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Comparative Analysis On Hindu Personal Law between Bangladesh and India

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Abstract

In British period, they made some laws for the Hindu Personal Law. Bangladesh and India followed that legislation. Bangladesh still follows those laws and they made amendment in the laws narrowly but in India they made vast amendment among those laws. This research paper also deals with the inconsistency between the shatric laws and statutory law. This research work is mainly focused on divorce, marriage registration, maintenance, property regarding issues in both countries. In my research work I have tried to cover these issues by the case, principle, regarding laws, decisions of the judiciary and another country example to analyses that how they deal with it. I have shown that, in Divorce, Maintenance, Registration of marriage, Property, Maintenance are the sector where Hindu religions are neglected in Bangladesh and in India how it changes Judiciary system, in regarding issues. I tried to find out inconsistency of legislation on Hindu personal law between Bangladesh and India.

**Comparative Analysis On Hindu Personal Laws Between
Bangladesh and India.**

Table Of Contents

<i>No</i>	<i>Topic</i>	<i>Page no</i>
1	<i>Acknowledgement</i>	I
2	<i>Abstract</i>	II
3	<i>Chapter 1-</i> <i>Introduction</i> <i>Literature Review</i> <i>Scopes</i> <i>Objective of Study</i> <i>Methodology</i> <i>Limitation</i>	1-3 1 1 2 2 3 3
4	<i>Chapter 2-Marriage</i>	4-12
5	<i>Chapter3- Maintenance</i>	13-17
6	<i>Chapter4-Divorce</i>	18-21
7	<i>Chapter5-Property</i>	22-26
8	<i>Chapter-6 Recommendations and</i> <i>Conclusion</i>	26-28
9	<i>Bibliography</i>	28-32

Chapter 01

1.1. Introduction

Hindu law is a customary Law. In Ancient form, Hindu religion follows the custom or usage and their religion based on many principal, custom, and usage. There are some changes in their religion by the laws and principle amendment. These changes are based on mainly doctrine of Factum Valet. After the independent of our country, legislature made laws for the Hindu religion and we follow them but those laws are not enough for them. Bangladesh and India is a South Asia country and Hindu people live in both countries. There is lot of Hindus who live in India but minority of Hindu people live in Bangladesh has also. In India, they made the laws for the Hindu and made vast amendment in these laws and they endure the fair justice for them, on the other hand In Bangladesh which was not held and the laws of Bangladesh is enough for the Hindu citizen to protect them. I have made comparison between both countries about the legislation which they made for Hindu Religion in Hindu personal Law.

1.2. Literature Review

There are many authors who made written regarding problems of Hindu law and they find out situation of the Hindu people and Hindu people's faces many problems. They cannot establish their legal rights, obligation and also tries to find difference between Muslim laws and Hindu laws in many books, journal, articles, and online source. On the other hand, In India author are writing the condition of Hindu peoples in Hindu personal laws and mentioned that, vast amendment of their judiciary system in many books, Journals, articles, online source. There is vast research topic about condition of Hindu religion and I found lots of articles, Journals, books, online basis materials. I could not found articles, journals, online matters, books about comparison matters between the Bangladesh and India regarding issues, for such reason, I have decided to research in this topic.

1.3. Scopes

This work is only based on the existing provisions of marriage registration, divorce, maintenance, property related issues of the Hindu laws, and showing some criticism and problems which they are facing. Indian legislation and judiciary system has taken into consideration while we are discussing the issue of Bangladesh..

A number of questions can be framed on this research topic. However this research has been limited to following question. To fulfill the purpose of the research following question be addressed:

1. Is There any inconsistency legislations on Hindu personal laws between Bangladesh and India Laws.
2. Whether existing laws regarding the issue of Hindu Law in Bangladesh are enough to ensure justice?

1.4 Objective of the study: The objective of this study is

1. To analysis relevant law and the issue of Bangladesh and India.
2. To make the comparison regarding issues between two countries.
3. Recommended the amendment the existing laws in Bangladesh.
4. Recommended suggestion to resolve the disputes regarding issues.

1.5. Methodology

This research said qualitative or descriptive research. To describe the existing provisions, what existing also and tried to discover new meanings as well. In this thesis paper, I mainly use the secondary data. The methodology depends on some secondary source by searching Books, journals, articles, newspaper, online journals, websites, different blogs, also collected laws from various statutes to perform this work.

1.6. Limitation

This is the vast topic for the research of the Hindu law for such reason I choose this individual topic. This critical assessment on this issue might be able to provide a better outcome if there is no limitation of time. Doing this research, it was not able to find enough materials regarding this issue in India. There is a lacking of current case laws regarding these issues in Bangladesh and India and resources for research is not enough.

Chapter 02: Marriage

2.1. General Concept of Marriage under Hindu Law

In ancient Hindu Law recognized eight forms of marriage, four forms are as approved marriage and another four forms are disapproved. The approved forms are *Brahma*¹, *Daiva*², *Arsha*³, *Rprajapaty*,⁴ and the disapproved forms are *Asura*⁵, *Gandharva*,⁶ *Rakshasa*⁷ and *Paishacha*.¹⁵ In Bangladesh two forms are allowed to continue a marriage ceremony those are *Brahma* and *Asura*. For these forms, child marriage is allowed in ancient Hindu law but that marriage is disapproved in their religious forms. This is not inconsistent with their written text and doctrine of *Factum Valet* applies and Hindu Laws are re formed. In Bangladesh, there are two marriage system are practiced. First one is called *Brahama*, where father gives the daughter to the groom without consideration on the other hand groom receive *shulka* or bride price. Although the terminology *Brahma* or *Asura* is not commonly used in

¹Bride parents are not received any consideration for giving the girl in marriage.

²In this form, when priest in a sacrifice performed by the father, the father of bride give his daughter to him in lieu of dakshina.

³ Bride groom makes a present as a cow, bull and two cows and two bulls to the bride's father, which is accept as a religious purpose.

⁴Bride father gift her daughter as a condition, the groom would be a partner for performing secular and religious duties.

