COMBATING GENDER INJUSTICE
HINDU LAW IN BANGLADESH

Shahnaz Huda

The South Asian Institute of Advanced Legal and Human Rights Studies
(SAILS)

2011
Combating Gender Injustice
Hindu Law in Bangladesh

Published
December 2011

Researched by
Dr. Shahnaz Huda
Professor, Department of Law, Dhaka University

Research Assistants
Ragib Hasan
Ruma Halder
Nipa Roy
Nishat Farjana Nipa
Nusrat Jahan Urmii

© South Asian Institute of Advanced Legal and Human Rights Studies
No part of this publication may be reproduced or transmitted without prior permission from the publisher.

Graphics & Print
ArkaCL.com

Published by
The South Asian Institute of Advanced Legal and Human Rights Studies (SAILS)
House -55, Road -5, Dhanmondi, Dhaka, Bangladesh

Supported by
Embassy of the Kingdom of the Netherlands
Dhaka, Bangladesh
Preamble

Bangladesh is, and always has been, a pluralistic society with four major religious communities - Muslims, Hindus, Buddhists and Christians as well as a number of ethnic minority communities who follow these or other religious-cultural practices. In the Bangladesh Constitution of 1972, women have been specifically placed on an equal footing with men in all spheres of State and public life. The same Constitution also guarantees freedom of religion to all citizens of the country and allows each religious community the freedom to live according to the separate personal laws that have governed their communities since much before the partition of the Indian Sub-continent. These laws govern the issues of marriage, divorce, dower, maintenance, guardianship, custody, adoption and inheritance.

The separate personal laws which today still govern the family lives of the men, women and children of Bangladesh reflect the perception of gender inequality that remains prevalent in the current Bangladeshi society. The laws are inconsistent with the universal human rights as laid down in the international human rights treaties ratified by Bangladesh including, most particularly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Hindus constitute the largest minority group in Bangladesh. Given the fact that the Buddhist community also follows the Hindu personal family laws, Hindu laws have a major impact on the lives of a substantial portion of the population of Bangladesh. The following pages contain the findings of field studies conducted by a research team from April 2010 to May 2011 investigating the prevailing laws which govern the family matters of the Hindu community of Bangladesh, under the “Combating Gender Injustice” study project. The study has been carried out under the auspices of the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) and funded by the Embassy of the Kingdom of the Netherlands. From the very beginning, it has received the full support and cooperation of the Bangladesh Law Commission. The main purpose of the extensive research on Hindu personal laws undertaken was to review specific legal areas relating to women's rights within the Hindu family and the wider Hindu community in Bangladesh. The aim was to engage in dialogues with stakeholders with a view to formulate recommendations for law, policy and procedural reform for the Hindu community, in order to further women's rights within the family. In view of the fact that there has been no significant reform of Hindu personal laws in Bangladesh since the partition of the Sub-continent, the present study focuses on identifying the scope and possibilities for necessary reforms in this area.

We wish you an interesting read and hope that the following pages will succeed in giving a voice to a number of Bangladeshi women. May it be conducive to the improvement and betterment of their family lives.

The research team of the ‘Combating Gender Injustice’ - Hindu law study project
South Asian Institute of Advanced Legal and Human Rights Studies (SAILS)
Dhaka, December 2011
Acknowledgements

The 'Combating Gender Injustice' project researched different aspects of the Hindu, Muslim and Christian personal laws applicable in Bangladesh in three separate studies. First and foremost we wish to extend our gratitude to the four researchers who, despite their demanding careers, have tirelessly mapped out, supervised and conducted the research efforts, and whose conclusions based on their findings now lie before you. They are Professor Dr. Shahnaz Huda (Dhaka University) for the study on aspects of Hindu law of which the findings are presented in the pages of this report, Dr. Faustina Pereira (BRAC) for the study on aspects of the laws governing the Christian communities in Bangladesh and Dr. Nowrin Tamanna (University of Reading, UK) along with Advocate Md. Amirul Haq Tuhin for the study on the practices and court procedures related to custody and guardianship cases. The latter study would not have materialized without the continuous support of Barrister Sara Hossain. Their high academic standard combined with their commitment to legal reform make the three separate reports, under the 'Combating Gender Injustice' project, publications to be reckoned with.

We are grateful to the SAILS Governing Council, especially to Dr. Kamal Hossain (founder and Chairman of SAILS) and Dr. Sharif Bhuiyan, who have all given their continuous support to this first research project conducted under the auspices of SAILS. We are indebted to Dr. Uttam Kumar Das, Deputy Director of SAILS for his overall support to the study and the SAILS staff for their unfailing cooperation to host meetings and group discussions. Our acknowledgment goes to the research assistants of the Hindu law project who have tirelessly carried out the legwork needed to collect the large amount of data and materials: Ragib Hasan and Ruma Haldar for the extensive field studies they conducted. They travelled throughout the country to conduct interviews and focus group discussions with members of the Hindu community. We also thank the three law students who have carried out the questionnaire survey on Hindu University students -- Nipa Roy, Nishat Farjana Nipa and Nusrat Jahan Urmi. We are grateful to Ms. Valerie Scott who has language edited this particular publication with precision, commitment and timeliness. We are also greatly indebted to the support staff---coordinating assistant Rokeya Chowdhury who managed the entire administration with great precision and timeliness and Account Manager, Ms. Maksouda Khanam, who controlled the finances as precise as clockwork, which is after all, the prerequisite of all our efforts. Many many thanks.

Ms. Aroma Dutta, Executive Director of PRIP Trust and Member of the Bangladesh National Human Rights Commission has unfailingly provided us with advice in the field of Hindu Law; advice for which we are deeply grateful. On behalf of SAILS, I thank all those unmentioned here, who have given their time and advice during one on one interviews with the researchers to enable us to identify the issues in the field that need to be addressed.

This study would not have been conducted without the financial support which was granted to us by the Embassy of the Kingdom of the Netherlands in Bangladesh. We are grateful to Ms. Henny de Vries, Head of the Department for Governance and Gender Affairs for her initiative and support and Ms. Mushfiga Satiar, Adviser to the same department for her constant cooperation. Last but certainly not least, we thank Professor Dr. Shah Alam, Chairman of the Bangladesh Law Commission, who has given us his unfailing support and attention from the moment, almost two years earlier, when we first broached the idea of undertaking research on family law reform in Bangladesh. We look forward to a long and fruitful cooperation with him and with the Law Commission in our common endeavour of reforming the law in Bangladesh.

