independence. 'The Hindu Marriage Registration Act'⁴ has been introduced in 2012. This Act has mentioned the issue of registration in the case of Hindu marriage but registration has not been made mandatory for the validity of marriage. Therefore, it cannot be said that this law has brought a significant change.

As the law is a subject of continuous development, its provisions need to be in harmony with the modern social order. Laws that were effective in a thousand-year-old social system may not be effective today. Moreover, in the changing socio-economic context, many provisions of the old laws may be incompatible with the existing social system. Therefore, it is very important to reform the provisions of the law in time. Another weak point of Hindu law in Bangladesh is that females do not inherit property from fathers or husbands in presence of male heirs. In the question of women's equality and for the empowerment and modernization of women, the right of Hindu women to inherit property from their fathers and husbands is highly desirable. Hindu women in Bangladesh actually suffer as a result of ancient *shastric* law and the lack of a "Uniform Family Code." Practically, there has long been a desire for the creation of a "Uniform Family Code" that would be applied to all Bangladeshi communities, regardless of religion. The

³ "Bangladesh Population (2021) – Worldometer". worldometers.info. Retrieved (Jan. 16, 2022, 08:15 PM), <https://www.worldometers.info/world-population/bangladesh-population/>

⁴ No. 40, Acts of Parliament, 2012 (Bangladesh)

lack of establishment of such a Code may be due to considerable opposition from religion-based political parties, a potentially harmful effect on Muslim religious sentiment, and the potential loss of support.⁵ There are many other important issues which, if not reformed, Hindus as citizens will lag far behind people of other religions.

This article has pointed out many weaknesses of Hindu law very minutely. This paper also highlights why thousand years old laws are not being reformed despite a significant number of Hindu politicians and educated Hindus living in Bangladesh. Finally, several structural reforms have been proposed many of which neighboring India has been reforming for the last hundred years.

II. NATURE AND PHILOSOPHIES OF HINDU LAW

Ancient Hindu law is not the result of any legislation governing the Hindus. It is supposed to be of divine origin, being derived from the *Vedas*, which are the revelations of the Almighty Himself. Unlike Roman law or the British Legal system, it is more religious than secular in character. The Hindu kings were bound by the divine laws and these applied to kings and subjects alike. The king used to administer justice as the representative of GOD. Thus, Hindu law does not always follow the maxims "The King can do no wrong" or "The King is the wellspring of justice."⁶ Laws, as understood by the Hindus, are branches of 'Dharma'. Thus the ancient Hindu texts cover all the systems of law-civil, religious and moral. The Hindu law is not a codified law but interacted from various religious texts, commentaries, usages and customs, and judicial decisions.⁷ According to Hindu *Dharmashastra*, there are four goals of human life: (a) *Artha*; (b) *Kama*; (c) *Dharma*; and (d) *Moksha*. According to Hindu philosophy, the ultimate aim of life is to attain 'salvation' i.e. '*moksha*' (escape from this physical world). Any person's soul stays free after death and takes on a new shape upon rebirth. Thus, the chain of birth and death continues till the soul attains '*moksha*'. Life in accordance with '*dharma*' leads to happiness and pleasure.⁸

Hindu law is not a territorial law. In other words, it is not a "*lex-loci*" i.e. Law of locality (which applies only to a particular locality or state) but a personal law. It implies that Hindus are subject

⁵ Dr. Chitta Ranjan Das, *Discrimination of Hindu Women in Bangladesh within the Legal Framework*, United Nations General Assembly, Human Rights Council, Forum on Minority Issues, Fourth Session Geneva, 29-30 Nov. 2011, <http://file:///E:/All%20Articles/Article%20on%20Hindu%20law%20Reforms/BangladeshHinduBuddhistChristianUnityCouncilUK.pdf>

⁶ S. K. Routh, *Elements of Hindu Law*, 1 (Comilla: Gagan Kutir 1974)

⁷ Zakir Hussain Khan, *Hindu Law of Bangladesh*, 1-2 (Dhaka: Law Book Company 2010)

⁸ R. D. Agarwala, *Text Book of Hindu Law*, 1-2 (Allahabad: Central Law Agency 1958)

to Hindu law in all personal concerns wherever they may be.⁹ In the case of *Vannia Kone vs. Vannichi*¹⁰ it was observed by the Privy Council: “What is ordinarily understood as Hindu law is not the customary law of the country like the Common law of England. Neither is it a statutory law, in the sense that some king or legislature framed the law, and enforced its acceptance by the people. The Hindu law, as it is generally known, is a set of regulations found in various *Sanskrit* literature, which the *sanskritists* regard as authoritative sources on Hindu law.”