⁵ Bride father takes consideration from the groom and this is considered as bride sale.

⁶ This marriage is happened by mutual consent.

⁷ This marriage is affected by forcible capture and marriage was allowed only for military Class.

⁸Bride parents are not received any consideration for giving the girl in marriage.

⁹In this form, when priest in a sacrifice performed by the father, the father of bride give his daughter to him in lieu of dakshina.

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¹² Bride father takes consideration from the groom and this is considered as bride sale.

¹³ This marriage is happened by mutual consent.

¹⁴ This marriage is affected by forcible capture and marriage was allowed only for military Class. Ibid.

¹⁵The person who had committed the crime of ravishing her either when asleep or when made drunk by administering an in toxin drug or when in a State of Mental Disorder, father gives her daughter to marry with him.

Bangladesh. One of those forms will be manifest form the marriage ceremony celebration.¹⁶There was a prohibition degree for marriage, if the bridegroom belongs to same gotra the bride cannot marry her it is a common practice, this provision provides are Vishnu. They are not sapinda each other. When a person dies, giving the rice ball and take rice ball and they are the include the inheritance line and they succeed his property according to Dayabhaga School, in Mitakshara School blood relation will be prevailed, they cannot marry each other.¹⁷

2.2. Hindu Marriage Related Laws: Bangladesh Perspective

There are three Laws in Bangladesh regarding Hindu Marriage, They are, The Child Marriage Restrain Act, 2017 another is Hindu Marriage Registration Act, 2012. Widdow's Remarriage Act, 1856. I will discuss it one by one.

2.2.2. The Child Marriage Restrain Act, 2017

In ancient Hindu Law, the families have a tendency of child marriage and they also used to gift their daughter to someone for getting gratuitous. On the other hand there are some men who already have a wife but want to marry another girl and they convince their father and they get married. In Hindu law follow customs and rituals regarding marriage, but Laws are deals this issues.¹⁸A Hindu woman is treated like a slave in her in-laws house after the death of her husband, she cannot ask for her legal rights from the family. ¹⁹In Hindu law marriage is religious duty nothing else. On the other hand there is a remarkable change in Hindu law, widow remarriage where the widow can marry someone but the practice is still rare in our country. In India, they face some problems regarding issues but they made amendment and made strict provision regarding problem.

¹⁶ Mahua Zahur, "The Hindu Marriage system in Bangladesh Addressing Discrimination"[2014]1,10

¹⁷ Ibid p 1, 11

¹⁸ Ibid P.1, 12

¹⁹Sharmin Aktar and Abu sayed abdullaha "A comparative study on Hindu Law between Bangladesh and India" (2007)<https://www.cdrb.org/journal/current/4/Sharmin_4.pdf#targetText=Comparative%20reference%20is%20made%20to%20the%20law%20applicable%20to%20Indian%20Hindu%20women.&targetText=Because%20of%20the%20lack%20of,in%20their%20socio-economic%20life.>accessed 6 August 2019

Child marriage was permitted in Hindu law. Underage Married Girls suffer from more health-related problem because they enter into sexual intercourse in their conjugal life so that they give birth to weak and underdeveloped offspring because the body of girls under 18 years old that is not are fully developed.²⁰ Apart from that child are died at the time of birth. In fact, pregnancy related complications are the main cause of death in 15-19-year-old and estimated 14 million girls between 15-19 years old give birth every year. If a mother is under 18 her baby chances of dying in the first year of life is 60 percent greater that of a baby born to a mother over 19. Babies born to mothers under 18 are more likely to suffer from low birth weight, under nutrition and delayed physical and cognitive development. The Child marriage are hampered to develop the mentality of the women, she cannot take her own decision, it is also hampered her health, early death of girls, premature are births, ill health, discontinuation of education, poverty.²¹

In Hindu law, there is no age limit for marriage, Bangladesh Majority Act 1875, which is not applicable in Hindu law. Child Marriage Restrain Act, 1929 provides that age limit for women were 15 years old and for man those was 18 years old. Then the Child Marriage Restrain Act 1929 was amended, according to that amendment women are attained to 18 years old and man attained to 21 years old according to section 2, Child marriage Restrain Act, 1929 are amended in 2017, in this Act, punishment is added and according to section 11, if there is any registration regarding child marriage and it proved then he will get punishment. But This Act prescribed little punishment for the accused and that punishment is mare. These provisions are not enough for this. For such reason this Act are amended in 2017 and added strict provision which is reformed the Hindu law, it provides that anyone attempt to this or make are registration the child marriage then he will get the punishment. These Laws are changed the Ancient practice of Hindu Law.

²⁰Sharmin Aktar and Abu Sayed Abdullaha "A comparative study on Hindu Law between Bangladesh and india"2007<https://www.cdrb.org/journal/current/4/Sharmin_4.pdf#targetText=Comparative%20reference%20is%20made%20to%20the%20law%20applicable%20to%20Indian%20Hindu%20women.&targetText=Because%20of%20the%20lack%20of.in%20their%20socio-economic%20life...>accessed 6 August

²¹ The Child Marriage Restrain Act 1929, s 1(2)

This Law are encouraged and Court also encourage and social NGO, Organizations are encouraged follow that law to restrain the child marriage.

2.2.2. Hindu Marriage Registration Act, 2012

It is another major law of Hindu Law. But This Law is not mandatory for the Hindu Citizens of Bangladesh. If any problem, arise in conjugal life Hindu women cannot establish her legal rights and obligation because before established this right she must proof that there was valid marriage and marriage are follow ritual are custom and it is a valid marriage under Hindu law. Registration is necessary to prove the marriage is happened between them.

But In Indian Hindu Marriage Act, 1955, Registration made Compulsory for the entire Citizen, which is remarkable change in India.

