



## HUMAN RIGHTS analysis

# Personal rights of women in Hindu laws

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HINDUISM is considered as one of the most ancient religions in the world and that is why it is also called "Sanatan Dharmo". Like all other religions it embraces all segments of human life including the rights, duties, liabilities of a woman. Though it is hard to find in particular the position of women in the ancient Hindu social system but it is clear from

need to be reformed. Initiatives to such reforms always face opposition from a segment of Hindu community who are rigid in upholding "Sanatan Ain" (traditional customary law) because they are convinced that the laws originating in supposedly divine source cannot undergo a change. But it is noteworthy that our neighboring country India, where the Hindu law actually originated, has already introduced a lot of

Dayabhaga school is followed in Hindu Family Law. Unfortunately the religious element in Hindu Family Law has been greatly exaggerated in our country. Very little has been done towards reformation of Hindu personal law as it is same to Muslim Personal Law in India. Therefore, Hindu women have no right in Bangladesh. They are deprived of their parent's/husband's property as well as right to divorce and right to adoption etc. The government has not yet considered amending the personal laws though it ensured equality of the citizens in the eye of the law by the constitution. The reason behind perhaps is that thinking any self-initiatives of amendment may give rise to communal tension in the country.

**Comparative review**  
**Inheritance:** According to Bangladesh Law Hindu women only get a limited share. They inherit life interest in the property. There are five female Sapindas according to the Dayabhaga law, namely the widow, the daughter, the mother, the father's mother and the mother of father's father. No other female relation is recognised as heir by the said school. Moreover a daughter cannot receive any property, even she cannot get life interest in the presence of son, grand son and great grand son. Although in neighbouring India laws in this regard have been updated since independence in 1947, in Bangladesh the pre-1947 laws are still prevailing. In India laws have been framed and amended that have established women's rights on the property of father and husband.

A wife's right to her husband's property is elaborately mentioned in Article 8 of Indian Succession Act. It is stated that if a Hindu man fails to distribute his property through a deed or testament, the inheritance will be determined based on Article 8 of the Hindu Inheritance Law and according to the list described in that law. In this way, a Hindu widow can demand the property of her husband under this law. Article 25 of Hindu Marriage Law states that a Hindu divorcee woman will receive subsistence

allowance from her former husband. It is also stated that if the divorcee woman does not marry again, does not engage herself in adultery, and does not earn enough, she is entitled to receive subsistence allowance for the rest of her life from her former husband. Woman's limited estate has been abolished and whatever property has been or shall be inherited by a Hindu female will be or shall be her absolute property.

**Marriage:** According to Hindu social customs, Hindu marriages are solemnised through religious rituals. There is no marriage registration system for Hindus in Bangladesh. There is also no Hindu marriage law or Hindu marriage registrar in the country. So, if any Hindu woman suffers in the hands of her in-laws, she does not get legal help.

As per a 1946 law, Hindu women can file cases with courts to only regain the rights to conjugal life. Besides, the Hindu women can file cases under Family Court 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. But the situation is very different in neighboring India. There are laws in that country to protect the rights of Hindu women such as Widow Marriage Act 1856, Racial Inability Remission Act 1850, Child Marriage Prevention Act 1929 (Amended 1938), Earned Property Affairs Act 1930, Inheritance Act 1925 and Hindu Women's Rights to Lands Act 1937. Besides, new laws have been made in India after independence in 1947. These include Hindu Marriage Act 1955, Immature Children's Property Act 1956, Hindu Adoption and Maintenance Act 1956, Hindu Inheritance Act 1956 and Special Marriage Act 1960. It would be pertinent to mention the remarkable changes in ancient Hindu Law in India through the Hindu Marriage Act-1955:

1. Inter marriage between persons of different castes is not prohibited.
2. Monogamy which is essentially the voluntary

union for life of one man with one woman to the exclusion of all others is now enforced by legislation.

3. Bigamy has been made punishable as an offence.
4. The conditions and requirements of a valid marriage have been considerably simplified.
5. Several matrimonial reliefs e.g., restitution of conjugal rights, judicial separation, nullity of marriage and divorce have been provided in this Act.

It is a matter of great regret that the Hindu women of our country fail to avail this kind of opportunity due to the lack of proper legislation.

**Divorce:** The concept of divorce is not recognised under the orthodox Hindu Law. Manu believed that the duty of a wife continues even after death. She can never have a second husband. The reason is that a marriage from the Hindu point of view creates an indissoluble tie between husband and wife. Unless divorce is allowed by the custom neither party to a marriage can divorce the other party. However, through the passing of Hindu Marriage Act 1955 in India some revolutionary changes have been introduced regarding marriage and divorce. After the passing of the Act the idea of marriage as an indissoluble union has been abolished and it is almost converted to a civil contract just like Muslim Law. The option of divorce is the most significant part of this Act. Section 13(1) declares the right of divorce to both the parties. The grounds are as follows:

Adultery; treated the other party with cruelty; deserted the other party for a continuous period of not less two years immediately preceding the presentation of the petitioner; conversion to other religion; if one party becomes incurably of unsound mind or has been suffering continuously or intermittently from medical disorder of such a kind and extent that other party cannot reasonably be expected to live with the respondent.

