

Islami Ain O Bichar
Vol. 13, Issue 50
April – June, 2017

Muslim and Hindu Marriage Laws in Bangladesh A Comparative Study

বাংলাদেশে মুসলিম এবং হিন্দু বিবাহ আইন : একটি তুলনামূলক আলোচনা
Md. Najeebur Rahman *

ABSTRACT

In Bangladesh there are 88 percent Muslims and the remaining are Hindus, Christians and Buddhists. As a social and legal institution, marriage is recognized in every Society and by every faith. Directed by the different religious rules and regulations, the marriage laws are unique to each other. In this article, the only motive that has been indicated is to compare or distinguish between the Muslim marriage Law and Hindu marriage Law. It will focus on the major differences and impacts upon the marital relationships. The significance of the laws also be discussed. Side by side the security and rights of married women is also mentioned here. It has also been proven that the concept of women rights is in fact originated from Islamic jurisprudence although there are many debates and arguments on this issue. This study is based on the primary and secondary sources with regard to the Muslim and Hindu marriage laws. From the study the readers will be able to have a clear idea on the issue. It is to be noted that the methods of description and comparative study of the topic mentioned have been utilized in this text.

Keywords: muslim; hindu; marriage; law; bangladesh.

সারসংক্ষেপ

বাংলাদেশে মোট জন সংখ্যার ৮৮% মুসলিম এবং অবশিষ্ট হিন্দু, খ্রিষ্টান ও বৌদ্ধ বাস করে। সকল সমাজ ও ধর্মে বিয়ে একটি সামাজিক ও বৈধ প্রতিষ্ঠান হিসেবে স্বীকৃত। বিভিন্ন ধর্মের বিবাহ আইন গুলো একে অন্যের চেয়ে আলাদা। অত্র

প্রবন্ধটিতে শুধুমাত্র মুসলিম বিবাহ আইনের সাথে হিন্দু বিবাহ আইনের তুলনামূলক পার্থক্য তুলে ধরা হয়েছে এবং প্রধান পার্থক্য সমূহ ও তার তাৎপর্য গুলোর উপর আলোকপাত করা হয়েছে। এ আলোচনায় সামগ্রিকভাবে আইনগুলোর গুরুত্ব স্পষ্ট হয়ে উঠে এসেছে। পাশাপাশি নারীদের সার্বিক নিরাপত্তা ও অধিকারের কথাও আলোচনা করা হয়েছে। নারী অধিকারের স্পষ্ট ধারণার কথা গুলো যে ইসলামী শরিআহ থেকেই উদ্ভূত হয়েছে এবং তা যে মানুষ হিসেবে সকল ধর্মের নারীদের জন্য সমানভাবে প্রযোজ্য, তাও আলোচনা করা হয়েছে। আলোচিত প্রবন্ধটি মুসলিম বিবাহ আইন এবং হিন্দু বিবাহ আইনের প্রাথমিক ও দৈনিক উৎসসমূহের উপর ভিত্তি করে প্রস্তুত করা হয়েছে। এর পাঠকগণ অত্র আলোচনা থেকে বিষয়বস্তু সম্পর্কে একটি পরিষ্কার ধারণা পেতে সক্ষম হবেন। উল্লেখ্য যে, বিষয়টিকে স্পষ্ট করে তোলার জন্য সহজ বর্ণনা পদ্ধতি ও তুলনামূলক আলোচনার প্রয়োজনীয় খুঁটিনাটি বিষয়গুলো এখানে সংযুক্ত করা হয়েছে।

মূলশব্দ: মুসলিম; হিন্দু; বিবাহ; আইন; বাংলাদেশ।

Introduction

The legal system of Bangladesh is based on common law, which was applied during the colonial regime of British-India. Still, some special parts of law applied during the British period remained untouched. This special area of law is called personal law, and it is shaped by religious law or customs. This personal law includes: marriage, divorce, dowry, maintenance, guardianship, inheritance and so on. In 1947 India was partitioned in two, Hindustan - the present India – where the majority of the population is Hindu, while the other is Pakistan – a Muslim state. Interestingly, both the countries had upheld their religious rules in the matters of personal law. Bangladesh was at that time part of Pakistan, and in 1971 Bangladesh achieved independence. The majority of the population in is Muslims, but there are also religious minorities including Hindu, Christian and Buddhist. In the case of family matters, everyone is ruled by his or her own religious law.