III. DIVINE SOURCES OF HINDU LAW

There are many sources of Hindu law. The major sources are: ‘*Sruti*’, ‘*Smriti*’, and ‘Customs & Usages’. The non-major sources are: ‘Commentaries or *Nibandhas*’, ‘*Factum valet*’, ‘*Puranas*’, ‘Minor commentaries’, ‘Acts of Legislature’, ‘Judicial Precedent’, and ‘Equity, Justice and Good conscience’. Of these sources, ‘*Sruti*’, ‘*Smriti*’, ‘Commentaries’, and ‘*Puranas*’ form the characteristics of Divine law. ‘*Sruti*’ is completely divine and others are based on ‘*Sruti*’. In case of ‘*Smritis*’, ‘Commentaries’, and ‘*Puranas*’ the language is of human origin but the rules are divine.

(A) *Sruti*

‘*Sru*’ literally means ‘to hear’ and thus ‘*Sruti*’ literally means ‘What was heard.’ It is the very (direct) words of GOD. It is regarded as the primary and paramount source of Hindu law. It consists of Four *Vedas*, Six *Vedangas*, and numerous *Upanishads* or *Vedantas*. The *Vedas* are the ultimate, traditional source of law. The *Vedangas* are appendages to *Vedas*. And the *Upanishadas* are the concluding portion of *Vedas* and embody the highest principles of Hindu religion. There are four types of *Vedas*: *Rik-Veda*, *Sama-Veda*, *Yajur-Veda*, and *Atharva-Veda*.¹¹

(B) *Smriti*

‘*Smriti*’ literally means ‘which was remembered’. It is believed to contain the precepts of GOD. The *Sruti* contains the exact words of GOD whereas, the *Smriti*’s precepts are divine but the language is of human origin. The *Smritis* are believed to be founded on lost or forgotten *Sruti* since they are compiled from memory and are declared as embodying binding rules of conduct. There are three principal *Smritis*: ‘The Code of *Manu*’, ‘The Code of *Yajnavalkya*’, and ‘The code of *Narada*’. *Sruti* is more authoritative. So, preference is given to it. If a *Smriti* is in conflict

⁹ *Id.* at 7.

¹⁰ (1928) 51, Mad.1

¹¹ *Supra* note 7, at 2.

with *Sruti*, it must be rejected.¹² The Hindu jurisprudence regards the *Smritis*, which are often designated as *Dharmashastras*, as constituting the foundation and an important source of law.¹³

(C) Commentaries or Digests or Nibandhas

A concise and methodical explanation of legal norms, ideas, and principles was required in an ever-evolving society. The legal principles outlined in the *Smritis* were not always clear-cut and did not apply in every circumstance. One *Smriti* was different from another, and there were occasionally contradictory writings within the same *Smriti*. Thus, the need arose for further analysis, systematization, and assimilation of law. This need was satisfied by the Commentaries or Digests. Though there are numerous Commentaries, except two, others are treated as minor Commentaries with limited acceptance. The two main important and outstanding Commentaries are: *Mitakshara* (written by *Vijnaneswara*) and *Dayabhaga* (written by *Jimutabahana*). The *Mitakshara* is a running commentary on the code of *Yajnavalkya*, whereas the *Dayabhaga* is not a commentary on any particular code but a digest of all the codes. It prioritizes the Code of Manu over all else. Since Hindu law is thought to have divine origins, perfect harmony amongst the several Codes is to be expected. But the conflict between the *Smritis*, seeming or real, has given rise to the commentaries that are also called Digests or *Nibandhas*. While the Commentaries claimed to interpret the law as set forth in the *Smritis*, they made alterations to bring it into compliance with the practices of the people subject to the law. It is the commentators' opinion that is in force in the provinces where their authority is acknowledged.¹⁴ Commentaries or Digests collected all the available texts of law on certain points at one place and thus provided useful means of ascertaining the law.¹⁵

(D) Puranas

The *Puranas* are *Codes* that illustrate the law by instances of its application. They are mythological poems professing to give an account of the creation, to narrate stories of GOD and ancient kings and in doing so they relate religious duties and rights. Regarding its importance, it is called the 5th (Fifth) *Veda*.¹⁶ As observed by the Allahabad High Court: “Somewhere in the order of precedence, either between the *Srutis* and the *Smritis*, or more

¹² *Id.* at 2-3.