According to Hindu Marriage Registration Act, 2012, it is applicable for the entire Hindu Law citizen²². But it is not mandatory for all the Hindu Law citizens for such reason the court faces many problems and they presume that the marriage was held. The Hindu Marriage Registration Act, 2012, provides that, there is a registration Act for the Hindu citizen and object of the Act is to keep the proof of the marriage; through this marriage a Hindu woman can established their legal rights and obligation.²³Hindu Marriage Registration Act, 2012, provides the proceeding regarding Registration and there is no Higher punishment is included this Act.²⁴Provides that Hindu people can ask for copy of registration and which is need for them to establish the marriage and it is will be proof of the marriage.²⁵In this situation, is related in presumption of marriage. Presumption marriage means, Lacking of the registration, if there is not registration of marriage, the court will presume that it may be marriage is happened between them. The essential valid marriage element is invocation before the sacred fire 2. Saptapadi, it is taking of seven steps by the bridegroom and bride jointly before the sacred fire is the two essential ceremonies. In our country to proof valid marriage these two provisions are the court may consider it.

²²The Hindu Marriage Registration Act 2012,s2

²³ Hindu Marriage Registration Act 2012, s (2-3)

²⁴ Ibid, s (8-11)

²⁵Ibid, s12

In lack of registration court will presume that, the marriage was held. Which is major problem in Bangladesh and court also faces many problems to solve this issue. In this case, *Swapon Kumar Gain vs. Amita Golder*²⁶ plaintiff claims that, the marriage is happened between them in Dhakeswari Mandir as per the religious rule of Hindu law. She also claims that she lives her father house because her husband torture her and she wants maintenance from her husband, and her husband denies that the marriage is happened between them and marriage is not valid because it does not follow the rituals. Plaintiff established that, there were marriage between them and there was no registration but notary public confirming the marriage and the court wills valid presumption that, it contains record of the marriage, marriage is was held as per the Hindu Law rituals.

In this case *UtpalKanti Das vs MnjuDas*,²⁷ Plaintiff claim the maintenance, she also claims that, her father gave dowry to her husband and her husband tortured her for more for such reason she left the house, even she was still in her father's house but her husband kept threatening her so that she claimed maintenance and dissolution of marriage. In this case, the burden of proof of plaintiff but she failed to establish that there was marriage as there was no registration and no valid evidence. The court held that, there was no valid reason to presume that the marriage was held for such reason she cannot establish her legal rights.

In this *A Mulya Chandra Modak vs the State*²⁸ the accused fraudulently marry to the plaintiff²⁹ and he marries her and promise her when he mothers return in the house then the marriage ceremony were held. They enter into sexual enter course with her, when her mother came he denied and did not accept her and he claim that the marriage is not valid and he has taken the consent fraudulently by her.

²⁶58 DLR (2006), 26.

²⁷ 50 DLR (AD) (1998), 47

²⁸35 DLR (1983), 160

²⁹35 DLR (1983), 160

In another case *KaratalaVihar V. H.R .Chowdhury*,³⁰ the court face same problem, there was no registration in the marriage and burden of proof the marriage is plaintiff and she failed prove it. In this cases there is a Registration is lacking, for such reason, she cannot establish her legal rights and obligation.

Due to lack of mandatory provision the court will presumption of marriage in Bangladesh. For such reason they faces lot of problems and suffered for it, in this cases court presume that marriage was held if, there was registration of marriage, court will deal that easily. Hindu Marriage of registration must be mandatory for all the citizen of Hindu Law.

2.3.1. The Widow's Remarriage Act, 1856

Widow Marriage was prohibited in the ancient Hindu texts and Hindu women think that, after her husband's death and she have to continue to her chastity in order to secure heaven after their death according to manu. This kind of marriage is prohibited in the upper caste. If she marry someone and she get a new born baby use to be called illegitimate child in British Period but on the other hand, in the lower cast, 80 percent Sudra caste and the untouchables, they represent that widow can remarry to someone by custom and usage and they do not practice child marriage, on the hand it also found that the child widow are in the upper caste.³¹ The British India government through their legislative power to reform this rule and it organized by the *Panditvidyasagar*³²and enacted Hindu Widows' Remarriage Act1856, this Act provides the provisions which helps to reform the society. As per this Act, widow can marry someone there is no legal bar about it and if any child is born then child will be legitimate.³³ This Act also provides that, all the ceremonies shall same effect as a valid marriage and its effect will be as a veiled marriage.³⁴ When widow remarry someone she has no right over former husband property as per the Act.³⁵

³⁰40DLR 91998) [AD]137

³¹Mahua Zahur, 'The Hindu Marriage system in Bangladesh Addressing Discrimination' [2014] 1, 17

³²Ishwar Chandra Vidyasagar is a famous scholar and writer who devoted his entire life to cause of social welfare. One of his deepest concerns was the prohibition on widow remarriage .He also commented on the practices of child marriage and polygamy.<<http://www.preservearticles.com/201104225805/biography-of-iswar-chandra-vidyasagar.html>> accessed 23 Mrch2019

³³ The Hindu Remarriage Act 1856, s1

³⁴Ibid, s6

³⁵Ibid; s2.

In this cases *Soudamini Ray Malakar v. Narendra Chandra Barman And other*³⁶ Court apply the section 2 of the widows Remarriage Act 1856, the court held that, Widow enter into the remarry someone she forfeits the rights of former husband property and court may apply the *Stare Decisis* , it would not disturb it. On the other hand there was the leading case where the court give another decision that, In this case *Jaynal Abedin Khandakar and Others v. Badiazzaman Mondal and Others*,³⁷ In this case plaintiff challenge the her former Husband property and she remarry someone to according to custom and usage and This Case lower court held as per the section 2 of The Widow's, Remarriage Act 1856, that she does not allow to get the property of former Husband.³⁸ The Appellate Court set aside the lower court judgment, held that, Section 2 of the Hindu Widow's Remarriage Act 1856 does not apply to a case Where The marriage had taken place in accordance with the custom of the case where the marriage had taken place in accordance with the custom of the case which she belonged, if remarriage is permitted by the custom of forfeiture of the property which the widow had inherited former her husband.³⁹

Though we have widow's Remarriage Act 1856, clearly stated that, when she marry someone she cannot get former husband property but Judiciary principle came and interpret law, that widow may inherit the former husband property if she prove that it is allowed by the custom. So, that to establish the right of widow we need to reformed the Widow's Remarriage Act, 1856.

