

Divorce is a procedure whereby the married couple decides to separate and break all the vows that were taken during the sacred ceremony of a marriage. In Bangladesh the Hindu women are suffering greatly to seek divorce or to demand compensation from husbands. Contrast to India and Nepal, Bangladeshi Hindu women cannot divorce as there exists no such legal provisions. Most of the Hindu communities in Bangladesh follow the centuries-old Dayabhaga law. According to that law, a Hindu woman does not have the right to divorce her husband.

Ancient Hindu law does not allow dissolution of marriage however painful cohabitation may be. Although, in some communities divorce is allowed by custom and the courts enforced such custom provided they fulfilled the requisites of a valid custom (*Sankaralingam Chetti vs Subban Chetti And Anr*, 1894).

It can be said that there are some grounds in which Hindu law allows separation or desertion. But it doesn't have the effect like divorce or results like dissolution of marriage tie completely. Besides, unsoundness of mind of either party for a number of years or suffering from any virulent or incurable form of disease or renouncement of the world would not be a ground for divorce ("Bangladesh's Hindu women fight for divorce rights," n.d.).

An article titled "Suffering for Absence of Marriage Registration"- was published on June 27, 2004 in the Daily Star by Shanchita Sharma (2004). In that article Shanchita Sharma presented a fact of a Hindu woman of Bangladesh who suffered for absence of divorce provision. The fact was about Minati Karmakar. She suffered at her husband's house for inability to bring dowry. Minati's husband tortured her, as she could not bring dowry money for him. Being Fed up, one day she left her husband's house and returned to her parents.

But even after this her husband did not give her the scope to be free from his torture and the harassment was too much for her to bear. In this situation Minati wanted to terminate the marriage. She went to court and found herself surprised when she came to know that the existing Hindu law of Bangladesh could not help her through divorce.

It happens to thousands of Hindu women in Bangladesh. As per “Hindu Women’s Right to Separate Residence and Maintenance Act, 1946” Hindu women can file cases with courts to only regain the rights to conjugal life. But they can’t ask for divorce. They have limited scopes to ask for separation. But they can neither divorce nor remarry (n.d.).

On the other hand, Hindu women can file cases under the “Family Courts Ordinance, 1985”, “Dowry Act, 1980” and “Women and Children Repression Act, 2003”. But these laws are too inadequate to protect the Hindu women’s rights in this regard.

The President of “Bangladesh Metropolitan City Universal Puja Committee” Swapan Shaha consents with enacting such laws and said: “There should be laws to guide Hindu marriage, including rights to divorce because Hindu women are sometimes forced to leave their husbands houses. In such a case, a woman should be able to obtain legal divorce and take another husband”.

Another article titled “Plight of Hindu women in Bangladesh”- was published on February 05, 2014 in the Daily Star written by a Hindu woman whose name was withheld due to request.

She was a university educated Hindu woman and got a prestigious scholarship on her own merit to do Ph.D. in a foreign university in 2008. She taught at a university college in Dhaka and got married under pressure from her family and relatives after her BA Honours. She had no choice but to live with this man for long 5 years and every day of it was hell for her. Her husband had other women and it was normal for him to beat her without any rhyme or reason. She mentioned that she had never made love and her husband regularly raped her.

When she became pregnant, one day her husband punched on her backbone. On examination, the doctors found that her spinal cord was damaged and said that the

injury may never be healed. Quite surprisingly, her husband did not regret what he did and continued his brutal behaviour.

Finally, with her father's help she gained some courage and divorced him against uproar and protest from her relatives, many of whom have university degrees. But my problems were not really over. She was regularly lectured by her so-called educated relatives who constantly asked her to return to her husband knowing well how brutish he was and how unfaithful he had been.

She claimed that "We have "Bangladesh Hindu Bouddha Christian Oikyo Parishod" to fight for political rights for minority communities in Bangladesh, but did they ever give any attention to the centuries-old evils that prevailed in Bangladeshi Hindu society?"

Hiren Biswas, the president of the Samaj Sangskar Parishad group, commented on these issues saying: "We don't mind optional registration because Hindu couples sometimes need the marriage certificate when they travel, but we won't accept mandatory registration, or divorce and inheritance rights to women because our scriptures and customs don't allow them."