¹³ Sunderial T. Desai, Mulla, Principles of Hindu Law 8 (Mumbai: N.M. Tripathi Private Limited 1912)

¹⁴ Paras Diwan, Modern Hindu Law, 39-45 (Allahabad: Allahabad Law Agency 1972)

¹⁵ Dr. U.P.D.Kesari, Modern Hindu Law, 16 (Allahabad: Central Law Publications 1996)

¹⁶ *Supra* note 8, at 11.

probably after them come the *Puranas*.”¹⁷ There are eighteen *Puranas*, and eighteen *Upapuranas* which explain and illustrate laws.¹⁸

IV. REASONS BEHIND NON-REFORMATION OF HINDU LAWS IN BANGLADESH TILL TODAY

Hindu law saw a small fresh development once British control was established in India. A progressive segment of the Hindu community, including social reformers like Raja Ram Mohan Roy, Swami Vivekananda, Iswar Chandra Vidyasagar, and others, felt that customary laws needed to be codified and made statutory to address inconsistencies and contradictions in the customs, eliminate obsolete or archaic norms, and enact new laws to address contemporary issues.¹⁹

The evolution of Hindu law met with a split fate following the end of British authority. As was to be expected, the end of colonialism opened the door for real reforms in Hindu law in India, which were implemented. By fusing the progressive components of different schools of Hindu law, Indian reforms illustrated not just contemporary standards of human rights but also the nature of changes inherent in Hindu law itself. Conversely, Hindus in Pakistan found themselves in a more colonial situation after being freed from British colonial rule, which had a clear detrimental effect on the development of Hindu law. The situation was worse in East Pakistan. It was a case of "double colonialism" for Hindus. Bangalees in Pakistan experienced widespread prejudice, which provided sufficient justification to characterize the situation as neo-colonial and ultimately sparked the liberation war of Bangladesh. Hindus were in a poorer and more vulnerable position. Due to their ethnicity (Bangalee and Hindu), they faced additional risks. The overt and covert objective of the Pakistani government was to gradually drive Hindus out of East Pakistan. This was the goal of emergency requisition laws, evacuation legislation, and enemy property laws. Hindus gradually migrated in large numbers to India as a result of these regulations, particularly the 'Enemy Property Act', which was passed fewer than 20 years after India was divided. These laws also contributed to social and political discrimination against Hindus as well as the dread of religious violence. The most progressive segment of the Hindu population in East Pakistan virtually disappeared. Unfortunately, the social, cultural, economic, and political situation of Hindus has deteriorated from that of British India. In East Pakistan,

¹⁷ Ganga Sahai v. Lekhraj 9 All, 253.

¹⁸ B.M. Gandhi, *Hindu Law* 25 (Lucknow: EBC Publishing Pvt. Ltd. 1999)

¹⁹ Dr. M. Shah Alam, *Review of Hindu Personal Law in Bangladesh: Search for Reforms*, *Bangladesh Journal of Law* 8:1&2 (2004) 30 (Mar. 20, 2022, 11:08 AM), <https://www.biliabd.org/wp-content/uploads/2021/08/Dr.-M.-Shah-Alam.pdf>

the environment of freedom and creativity that is necessary for any reform was completely missing. As a result, there was little public demand for Hindu law reforms, and Pakistan's authorities showed no interest in them either, even after these were implemented in India.²⁰

The conditions of Hindus did not significantly improve after Bangladesh was established in 1971. In reality, things got worse after the military took control of politics in Bangladesh in 1975. Recommendations for Hindu law reforms that were produced during the final years of the British Empire and presented to the Federal Legislature as a bill on April 11, 1947, were postponed or halted for a variety of factors related to India's independence and division. While Hindu law in India gradually expanded due to new legislations and court rulings, it remained unchanged in Bangladesh as where it was in August 1947.²¹