2.3. The Hindu Marriage Related Laws: India Perspective

In India made laws for all the Hindu citizen and they include all the provisions regarding Hindu law personal Law. This Law is so scrutinize and included all the provision of regarding problems in Hindu Marriage Act 1955. If any problem arises about it, then the court may easily solve it.

36 [1952]4 DLR 492
37 [1967] 19DLR 935.

³⁸ Ibid.,936

³⁹ Ibid.,939

2.3.1. The Hindu Marriage Act, 1955

This Act provides that, essential requirement of marriage, consent is important and both parties must have consent in the marriage, if a person already has a wife he cannot marry another women, the person who is unable of procreation of child, impotent, unable to give consent he cannot marry to someone else or again, another important thing is the bride must be 18 years old and groom must attain 21 years old, there is no sapinda relationship at the time of marriage.⁴⁰ This Act also provides that, ceremonies are Hindu marriage, Hindu marriage is solemnized according to custom and religious rituals, two important things are same that the, Fire, saptpadi, it means taken seven steps, this are the same in both countries to take consider valid marriage.⁴¹ This Act also provides that, government makes the registration compulsory, for proof the marriage after the marriage ceremony they register their marriage and if they do not do this, they shall be get punishment with fine and the fine will be extended 25 rupees.⁴²

This Act provides a guide line for them for such reason they can establish their right through the marriage. Government make compulsory registration of marriage for the entire citizen, if they do not do it then they can get punishment for this.⁴³ If anyone contravene the provision, he would be ultra-virus, it is shall be enforceable for all, as if parties can established their claim by this registration document.

There was child marriage related problem are faced in India, Then they made amendment Child Marriage Restrain Act and The amendment Act name is Child marriage Restrain (Amendment) Act, 1978⁴⁴ before this amendment, when girl attains 15 years old and male attain 18 years old and they can marry each other and marriage is valid and there is no legal bar.⁴⁵ After the amendment, strictly prohibited the child marriage and mentioned the higher punishment in the

⁴⁰ Indian Marriage Act 1955, s5

⁴¹ Ibid, s7

⁴² Ibid, s 8

⁴³ Ibid, 8

⁴⁴ The Child Marriage Restrain (Amendment) Act 1978

⁴⁵ The Child Marriage Restrain (Amendment) Act 1978, s5

Act.⁴⁶In this Act mentioned that, Age must be attain 18 years old of girl and male attain the age 21 years old and this provisions are applicable for the citizen.

2.3.2. Widow Remarriage in India Perspective

Widow can remarry with someone it is valid both countries and they follow the provisions of Widow's Remarriage Act; 1856.Both country are follow the same provision, regarding widow remarriage.

In India the statue are mandatory that, there are two provision of important for valid marriage, court will consider in case of marriage all the documents of that, registration shall be compulsory, punishment also mentioned, child marriage age mentioned, though marriage is valid but punishable, widow can remarry, their The marriage Act1955, provides all the provision for such reason their jurisdiction are advanced than Bangladesh law for Hindu Law, On the other hand in Bangladesh, child marriage age are mention, marriage is valid but punishable, widow can remarry, there are two essential elements of marriage but there was no proof about valid marriage lacking of registration, the Hindu women cannot establish their legal rights and obligation, though we have Registration Act 2012, but it not mandatory, there is no punishment about it, our jurisdiction is not scrutinized for Hindu citizen, there are very narrow scope for them, to establish their legal right.

⁴⁶ The Child Marriage Restrain(Amendment) Act 1978, s7

Chapter 03: Maintenance

3.1 General concept of Maintenance under Hindu Law

A Hindu husband has personal obligation to maintain his wife, minor children and aged parents. A Hindu husband can give maintenance from his personal property or his ancestral property; because his father died he can inherit his father ancestral property.⁴⁷ On the other hand an illegitimate child can get the maintenance from his father property; this principle is established from Indian case. The case name is *Rundibala Roy vs putubala*⁴⁸. In Dayabhaga School They are not inherit will the property jointly so that son will inherit his father property after his father died and he is bound to give maintenance to his wife, unmarried daughter, unmarried sister, widow but he is not bound to give the maintenance from his personal property. In Mitakshara School, they inherit the property jointly so that all are getting maintenance from the joint property.⁴⁹

3.2. Maintenance Laws: In Bangladesh Perspective

There is a law regarding issue and Bangladesh follow this Law and This Law name is Hindu Women's Right to Separate Residence and Maintenance Act, 1946. But this law is not proper to protect the women and this Law must be reformed.

⁴⁷Dr Shahnaj Huda "Double trouble: Hindu women in Bangladesh-A Comparative Study", 115-117

⁴⁸DrShahnaj Huda "Double trouble: Hindu women in Bangladesh-A Comparative Study", 115-117

⁴⁹ 15 DLR, 330

3.2.1. Hindu Women's Right to Separate Residence and Maintenance Act, 1946

In Bangladesh there is no divorce law so that the women's are suffered lot of problem. Instead of divorce provisions, the victim can claim the separate Residence and maintenance but this is not enough for her, she suffered a lot of problems.

This Act provides some provision and a Hindu woman proof this provision for getting maintenance and separate residence:⁵⁰

1. If he is suffering from any loathsome disease not contracted from her
2. If he is guilty of cruelty and tortured her and it is impossible for her to live with his husband.
3. If he is of abounding without her consent and against to her
4. If he marries again
5. If he adopts or conversion to another religion
6. If he keeps a concubine in the house and habitually reside with concubine
7. For any other justifiable clause⁵¹

This Act also provides that, Hindu married women shall not entitle to claim maintenance from her husband if she is conversion or adopt another religion and also she unchaste. If she fails to prove that the marriage is valid and she is suffering pain under this provision, then she fails to get decree from competent court in her favor. Court decides the amount of maintenance which is depend on its discretionary power and depends on husband capacity and social status.⁵²

As per the Case *Nirmal Kanti Das Vs Sreemoti Biva Rani* ⁵³The Court held a Hindu women instituted the suit to get maintenance against her husband under the Family Courts ordinance, 1985.