In Bangladesh, the majority of Muslims follow the Sunni-Hanafi school of legal thought, certain components of which have been codified and amended under the Muslim Family Laws Ordinance of 1961. Muslim personal law recognizes a marriage as a contract

* Dr. Md. Najeebur Rahman is an Associate Professor, Department of Arabic, National University, Gazipur-1704, Bangladesh, email: dr.mdnajeeb@gmail.com

(Fatwa Hindiyyah 2001, 2/19). Muslim personal law calls for compulsory marriage registration, yet this requirement is rarely enforced. Furthermore, the procedures for marriage registration under Muslim personal laws are not sufficiently managed or regulated in order to facilitate accurate and accessible record-keeping.

On the other hand, Dayabhaga school of Hindu law is the origin of most personal laws on marriage and separation governing Hindu practices. In Hinduism Divorce is not permitted for men or women. Hindu women can apply for separate residence and maintenance from their husbands but the permissible grounds for submitting a formal application, which must be done in family court, are very restricted. (The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, 2/19)

Marking these important views in mind cited above, in this paper an attempt is made to focus, through a comparative study, the various legal aspects and provisions regarding marriage and marriage related issues in the Muslim and in the Hindu personal law and to trace possible trends of further legislative development both in Muslim and in Hindu marriage law in Bangladesh.

Religious Importance of Marriage in Muslim and Hindu Law

Marriage is necessarily the basis of social organization and the foundation of important legal rights and obligations. The importance and the imperative character of the institution of marriage need no comment. Marriage is reorganized in Islam as the basis of society. It is a contract, but it is also a sacred understanding. Marriage is an institution leads to the uplift of man and is a means for the continuance of the human race. Spouses are strictly enjoined to honor and love for each other. Islamic law gives to the women a definite high social status after marriage. The prophet Muhammad (s.m) was determined to raise the status of woman. He asked people to see their brides before marrying them and taught that the nobility of character is the best reason for marrying a woman. Abū Hurairah (Ra.) reported: The Prophet (S.) said:

“A woman is married for four things: for her wealth, for her lineage, for her beauty or for her piety. Select the pious, may you be blessed!” (Al-Bukhārī 2002, 5090)

But this aspect of Muslim marriage is very often overlooked. Al-Quran ordains every Muslim to marry if they are competent for that. So marriage is compulsory to the competent Muslim man or woman as the verses of Quran says:

“And marry such of you as are solitary and the pious of your slaves and maid servants. If they be poor Allah will enrich them of His bounty. Allah is of ample means, and aware.” (Al-Qur'an, 24:32).

Marriage in Islamic Law is an object of procreation. Al-Quran ordains

“O mankind! Be careful of your duty to your Lord who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women...” (Al-Qur'an, 4:1).

Hence, valid reproduction of human generation also depends on marriage. Not only that, it creates love and honor to each other as well. It brings a reciprocal affection and passions to the marrying parties. The relevant passage of al-Quran is that:

“He created for you helpmates from yourselves that ye might find rest in them, and ordained between you love and mercy.” (Al-Qur'an, 30:21).

The object of Hindu marriage has been more connected with the performance of religious duties and begetting for a son who enables a man to get deliverance from the suffering of hell. Hindu marriage is a permanent tie which is solemnized once and for all. It fortifies the concept of oneness which is expressed by an adage, “A woman is half of her husband and completes him” (Gandhi 1999, 207). Every Hindu, male or female, is also bound to marry by the Shastra's if he or she does not want to be an ascetic (sanyasin). It shows that, the concept of marriage in both religions is nearly the same.

Marriage Law in Bangladesh

Muslim Marriage Laws in Bangladesh

There are several laws and acts relevant to Muslim Marriage Law in Bangladesh:

1. Bengal Mohammadan Marriage and Divorces Registration Act of 1876 (Bengal Act I of 1876): This act was the earliest statute providing for registration of Muslim marriages. This Statute provided for the voluntary registration of marriages and divorces in undivided Bengal and later for East Pakistan. Under the above Act, the person empowered to register marriages and divorces was known as the Mohammadan Registrar.
2. Muslim Family Laws Ordinance, 1961: From 1961 the Muslim marriage contracts are required to be compulsory registered. The MFLO however made no mention of divorce registration but presumably divorces continued to be voluntary registered under the Act of 1876. The Family Laws Commission, on whose recommendation the Muslim Family Laws Ordinance of 1961 was enacted, agreed that registration of marriage must be made compulsory. As questions relating to the validity and existence of marriage between parties and frequently civil and criminal courts Registration, the commission opined, would solve complex questions relating to such validity and existence as well as those relating to legitimacy or illegitimacy of heirs (in cases relating to inheritance), claims of right to maintenance by the wife, and for the purpose of disproving criminal charges, for example when two men claim to be the husband of the same woman in order to avoid conviction for abduction, in all these cases documentary evidence may be necessary.
3. The Muslim Marriages and Divorces (Registration) Act, 1974: In 1974 the Muslim Marriages and Divorces

Registration Act was enacted by the 5th Session of the 1st Jatiyo Sangsad. The main intentions were to remove the power to appoint Registrars from the hands of the Union Councils and give this power to the Government and also to include divorce Registration in the Act. By virtue of the powers conferred by Section 14 of the Act of 1974, the Government made the Muslim Marriages and Divorces (Registration) Rules, 1975.

The legal aspects of Muslim Marriage according to above mentioned law as below:

A. Marriage in Muslim Law

Among the Arabs *nikah* or “the marriage”, is a wide term, comprising sexual relationship. But in Muslim Law it has a very definite legal meaning. It is a contract for the legalization of relationship of man and woman and the procreation of children. According to Ameer Ali, "Marriage is an institution ordained for the protection of society, and in order that human beings may guard themselves from foulness and unchastity" (Ameer Ali 1903, 67). Justice Mahamood in the leading case of *Abdul Kadir v. Salina* Observes: Marriage among Muhammadans is not a sacrament, but purely a civil contract (ILR 1886, 154). But it has been observed from the nature of the Muslim marriage that it is not just a civil contract. Because, unlike civil contracts, it cannot be made contingent on a future event; and it cannot be for a limited time. It has thus been seen that *Abdur Rahim's* definition is by far the best, as it gives proper weight age to both aspects of marriage, namely, temporal and religious. In *Abdur Rahim's* language: “The Muhammadan jurists, therefore, regard the institution of marriage as partaking both of the nature of 'ibadat or devotional acts and mu'amalat or dealings among men”. (*Abdur Rahim* 1911, 327)

Such as marriage is a civil and religious contract, whereby a man is joined and united to a woman, for the purposes of civilized society.

B. Components (Rukn) of marriage in Muslim Law

It is essential to the validity of a Muslim marriage that there should be a proposal made by or on behalf of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence and hearing of two male or one male and two female witnesses, who must be sane and adult Mohammedans. The proposal and acceptance must both be expressed at one meeting. A proposal made at one meeting and an acceptance made at another meeting do not constitute a valid marriage. Marriage may be constituted without any ceremonial; there are no special rites no officiates, no irksome formalities. The words with which the marriage is contracted must be clear and unambiguous (Al-Marginanī 2003, 2/3-4).

C. Capacity for marriage in Muslim Law

Every Muslim of sound mind, who has attained puberty, may enter into a contract of marriage. Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians. No lowest age of marriage is mentioned in the Quran. Here the relevant verses of Al-Quran are:

“Prove orphans till they reach the marriageable age; then if you find them of sound judgment, deliver over unto them their fortune...” (Al-Qur’an, 4:6).

The presumption is that a person attains majority at 15 years of age. But the Hedaya lays down that the earliest period for a boy is 12 years and for a girl 9 years (Al-Margananī 2007, 3/609). A marriage of a Muslim, who is of sound mind and has attained the puberty, is void, if it is brought about without his consent.

D. Guardianship of marriage in Muslim Law

An Indian scholar Mr. Tyabji defines ‘guardian’ as follows: “A guardian for marriage is a person authorized by law to make a valid contract for affecting the marriage of a minor or person of unsound mind” (Tyabji 1940, 146) The right to contract a minor in

marriage belongs successively to the (1) father, (2) paternal grandfather how high so ever, and (3) brother and mail relations on the father’s side in the order of inheritance enumerated in the Table of Residuary. In default of paternal relations, the right devolves upon the mother, maternal uncle or aunt and other maternal relations within the prohibited degrees. In default of maternal kindred, it devolves upon the ruling authority (Al-Fatawa al-Hindiyyah 2011, 2/62).