Cécile Insinger  
*South Asian Institute of Advanced Legal and Human Rights Studies (SAILS)*
About the Author

Shahnaz Huda

Professor Dr. Shahnaz Huda has been teaching at the Law Department of the University of Dhaka since 1989, specializing in personal and comparative family laws as well as in gender and child rights issues. Shahnaz Huda is regarded as an authority in her field and is frequently consulted by non-governmental organisations and other institutions for advice. She is also an active Board member of the Manusher Jonno Foundation, a national initiative set up to promote good governance and human rights in the country. Professor Huda obtained her Doctorate from the University of East London, United Kingdom, in 1996 and recently completed a post-doctoral research at the School of Oriental and African Studies (SOAS), University of London, United Kingdom, as a Commonwealth Academic Fellow on family law in South Asia. She speaks and publishes very regularly on subjects of family law governing both the Hindu and the Muslim communities in the country.
# Table of Contents

Abbreviations ........................................................................................................... 7
Persons Consulted and Interviewed ......................................................................... 8
1. Introduction ........................................................................................................... 10
2. Methodology ......................................................................................................... 10
3. The State’s obligation to ensure gender justice under the Constitution of the People’s Republic of Bangladesh and international instruments .......................................................... 11
4. Hindu Religion: Sources and Schools ................................................................ 13
5. Hindu Law in British India and after partition ....................................................... 13
6. Hindu personal laws in Bangladesh .................................................................... 14
   6.1. Marriage ......................................................................................................... 14
   6.2. Guardianship of Children .............................................................................. 23
   6.3. Maintenance .................................................................................................. 23
   6.4. Adoption ....................................................................................................... 24
   6.5. Succession ..................................................................................................... 26
7. Hindu law in India and Bangladesh: Comparisons, Contrasts, Contradictions and Thoughts .......................................................... 29
   7.1. Marriage ......................................................................................................... 29
   7.2. Dissolution of marriage and judicial separation ............................................ 33
   7.3. Maintenance .................................................................................................. 35
   7.4. Adoption ....................................................................................................... 35
   7.5. Succession ..................................................................................................... 36
      7.5.1. Position of Hindu widow after and before the Act of 1956---Comparative analysis .......................................................... 37
      7.5.2. Position of Hindu daughter after and before the Act of 1956---Comparative analysis .......................................................... 37
8. Hindu Law in Bangladesh: Possibilities for Reform ............................................. 38
   8.1. Uniform Family Law ....................................................................................... 38
   8.2. The Special Marriage Act, 1872 (applicable in Bangladesh) and the Special Marriage Act of 1954 (applicable in India) .......................................................... 40
   8.3. Reforming personal laws ............................................................................... 41
9. Initiatives for reform of Hindu law in Bangladesh .................................................. 41
10. Conclusion ............................................................................................................. 46
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AD</td>
<td>Appellate Division</td>
</tr>
<tr>
<td>AIR</td>
<td>All India Reporter</td>
</tr>
<tr>
<td>BLC</td>
<td>Bangladesh Law Commission</td>
</tr>
<tr>
<td>BLD</td>
<td>Bangladesh Law Digest</td>
</tr>
<tr>
<td>BMP</td>
<td>Bangladesh Mahila Parishad</td>
</tr>
<tr>
<td>Bom</td>
<td>Bombay</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>DLR</td>
<td>Dhaka Law Reports</td>
</tr>
<tr>
<td>FGD</td>
<td>Focus Group Discussion</td>
</tr>
<tr>
<td>GoB</td>
<td>Government of Bangladesh</td>
</tr>
<tr>
<td>HMA</td>
<td>Hindu Marriage Act</td>
</tr>
<tr>
<td>HRCBM</td>
<td>Human Rights Congress of Bangladesh Minorities</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>Kar</td>
<td>Karnataka</td>
</tr>
<tr>
<td>LC</td>
<td>Law Commission</td>
</tr>
<tr>
<td>LJ</td>
<td>Law Journal</td>
</tr>
<tr>
<td>LW</td>
<td>Law Weekly</td>
</tr>
<tr>
<td>MFLO</td>
<td>Muslim Family Laws Ordinance</td>
</tr>
<tr>
<td>MIA</td>
<td>Moore's Indian Appeals</td>
</tr>
<tr>
<td>MJF</td>
<td>Manusher Jonno Foundation</td>
</tr>
<tr>
<td>MLR</td>
<td>Miscellaneous Law Reports</td>
</tr>
<tr>
<td>Nag</td>
<td>Nagpur</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Government Organization</td>
</tr>
<tr>
<td>Raj</td>
<td>Rajasthan</td>
</tr>
<tr>
<td>SAILS</td>
<td>South Asian Institute of Advanced Legal and Human Rights Studies</td>
</tr>
<tr>
<td>SC</td>
<td>Supreme Court</td>
</tr>
<tr>
<td>UFC</td>
<td>Uniform Family Code</td>
</tr>
<tr>
<td>UFL</td>
<td>Uniform Family Law</td>
</tr>
</tbody>
</table>
Persons Consulted and Interviewed
(in first name alphabetical order)

Aroma Dutta, Executive Director, PRIP Trust and Member, Bangladesh National Human Rights Commission.

Ashish Ranjan Das, District Judge, Khulna.

Ayesha Khanam, President, Bangladesh Mahila Parishad.

Debapriya Bhattacharya, Distinguished Fellow, Centre for Policy Dialogue.


Gobina Chandra Thakur, Justice, Supreme Court of Bangladesh.

Jitendra Lal Bhoumik, Managing Director, Shariatpur Group of Industries.

Kalpana Rani, Care Bangladesh.

Kamrun Nahar, Member, Naripokkha.

Kishori Pada Deb, Shyamol, Advocate, President, Maulivibazar District Commitee, Bangladesh Human Rights Commission and Editor Sri Gourbani.

Kirnomoyee Sarker, Lecturer, Shashikor College, Madaripur.

Mainul Haque, Additional District Judge, Khulna.

Mizanur Rahman, Professor, Chairman, Bangladesh National Human Rights Commission.

Naznin Pappu, Senior Coordinator, PRIP Trust.

Pushpita Deb Champa, Female Commissioner, Maulivibazar Paurashava, Sylhet.

Rana Das Gupta, Advocate, General Secretary, Bangladesh Hindu, Buddha, Christian Oikya Parishad.

Ranjit Kumar Das, Superintendent, Ramkrishna Mission, Maulvibazar.

Rina Roy, Manusher Jonno Foundation.

Shamir Kumar Dutta, Khalishpur Arjya Dharmatola Bhaktashangha Harishava, Khulna.

Shidhdharta Shanker Debnath, Advocate, Supreme Court Bar Association.

Shubroto Chowdhury, Advocate, Supreme Court Bar Association.

Shudhir Saha, Major (Rtd.), Chairman, Kalyani Foundation.
Persons Consulted and Interviewed
(in first name alphabetical order)

Aroma Dutta, Executive Director, PRIP Trust and Member, Bangladesh National Human Rights Commission.

Ashish Ranjan Das, District Judge, Khulna.

Ayesha Khanam, President, Bangladesh Mahila Parishad.

Debapriya Bhattacharya, Distinguished Fellow, Centre for Policy Dialogue.


Gobina Chandra Thakur, Justice, Supreme Court of Bangladesh.

Jitendra Lal Bhoumik, Managing Director, Shariatpur Group of Industries.

Kalpana Rani, Care Bangladesh.

Kamrun Nahar, Member, Naripokkha.

Kishori Pada Deb, Shyamol, Advocate, President, Maulivibazar District Committee, Bangladesh Human Rights Commission and Editor Sri Gourbani.

Kirnomoyee Sarker, Lecturer, Shashikor College, Madaripur.