Four grounds are available only to wife: Bigamy; Rape,

sodomy; Non payment of maintenance decreed to the wife; Wife was under 15 when she was married and has repudiated the marriage before she is 18.

Unfortunately in Bangladesh any legislative enactment is yet to be introduced allowing a Hindu to divorce his/her spouse. Hindu women in Bangladesh are the worst sufferer due to this lack of provision of divorce. Very often they have to undergo physical and mental torture for dowry from their husband but can't divorce him since there is no such option in our country.

**Adoption:** Adoption is the transplantation of a son from the family in which he is born to another family where he is given by the natural parents by way of gift. The power of a Hindu female to adopt a son is very much restricted in Bangladesh. She can't adopt by herself but only with the consent of her husband. She has no right herself, she is deemed to act merely as an agent, or representative of her husband. A wife can but no other female can adopt. However, in India a woman enjoys a lot of rights conferred by the Hindu Adoption & Maintenance Act 1956. The Act has made the following changes in the law relating to adoption:

- A female may also be adopted (Sec:7&8)
- A virgin, divorcee, or widow is entitled to adopt and wife can also adopt in certain circumstances. (Sec:8)
- A male can adopt only with the consent of wife or wives, if any. (Sec:7)
- The father without the consent of mother can't give a child in adoption except in certain circumstances. (Sec:9)
- The ceremony of "Datta Homam" is not essential. (Sec:11)

From the above discussion it can be said that the Hindu women in Bangladesh are deprived of equal rights due to existence of the non-amended personal law which doesn't allow equal rights of women in different aspects of life even though constitutionally women are bestowed with equal right in social and political arena of Bangladesh. With the realisation



of the concept that "man is not for law but law is for man", the world's civilizations has always brought about necessary changes in their respective laws and customs to adjust to the changing scenario. But in Bangladesh the scope of freedom of Hindu women is clogged by the crude provisions of Dayabhaga School that stands like a wall in the way of advancement and empowerment of Hindu women. This situation needs to be changed at any cost and therefore following recommendations are suggested to bring a constructive change in the Hindu Family Law and thereby upheld the dignity of Hindu women:

- Polygamy should be prohibited through law.
- Marriage registration should be made compulsory along

- with the traditional ritual of marriage ceremony.
- Right to divorce of both man and woman should be ensured under equal condition.
- Maintenance should be given to the wife and children as per Guardianship and Ward Act, 1898.
- Guardianship right should be entitled to both the parents.
- Adoption right should also be given to women.
- Finally, women should get equal share from the property of both father and husband.

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the old writings that with the end of the matriarchal system and introduction of patriarchy, women have become dependent on their male counterparts to a large extent. Since then Hindu women have been deprived of the right to property of their father and/or husband for survival. They remain dependent on parents during their childhood, on husband in youth and on children in old age. Therefore, for the betterment of the condition of Hindu women it is felt that Hindu family laws

modifications and alterations in the family law system in order to make it compatible with the changing society.

**Situation in Bangladesh**  
 Hindu community is the second largest religious community in Bangladesh. According to 1991 census 11.5 per cent of the population of our country belong to the Hindu Community. Their social and family affairs all are very intensely controlled and influenced by their religious doctrine. In Bangladesh,

## RIGHT investigation

# Problems of working for rehabilitation of sex workers

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IN our country NGOs working for the benefit of sex workers and their children employ a large number of young men and women to work with the sex workers inside and/or outside brothel areas. These young men and women are hardworking people and are dealing with those from the high risk group with whom not many people in our country want to work. They face problems in work which don't match with what others who work for others in our NGO community face. In our country people don't have a positive attitude towards sex workers or those who work for them. Reflections of their negative attitude have been observed in their behaviour with those who work for the sex workers i.e. the NGO workers. To work for this vulnerable group, these NGO workers need to sacrifice a lot to stick to their courage. But many of us don't know much about their sufferings or sacrifice. Let's have a look at the problems faced by the NGO workers working for the sex workers in our country.

Workers belonging to active NGOs visit brothel areas on a regular basis for their work. Not only community people, sometimes members from their own family oppose their working with sex workers. The women workers face more problems than men. The problem is acute if the woman worker is unmarried. They face problems in getting married. There are examples of some women not able to marry in time or ever only because of their working for sex workers. Most of the brothels in our country are situated in the middle of the business places where workers are easily seen by other members of their family or people of the society while working in or out of the brothel areas. Because of their proximity with sex workers they are not provided with house rent. Sometimes, people pass abusive remarks about their work.