But the situation is different in India because they have already adopted the Hindu Marriage Act, 1955 which lays down the procedure for Divorce in India where there is an option for the Hindu married couple to approach the Courts of law for separation procedure (Hindu Marriage Act, 1955 Irretrievable breakdown of marriage as a ground of divorce, 1978). Section 13 of the said Act states the accepted grounds for seeking divorce includes cruelty, adultery, desertion, insanity or incurable disease and so forth. Section 12 provides the additional ground available to a wife, that being impotency of the husband and section 13(2)(4) provides that a Hindu wife can seek divorce on the ground that her marriage was solemnized before she attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining the age of 18 years.

The pre-condition for divorce for Hindus is that the couple should be living separately for at least one year then to file an application for divorce. One is “by mutual consent” and the other is “by contest”. The divorce application “by mutual consent” is easier as it takes lesser time as both husband and wife agrees for the grounds on which separation is sought. If the application is made via the latter method it leaves room for the counter party to contest the application and drag the case for years together without a valid reason. Thus, it is quite clear that compared to India, the law regarding divorce for a Hindu woman in Bangladesh is rife with unfairness and it requires modernization. Bangladesh Government should enact divorce law for Hindu husband and woman.

For a long time different NGOs, civil society, women’s rights groups are creating pressure upon the Government to enact the law of divorce for Hindu women. Recently on 20 January, 2015 the High Court Division of Bangladesh Supreme Court issued a rule on the Government asking it to explain the reason why a Hindu women would not be allowed to divorce her husband as there exists no right to do so in the Hindu personal laws. Following a writ petition filed by Bangladesh Human Rights Foundation’s chief executive Alena Khan and aggrieved Aapita Das for enforcement of her fundamental rights. The petitioner mentioned that the Hindu laws on marriage and divorce are inconsistent with the provision of the citizen’s fundamental rights which are guaranteed in the articles 26(1), 27, 28, 31 and 32 of the Constitution of Bangladesh as well as articles 3, 5, 7 and 16(1) of the Universal Declaration of Human Rights (Universal Declaration of Human Rights, 1948, n.d.).

Law Commission of Bangladesh has recommended some important matters after long study in favour of enacting of divorce provisions. The reasons for which Hindu women are acknowledged to live separately, most of them can be considered as reasonable cause for divorce. Law Commission has also recommended that only for specific reasons divorce can be given through Court and remarriage needs be allowed (Recommendation for Reformation of Hindu Family Law, 2012).

According to the Convention on the Elimination of All forms of Discrimination against women, the State Parties to the International Covenants on human Rights

have the obligation to ensure the equal rights of men and women where the State Parties can take necessary steps depending on Article 11 of the convention (Recommendation by Law Commission from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, 2013). On the other hand, article 16(1) of the convention has focused on the same rights and responsibilities during marriage and at its dissolution for both men and women. So the Government should enact a complete law with necessary divorce provisions to establish the Bangladeshi Hindu women's divorce rights.

References

A Bangladeshi Hindu Woman. (2014, February 5). Plight of Hindu Women in Bangladesh. Retrieved from <http://www.thedailystar.net/plight-of-hindu-women-in-bangladesh-9973>

Bangladesh's Hindu women fight for divorce rights. (n.d.). Retrieved from <http://www.dawn.com/news/729888/bangladeshs-hindu-women-fight-for-divorce-rights>

Hindu Marriage Act, 1955 Irretrievable breakdown of marriage as a ground of divorce. (1978). Retrieved from <http://www.lawcommissionofindia.nic.in/main.htm#a7>

Recommendation by Law Commission from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979. (2013). Retrieved from <http://www.lc.gov.bd/reports.htm>

Recommendation for Reformation of Hindu Family Law. (2012). Retrieved from <http://www.lc.gov.bd/reports.htm>

Sankaralingam Chetti vs Subban Chetti And Anr (A J Collins, Parker March 29, 1894). Retrieved from <http://indiankanoon.org/doc/1326123/>

Shah Ali Farhad. (n.d.). Reform of laws on Hindu marriage and related areas in Bangladesh: A “legal” take on a very “social” issue.

Shanchita Sharma. (2004, June 27). Suffering for Absence of Marriage Registration.

Universal Declaration of Human Rights, 1948, § Article 7.