Mainul Haque, Additional District Judge, Khulna.

Mizanur Rahman, Professor, Chairman, Bangladesh National Human Rights Commission.

Naznin Pappu, Senior Coordinator, PRIP Trust.

Pushpita Deb Champa, Female Commissioner, Maulvibazar Paurashava, Sylhet.

Rana Das Gupta, Advocate, General Secretary, Bangladesh Hindu, Buddha, Christian Oikya Parishad.

Ranjit Kumar Das, Superintendent, Ramkrishna Mission, Maulvibazar.

Rina Roy, Manusher Jonno Foundation.

Shamir Kumar Dutta, Khalishpur Arjya Dharmatola Bhaktashangha Harishava, Khulna.

Shidhdharta Shanker Debnath, Advocate, Supreme Court Bar Association.

Shubroto Chowdhury, Advocate, Supreme Court Bar Association.

Shudhir Saha, Major (Rtd.), Chairman, Kalyani Foundation.

A Purohit (Priest) is conducting the rituals of a Hindu wedding in old Dhaka.

Photo: Mustafiz Mamun, DRIK
1. Introduction

The Constitution of the People's Republic of Bangladesh, Government policy documents as well as the State's commitments under international laws impose upon it a duty to strive to achieve justice for all citizens. As part of the human rights discourse therefore, and of the State's guarantees of equal protection of law to all citizens and non-discrimination on any ground such as gender, caste, race etc., the need for law reform is being debated. The South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) conducted a study entitled: “Combating Gender Injustice” to find out how the rules and regulations of family law affects the lives of the members of the Hindu community in Bangladesh and the possibility of reform.

The vast majority of the approximately 163 million people of Bangladesh are Muslims. There however exist several other religious communities which demographically constitute a large and substantial portion of the populace. Hindus are the most important and significant minority community in Bangladesh. They constitute the largest religious minority group (about 9.2%) in Bangladesh and numerically Bangladesh can boast of the third largest Hindu population in the world.

2. Methodology

In order to investigate the effect of prevailing Hindu laws on the lives of the Hindu population in Bangladesh, as well as to elicit their opinion on possible reforms, an empirical study was conducted. Bangladesh is divided into seven Divisions, each of which is again divided into 64 Districts. In-depth field investigation was conducted nationwide in all seven Divisions as well as questionnaire surveys in two Districts of each Division among Hindu respondents. The Districts which were identified were amongst the three with the largest Hindu populations. These areas are as follows:

<table>
<thead>
<tr>
<th>SL</th>
<th>DIVISION</th>
<th>DISTRICTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>DHAKA</td>
<td>Madaripur, Kishoreganj</td>
</tr>
<tr>
<td>2.</td>
<td>CHITTAGONG</td>
<td>Comilla, Brahmonbaria</td>
</tr>
<tr>
<td>3.</td>
<td>SYLHET</td>
<td>Maulvibazar, Habiganj</td>
</tr>
<tr>
<td>4.</td>
<td>KHULNA</td>
<td>Khulna, Jessore</td>
</tr>
<tr>
<td>5.</td>
<td>BARISHAL</td>
<td>Patuakhali, Barishal</td>
</tr>
<tr>
<td>6.</td>
<td>RAJSHAHI</td>
<td>Rajshahi, Bogra</td>
</tr>
<tr>
<td>7.</td>
<td>RANGPUR</td>
<td>Rangpur, Dinajpur</td>
</tr>
</tbody>
</table>

The questionnaire surveys were answered by 105 males and 70 females–in total 175. Amongst them 95 were married, 77 single and 3 were widows/widowers.

Several Focus Group Discussions (FGD) were also conducted (one in each District, i.e. fourteen in total). In addition, in order to ascertain the opinion of the younger generation of Hindus who are the future policy makers, fifty Hindu students (aged 21 on average) at university level, both public and private, were also involved in the process and took part in the questionnaire survey. In the case of the students the questions were self-administered whereas in the case of the general population, they were administered by myself or my research assistants. The universities included Dhaka University, Eastern University, Northern University, North South University, Jahangirnagar University, South East University, National University and Stamford University. Out of the fifty students, four were married and forty-six were single. They were given a shorter questionnaire which, as mentioned, they completed by themselves. One question referred to their caste, and interestingly the majority did not respond to that particular question. Four specifically mentioned that they did not want to indicate their caste. These students represented all the castes: 4 were Brahmin; 4 Kshatriya; 4 Vaishya and 13 within the broad range of the Sudra caste (6 mentioned they were from the Schedule caste; 2 Sudras; 4 Kayasthas and 1 Namasaudra). Two stated simply that they were Hindus, one Sarkar and the other that he followed Vishnuism.

Additionally, in-depth qualitative interviews were conducted with persons who have knowledge of the prevailing application of Hindu laws in the country. These included lawyers, activists, judges of both higher and lower courts, eminent Hindus,
academics and learned members of the Hindu community. A Consultation meeting was also held at the SAILS office, attended by individuals (mainly representing the Hindu community) with wide experience and knowledge about Hindu law, its application in Bangladesh and the realities at the ground level.

3. The State’s obligation to ensure gender justice under the Constitution of the People’s Republic of Bangladesh and international instruments

As in many other countries, formal equality is explicitly enshrined in the Bangladeshi Constitution and various Articles reiterate the principle of non-discrimination based on sex, caste, race and other motives. Article 7 declares the supremacy of the Constitution over all other laws and states that any existing law of the State which is inconsistent with any provision of the Constitution shall be void. Furthermore, the principles of equality before the law and equal protection of the law are also incorporated as fundamental rights (Article 27).

Articles 28 and 29 of the Constitution of Bangladesh declare the principles of non-discrimination on the basis of sex, caste, race etc. Article 28 enunciates that the State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex or place of birth [28(1)] and that women shall have equal rights with men in all the spheres of the State and of public life [28(2)]. Although the latter leaves out the personal domain from protection, Article 28(4) empowers the State to make special provisions in favour of women or children, or for the advancement of any backward section of the society.

In 2011, the much debated Women’s Policy announced by the Government reiterated the State’s desire to ensure gender equality. Although opposed vehemently, and somewhat unnecessarily by fundamentalist Muslim groups, the policy has implications for the rights of Hindu women. The objectives of the Women’s Policy of 2011 are varied and aim to establish, “in the light of the Bangladesh Constitution, equality for men and women in all spheres of State and public life” [16(1)] and “women’s human rights” [16(4)]. For the latter purpose, i.e. the establishment of women’s human rights, the reform of existing laws and, to the extent necessary, enactment of new laws are pledged [17(3)]. Clause 25.2 of the Policy guarantees the absolute control of women over property earned through work, inheritance, credit, loan, land and market management. This would represent a huge progress for Hindu women since, as far as their rights to inherited property are concerned, under the Hindu law in Bangladesh, women in any relationship (widow, daughter, mother, or grandmother), always inherit in a limited manner (see page 19).