Hindu laws have not been changed in independent Bangladesh for a variety of reasons, some of which can be summed up as follows:

- None of the religious organizations that are active in Bangladesh want any reform of Hindu laws in the country. Every time whenever any initiative is taken by the government to reform the provisions of Hindu law, organizations like 'Bangladesh National Hindu Grand Alliance', 'Bangladesh Matua Mahasangha', 'Hindu Law Amendment Prevention Committee', 'Bangladesh Brahman Sangsad', 'Jago Hindu', 'World Hindu Association' etc. raise strong protest against such initiatives of reform. They hold the rigid view that since Hindu law is divine law, so those can in no way, be amended by human authority.
- Another reason for non-reformation is the unwillingness of Hindu MPs or influential political leaders over reform issues. After independence, many Hindu leaders became MPs and Ministers but none of them put proposals before the government regarding reform issues. The present leaders are also no exception to them. They always leave the point and let it go.
- Some have the fear that if females can inherit from fathers and husbands by way of inheritance, the majority Muslims or non-Hindus will try to compel the females to marry and afterward convert to other religions for grasping the property or wealth inherited by females.
- Inheriting property by females will aggravate the level of violence against Hindu females.

²⁰ *Id.* at 32

²¹ *Id.* at 32-33

- Many think that as a consequence of reforms, the rate of conversion to other religions by Hindu females will increase.
- No one will agree to marry a Hindu female who does not own property. Females having proprietary rights will be valued more during marriage and will create an imbalance in the status of women.
- The orphan girls and those who do not own property will face the evil consequences of the dowry system. Bridegrooms and their families will demand dowry from them as a condition of marriage which will also cause domestic violence and the dissolution of marriages in society.
- Except for some exceptions, the Hindu males living in Bangladesh do not hold a strong stand in favour of Hindu females' getting property by inheritance. More practically, the brothers will not let their sisters inherit from their fathers.
- There exist lots of complexities regarding the distribution of property among daughters under the *Dayabhaga* principle of succession. Besides, there lies a misconception among the common Hindus that females are in no way entitled to succession even though they (females) may receive property from the deceased person in absence of male heirs. All these stand against the concept of reforms necessary for females regarding their entitlement to succession.
- Due to different socio-political reasons, the number of Hindus has been decreasing since the independence of the country. The Hindus living at present consider themselves not only minority but also strangers in their own homeland. Therefore, they do never feel the necessity of reforms relating to Hindu law.

V. DRAWBACKS IN HINDU LAW PROVISIONS IN BANGLADESH

(A) Marriage

A Hindu marriage is more religious than a secular institution. For a Hindu, marriage is a *samskara* (religious rite or sacrament). Marriage is the last of the ten sacraments for males and only one for females. The *Veda* states that: "A Hindu marriage is inseparable. As long as the husband is alive, the wife is enjoined to regard him as her God; likewise, the wife is declared to be half the body of her husband (*Ardhangini*) who shares with him equally the fruits of all his acts, good or bad."²² In *Tikait Munmohinti vs. Basant Kumar*, it was observed that: "In Hindu law, marriage is a sacrament, a union, an inseparable union of flesh with flesh, bone with bone

²² *Supra* note 9, at 31.

which will be continued even in the next world.”²³ The main problem with Hindu marriage is that the *shastriya* law does not require a Hindu marriage to be registered for its validity. In 2012, ‘The Hindu Marriage Registration Act’ has been enacted in Bangladesh but it also does not make registration compulsory for marriage. *Shastriya* law prescribes numerous religious ceremonies and so many forms for the performance of marriage many of which are only directory for its validity. It allows child marriage. It provides an old and complicated concept of prohibited degrees of relationship for marriage. It does not make polygamy a punishable offence. Though the mother gives birth to the bride, she has no preferential right to play the part of ‘*Kanya sampradan*’ (the authority of religious transfer of the bride to the groom during the performance of the marriage ceremony through the priest).²⁴

(B) Divorce

The biggest problem is, that *shastriya* Hindu law has no room for judicial separation or divorce. So, re-marriage and restitution of conjugal rights are not possible under *shastriya* Hindu law.