In this case poncho *Rikssi Das vs Khuku Rani Das*⁵⁴Ponchon married the Khuku Rani Das under Hindu law and dowry was given by bride father. Ponchon sent her wife to her father house and

⁵⁰Hindu Women's Right to separate Residence and Maintenance Act, 1946 s2

⁵¹ Ibid;

⁵²Ibid;s3

⁵³ 47 DLR HCD 514

⁵⁴50 DLR 198 (47)

he failed to maintain her and children on the other hand he married again. He tortured her regularly, for such reason she bound to leave her husband house and husband sent to her for getting money from her father. Plaintiff claim to separate residence and maintenance from her husband, the marriage is valid and she is entitled to claim maintenance under Hindu women's Right to Separate Residence and Maintenance Act 1946. Section 2 of this Act, provides that some grounds for claiming maintenance under this Act. If he marries again and if he is cruelty and torture to her wife, then she claims maintenance and separate residence. These two provisions are related with fact, she can be instituted the suit for claiming maintenance against her husband because this Act gives this right to her.⁵⁵

3.2.3 The Family court ordinance, 1985

The Family Court Ordinance, 1985, section 5, provides that, a family court shall have exclusive jurisdiction to entertain or relating to or arising out of these following matters, they are: Dissolution of marriage, restituting of conjugal life, dower, maintenance, guardianship and custody of the children.⁵⁶

This fact is relating with maintenance case. In this case, *Poncho Rikssi Das vs Khuku Rani Das*⁵⁷ Plaintiff instated the suit under section 5 of the Family Court Ordinance 1985, she has right to claim her legal rights, this rights are given by this law.⁵⁸

The Court Held that, the plaintiff has the right to institute the suit under section 5 of The Family Court Of Ordinance 1985, Because all the provisions are relating with this Act, she Proved that she tortured by her husband and she left her husband house and Her Husband do not maintain her and all this grounds are general condition to get this maintenance under Hindu Women's Right to Separate Residence and Maintenance Act, 1985. The Court may give order to give maintenance her wife. According to 27 of the Family Court Ordinance 1985, Provides that, Before This Act, Maintenance relating issue are solved under 488 of The Code of Criminal procedure 1898, awarding the maintenance under this Act but The Code of Criminal procedure 1898 has no jurisdiction to entertain maintenance relating the issue because The Family Court

⁵⁵ Dr. M Shah Alam "Review of Hindu Personal Law in Bangladesh: Research for Reforms" 15, 22-25

⁵⁶ The Family Court Ordinance 1985, s5

⁵⁷ 50 DLR 198 (47)

⁵⁸ The Family Court Ordinance 1985, s5

Of Ordinance 1898, come into force. Though we have law regarding Hindu law, this mere provision or law does not give security because her husband may take attempt to further torture her. But burden of proof the plaintiff to establish her rights and obligation.

3.3. The Maintenance Law: In India Perspective

We find that, the Hindu women get maintenance under Indian Marriage Act 1955. This Act gives right to the women claim maintenance from his husband, this is the one of the great change in India, because Indian Hindu Marriage Act, 1955 are amended, and Ancient Hindu Indian Marriage Act 1955, there is no provision about the maintenance so that, this Act give this right after its Amendment. There is a separate Act about the maintenance in India; This Act name is Hindu Adoption and Maintenance Act, 1956. This Act mentioned the provisions and Procedure of maintenance system that means How the Hindu women are get the maintenance from her husband and other. .

3.3.1 Indian Hindu Adoption and Maintenance Act, 1956

Maintenance means food, clothing, residence, education, medical attendance and treatment. So the wife gets maintenance from her husband in these sectors.⁵⁹ Hindu women can claim maintenance prove must some grounds, which is similar provision of Bangladesh Law.⁶⁰ A Hindu widow to get maintenance from husband family and she claim as of right maintenance from her husband, if she converted to another religion, she cannot claim the maintenance, The amount of maintenance depends on court, court determine it the issue of circumstances.⁶¹ Though the marriage is valid, the court will valid presumption, but she has right to claim maintenance as a consequential relief, husband bound to give menace to her wife, parents, sister daughter, they claim for it.

⁵⁹ The Indian Hindu Adoption and Maintenance Act 1956, s13

⁶⁰ The Hindu women's right separate residence and Maintenance Act 1946, s2

⁶¹ The Hindu Adoption and Maintenance Act, 1959, s (19-22)

3.1.2. The Indian Penal Code, 1973

Criminal court has jurisdiction to entertain the case the issue of maintenance it is the mentioned the section 125 of The Indian Criminal Procedure Code, 1973, if any one do not comply within provision of Act he will get punishment.⁶²

As per the description, In India, A Hindu woman claim as of right maintenance, this Act give this right, if her husband do not give this maintenance, he shall get punishment, which is given security to her life and she also revoke her marriage at any time. She claims judicial separation instead of divorce. In The Indian Hindu marriage 1955, just include she will get maintenance but This Act does not provide other provisions, for such reason they made another separate Act, which ensured its right.

In Bangladesh though we have Act, this Act give as of right to claim maintenance or separate residence from her husband, it is not enough for her to give security, after separation and getting maintenance may her husband can threat to her or attempt to torture her, though we have act, we have provision, which may not enough for the Hindu women and it do not ensure security for her life and need to reformed the Act, there is separate Act but the Hindu women's are suffered and Court will try to give relief to her by interpret the laws and case decision, but every case is not possible and this laws should need amended and added higher punishment as if she will lead a secure life. There are added some laws in this Act, as if the court may deal regarding issues easily.