As a party to a variety of international instruments, Bangladesh is also committed to ensuring equality on the basis of gender, caste and other grounds. It ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, on November 6, 1984. Apart from the CEDAW, which is indubitably the most important international instrument relating to women, Bangladesh is also a party to several other treaties which reiterate the principle of gender equality such as the International Covenant on Social and Cultural Rights (ICESCR) of 1966 (Bangladesh acceded to the treaty on 5 October 1998); the International Covenant on Civil and Political Rights (ICCPR) of 1966 (Bangladesh acceded to the treaty on 6 September 2000) and the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriage of 1962 (Bangladesh acceded to the treaty on 5 October 1998).

Bangladesh has entered reservations to certain articles of all of the above treaties. For example, in the case of the CEDAW, Bangladesh registered reservations to Articles 2 and 16(1)(c). Reservation to Article 2 is based on the fact that the “Government of the People’s Republic of Bangladesh does not consider as binding upon itself the provisions of article 2, as they conflict with sharia law based on [the] Holy Koran and Sunna”. On a grammatical interpretation of the above, it may not be incorrect to say that in the case of the laws of other communities, Article 2 remains binding.
Regarding the above reservation, it is alleged that it defeats the purpose of the entire Convention. Article 16 (1) (c), to which Bangladesh also has a reservation provides that the State shall ensure “(t)he same rights and responsibilities during marriage and at its dissolution”.

Bangladesh has no reservations to the other clauses of Article 16. Under Article 16, State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. This article thus deals with issues which may be pertinent in view of the present study. These include Article 16 (1) (b) dealing with free and full consent to marriage; 16(1) (d) relating to (t)he same rights and responsibilities as parents and 16(1)(f) (to which Bangladesh previously had reservations that it later removed) which provides that both men and women shall have: “The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount.”

Bangladesh is also obliged, under Article 5(a) of the CEDAW, to take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

In the case of the ICESCR, Bangladesh has reservations to Articles 2 and 3 amongst others. These articles deal with the effective implementation of the treaty. Article 3 obligates State parties to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”. Bangladesh’s reservation reads as follows: “The Government of the People’s Republic of Bangladesh will implement articles 2 and 3 in so far as they relate to equality between man and woman, in accordance with the relevant provisions of its Constitution and in particular, in respect to certain aspects of economic rights viz. law of inheritance.”

In case of the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriage 1962, to which Bangladesh acceded in 1998, reservations were put forward to Articles 1 and 2 which deal with the free consent of parties and the minimum age of marriage. Article 3, to which no reservation exists, states clearly that “(a)ll marriages shall be registered in an appropriate official register by the competent authority”, thereby placing Bangladesh under an obligation to provide mechanisms for the registration of all marriages, including Hindu marriages.

In the case of the International Covenant on Civil and Political Rights, Bangladesh, although expressing reservations to several Articles, has not (as far as could be determined) denied Article 23 which provides that:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Following from the above, Bangladesh is bound by its international commitments to ensure full consent of the parties to a marriage, equality regarding the marriage and its dissolution as well as registration of all marriages.
4. Hindu Religion, Sources and Schools

The Hindu religion or Dharma is referred to as Sanatan dharma or eternal law. Broadly speaking, a Hindu is any person who follows the Hindu religion in any of its forms and developments. Although the Hindu religion is replete with various rituals and ceremonies, non-observance of any such ritual relating to lifestyle, food habits and so forth does not operate to strip a person of her/his status as a Hindu.

Hindu law is credited as being one of the most ancient systems of law. Hindu law is defined by Mayne as “the law of the Smritis as expounded in the Sanskrit Commentaries and Digests which, as modified and supplemented by custom, is administered by the Courts” (Mayne, 1995:1). The primary source of such law is considered to be the divine Veda or Sruti, which are the words of the Gods themselves, eternal, immutable and unchangeable. However, as a source of lawyers’ law, more importance is given to the second source of Hindu law which are the Smritis, literally that which was heard from the lips of Gods and remembered by the Rishis or Sages who proceeded to record them in their own words. The Smritis, better known as the Dharmashastras, contain many laws usable for the legal profession. There are innumerable Dharmashastras written by different Rishis and consequently the need to interpret and decipher the inconsistencies and confusions inherent in them arose. As a result, Commentaries and Digests, i.e. interpretation of Dharmashastras by erudite Hindu scholars, continued the expansion of Hindu law. Apart from these, Hindu law recognizes custom or usage as an acceptable source of Hindu law. In fact, it has been firmly established by precedents of Courts that custom, if proved, can outweigh the written text of the law. As with all systems of law, Hindu law also has more modern sources which complement, clarify, reform and modify the law such as legislation and precedent. Factum valet, i.e. the principle that a fact when done may be considered as valid although initially not so accepted, is also acknowledged in Hindu law, as is a unique blend of Hindu and English sense of justice, equity and good conscience.

There are two main schools of Hindu law: the Mitakshara and the Dayabagha. The latter school, which is also known as the Bengal School, differs from the former on mainly the questions of joint family and inheritance. It is the one that prevails in the Bangla speaking areas of the Sub-continent, including Bangladesh. The Hindu social structure is based on Verna Vyavstha, i.e., a caste system (Agarwala, 2005:1). Hindus are divided into four castes: (1) the Brahmans, or priestly caste; (2) the Kshatriyas, or warrior caste; (3) the Vaishyas, or agricultural caste; and (4) the Sudras (Desai, 1990:67). The first three castes are also known as the twice born, since those belonging to these castes are believed capable of rebirth. The second birth or regeneration consists in the study of the Vedas or sacred literature and in the performance of sanskara or sacrament (Desai, 1990:67).

5. Hindu law in British India and after partition

Postcolonial States responded differently to the group-specific personal laws that governed family life in many societies under colonial rule (Subramanian 2008:1). Immediately after the departure of the British colonial rulers, the then two post-colonial States of the Indian Sub-continent, i.e. India and Pakistan, elected to continue in more or less the same way as before with regard to the operation of personal laws. The three major religious communities continued to be governed by their own personal laws as regards family matters, including succession. Although during the British reign, several enactments affecting the personal laws of all major religious communities had been made, there was no attempt to introduce any sort of uniformity concerning family matters. Especially in the case of Hindu personal laws, legislation by the British mainly related to practices which the rulers found particularly abhorrent such as child marriages, the practice of sati (widow immolation) and so forth (Huda, 2003:4). The other notable statutes relating to Hindu personal law during the British reign include (only some of those dealing with the Dayabagha School are mentioned here):

The Caste Disabilities Removal Act, 1850
The Hindu Women’s Right to Property Act, 1937

The Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946

After the partition of 1947, no legislative changes or developments regarding Hindu family laws were made in Pakistan or later in Bangladesh. Thus, the Bangladeshi Hindu law continues to be what may be referred to as Anglo-Hindu law.