(C) Maintenance

Maintenance is a right to get the necessities that are reasonable. According to Hindu law, a Hindu is under a legal obligation to maintain his aged parents, virtuous wife, and minor children even by doing a hundred misdeeds.²⁵ Though *shastriya* Hindu law provides maintenance to wife or widow and children, due to lack of specified legislation, it creates confusion during the proceedings of suit for maintenance in family courts which sometimes leads to failure of the females to get an adequate amount of maintenance from the husband or in law’s family. *Shastriya* law also provides that if the wives or widows possess sufficient *stridhana* property, they may not be entitled to maintenance. This provision is a bar to maintenance rights and should not exist.

(D) Guardianship

Under *shastriya* law, in the case of legitimate and adopted children, the father has got the preferential right to become a natural guardian. The mother becomes guardian in the absence or death of the father. Father has got the right to appoint a testamentary guardian for his children and that testamentary guardian has priority over the mother. Mother has no such right unless delegated by father. In the case of appointing a testamentary guardian by the father, consent of

²³ ILR 28 Cal. 758.

²⁴ *Supra* note 8, at 25-41.

²⁵ According to Manu, a famous Hindu saint and religious commentator.

the mother is not required. An *ad hoc* guardian has no right to alienate the property of the minor even in case of extreme legal necessity of the minor.²⁶

(E) Adoption

The objects of adoption in Hindu law are twofold: The first is religious i.e. to derive spiritual benefit to the adopter and his ancestors by having a son to offer funeral cakes (or *pindas*) and libations of water. The second is secular i.e. to secure an heir and continue the lineage. *Shastriya* Hindu law does not prohibit the adoption of female children but encourages to adopt male children for the fulfillment of religious and secular objectives. For this reason, the misconception of adopting only male children has been created. Mother cannot adopt a child purely for herself. The mother's consent is not even necessary during adoption by the father. There is no age limit between adopter and adoptee. The adopted son does not get equal share with the natural son from the adoptive father. *Shastriya* Hindu law recognizes different categories and types of adopted and natural sons which is unnecessary and has become obsolete nowadays. *Shashtra* prohibits the adoption of orphans as well as deaf and dumb persons which is unfortunate.²⁷

(F) Succession

One of the biggest drawbacks of Hindu succession in Bangladesh is the inability of the daughters in case of inheriting from the father in presence of their brothers. While having the opportunity to inherit in absence of male issue of the deceased father, there are discriminations like – an unmarried daughter gets preference to a married daughter; son-bearing daughter gets preference to daughter-bearing daughter. Widows do not get share except maintenance from the property of their deceased husbands while sons, grandsons, and great-grandsons of the deceased are alive.²⁸ Though 'The Hindu Women's Rights to Property Act, 1937'²⁹ has been enacted under which widows in Bangladesh can inherit, in practice due to ignorance helpless widows fail to take benefit from this enactment. Illegitimate children are often excluded from inheritance. According to rules of exclusion from inheritance under the *Dayabhaga* school, blind, deaf, dumb, lame, impotent, and persons losing any limb or organ are excluded from inheritance. This rule seems unjust and discriminatory as well as contrary to charity and benevolence.³⁰

²⁶ *Supra* note 8, at 401-416.

²⁷ *Supra* note 7, at 33-54.

²⁸ *Supra* note 8, at 116-117.

²⁹ No. 18, Acts of Parliament, 1937 (Bangladesh)

³⁰ *Supra* note 8, at 142.

(G) Gift

Under the *Shastriya* Hindu law, a *Dayabhaga* father can dispose of his whole property by way of gift even excluding his own heirs. There is no restriction upon the power of alienation by *Dayabhaga* father which may leave the heirs assetless. *Shastriya* Hindu law does not require every gift to be registered.³¹ Another drawback is that, while making any gift by the husband, the consent of the wife is not considered essential.

