

| HUMAN RIGHTS |

ARE HINDU WOMEN SUFFERING FOR LACK OF LAWS?

Infographic: Shaer Reaz

In Bangladesh's Hindu community, women cannot show their marriage registration, which is why they face multiple legal difficulties within and outside the country and thus suffer various types of gender-based discrimination. Even in miserable conditions, Hindu women cannot divorce their husbands and so re-marriage is impossible. According to the religion, a woman's husband is her pre-determined fate. A man, however, can marry again without any difficulty. In addition, if a Hindu man rejects a marriage or leaves his wife, the wife can only demand alimony after separation. Marriage and inheritance laws are rendering women helpless—their basic rights to independence and freedom of expression are jeopardised.

The following research work and its findings shed much-needed light on the matter.

THE PURPOSE OF THE RESEARCH

DONE BY THE RESEARCH INITIATIVE BANGLADESH TEAM LED BY MEGHNA GUHATHAKURTA AND THE LATE MD KORBAN ALI

TO DISCOVER THE PREVALENCE OF TORTURE FACED BY HINDU WOMEN AS A RESULT OF NO HINDU MARRIAGE ACT.

RESEARCHED SAMPLE STATS



CASE STUDIES OF 36 WOMEN WERE GATHERED AT 9 WORKSHOPS BY LOCAL LEVEL CIVIL SOCIETY GROUPS.

PEOPLE INTERVIEWED *THROUGH RANDOM SAMPLING IN 7 DIVISIONS



CASE STUDY

Onu (not real name, 26), Natore
Onu's father died early. Her brother, relatives and community members arranged for her marriage.
Her domestic life was not happy. Her husband physically tortured her. He would hit her behind closed doors, and her mother-in-law would help him. In this state, Onu had a complete breakdown. Onu's mother, on seeing her daughter's pain, died prematurely.
Prominent members of her community gathered in an arbitration. Onu said that at the arbitration, everyone was in favour of her. They threatened her husband and mother-in-law. But as her community and chairman failed to come to an agreement, they decided that the couple should separate. Her marriage had not even lasted a year.
But before that could happen, her husband brought back his first wife and child. Onu had been led to believe that her husband and his first wife had divorced. After his first wife returned, Onu's husband left her. She took shelter in her brother's house and earned a little by doing tuitions.
Onu does not know what her future holds. She does not wish to marry again. She is always under strain. Onu feels that if a registration system had been in place, she would have gotten stronger legal justice.

INDIA, AFTER GETTING INDEPENDENCE, HAD CONSIDERED THE PROBLEMS IN HINDU MARRIAGE AND PROVIDED LEGAL PROTECTION. MORE RECENTLY, THE PAKISTANI GOVERNMENT PASSED THE "THE HINDU MARRIAGE BILL 2017". WHAT PRESIDENT NAWAZ SHARIF STATED AS THE NECESSITY AND PURPOSE OF THE LAW IS HIGHLY RELEVANT TO BANGLADESH. ABOUT EQUAL RIGHTS HE SAID, "IT IS A CONSOLIDATED RIGHT FOR SOLEMNISATION OF MARRIAGES BY HINDU FAMILIES RESIDING IN PAKISTAN... THEY ARE AS PATRIOTIC AS ANY OTHER COMMUNITY AND, THEREFORE, IT IS THE RESPONSIBILITY OF THE STATE TO PROVIDE EQUAL PROTECTION TO THEM."

Therefore, it is time for Bangladesh to prepare a complete Hindu family law like India and Pakistan where the dignity of women is upheld in regards to marriage registration, divorce, inheritance, etc.

RESEARCH RESULTS

52.7% WOMEN ARE VICTIMS OF TORTURE
MOST MEN ARE SILENT ABOUT TORTURE OF WOMEN IN THEIR HOME OR FAMILY.

91.3% RESPONDENTS WANT MANDATORY MARRIAGE REGISTRATION
74.5% OF THEM ARE WOMEN.
61.3% OF MALE RESPONDENTS FEEL WOMEN ARE TORTURED BECAUSE THERE IS NO MARRIAGE REGISTRATION ACT. 88.3% OF MALES THINK AN ACT IS NECESSARY.

LEGALISING DIVORCE:

29.2% WOMEN IN FAVOUR
28.2% IN FAVOUR OF JUSTICE
26.3% IN FAVOUR OF SEPARATION
26.1% WANT INDEPENDENT LIVING

26.7% MEN IN FAVOUR
0% IN FAVOUR OF JUSTICE
26.7% IN FAVOUR OF SEPARATION
28.3% WANT INDEPENDENT LIVING

70.4% RESPONDENTS EXPRESSED DISSATISFACTION CONCERNING WOMEN RECEIVING PROPERTY UNDER EXISTING HINDU FAMILY LAW

PROBLEMS IN THE HOME ARISE BECAUSE OF THE PLIGHT OF WOMEN DUE TO NO MARRIAGE REGISTRATION, DOWRY, AND THE ABSENCE OF DIVORCE ACTS AND INHERITANCE LAWS FOR WOMEN.