Unlike Bangladesh, within a couple of years after achieving independence, India introduced wide-ranging reforms and transformed the religious laws of the majority of the population, i.e. of the Hindus, whilst the laws of the minorities remained mainly untouched. Similarly, in Pakistan (of which Bangladesh was then a part) legislative endeavours took place, albeit not so extensive, in the 1960’s and Muslim law was reformed to a certain extent. However, the Hindu personal laws remained intact, unreformed and uncodified. After the independence of Bangladesh from Pakistan in 1971, no attempts were made to modernise the personal laws of the Hindus who continue to be governed by Shastria laws which are almost completely different from the applicable Hindu laws in India. In the latter country, four laws enacted during the 1950’s, addressed what were considered as the most important issues requiring reform. The process of introducing such overarching reforms was contentious to say the least, and the negotiations were long and protracted. In 1941 and 1944, the first and second Indian Hindu Law Committees were appointed and debated a number of issues related to Hindu law reform. The latter committee presented its report in February of 1947 in the form of a Hindu Code Bill. However, political events overtook the bill. India was declared an independent State on 15 August 1947 and was immediately partitioned into India and Pakistan (Parashar, 1992: 80). After independence, the process and debate over Hindu law reform continued. Eventually in 1952, after the first elected Parliament took office, the Government split the Hindu Code Bill and presented it as several separate bills (Parashar, 1992: 81). Parashar (1992:81) notes that the codification and reform of Hindu law was not taken up in response to public demand. Rather the State assumed the responsibility for reform on its own initiative (Parashar, 1992:81).

6. Hindu personal laws in Bangladesh

In Bangladesh the legal system may be said to be pluralistic in the sense that there exists an uniform and non-religious system of law applicable to all Bangladeshis (e.g. criminal laws, land laws etc.), while on the other hand personal and private matters such as marriage, its dissolution, custody of children and so forth fall within the ambit of the personal law of each community (Huda, 2004:103). Hindu law is the personal law of the Hindus of Bangladesh. They follow, as mentioned earlier, the Dayabagha School or what is also known as the Bengal School. The issues of marriage, dissolution of marriage, guardianship, maintenance, adoption and succession amongst others are the most significant issues relevant to, and affecting the lives of, the Hindu population, especially the women. If one is to identify the most crucial portions of the Hindu law of Bangladesh which may be construed to have the most serious implications on gender justice, the applicable law relating to the above issues need to be comprehended. Below is a brief discussion of the applicable Hindu laws in Bangladesh regarding marriage, guardianship, adoption, maintenance and succession. As mentioned earlier, this law is basically the Hindu Shastra- based law and remains uncodified except for certain legislative changes made during the British rule. Findings of the empirical investigation have been mentioned where applicable.

6.1. Marriage

Hindu marriage is primarily a sacrament, samskara or religious duty, which is considered to be a sacred indissoluble union. Especially for Hindu women, marriage is considered to be their most significant duty. The primary and sacramental object of marriage is to give birth to a male issue, thus leading to discrimination from the very beginning against the girl child. A son is necessary to continue the family lineage and participate in the Shraddha or funeral ceremony in order to confer spiritual benefit on the father and other ancestors. The marital union is perceived to be everlasting, continuing even after the death of the parties. Following from the ideal of marriage as a holy indissoluble union, dissolution of marriage is not legally permissible in Bangladesh whatever may be the cause. As can be imagined, the lack of
provision for divorce causes untold misery for women and in some cases to men. At the SAILS Consultation on Hindu law, Major Shudhir Saha of the Kalyani Foundation spoke about his own experiences with Hindu clients:

A marriage was arranged between a Bangladeshi Hindu girl and a Canadian immigrant. Three days after the wedding, the boy returned to Canada and from there he informed his wife that it would not be possible for him to continue the marriage. The girl tried her utmost to convince him to change his mind. She was in a predicament --- her husband refused to take her but she did not have the legal option of divorcing him and starting afresh. After four long years, he was finally persuaded to reconsider. Imagine the humiliation of the girl --- she had no choice but to go to a man who did not want her. All these personal accounts have to be taken into account when we discuss reform.

Under the Hindu religious law, a wife cannot ever remarry, even after the death of her husband. This inflexible rule was however changed as the consequence of a social movement led equally by zealous British and Indian social reformers which resulted in the enactment of the Hindu Widow’s Remarriage Act of 1856. Under this law, in all three countries of the Sub-continent, widows may marry although upon remarriage they have to relinquish any rights obtained to the property of their deceased husbands. It may be relevant to mention that within the orthodox Hindu communities of Bangladesh, such remarriage, although legal, continues to be frowned upon.

Polygamy: Unlike a woman, a Hindu man, although unable to seek divorce generally, has the option of unlimited polygamy. There are no limits to the number of wives he may have, whilst, since there is no polyandry, a Hindu woman must practice monogamy. The practical consequence of this is that in Bangladesh, a Hindu man may potentially abandon or desert his wife/wives and marry several times. The wife/wives however continue(s) to be married to that one man and cannot dissolve the marital tie. Many respondents claimed that polygamy, even if permitted, is unusual, mainly because of the financial inability to take care of more than one wife. However, financial reasons may by themselves be the reason for polygamy. Indeed, the man entering into several marriages collects many dowries. Aroma Dutta, for example, opines that in particular areas of Bangladesh such as Gopalganj and other similar poverty-stricken areas, polygamy is rampant. Thus, Hindus in Bangladesh continue to enjoy the discretion of unlimited polygamy (Menski, 2001:146).

At the FGD in Dhaka, one respondent described the situation of a Hindu man known to him who had married six times and how because of one person’s greed, the lives of several women had been compromised. In Chittagong Division, 22 out of the 25 respondents thought that polygamy

![A newly married Hindu couple.](Photo: Abu Ala Rassel, DRIK)
should be banned. Women are becoming more and more educated and independent and if a husband marries again or tortures his wife, she should have the option of getting out of the marriage, one respondent added. Some respondents thought that the Muslim law requirement of consent of existing wife/wives should be made applicable to Hindus. Other reactions to the question as to whether they supported polygamy or not elicited mostly negative answers such as:

“Polygamy cannot be a part of modern society”

“Polygamy leads to torture of the woman”

“If polygamy is prohibited, the wife and children will be at peace”.

The field work also showed that amongst many Hindus there exists a lack of awareness regarding many issues connected to family matters. In some cases, they confuse the laws applicable to Muslims and Hindus and believe the former’s to also be applicable to them. For example, in Maulvibazar, Sylhet, one woman was under the opinion that like Muslim men, Hindu men were also under a legal duty to take permission before taking a second wife. In answer to the question as to which School of Hindu law they belonged to (Dayabagha or Mitakshara), the majority were clueless as to the existence of different Schools.

In the Dhaka division, 3 of the respondents said that polygamy is no longer in practice amongst Hindus. Amongst the other justifications put forward as to why the practice should not continue, there were economic reasons, unhappiness within the family, family conflict and increase of incidents of violence against women. As regards polygamy, the majority of the students of the universities questioned were in favour of a ban (41). Only 12 supported its continuation and three had no comments.

There are certain essential conditions necessary for the validity of a Hindu marriage in Bangladesh. The first of these is that the proper guardian must give in marriage. The mother is very low on the list of approved guardians for marriage. However, a marriage without the consent of the approved guardian may be validated by the principle of factum valet.