⁶²The Indian Criminal Procedure Code 1973, s125

Chapter04: Divorce

4.1. Divorce Related general concept:

In Hindu Law, as per the words of *Manu*, "Let Mutual fidelity continue until death"⁶³, they may not violate fidelity and they are lived with each other after marriage, it means marriage is not revocable. In our country, law is framed by this way there is no provision about the separation. The Hindu women cannot live or unable to live her husband house. Most of the legal system accepted the divorce provision. Divorce permitted in Hindu law, where the husband are not able to understand the marriage ceremony, impotent, and abandoned for 3 months or more than, so that divorce relating provisions are mentioned their texts. But these provisions are applicable in exceptional cases. Hindu marital bond is unbreakable and it is a permanent and indissoluble union.

4.2. Divorce Related Rules: In Bangladesh Perspective

In our Bangladesh follows shastric Hindu law and divorce is not permitted here. According to a newspaper article Minati Karmakar, she suffered at her husband house for inability to bring dowry and her husband tortured her for getting dowry, being fed up, one day she left her husband house and returned to her parents' house, even after this her husband did not give her scope to be free from his torture to her for bearing the dowry. In this situation, she wanted to terminate the marriage and she went to court and found herself there is no divorce provision in Hindu law system in Bangladesh. Existing Hindu law provision of Bangladesh cannot help her through divorce.

Instead of divorce Bangladesh follows this Act. They claim for separation in this ground but they cannot file for dissolution marriage in a court.

There is no exception, it happens to thousands of Hindu women in Bangladesh; still they are suffered for this provision. According to "Hindus Women's Right to Separate Residence And Maintenance Act, 1946" Hindu women file a case in a court, under Family Court Ordinance 1985, because this courts are deal 5 grounds dissolution of marriage, restitution of congeal

⁶³Mahua Zahur, 'The Hindu Marriage system in Bangladesh Addressing Discrimination' [2014] 1, 12

rights, dower, maintenance, guardianship and custody of children, according to section 5 of Family Court Ordinance 1985, but they cannot ask for divorce and they have limited scopes to ask for separation, this Act is not enough to protect Hindu woman because her husband may torture her after separation. She stays in separate residence according to “Hindus Women’s Right to Separate Residence and Maintenance Act, 1946” but marriage is valid for such reason she cannot ask for divorce and remarry. Besides Hindu women can file case under the “Family Courts Ordinance 1985” and “Dowry Act 1980” and Woman and “Children Repression Act, 2003, but these laws are too inadequate to protect Hindu woman's right in this regard because they are unsafe and they can torture by her husband at any time because still they have marital relationship each other.

In our constitution, which is guaranteed in the “article 26 (1), All existing law inconsistent with provision of this part then that part shall be void.⁶⁴ Article 27 says that, all citizens are equal before law are entitled to equal protection of law and Article 28, the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth, and women shall have equal right with men in all spheres of the state and Article 31, to enjoy protection of law, Article 32, No person shall be deprived of life or personal livery save in accordance with law.”⁶⁵ But the Hindu women are discriminating not only religion but also the gender and other religion we can see that the divorce provisions are accepted widely in other religion, but in this situation, Hindu women are discriminate in their religion. As per our constitution, article 29, making the special provision in favor of any backward section of women, child for the purpose of securing. The Hindu women can discriminate in various sections which I mentioned and The Governing laws, Hindus Women’s Right to Separate Residence And Maintenance Act, 1946” instead of divorce are not enough to protect them which I mentioned in Chapter maintenance,

4.3. Divorce Related Rules: In India Perspective

In India, after passing the Hindu Marriage Act 1955”, this law gives the right both parties to go to the court for dissolution of marriage. This Act gives right to the Hindu women she can seek

⁶⁴The Constitution Of The Peoples Republic Of Bangladesh Article 26(1)

⁶⁵Ibid.; article(27,28,31,32)

for divorce in additional grounds, which ground share not mentioned in their custom. In this Act provides that judicial separation,⁶⁶ it is another relief instead of Divorce and she can claim it as of right, Section 13 of this Act, There are some grounds are mentioned this Act, In this ground both parties can claim the Divorce,⁶⁷ they file the Divorce mutually, Any party can claim divorce as per the section 11, Hindu female can claim for the Divorce in this ground, if husband marry someone, if he is impotent, converted other religion, he is abandoned, as per the section 3 of this Act. There is a divorce provision mentioned this Act so that they can adopt it widely. Divorce are must be granted by the court by mutual consent, before giving the decision regarding matter court will look into mutual consent of the parties and if is found that, the court may grant the Divorce. ⁶⁸In the judicial proceeding the court will not entertain the divorce matter, firstly it give time for 1 year to solve the matter and if they are not do this, then court will entertain the regarding matter of divorce.⁶⁹In this situation, there are lot of cases regarding this issues are solved and burden of cases are minimized. When the divorce is made, he or she can marry someone and she or he leads an independent life.⁷⁰

In India, there are provisions are come through this Act, and instead of divorce she can claim judicial separation and this provisions enlighten the Acts and when the divorce are made then they marry with someone. Both parties claim divorce, female can give Divorce in four grounds she must be establish it. If they do not follow this provision they will get the higher Punishment and this is the vast amendment in their laws, which laws are make their judiciary system strong. The Indian marriage Act 1955, provides the provision of divorce but the India has separate Divorce Act, 1869, this Act provides specific provisions about this issue, provide the procedure. These Laws also ensure the right of the Hindu citizens and it is so organized that, if any provisions which is not mentioned in Indian Hindu Marriage Act, 1955, that regarding issued are mentioned in the Indian Divorce Act 1969 and it shall be mandatory for all the citizen of Hind law and added punishment to protect them. These Laws are making remarkable changes in judiciary system of India.