Option of puberty in Muslim Law

When a minor married by his lawful guardian, other than the father or paternal grandfather, such a marriage can be abandoned by the minor on attaining the age of puberty. By the older law, a minor girl contracted in marriage by her father or grandfather could not exercise the option of puberty; this restriction has now been removed by the Dissolution of Muslim Marriage Act, 1939.

E. Mahar / Dower in Muslim Law

Mahar or dower is a sum of money or other property which the wife entitled to receive from the husband in consideration of the marriage. The amount of Mahar or dower may be settled by the parties at the time of marriage or after. This is specified Mahar or dower. When Mahar is payable on demand, it is prompt dower. When Mahar is payable on the dissolution of marriage by death or divorce, it is deferred Mahar. In such cases where dower has not been settled at the time of the marriage, proper Mahar should be fixed with reference to the social position of the wife’s family and her own personal qualifications. As the verses of al-Quran says

“Give women their Mahar as a free gift. But if they of themselves be pleased to give you a portion thereof, consume it with enjoyment and pleasure.” (Al-Quran, 4 :4)

So, Mahar is an essential condition of a Muslim marriage.

F. Classification of Muslim Marriages

A marriage may be valid (Sahih), or voidable (fasid), or void (batil) from the beginning as follows:

1. **Valid:** A Valid marriage is one which confirms in all respects with the legal requirements, and there should be no prohibition affecting the parties. A valid marriage confers upon the wife the right to dower, maintenance and residence in her husband's house, imposes on her the obligation to be faithful and obedient to him, to admit him to sexual relation, and to observe the *iddat* (waiting period). It creates between the parties prohibited degrees of relation and reciprocal rights of inheritance.
2. **Void:** A marriage which has no legal results is termed as void. A marriage forbidden by the rules of blood relationship is void. "A void marriage is no marriage at all. It does not create any civil rights or obligations between the parties. The offspring of a void marriage are illegitimate.
3. **Voidable-** A marriage which is relatively unlawful and may be made valid by removing the unlawfulness is voidable. For example: A marriage without witnesses. A voidable marriage may be terminated by either party, either before or after consummation the wife is entitled to dower, proper or specified whichever is less; she is bound to *iddat* for a duration of three courses; the issue of the marriage is legitimate; this type of marriage does not create mutual rights of inheritance (Al-Fatawa al-Hindiyyah 2011, 2/185).

G. Disabilities in Muslim Marriage

There are seven limitations to the unfettered capacity of a Muslim to marry any person of the opposite sex. The prohibition may be on the following grounds.

1. **Number:** As to plurality of husbands or wives, the rule in Islam is that a Muslim man may marry, if there is good reason and if he can do justice with two or three or four women as al-Quran pronounces:

"And if fear that you will not deal fairly by the orphans, marry of the women, who seem good to you two or three or four; and if you fear that you cannot do justice to them then one only or the captives that your right hands possess. Thus it is more likely that he will not do justice." (Al-Quran, 4:3) A Muslim woman can marry one man only at a time.

2. **Difference of Religion:** Muslim belonging to different schools of Law, such as Shiite or Sunnite, is entirely immaterial. Under Hanafi Law, A man may marry a Muslim woman or a kitabiyah (woman of those who received the Divine books, i.e. the Jews and the Christian), but a Muslim woman cannot marry anyone except a Muslim. A Muslim, however, cannot marry an idolatress or a fire worshipper; and a Muslim woman cannot even marry a kitabi (man of those who received the Divine books). As al-Quran provides:

"Marry not the women who associate others with Allah in His Divinity until they believe; for a believing slave-girl is better than a (free, respectable) woman who associates others with Allah in His Divinity, even though she might please you. Likewise, do not give your women in marriage to men who associate others with Allah in His Divinity until they believe; for a believing slave is better than a (free, respectable) man who associates others with Allah in His Divinity, even though he might please you." (Al-Quran, 2:221)

3. **Relationship:** Law with regard to relations with whom to be married or not to be married is appeared in al-Quran (Al-Quran, 4: 22-25). Such as,
 - a. **Consanguinity:** A Muslim is prohibited to marry- (1)- his own ascendants; (2)- his father's or mother's

descendants; and (3)- the sisters or brothers of any ascendants .

b. Affinity: It is unlawful for a Muslim to marry – (1)-ascendants or descendants of the wife; and (2)- The wife of any ascendant or descendant.