**Ceremonies of marriage:** Hindu marriages are replete with a variety of ceremonies and rites which are scrupulously followed although they differ from caste to caste, different social groups and so forth. However, it has been established by the Supreme Court of Bangladesh that for the validity of a Hindu marriage, only two ceremonies are absolutely essential. These are (a) Invocation before the sacred fire and (b) Saptapadi.

Invocation before the holy fire is also referred to as Viva-Homa or Joggo. Saptapadi involves the taking of seven steps around the holy nuptial fire. Until the seventh and last step is taken, the marriage is revocable and incomplete. Although judicial precedent has clearly established the requisite ceremonies, field work shows wide divergence amongst the Hindus of Bangladesh as to what they consider essential ceremonies. According to Menski, the topic of traditional marriage solemnization is in itself an ocean of diverse beliefs, rituals and practices (Menski, 2003:277). Confusion as to exactly which ceremonies are essential for a legally valid Hindu marriage persists, it appears, all over Bangladesh. The ceremonies seem to include pre-marriage and post-marriage ceremonies. Among the various responses received as to what the respondents believed to be the essential ceremonies of a valid Hindu marriage, there were:

**Gaye holud:** The turmeric ceremony.

**Adhibash/dodhimangal:** Before marriage, after the gaye holud, the bride and groom are fed sweets, yogurt and so forth at their own homes. This is their last meal before the solemnization of the marriage, after which they eat together as husband and wife.

**Kanyadan:** The gift of the daughter to a groom.

**Shampradan:** The bride is handed over ceremoniously to the groom by an elderly male member of her family.

Presence of Brahmin/Purohit/priest: to solemnize the marriage and bless the couple.

**Joggo:** Invocation before the holy nuptial fire or agni. This rite has been recognized by Bangladeshi law as essential.

**Saptapadi:** Also known as Shaat Paak, this is another legal requirement.
Mala badal: Exchange of garlands between the couple.

Shakha and shidur: Conch shell bracelet and vermilion. Both of these adorn a woman and signify her married status from then onwards. The red vermilion or shindoor is sprinkled on the parting of the bride’s hair.

Fourteen steps around the sacred fire: This involves the taking of seven steps at the wedding ceremony and later the taking of seven more steps under the banana tree.

Bashi biye: The morning after the wedding, the couple returns to the mandap (temple) to pray to the Sun God.

Vriddhi Shraddha: Because marriage is a sacramental occasion, the bride’s father or other male relations offer oblations to the departed souls of the ancestors to get their blessings.

Identity of Caste - Prohibition on inter-caste marriages

Under Bangladeshi law, there is a bar on marriage between different castes. This prohibition is more serious when a girl of a higher caste marries a man of a lower caste (Anuloma) since upon marriage a wife becomes part of her husband’s family and is no longer a member of her own. Despite such prohibition, and as will be seen throughout the study, the reality is that inter-caste marriages are taking place in Bangladesh and are solemnized by Purohits or priests. Most respondents conceded that the ban on such marriages have actually no practical effect in modern society. In a detailed personal interview, Rana Dasgupta, General Secretary of the Hindu, Buddha and Christian Oikya Parishad, said that not only are inter-caste marriages taking place, they are being accepted by society: if legalized, although there will be initial opposition, eventually such marriages will be accepted. According to him, there was a time when caste differences were mainly determined by economic factors, but now that point of view has evolved since persons belonging to lower castes may be better educated and occupy higher positions in various types of employment. Conversely, persons belonging to the highest caste may be engaged in the most menial of jobs. In several FGDs, participants gave examples of inter-caste marriages that have taken place and opined that unlike before, when most marriages were arranged by guardians, nowadays it is usual for members of the younger generation to choose their own spouses. As long as the marriage is within the broad range of the Hindu religion, it is generally accepted. There are of course those who opined that for marital and cultural harmony there should be no overlapping of castes and the system of intra-caste marriages should be left alone. As regards the ban on inter-caste marriages, 8 out of the 9 FGD participants in Brahmonbaria, Chittagong, were united in concluding that such marriages should be allowed since in their opinion, according to the Shastras, caste depends on personal qualities and good work. In the modern world, ideas about the Hindu caste system are changing and most people believe that how a person is to be treated should not depend on his/her birth but rather on other qualities and skills. The opinion in general was that although under religious laws, as regards marriage, caste is important, nowadays education is having an effect on people’s attitudes. Modern parents are more concerned about their children’s happiness than about the caste of their partners at the time of their marriage.

The one participant at the Brahmonbaria FGD who disagreed with all of the above was a Brahmin who believed that the caste culture of Hindu marriage should be maintained since the Hindu caste system is an ancient system. According to him, lower castes and higher castes belong to different classes and when they intermingle it causes chaos. However, he also added that although he believed that family traditions should be maintained, some traditions are contrary to human nature and will therefore not last long.

In Khulna, the participants of the FGD were all generally against the caste system since according to them “all are humans made of flesh and blood”. As regards inter-caste marriages, the view was expressed that the law should remove such prohibition. Nevertheless, they questioned the efficiency of such a measure: “even if the law is made, it is doubtful whether people will follow it; the superstitions will continue to remain” (FGD, Dist: Jessore, Div: Khulna). They concluded: “However, even then attempts to improve the system have to be made.” One participant explained:
If the law is changed, at first there will be problems. The elders of our community will create problems. However, once a law is made and the people become aware of it, in the end the law will be followed.”

One respondent stated that in the sixty-four districts of Bangladesh and the over four hundred Upazilas, Hindu law is based on customs and family traditions. A marriage should take place in such a manner that the families have the same outlook in life and have the same level of education rather than being based on caste considerations. We see that a suitor of a higher caste may be less educated and not have a good job, but even then a girl is forced to marry him, however unsuitable he may be, just to stay within her caste (Sree Dutta, Khulna).

At another FGD, some of the participants, explaining the ban said that caste-based marriages had certain purposes and mostly were related to family culture. For example, amongst Shudras, during the Bangla month of Kartik, which is damodor month or niam mash, certain religious rites are forbidden. On the other hand, in the case of the higher Brahmmin caste, some religious customs may be forbidden for the entire year. Under different castes, when a child is born or a man dies, different things are forbidden and various customs are followed to please the Gods and Goddesses (FGD Brahmonbaria, Chittagong). In the Chittagong Division as a whole (Brahmonbaria and Comilla Districts), amongst the respondents of the questionnaire survey, eight of the respondents were in favour of the caste-based prohibition while seventeen were against such a rule. Amongst the students of the questionnaire survey, 40 (80%) of the students were against the bar to inter-caste marriage whilst seven were for it and three refrained from commenting. Several respondents mentioned that their sisters or other female family members were not able to get married simply because a boy from the same caste could not be found.

The general consensus was that there should not be any discrimination regarding caste so long as the boy and the girl are suitable for each other. One female respondent from Barishal narrated her cousin sister’s experience: “My cousin had a relationship with a boy for eight years. He became an engineer later. Only because of caste differences she was not allowed to marry him and as a result she committed suicide.” A 23 year old single respondent from Barishal shared his own experience: “I am in love with a girl who is from a different caste; we don’t know what to do and we are both very concerned.” There were of course those who thought that the ban on inter-caste marriages was for a particular purpose.