⁶⁶ The Indian Hindu Marriage Act 1955, s7

⁶⁷ Ibid. s13

⁶⁹ The Indian Marriage Act 1955, s14

⁷⁰The Hindu Marriage Act1955, s15

On the other hand, In Bangladesh, lacking of divorce provision Hindu women's is discriminated and suffered the lot of problems. Though Instead of Divorce provisions we have laws to protect them but it is not sufficient which I mentioned in maintenance chapter. there is a noticeable ground that, there is no divorce provision in our country and for such reason she cannot marry someone and she leads a life sorrowfully and after some times she turn in to a slave or burden in her family and This Laws are need to reformed and as per the constitution to protect all the citizens and it does not discriminate on the ground of religion, cast, sex but Hindu women are discriminated and it is violation of the provision of constitution. The constitution also provides that, to make laws for the backward people and according to this provision, to make divorce law for backward section people and these laws gives them protection and they lead secure life. Muslim Family Law Ordinance, 1961, this laws are provides dissolution of marriage and provides all the provisions regarding issues of Muslim personal law and We have other laws regarding issues, Dissolution of Marriage Act, 1939, for such reason the court can easily solve the issues and also remarkable change that the, This laws so scrutinize, and provided those issues which is not mentioned in The Muslim Family Law Ordinance, 1961 and mentioned higher punishment. This is similar with India. But in Bangladesh, does not provided this like of laws regarding the issue of divorce, for such reason Hindu religion are discriminated in this sectors and this is violation of provision of our constitution.

Chapter 05: Property Rights

5.1. General concept of property Rights Under Hindu Law: Hindu inheritance property is widow state, Stridhan, joint family property, inheritable property, religious and charitable property. In our country, we need to promote the women's equal right to remove the poverty, women are played important rule of Bangladesh, their life is not limited the in her house, she can play great rule social, economic, political status, a Hindu woman in inheritance, she can have limited owner of the property, she cannot claim her rights, this is the discrimination picture of our country regarding Hindu women to inherit the property.⁷¹In Dayabhaga School, when any person dies then he can inherit his property, the property is separated and absolute. In Mitakshara School Inheritance Rule are called doctrine of survivorship, when any person born then he can inherit the property as coparcenaries', property will be inherited jointly. There are inheritance rules for women; Women can inherit the property which is widow estate, Stridhana. She is the Limited Owner of the property, only limited purposes she can inherit the property, because property will back to reversionary.⁷²The property will go to the back to reversionary. The property will go to the back heirs for such reason Hindu women cannot hold the property absolutely and they discriminated in many sector.

5.2. Hindu Inheritance Rule: Bangladesh perspective

Bangladesh follow this laws regarding issue of property and this laws name is Hindu Women's Right to Property Act, 1937. This Act must be reformed.

⁷¹Mahua Zahur "Hindu Women Property Right: Bangladesh Perspective" 2016

⁷²MahuaZahur "Hindu Women Property Right: Bangladesh Perspective" 2016

5.2.1. Hindu Women's Right to Property Act, 1937

Hindu Women's Right to Property Act, 1937, provides that the women can inherit the property for limited purpose, after her husband died she can inherit the property for her next heir, if the husband has more than one wife she also did same thing, in joint family property a Hindu women can claim the partition but she cannot alienate the property. She cannot alienate it.⁷³ In Dayabhaga school 5 category women can inherit the property but did not alienate it and also applicable for Mitakshara school, Female are included fifth line of inheritance, for such reason they cannot claim the property right, though we have law, but that law is not give right to alienate the property except Stridhan, she can alienate for limited purpose only and she has no absolute right regarding the alienation. There is a basic rules of Hindu law, property line will be by the male person, he is a last full of owner , and women cannot start a inheritance line because the property will be revert and she is a limited owner, this rules are prevailed.

In our constitution, it is ensured that, equality before law and there is no discrimination against the citizen of Bangladesh.⁷⁴ As per the constitution, "article 27 all citizen are equal before law, are entitled to get equal protection, article28, the state shall not discriminative against any citizen on grounds only of religion, race, caste, sex or place or birth.⁷⁵If we talks about inheritance rule of Hindu law of women, she cannot alienate the property as per her need; so that discrimination is create against her. Another Article 29 (3) provides that, nothing I this Article shall prevent the state from, making special provision in favor of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic.⁷⁶ As per the article, make the law for backward section means, women or children who discriminate in the society, but when we see the Hindu women regarding the property, her cannot claim property and establish her right. Property Right is fundamental right for the entire citizen as per the article of 42, as per the article 32, to give protection of right to life, and personal liberty, but Hindu women's are discriminated in this sectors.

On another side, we can see that, A Muslim women can inherit the property with the brother, she can inherit the property of her father, husband, she equal right with her son daughter, a Hindu

⁷³Hindu Law of Inheritance (Amendment)Act1929;s 1(2),2,3

⁷⁴ The Constitution of Peoples Republic of Bangladesh, Art 27 & 28

⁷⁵Ibid

⁷⁶ Ibid

women when she is marry with someone, her property right will be extinguished, there are another ground where she is discriminate. On the Other hand, In the Christian women can inherit the property and Christian widow can equal right with son, daughter and she can inherit her husband property as per rule of, The Succession Act, 1925.⁷⁷ Christian Women or Hindu women, both are alienate her property and they have no need to permission for disposing because their property are separate property she is a absolute owner, she can enjoy it but unfortunately a Hindu women cannot do so because the will be revert to the reversion. So that we can say that, not only discriminate make on the ground of sex, discrimination is also made religion ground, violation the provision of constitution.

5.3. Hindu Inheritance Rule: In India Perspective

In India, they made the laws for the citizens for the social, economic, political purpose, In they do not change their customs but they modify their laws, in joint family property, they can claim the partition, inherence line are the changed. They modify the Hindu Succession Act, 1956 and this Act is Consistent with the Indian Constitution.

The constitution of India, Preamble of the constitution provides that, it is the supremacy of Law, According to the Indian Constitution for the citizen, (a) equality before law, state shall give equal opportunity to enjoy the law, (b) no discrimination on grounds of religion, race, caste, sex, place of birth or any of them, they get the equal opportunity to enjoy the rights,(c) equal of opportunity in matters of public employment it means all the citizens shall get equal opportunity, no cannot discriminate by the any Act.⁷⁸

5.3.1. The Indian succession Act, 1956

Property is divided in first schedule, second's schedule, and third schedule. This property line sons and daughter are first category and they are co persona. The property is divided equally between them. If anyone is not belonging in the first class then, second and third class will be prevail. Blood relationship will be prevailing.