(H) Will

There is no direct mention in *Shastra* as to women's power of making a will without consent or delegation of power by husband. The mother's consent is not even required in the case of a will made by the father. Under *Shastriya* law, will must not be in writing or registered. Like gift, a *Dayabhaga* father can dispose of his whole property by way of will even excluding his own heirs.³²

(I) Stridhana

The *Shastriya* rule regarding *stridhana* property is very complicated and creates confusion. Moreover, though *stridhana* property means women's absolute property, there is restriction upon their power of alienation regarding some particular types of *stridhana* property. Under *Shastriya* law, a woman cannot dispose of immovable property that has been given by her husband without his consent. She cannot alienate that portion of *stridhana* property which she receives from strangers.³³

VI. RECOMMENDATIONS

Lots of recommendations may be proposed under separate headings for marriage, divorce, maintenance, adoption, succession etc. But one common recommendation should be, that there shall be specific separate legislations governing every issue like India. However, the following reforms regarding different issues of Hindu laws have been proposed in a nutshell:

(A) Marriage

- Registration should be made compulsory for the validity of the marriage. Therefore, every marriage solemnized under the rituals of Hindu law must also be registered.

³¹ Sree Mridul Kanti Rakshit, *The Principles of Hindu Law*, 740-741 (Dhaka: Kamrul Book House 1964)

³² *Id.* at 762-768.

³³ Mohammad Ataul Karim, *Hindu Law in Bangladesh: Intersecting Religion, Tradition and Law* 211 (Dhaka: Oriental Law Publishing 2020)

- Child marriage must be prohibited. Regarding the solemnization of marriage, the age of majority for the bride should be 18 and for the groom, it should be 21 years of age.
- No particular form of marriage except the '*Prajapatya*' form should be made essential for the validity of marriage.
- Only the essential religious ceremonies i.e. 'Recitation of *Vedic* texts before the sacred fire' and '*Saptapadi-gamana*' should be required for the validity of the marriage. Other customary provisions should have no effect on the validity of marriage.
- Identity of caste between the parties to a marriage should not be considered. It will be enough if both parties fall within the ambit of Hindu law or upon whom the Hindu law applies. So, marriages amongst Hindus, Jains, Sikhs & Buddhists must be declared valid in the eye of law.
- The old concept of prohibited degrees of relationship for a Hindu marriage should be abolished. The prohibited degree should only contain full-blood, half-blood, uterine-blood, and adopted relationships.
- Monogamy should be established and the practice of bigamy should be made a punishable offence.
- There must be arrangements for judicial separation or divorce between bride and bridegroom through mutual consent according to strict provisions of law.
- After death or judicial separation, either the bride or the bridegroom may be allowed to remarry.
- The widow's marriage should be less formalistic. Only observance of two essential religious ceremonies ('Recitation of *Vedic* texts before the sacred fire' and '*Saptapadi-gamana*') should be made compulsory for facilitating a widow's marriage.
- There must be arrangements for restitution of conjugal rights between the parties by the operation of law.
- Mother should have the right to play the part of '*kanya sampradan*'.

(B) Divorce

- There must be arrangements for judicial separation or divorce between bride and bridegroom.
- Petitions seeking judicial separation may be submitted to the court either by the husband or the wife.

- There must be certain justified grounds upon which divorce may be sought.
- Decree for judicial separation must be pronounced under specific justified grounds.
- After a valid separation, the wife if entitled, should get maintenance or permanent alimony as well as expenses of legal proceedings according to strict provisions of law.
- In case of divorce, custody of children must be determined by Court according to law.
- During the continuance of legal proceedings, the question of custody of the children should be decided by the court upon consideration of the interest of the children.

(C) Maintenance

- After a valid separation, the wife if entitled, should get maintenance or permanent alimony as well as expenses of legal proceedings according to strict provisions of law.
- In case of separation, children must get maintenance from their father.
- Wives or widows should get maintenance even if they possess sufficient *stridhana* or other means of support.

(D) Guardianship

- Guardianship rights should be entitled to both parents. That is, in both the cases of legitimate and illegitimate children, both father and mother should become equal natural guardians without any preferential right.
- In case of adopted children also, both father and mother should become equal natural guardians without any preferential right.
- Loss of caste should have no effect on the right of guardianship.
- Wife should also possess the right to appoint a testamentary guardian for her child independently and without her husband's delegation of power.
- Mother should be preferred to a testamentary guardian appointed by the will of the father.
- In case of appointing a testamentary guardian by the father, consent of the mother should be required.
- An *ad hoc* guardian should have the right to alienate the property of the minor in case of extreme legal necessity.