One respondent explained: “caste ensures that there is continuation of the family tradition and pride. The caste system is our tradition and should continue”. Another said: “if we abolish the caste system we will be disregarding religion.” Again another respondent was of the opinion that, “it is a great sin to go out of one’s caste; social and religious prohibitions should be followed otherwise there will be chaos.” 26 year old married Anamika opined:

“I have seen since childhood that marriage out of caste causes many problems - especially at my in-laws - one does not even eat from the other’s hand”.

In general however, there was consensus on the fact that caste-based prohibitions have no place in the modern world. Opinions included: “there should be no caste bar to marriage. We will not be able to give value to human beings this way”; “we have to treat everyone the same; as long as the person is good, religion or caste is immaterial”. Additionally, several respondents believed that the prohibition no longer existed in Bangladesh, or that even if it did, it was not followed in reality. According to one respondent, “most people do not maintain or observe the caste difference in the case of marriage. Mentality of people has changed over time and inter-caste marriages are now often taking place.” Several respondents appeared to resent the fact that they had to show respect to, even spend money on, purohits or Brahmmins who actually did not deserve such reverence and only demanded and received it due to the accident of birth.

Table 1 General Responses to Removal of Prohibition Against Inter-caste Marriages

<table>
<thead>
<tr>
<th></th>
<th>For</th>
<th>Against</th>
<th>No Response</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>104</td>
<td>65</td>
<td>4</td>
<td>2</td>
<td>175</td>
</tr>
</tbody>
</table>

Table 2  Student Responses to Removal of Prohibition Against Inter-caste Marriages

<table>
<thead>
<tr>
<th></th>
<th>For</th>
<th>Against</th>
<th>No Response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>43</td>
<td>4</td>
<td>3</td>
<td>50</td>
</tr>
</tbody>
</table>
**Proof of marriage - lack of provision for registration of marriage:**

In practice, one of the main problems faced by Hindu couples relate to the proof of marriage. Bangladeshi Hindu law does not provide for registration of marriage and consequently questions as to the existence of marriage may arise in various cases including where one party, usually the husband, denies the fact of marriage. In the case of Amulya Chandra vs. The State\(^1\), mentioned earlier, the question of proof became crucial for the woman. Kalpana Rani was 17 or 18 years old and alleged that she had been induced into believing that she had married Amulya Chandra by the secret exchange of garlands. After she became pregnant, Amulya Chandra denied the marriage. Failing to obtain any remedy from the village *Shalish*, she instituted a criminal suit under Section 493 of the Penal Code of 1860 on the ground of deceit. The lower court held in favour of Kalpana Rani and imposed punishment on Chandra: 5 years of imprisonment and a fine of Taka 1000. Amulya Chandra appealed successfully and was acquitted by the higher court who refused to believe that a 17 or 18 year old girl would be naïve enough to believe that without such ceremonies as *Saptapadi* and *Viva Homa* a valid marriage could be solemnized. The Court went on to add that it is customary amongst the Hindus of Bangladesh that some relations remain present and that the bride is made to put on new clothes, bangles and vermilion mark on her forehead. In the absence of all of these, Kalpana Rani could not have possibly believed that by a mere exchange of garlands the accused had become her husband. Without any document or registration systems therefore, questions regarding proof of marriage will continue to confound the judiciary.

As Menski (2001:9) notes in the Indian context, in social reality and therefore in legal practice cases often come up “where one party claims that a particular Hindu marriage does not exist or, more precisely, there is or was no legally binding marriage between two particular spouses. Such cases may come up many years after the death of a particular spouse, often when succession is contested.”

Sharma (2004), in an article in the Daily Star entitled “Hindu Women in Bangladesh Suffering for Absence of Marriage Registration”, gave examples of how the lack of registration violates the rights of women. Minati Karmakar, in her 20s, suffers torture at her husband’s house for her inability to bring dowry. Unable to stand the harassment, she wants to terminate her marriage but realizes to her dismay that Hindu law does not allow her to do so.

23 year old Kajali Rani Das works as a day-labourer in her village. Her neighbour, Sanjoy Madhu, proposes to Kajali and they get married. They live with Kajali’s parents. After she becomes pregnant, Sanjoy is asked to take Kajali to his own house. He delays doing so by making excuses and later denies his marriage to her. Pregnant and helpless, Kajali is disbelieved by society since she has no documents to prove her marriage.\(^5\)

At the SAILS Consultation, Major Shudhir Saha of the Kalyani Foundation, shared his personal experiences regarding problems arising due to the absence of provision for marriage registration under Hindu law in Bangladesh. For example, even for something as simple as applying for immigration to the USA, Canada or the UK, proof is required that a couple is married. Couples often submit a notarized document stating particulars as proof, such as photographs or even invitation cards. The question arises as to what is the proof of the sacrament of Hindu marriage. Embassies usually inquire whether the *Saptapadi* was completed or not, which is difficult to establish.

At the FGD in Dhaka, all the participants agreed that there is no need for a written document to prove that a Hindu marriage has taken place, although sometimes the couples do sign a white or blank piece of paper. In most cases, marriages take place in the presence of assembled guests who can attest to the marriage taking place. The field work showed that although the majority of the respondents did not face any personal problems due to the lack of any written proof of marriage, some did. Usually, if any problem arises, it is solved internally and discreetly. Many of the respondents opined that overall, problems within the Hindu community connected to the marital relationship seldom occurred, but whether this was because of a lack of options remained unclear. It can be said that the absence of any formal proof of marriage deprives women of the few rights they do formally have. For example, although divorce is

**Table 1**

<table>
<thead>
<tr>
<th>Item</th>
<th>For</th>
<th>Against</th>
<th>No Response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>104</td>
<td>65</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>2.</td>
<td>43</td>
<td>4</td>
<td>3</td>
<td>5</td>
</tr>
</tbody>
</table>

---
not permitted, a Hindu woman may ask for separate residence and maintenance before the Family Court (further details in the section on maintenance), but to make such a demand, her married status needs to be established first. The participants of the Dhaka FGD gave further examples of cases where registration as a proof of marriage might be necessary. One narrated the incident of a husband who left his wife to marry another woman and forced the first wife to go back to her father’s house with their child. It should also be mentioned that the father has no legal obligation to maintain his married daughter under Hindu law. Even though by and large people did not have any use for a written document, the FGD participants all agreed that these modern times demand that there should be a mechanism to prove Hindu marriages. Due to the understanding of most Hindus that in the globalized and modernized age, written documents are crucial and may be needed at any time, the general consensus was very much in favour of introducing a system of marriage registration amongst the Hindus.

For the past years, the media has reported on the difficulties that arise due to the lack of registration of marriage. The daily Prothom Alo, for example, in its 27th of August 2006 edition, reported in a news item with the heading “Hindu Marriage Registration --- Demand of the Times”, that proof of a marriage may be required when a Hindu widow, upon her husband’s demise, wants to claim pension, when the guardianship of a child is contested or when a wife abandoned by her husband wants to claim rights of inheritance for herself and her children.