⁷⁷ The Succession Act,1925,s(33-40)

⁷⁸ Indian Constitution, part 6

As per the Act, first schedule they include the daughter, as per the schedule property are divided each other and blood relationship will be prevail, ⁷⁹daughter, sister, are included in the inheritance line, they will get equal share and if any person is not first schedule then second schedule peoples are come and inherit the property, Women get equal share and she claims the property as per this Act, women has equal right with men. A Hindu women can alienate the property, she can inherit the property, she can get the property from her father as gift, she can inherit the her husband property and she can alienate the property because that property is absolute and separated The Property are distributed the per stripes and precipitate and all the persons are get equal share. Widow is excluded from the inheritance line if she marries with someone. If she marries with someone she cannot get the property from deceased husband, but if she has son then her son will get the deceased father property. Legitimate Child, Illegitimate Child can get property and they are included in inheritance line, he can claim the property as of right.

Constitution give equal right to them, son and daughter are coe sonar and they get equal property Indian Constitution. Every person get equal property, illegitimate child can get property, women, daughter, widow, sister are included in the schedule it means inheritance line, they can inherit the property, their property are separated property and absolute property and their property are separated property , Law gives her this right which is remarkable change in India. There is no violation of the constitution of India, Stridhan is the separate property for Hindu women and its Cristal clear and there is no ambiguity about it.

On the other hand, in Bangladesh, there is a question about stridhan whether it is separate or not, there is no provision regarding issues, in the existing law, for such reason court interprets to about it regarding issues. It is another issue of Bangladesh, property right is fundamental right, every people to use their property or not and related this provisions are not mentioned in existing law and the court do not interpret it borderly property, Hindu women cannot use it freedom, she does not get equal protection under laws because these laws provision are not enough to protect

⁷⁹ The Indian constitution part 6

her. This law does not give the women to dispose the property she only enjoy it and she dispose it for limited purpose. For such reason she cannot claim the property as of right and there was amendment, but that law does not give right to use the property absolutely. This law provisions is backward insecure for the Hindu women, this inheritance rule should be change to secure her legal rights and obligation. Bangladesh still follow the traditional rule of inheritance, where son will get priority, and female members are situated five number of inheritance line, it should amendment because for such reason Hindu women right inherit property does not ensured and they are discriminated, do not enjoy right to protection of properly and do not enjoy protection of law, and does not ensure equality before law, this violation of provision of constitution. And Existing Laws should be amendment.

Chapter 06: Recommendation and Conclusion

6.1 Recommendation

Being a quality research, it is quite difficult to come to a conclusive statement or to give any direct decision regarding the topic. The core argument in my paper finds out inconsistency regarding issues between two countries. In chapter 2 we can see that, there is a conflict situation and circumstance because of Hindu marriage Registration Act ,2012 where there is lacking of the mandatory provisions so that they suffer to establish the marriage and also suffer after dissolution of marriage. Chapter 3 also provides that the problems of the Hindu religion because of provision of divorce, Bangladesh follow the Hindu Married Women's Right to separate Residence and Maintenance Act, 1946 and for such reason they are facing a lot problems. Chapter 4 the problems due to lacking of divorce provision and chapter 5 deals with Hindu women who are discriminated in their Hindu religion regarding property and they are also discriminated with other religion. There must be the solution, Bangladesh can amend the laws regarding issues like the India. When they amend the existing provision regarding issues in Hindu Law they consider some Indian laws regarding issues.

Besides that, I have managed to give some recommendation regarding these issues:

1. There should be added some provision as if the court declare that, the marriage is valid.
2. Hindu Marriage Registration 2012 shall be mandatory and added higher punishment as if all the citizen are bound to follow it compulsory.
3. There shall be a Separate divorce Act provision for Hindu religion in Bangladesh.
4. Divorce provision must be mandatory for the entire citizen, so that after divorce they can marry someone.
5. The Hindu Women Right to Separate Residence and maintenance Act, 1946 should be reformed as if it can ensure and secure Hindu Women's Life, after separate residence.
6. TBangladesh still follow the traditional rule for the inheritance rule of the property and son will get priority and I suggest that, this law should be amended and added provision of in this Act, that women will get the property absolutely .
7. Must be added this provision in the Act, they are the cope sonar and get equal provision.
9. In our country we have the Muslim Family Law Ordinance 1961 and Muslim personal Law issue are arise then that is solved by this Act. For Hindu religion are discriminated in this sector and the laws are not proper to protect them I suggest that, though it is not possible to made separate Family Court for Hindu Religion then Family Court Ordinance, 1985 are amendment and Hindu Personal laws related all the laws are added and added higher punishment, as if it can deal all the issues regarding Hindu personal Laws. By this way their legal right must be ensured.
10. Existing Laws regarding Hindu Personal Law are must be reformed so that they cannot discriminate marriage, property, maintenance, divorce.

6.2 Conclusion

The number of Hindu Religions people is very little in Bangladesh on the other hand the number is pretty high in India; so that they have made a lot of changes in their laws protect to protect them. By having a comparative analysis, of both of the countries legislation I found that in India they have made many amendment like, mandatory registration for marriage, punishment added, in spite of divorce they can apply judicial separation. Wife can claim maintenance from her husband's after divorce or judicial separation. There is no such upgraded or amendment laws like India till now in Bangladesh. Provision is not mandatory in Bangladesh law nor the punishments are strong or specific that's why the law is unable to protect the rights of Hindus in this regarding issues. Constitution articles 27, 28, 32 and other articles to ensure the right and protection of the citizens but Hindu peoples are discriminated in this sector. So that the amendment and provision of laws I recommended in my research paper will help to protect legal rights and obligation of Hindu religious people specially in terms of registration of marriage, property, Divorce, Maintenance.

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