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Three years ago, a Bangladeshi woman, let's call her Nila, petitioned the High Court asking for protection of her fundamental right to equality. She had been living in a violent marriage. But as a Hindu in Bangladesh, she has no right to divorce, and no exit route from continuing abuse. She asked the Court to give her the same rights to escape a violent marriage that are available to the millions of other Bangladeshi women who marry under customary or religious or civil law.

under their respective personal laws. So a Muslim woman has a right to divorce if it is clearly stipulated in writing at the time of her marriage, and may exercise this in cases of incompatibility, lack of maintenance, cruelty or for any reason stated. And of course she can be divorced at any time and unilaterally by her husband. A woman, who marries under Christian law, or civil law, can also initiate a divorce if she can establish cruelty or some other cause. Her husband can

Ministry of Law, and repeated calls for reform and for adoption of civil laws by groups such as Naripokkho, Bangladesh Nari Progati Sangha, Ain o Salish Kendra and others. Researchers have also highlighted the issue, for example the detailed report for the Manusher Jonno Foundation by Dr Meghna Guhathakurta, now a Member of the National Human Rights Commission. At BLAST, given the opportunity to assist the Court, we sought to add our voices to this muted if robust chorus. We

Do we know anything about what Hindu women want? Dr Meghna Guhathakurta, in her research, spoke to Hindu men and women around the country about precisely this question. She found that 30 percent of her respondents, men and women alike, wanted to see Hindu laws reformed to recognise the right to divorce. The reasons they identified are very similar to those that were articulated by India's BN Rau Committee in 1955 when recommending reform of Hindu personal laws. When countering the criticism of reforms put forward by orthodox members of the Hindu community, that marriage is sacrament and indissoluble, they noted that this view would prevent a Hindu widow from re-marrying, but widow re-

SEIZING THE OPPORTUNITY?

Redressing divorce inequality and injustice for Hindu women

SARA HOSSAIN

The Court accepted her petition and asked the government to explain why the lack of divorce rights under law for Hindu women should not be considered as discrimination. Later, on considering the importance of the issue, it asked four senior lawyers to assist it with relevant arguments and legal submissions as 'friends of the court'. It also sought the views of two Hindu religious scholars and two rights organisations, Bangladesh Legal Aid and Services Trust (BLAST) and Manusher Jonno Foundation (MJF), to obtain information on 'the prohibition of divorce of Hindu women'.

Months passed. As often happens, the judge concerned was allotted different issues to adjudicate, and the case no longer appeared on any of the daily cause lists. In the meantime, Nila's husband filed papers in Court claiming that he had already divorced her under customary law. Perhaps exhausted by the prospect of years awaiting a resolution of the larger constitutional questions, Nila filed a petition saying she would not pursue her constitutional challenge. On the basis of her petition, the Court disposed of the matter.

But the larger question—about whether Bangladeshi citizens, and women in particular, are entitled to equality and freedom from discrimination based on religion and gender—remains unresolved.

In Bangladesh, today, 46 years after our Constitution was adopted promising us equality, there is no single law on marriage or divorce. While there is a possibility to marry under a civil law, very few people in fact choose this option, and most people in Bangladesh marry



PHOTO: AMIR HAMZA

divorce her simply upon establishing cruelty. But under Hindu law, there is no right to divorce—for either men or women—with exceptions 'under customary law for certain lower castes'. In other words, women have fewer rights than men to divorce, and Hindu women not only have fewer rights than men, but also fewer rights than women of other religions. In all these years there has been no reform of marriage and divorce laws for Hindus, or for any community other than Muslims. As far as I'm aware, our Parliament has never debated these issues, and no MP has raised a question about this continuing inequality. The Law Commission of Bangladesh, to its credit, has engaged in some consultations on personal law reform, but it is unclear whether or how it has taken this process forward.

The deafening silence of our law and policy makers has been pierced from time to time, though with little response sadly, by rights organisations. Notable examples include the preparation and submission of a draft civil code by the Bangladesh Mahila Parishad to the

prepared a review of the relevant laws across South Asia. We were given assistance pro bono by lawyers from a number of the countries, through the Trust Law network. We found that of all the SAARC countries, only Bhutan, India, Nepal, Pakistan, and Sri Lanka, have laws in place that allow Hindu women to divorce. Pakistan's law was adopted only a few months ago. This means that a Hindu woman in Bangladesh in fact not only has fewer marriage rights—to equality and to freedom from family violence—than other Bangladeshi women, but also women in other South Asian countries.

Given that Bangladesh is so far ahead of our neighbours in achievement of so many socio-economic indicators on gender equality, why are we lagging so far behind in ensuring formal legal equality for women? Is it simply that no one in power is interested in hearing the voices of Hindu women, particularly those who are powerless and living trapped inside a violent and abusive marriage, with no access to remedy or support?

marriage had been legalised almost a century earlier. They also commented that Hindu women were being left in limbo, abandoned by husbands, but unable to re-marry or continue with their right to family life. They found that divorce was already practiced as a custom in many Hindu communities, but because of lack of codification, and given the levels of literacy, many people simply did not know about these rights.

The comments of the BN Rau Committee are all too pertinent today, more than 60 years on.

It is more than a little painful to see that we are lagging behind all other South Asian countries. I hope before another year passes, we might begin the process of reforms. The struggle for freedom must also be about freedom to chart the course of our own lives. The hearing that concluded in Court today may be the beginning of this process. Thank you Nila for starting the discussion.

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