In our country the issue of sex workers still considered sensitive and people in general don't want to be open in talking about it. Not many people want to be employed in work with the sex workers though unemployment is a big problem in our country. Because of the shortage of people NGOs have problems to find good and committed field level staff to work for the sex workers. Sometimes the brothel areas are situated in isolated places like Doulatdia or

Baniashanta. In such case the NGOs find it more difficult to find staff to work and stay there. The situation is worse for those NGOs which have rehabilitation centers in which full time women staff needed to look after children or girls. In Jessore, an NGO working with a project of DSS for rehabilitation of sex workers faced problems several times as its female staff left job after marriage as their families didn't allow them to work for this community. One of its staff

named Ms. Hamida married late only because of her job. In Doulatdia, the NGO implementing the project for rehabilitation of sex workers and their children didn't find any suitable female staff for long time to look after children under the project.

According power structures of brothels in our country, there are different types of leaders who are locally called 'Sardami'. Activities in brothel areas are controlled or dominated by these leaders. Some of them are the 'Gharwali' / 'Bariwali' who hire room(s) from building owners/landlords with position for a certain period in exchange of a considerable amount of money. Some women hire room(s) from the 'Gharwali'/'Bariwali' on a fixed daily rent basis and are called as the 'Bharatia' (means 'tenant'). Normally the 'Gharwali'/'Bariwali' are aged women who have lost their ability to fulfil the physical desire of the client. The 'Bharatia' (tenant) includes both aged and young women and their involvement in sex work depends on their age and capacity. However, both of these two types of leaders employ young girls or women in sex work in exchange of food and clothing. The young women/girls are locally called 'Chhemri'/'Chhukri' and the earnings from their hard work go to the above mentioned two types of leaders i.e. 'Gharwali'/'Bariwali' and the 'Bharatia'. These women involve pimps, hoodlums and sometimes police in their conduct of business. The NGO workers deal with these leaders of sex workers.

However, it is regardless to say that though all those people who work for development of sex workers play significant roles but most of them are working for uplifting the status of sex workers through providing different types of services on health, education, environment etc. and only a few dare to play the direct role in the process of rehabilitation and talk about alternative livelihoods which deny interest of many people who are directly benefited from

this business. The workers who work for rehabilitation of sex workers face serious threats from different groups engaged in sex work business in brothel areas such as leaders of sex workers, pimps and hoodlums etc.

The NGO workers target young girls for rehabilitation which is not supported by the leaders as they are highly benefited from the share of profits in the sex business. Rehabilitation efforts in most cases are welcomed by the general inmates while the leaders always oppose because this make the young girls able to differentiate between the good and the bad. So they create problems for workers. They don't allow young girls to go outside brothel areas to take part in activities arranged by NGO workers. Some of the NGOs in recent times have established centres for health check-up, education, counselling etc. inside brothel areas so that the girls don't need to go out of brothels. But their efforts are about to fail due to obstacles from the leaders. The leaders don't allow young sex workers to attend the centres even inside brothel areas. Sometimes they don't allow young girls to talk to the development workers. The workers are sometimes not allowed to enter the brothel areas. The workers need to face others also in the process of rehabilitation. It is learnt that a big amount of money is transacted everyday to and from the hands of these leaders and they become so rich that they care nobody. These leaders have a good link with local influentials, sometimes even with people in the local administration.

For rehabilitation of sex workers, coordination efforts are needed. But sometimes co-ordination efforts prove to be futile as many people in different sectors don't want to work for them. In Jessore, under the initiative of a UNDP supported project of DSS to provide coordinated health service for sex workers and their children, a doctor was assigned by the

office of the Civil Surgeon as per request of the partner NGO of the project to work in a satellite health centre inside brothel. After the first day of his work at brothel, the doctor refused to work saying that his family members wouldn't allow him work inside brothel areas. NGOs for rehabilitation of sex workers establish rehabilitation centre/shelter homes outside brothel areas for them and their children. These NGOs always find it very difficult to hire houses for establishment of such rehabilitation centres. The NGOs in city areas face more problems than others.

The NGOs working for floating sex workers are in big problems. Large numbers of children of sex workers studying at different government and non-government schools around the country under projects for rehabilitation and the staff who are involved in the process of admission of children face similar problems. It sometimes takes a long time to manage teachers and guardians to accommodate these children and the first hit are the workers.

Finally it is to say that not only the sex workers but also those who work for them are the victims of attitudinal problem of our people. Their work should not be considered as simple, neither should they be classified as similar to other service providers because they are dealing with specific group of people with whom not many people of our society want to be involved and they (the NGO workers) need some specific personal qualities to deal with these people. But ironically these workers are in most cases not well paid compared to others in profession. The employers should pay positive attention to the issue of these workers who should be considered differently than others. In fact we all should pay special attention towards these workers.

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