4. **Fosterage:** Muslim Law prohibits marriage within certain limits of fosterage. A man may not for instance, marry his foster-mother, or his foster sister.
5. **Unlawful Conjunction:** A man is also prohibited to have two wives at the same time, who are related to each other by consanguinity, affinity or fosterage that they could not have lawfully intermarried with each other if they had been of different sexes.
6. **Iddah:** A widow, a divorced woman or a woman who is pregnant by illicit intercourse are prohibited from remarrying during the period of *iddat*. The objective of *iddat* is to ascertain whether the woman is pregnant or not and to ascertain the paternity of the child. The period of *iddat* in case of (a) the marriage dissolved by death is 4 months and 10 days or, if the woman is pregnant, till delivery, whichever is longer; (b) and the marriage is consummated and dissolved by divorce, it is three courses, or till delivery in case of pregnancy. As al- Quran provides:

“women who are divorced shall wait, keeping themselves apart, three monthly courses...” (Al-Quran, 2 : 228).

After the maintenance of *iddah* a muslim woman can remarry.

F. Irregular prohibitions of Marriage:

- a. The Doctrine of Equality in Marriage: It is the doctrine of *kufu* or equality of spouses. Under Hanafi Law, there are six requisites to equality: 1. *Nasab* (family or descent),

2. *Taqwa* (Piousness), 3. Profession, 4. Freedom, 5. Means (financial capacity) 6. Accepting Islam of their Ancestors. The Hanafis accordingly hold that equality between the two parties is a necessary condition in marriage (Al-Marginanī, 2003, 2/28-31; Al-Fatāwā Al-Hindiyyah, 2001, 2/79)

- b. Divorce: When a man divorces a woman, and the divorce is effective as a triple *talaq*, remarriage between them is impossible unless the woman observes *iddah*, lawfully marries another husband, the second marriage is consummated, and the second husband lawfully and effectively divorces her (Al Qur’an 02:230).

The Ancient Practice of Hindu Marriage System

According to ancient Hindu Law, marriage is the last of the ten sacraments, and is a tie, a sacred tie, a tie which can never be broken. It is a relation established by birth. Even death cannot break this relation of husband and wife which is not only sacred and religious but is a holy union also (Smrite). The institution of marriage is a sacrament and not a mere socio-legal contract. Every Hindu, male or female, had to marry. He was enjoined by the Shastra’s to marry. But with the changed condition of life, marriage became optional for both, a male and a female (Gandhi 1999, 207).

There are eight types of marriage described in the ancient Hindu text of Manusmriti (Laws of Manu) or "Manava Dharma Shastra":

1. Rite of Brahmana (Brahma) - where the father of the bride invites a man learned in the Vedas and a good conduct, and gives his daughter in marriage to him after decking her with jewels and costly garments.
2. Rite of the Gods (Daiva) - where the daughter is groomed with ornaments and given to a priest who duly officiates at a sacrifice during the course of its performance of this rite.

3. Rite of the Rishis (Arsha) - when the father gives away his daughter after receiving a cow and a bull from the brightgroom.
4. Rite of the Prajapati - (Prajapatya) where the father gives away his daughter after blessing the couple with the text "May both of you perform together your duties"
5. Rite of the Asuras (Demons) - when the bridegroom receives a maiden after bestowing wealth to the kinsmen and to the bride according to his own will.
6. Rite of the Gandharva - the voluntary union of a maiden and her lover, which arises from desire and sexual intercourse for its purpose.
7. Rite of the Rakshasa - forcible abduction of a maiden from her home after her kinsmen have been slain or wounded and their houses broken open.
8. Rite of the Pisaka - when a man by stealth seduces a girl who is sleeping or intoxicated or is mentally disbalanced or handicapped (Das 2016)

The remaining Hindu Law unrecognized four forms of marriage-Ashura, Ghandharva, Rakshasa and Paishacha, were termed as "irregular" or adharmya forms of marriages. In Ashura marriage wealth was to be given to the bride's parent by the groom, while Gandharva marriage was the result of an amorous inclination of the bride and the groom reciprocally. Seizure of the bride by force or fraud and marrying her was a Rakshasa form of marriage and when the girl was upraised while sleeping or drinking or where she was disordered in mind and afterwards married, the marriage was termed a Paishacha marriage. One could marry within one's own religion and caste but also marriage was not possible within one's gotra and pravara, i.e., descendants of the immediate paternal

ancestors of founders of one's gotra. No lowest age for marriage was prescribed. Polygamy was permitted but polyandry was illegal (Gandhi 1999, 207).