- The question of custody of the children during the pendency of legal proceedings as also after the passing of a decree is to be decided by the court, the interest of the children being the prime consideration.

(E) Adoption

- Female children may also be adopted.
- Wife, widow, divorcee, even an unmarried girl may adopt.
- Wife's consent should be made necessary in case of adoption by husband and *vice versa*.
- Wife should have the right to adopt a child for her in-law's family even during the lifetime of her husband.
- In case of adopting a male child, the adoptee must be below 15 years than the adopter except recognized by custom.
- '*Datta-Homa*' may not be essential for the validity of adoption. It may or may not be performed.
- In case of adopting a female child, the female child to be adopted must be at least 21 years younger than the adopter.
- Adoptive parents should not be deprived of the right to transfer property.
- Adopted son should get an equal share with the natural-born son from the adoptive father.
- Question of different castes should not be raised. Both the adopter and adoptee must be Hindus only.
- Different types of sons under *Shastriya* Hindu law must be abolished. Only two types of sons – '*Aurasa*' and '*Dattaka*' must be recognized.
- Deaf and dumb persons should be adopted.
- An orphan should validly be adopted.

(F) Succession

- A uniform system of inheritance should be introduced for all Hindus living in the country irrespective of whether they belong to *Mitakshara* or *Dayabhaga* school.
- Daughters should get an equal share with their brothers from the property of the father irrespective of being married or unmarried.

- Widows should get share of the property of their deceased husbands like male heirs.
- Females should get property absolutely with complete power of disposition over it.
- Illegitimate children should be entitled to inheritance.
- Blindness, deafness, dumbness, lameness, impotency, or want of any limb or organ should not be regarded as defects that may exclude someone from inheritance.

(G) Gift

- There must be limitations regarding the portion or amount of property to be gifted by any person if he/she has heirs. Some property must be left for the heirs.
- Consent of the wife should be made compulsory while making any gift by the husband.
- Every gift must be registered by the operation of law even after delivery of possession.

(H) Will

- Women should have the express right to make any disposition by way of will through direct operation of law.
- Father should take the consent of the mother while making any will.
- Every will must be in writing and registered. Oral will shall have no effect.
- Like a gift, a Hindu should be restricted to make a will of the whole of his/her property. Heirs must have the probability to inherit.

(I) Stridhana

- In case of death of any Hindu married female, 1/4 of her *Stridhana* property should be inherited by the husband if living, and the remaining property should be inherited equally by her sons and daughters.
- Women ought to have the freedom to dispose of all types of *Stridhana* property, i.e. both *Saudayika* and non-*Saudayika*.
- By operation of law, women should have the right to dispose of their *Stridhana* property for religious or charitable endowment.

VII. CONCLUSION

One thing that is presumed from the above discussion is that if only women are recognized as successors of property, people of other religions may try to profit from their property for nefarious purposes and divine laws ordained from GOD should not be modified by human

authority - mainly for these two reasons, Hindu religious organizations always oppose reform proposals initiated by the government. It is very unfortunate that for one reason or another, radical Hindus oppose many modern proposals. In other words, many reform proposals are not passed due to two or three negative reasons. These religious organizations need to understand that law is a progressive ongoing issue that cannot remain unchanged for thousands of years. Laws need to be amended in the changing socio-economic context from time to time. Different religious, moral, and mythological laws have been changed in different countries of the world. Even some provisions of the ultimate rigid Muslim law have been reformed in different Muslim majority countries. Neighbouring India has made sweeping reforms to Hindu law without hurting religious sentiments. If a provision is not felt to be reformed, it may have reservations, but therefore no provision should be reformed - there should not be such a view. The Hindus of Bangladesh must understand that in the changing socio-economic context, the reformation of some thousand-year-old issues is very necessary. And what about Hindu women, if their condition does not improve, no matter how much Bangladesh improves, no matter how much women are empowered in the country, females will never be able to enjoy the benefits, rather they will have to spend their lives in darkness forever.

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