Hindu Marriage Law in Bangladesh

It is to be noted that all legislations relevant to Hindu marriage were enacted in the British colonial period, namely: The Racial Inability Remission Act, 1850; The Hindu Widow's Remarriage Act; The Sati Regulation, 1829; The Child Marriage Restraint Act, 1929; The Earned Property Affairs Act, 1930; The Inheritance Act, 1925; The Hindu Women's Right to Property Act, 1937; The Hindu Women's Right to Separate Residence and Maintenance Act, 1946. After separation: Hindu Marriage Act 1955; the Immature Children's Property Act 1956; the Hindu Minority and Guardianship Act 1956; the Hindu Adoptions and Maintenance Act 1956; the Hindu Succession Act 1956 and the Special Marriage Act 1960.

Bangladesh government recently enacted the Hindu Marriage Registration Act, 2012. This provides for registration of Hindu marriages on an optional basis. Many felt that the registration process should be made mandatory and hence this law has been subject to sustained and cogent criticisms from women's and human rights organizations.

A. Conditions of marriage

No remarkable reform has been brought in Bangladesh, the textual old Hindu Law is still applicable among the Hindus in Bangladesh that require three conditions for a valid marriage. Such as, (01). Identity of caste between the parties; (02). Parties to be beyond the prohibited degrees of relationship, i.e., are not the same gotra or pravara and are the sapinda of each other; (03). Proper performance of ceremonies of marriage (Agarwala ND, 34).

B. Capacity for marriage in Hindu Law

There was no formal law for Hindu marriage in Bangladesh before 2012. The Hindu Marriage Registration Act was passed in this year for implication by the legislative assembly which describes-

“Notwithstanding anything contained in any other law, if a Hindu man under the age of 21 (twenty one) years or a Hindu woman below the age of 18 (eighteen) years of age is married, then it shall not be registered under this Act. Notwithstanding anything contained in any other law, if a Hindu man under the age of 21 (twenty one) years or a Hindu woman below the age of 18 (eighteen) years of age is married, then it shall not be registered under this Act”.

(Hindu Marriage Registration Act, 2012, 5)

C. Guardianship in marriage of Hindu Law

A Hindu girl has no option on reaching puberty to abandon the marriage. But in India many of these disabilities have been removed by the Hindu Marriage Act 1955. One mentionable note is that the consent of the guardian is not a condition precedent to the validity of the Hindu child marriage. (22 Bom 509). According to Mitakshara school, the following persons in order can be guardian in Hindu marriage of a child- (1) father, (2) paternal grandfather, (3) brother, (4) other paternal relations of the girl in order of propinquity, (5) maternal grandfather, (6) maternal uncle, (7) mother. But stepmother has no right to give in marriage. (Mulla 1946, 521)

D. Mahar/ Dower in Hindu Law

Under Hindu law dower is not a requirement rather dowry is practiced (Pereira 2002, 54).

E. Ceremonies of marriage in Hindu Law

Marriage among Hindus being a religious and sacred tie, there are three important stages wherein certain ceremonies were to be

performed. They are: (1) Betrothal (vakdan) or a formal promise to give the girl in marriage; (2) Kanayadan, or actual giving away of the girl in marriage or formal donation of the bride by her father; (3) Saptapadi, which consists in performing a ceremony of taking seven steps before the sacred fire by the bride and the groom. It is pertinent to mention that the ceremony of saptapadi is necessary to complete a marriage performed according to the orthodox rites. Further, it is to be noted that cohabitation is not necessary to a marriage, (The Hindu Marriage Act 1955, art. 7)

F. Forms and Effects of Marriage

Kinds of Hindu Marriage

The ancient Hindu Law recognized eight forms of marriage of which four are approved and four unapproved forms. It is to be noted that the Hindu belonging to any class may marry either in the Brahma form or the Asura form. (Mulla 1940, 519)

G. Dissolution of Marriage

“Divorce is not known to the Hindu Law. But though Hindu Law does not contemplate divorce, yet it has been held that it is recognized as an established custom, it would have the force of law. So neither party to a marriage can divorce the other unless divorce is allowed by custom. Death does not dissolve a Hindu marriage; therefore, a widow cannot remarry (Mulla 1940, 530). But this situation has been changed by the Hindu Widows Remarriage Act, 1856. In Bangladesh a Hindu does not have the option of divorce but the woman can have separate residence and maintenance under the Hindu Married Women Right to Separate Residence and Maintenance Act, 1946.

H. Disabilities in Hindu Marriage

* Prohibited degrees in Hindu marriage

Rules regarding the prohibited degrees are: a. A man cannot marry a girl of same gotra or provara. But this rule does not apply to Shudra as they don't have gotra of their own. It is to be noted that Hindu Marriage Disabilities Removal Act, 1946 has been

introduced a great change in permitting sagotra marriage. b. A man cannot marry a girl who is sapinda (Rakshit 1946, 96).

*** Inter cast marriage**

According to the provision of shastric Hindu Law, inter caste marriages are invalid. But now the inter caste marriages are sanctioned by the Act 888 of 1923 which has amended the special marriage Act 1872 (Rakshit 1946, 96).

Comparison at a Glance

A short Analysis on statutory Development in Different Aspect of marriage of Muslim and Hindus in Bangladesh is stated in the table below:

	Subject Matter	Marriage under Muslim Personal Law	Marriage under Hindu Personal Law
1.	Age	Male Twenty one years of age; Female eighteen years of age. Child Marriage Restraint Act, 1929.	The same.
2.	Consent	Express or implied consent by both parties are necessary.	Declaration of consent by either party not a necessary.
3.	Witness	To male witnesses or one male and two female witnesses are necessary.	Witness at marriage is not a requirement.
4.	Nature of marriage	Not just a sacrament, also a civil contract.	Sacrament.
5.	Marriage by Guardian	Possible.	Possible.
6.	Right to repudiate by option of puberty	Allowed.	Not allowed.
7.	Dower	Mandatory element of marriage. Women are entitled to it as of right.	Not required.

	Subject Matter	Marriage under Muslim Personal Law	Marriage under Hindu Personal Law
8	Ceremony	Not prescribed.	Certain ceremonies are mandatorily maintained.
9.	Forms of marriage	Three: 1-Valid (Sahih) 2-Void (Batil) 3-Irregular (Fasid)	Four forms of shastric Hindu marriage are practiced.
10.	Registration	Required by statute.	Not required.
11.	Dowry	Prohibited by “The Dowry prohibition Act, 1980”. Not required by religion.	Giving or taking Prohibited. The Dowry prohibition Act, 1980. Prohibited by statutes.
12.	Child marriage	Punishable by Law, but Marriage valid.	The same
13.	Polygamy	Polyandry illegal. Though subsequent marriage subject to permission of present wife.	Polyandry illegal.
14.	Maintenance	Women entitled to it as of right.	The same.
15	Caste	No legal recognition of caste / group.	Recognized. Inter caste marriage is allowed and legal
16	Difference of religion	Men can marry women of religions of Christianity and Jews. Women cannot.	Marriage with non-Hindus is prohibited for both men and women.
17	Divorce	Husband has the absolute right to divorce. Wife has a limited right to initiate a suit for divorce.	No legal recognition either for men or women.

	Subject Matter	Marriage under Muslim Personal Law	Marriage under Hindu Personal Law
18	Remarriage after divorce	Women have to observe iddah for a period of 90 days , they cannot remarry during this period. But after iddah they can remarry. In case of irrevocable divorce a second marriage with a third party is necessary.	Not allowed since divorce is not recognized.
19	Inheritance	Reciprocal right of inheritance exists in valid marriage.	Hindu women do not inherit. Only limited right to property, called women property.

Conclusion

This ***“Muslim and Hindu Marriage Law in Bangladesh”*** reveals that the Muslim and Hindu personal Law have a great contribution to protect the right of a married man and woman, to legalize cohabitation or give birth of child between husband and wife and above all, to impose some legal duties and obligations upon the parties so that they can live as husband and wife as friends. It is pertinent to note that like the tremendous statutory development of Muslim law in Bangladesh, some enactments are required in Hindu marriage and law in Bangladesh especially on the marriage related issues, such as, divorce dissolution of marriage, inheritance of Hindu woman, dowry, polygamy and so on. Indeed, in connection with the Muslim marriage, through enactments, the state has taken some good initiatives for the sake of the Muslim and Hindu couple. Nonetheless, all are not sufficient. And, in order to adopt the statutory provisions for the development of Hindu and Muslim personal law without violating the divine spirit of the law.

Some recommendations are put forward below:

- 1- The separate Muslim family and marriage code consisting of marriage, dissolution of marriage and divorces, maintenance, dower, restitution of conjugal rights, guardianship and custody of children, inheritance, including ADR mechanism, might be adopted.
- 2- The separate Hindu family and marriage code consisting of widow's remarriage, deposition of property, inheritance, and women's right to property, removal of marriage disabilities, right to separate residence and maintenance, polygamy, dowry, adoption etc, including ADR mechanism, might be adopted.

References

- Abdur Rahim. 1911. *The Principles of Muhammadan Jurisprudence* (According to the Hanafi, Maliki, Shafi'i and Hanbali Schools). London: Luzac & Co and Madras: S.P.C.K. Depository.
- Agarwal, R.K. 1981. *Hindu Law*. 11st Edition. Mumbai: Central Law Agency.
- Al-Bukhārī, Abū 'Abdullah Muhammad Ibn Ismā'īl. 2002. *Al-Jāmi' al-Sahīh*. Beirut: Dār Ibn Kathīr.
- Al-Fatawa al-Hindiyyah. 2001. (Known also as Fatwa e Alamgiri - A compilation book of Muslim Law, edited by the King Muhammad Muhiuddin Aurangjeb Alamgir, Translated into Bengali by Mawlana Ishaq Faridi) Dhaka: Islamic Foundation Bangladesh.
- Al-Marghīnānī, Burhān al-Dīn Abū'l-'asan 'Alī bin Abī Bakr bin 'Abd al-Jalīl. 2003. *Al-Hidāyah*. Vol. 2, 2nd Edition. Translated by Maulana Abū Taher Misbah. Dhaka: Islamic Foundation.
- Al-Marghīnānī, Burhān al-Dīn Abū'l-'asan 'Alī bin Abī Bakr bin 'Abd al-Jalīl. 2007. *Al-Hidāyah*. Vol. 3, 3rd Edition. Translated by Maulana Abū Taher Misbah. Dhaka: Islamic Foundation.
- Ameer Ali, Syed, 1903. *Student's Hand-Book of Mahommedan Law*. 4th Edition. Calcutta: Thacker Spink And Co.
- Das, Subhamoy. 2016. *The Types of Hindu Marriage in the Laws of Manu*. <https://www.thoughtco.com/types-of-hindu-marriage-1770476>
- Fyzee, Asraf. A.A. 1974. *Outlines of Muhammadan Law*. 4th Edition. New Delhi: Oxford University Press.

- Gandhi, B. M. 1990. *Hindu Law*. 2nd Edition. Lucknow: EBC publishing (p) Ltd.
- ILR, The Indian Law Reports: Allahabad series. 1886. (Containing cases determined by the High Court at Allahabad and by the Supreme Court of India on appeal there from, Volume 8, Contributors: Uttar Pradesh (India); High Court of Judicature, India; Supreme Court, Great Britain; Privy Council; Judicial Committee, India; Federal Court. Publisher: Superintendent, Print. and Stationery, Uttar Pradesh, India)
- Mulla, Sir Dinshah Fardunji. 1946. *Principles of Hindu Law*. 10th Edition. Calcutta: The Eastern Law House.
- Pereira, Faustian. 2002. *The Fractured Scale: The Search for a Uniform Personal Code*. Calcutta: Popular Prokasan.
- Rakshit, Sree Mridul Kanti. 1946. *The Principles of Hindu Law*. 5th Edition. Dhaka: Kamrul Book House.
- Rashid, Syed Khalid. 1990. *Muslim Law*. 2nd Edition. Lucknow: Eastern Book Company.
- Tyabji, Faiz Badruddin. 1940. *Muhammadan Law: The Personal Law of Muslims*. 3rd Edition. Bombay: N.M. Tripathi & Co.