In Brahmanbaria District, under the Chittagong division, the FGD was held at Anandamoyee Kalibari, Shree Ram Krishna Ashram. All nine participants were in agreement about the need for registration of Hindu marriages. This group acknowledged that many problems arise due to the lack of proof of marriage since a variety of marital problems cannot be solved. One respondent shared his relative Shuvra’s experience:

Shuvra, 21, had married 28 year old Bidhan three years before without knowing about his addiction to drugs. After marriage however she and her family found out and tried their best to help him, but it became impossible for Shuvra to continue living with him. With the intervention of the local Shalish they tried to effect a separation but failed since Bidhan’s guardians refused to accept it. She could not go to Court for separation and maintenance since there was no legal书面 documents/evidence of the marriage. Shuvra could not even if she could prove her marriage through other means, end her marriage since Hindu law does not allow divorce. She is now staying at her father’s house and her husband does not pay any maintenance.

Although initially some respondents were hesitant to accept registration of Hindu marriages, calling it artificial and warning that if and when implemented, it may have negative effects such as the breakup of families— they ultimately acknowledged that for proof of marriage and other official requirements, registration has become necessary. The government, they opined, should start a Hindu marriage registration system taking religious sentiments into account.

In the Khulna FGD, all the participants agreed that the registration of Hindu marriage was necessary since “births are required to be registered and there is provision for the marriage registration of other communities; therefore, definitely provision should be made for Hindu marriage registration”.

It is obvious that differences of opinion exist in different parts of Bangladesh.

At the Habiganj (Sylhet Division) FGD, none of the participants had any documents to prove their marriage. Marriages were solemnized by the Purohit at the house of the bride as is the custom. None of those present at the discussion faced any problems themselves due to non-registration or the lack of documents and neither had they heard of anyone else facing any problems. All were in agreement that there is no necessity for marriage registration. At the Jessore District of the Khulna Division, the FGD was arranged at the Dohakula village under the Bagharpura Upazila. Regarding registration of marriage or written document proving marriage, the respondents held several perspectives, although by and large they agreed upon the fact that similar to other religions, there should be registration. One male participant himself pointed out: “If I leave my wife she can take recourse to law if she has a document and she
will have no problems”. The research identified the following general problems related to the lack of provision for Hindu marriage registration in Bangladesh:

- Difficulty in proving the marriage in cases of:
  - Husbands denying the marriage
  - Proving legitimacy of children
  - Establishing rights to maintenance for the wife and children
  - Criminal prosecutions such as dowry related cases etc.
  - Husband and wife being both government servants and wishing to be posted in the same district or area
  - Obtaining pension upon the death of a Hindu husband
  - Obtaining visa for spouses.

In a personal interview, Sree Dutta from Khulna explained various aspects of Hindu marriage. Hindu marriages take place based on social rather than religious rules and in different areas, there are different customs. Some think that the exchange of garlands is the most important. In some cases, couples, mostly teenagers, when the parents do not give their consent, get married before the idol (Debota) and the girl puts on shakha shidir. Thereafter, the boy may deny the marriage and since there is no proof of it having taken place and no witnesses, it is difficult to prove. Sometimes they get married through an affidavit. Registration or written document is necessary, especially if the husband denies the marriage and for other practical reasons. In simpler times he added, there was no need to prove a marriage, but now since people have become more shrewd as well as conniving, such proof is required. He was also of the opinion that in many cases, even where the wife is much more capable than the husband, the husband prohibits her from working or having a career because of his feelings of insecurity and conversely his feelings of superiority as a Hindu male and husband. Sree Dutta also supports the introduction of provisions for dissolution of Hindu marriages. According to him, the main purpose of marriage is to live together as a family and if this is not happening, then there should be a divorce. At the time of marriage, Hindu parents tell their daughters that marriage is their last and only resort. “Your husband’s home is your home,” they tell them, “and whatever the husband may do or not do; however much he may torture you, you cannot leave him; both your heaven and hell is with him” (personal interview with Sree S.K. Dutta, Khulna).

There are not many reported cases in the Law Reports related to Hindu marriages--- in all probability because they do not reach the higher courts. Several judges at the district level have however said that they do come across many cases related to Hindu marriages where the need to prove a marriage arises. Mainul Huq, Additional District Judge of Khulna, reiterated the need for marriage registration, as did the District Judge of Khulna in personal interviews. Example may be given of a case relating to the maintenance of a Hindu wife and son at the Family Court of Khulna. In the case of Onita Goldar vs. Bikash Goldar (Family Case No.456/04; Family Court Rupsha, Khulna), in the absence of provisions for Hindu marriage registration in Bangladesh and in order to prove her marriage to the Defendant to justify her claims to maintenance, the Plaintiff had to take the convoluted route of mentioning the existence of their son. The marriage was difficult to prove since it did not take place after any discussion between their parents and neither in accordance with social rites; it took place at the Kali Mandir. The Defendant appealed to the Additional District Judge, Khulna, on the grounds that the decree of the judge of the Family Court, granting the wife maintenance, was wrong since Onita’s marriage to him had not been proved. In addition, it was claimed that since they were within the prohibited degrees, a marriage was not permitted between them. Bikash Goldar also contended that there was no proof as to their having co-habited. The Additional District Judge Mainul Huq dismissed the appeal on various grounds. It is obvious that due to the lack of registration of Hindu marriages, the Courts have to waste a lot of time unnecessarily with the basic question of the existence of the marriage itself.
However, unlike a man who can make a life with a woman, a woman cannot. Although permanence of the marital tie is wished for amongst all communities, the reality is that situations arise when it is no longer possible to continue a marriage. The majority of the Christians of Bangladesh belong to the Roman Catholic Church which is vehemently opposed to divorce. However, there exists a civil law (the Divorce Act of 1869) which Christians of all denominations can avail of to end an unhappy union. Hindus, married under their religious law, do not even have an alternative option in Bangladesh. When asked what recourse a woman has if she is severely tortured but still cannot get divorced, many opined that there ought to be a way to opt out of the marital relationship. Since there is no divorce, Hindu husbands may simply desert one wife and marry another, and due to the lack of access to the legal system, a woman has little recourse, in reality, of getting maintenance and so forth. The majority of the respondents agreed that there should be a provision within the law to opt out of the marital union. However, they stressed that such option should only exist in certain specifically mentioned situations.

Of course there were others who believed in the sacramental permanence of the marital tie. For example, one lady said - "why will the marriage be broken - is it something one should break; in any case this is rare amongst us." Many said that it would be against the Shastras to introduce the concept of divorce. On the other hand, others conceded that in reality marriages do break apart and if the woman cannot bear it any longer, she should have the option of dissolving the marriage, although this option should only be made available in the most serious of cases (FGD, Dist: Jessore, Div: Khulna). Thus, divorce may be given only when problems arise, i.e. conditionally. In the FGD at Maulvbazar, Sylhet, one young female participant opined that divorce ought to be introduced so that a couple may make a clean break: “now the males are in overall control”. One respondent who was against introducing the divorce system said: “There is no need for change; women will become too brazen (beshi shahosh hoye jabe).”

As regards the younger generation, the responses were as follows:

### Table 3: Introducing Provision for Hindu Marriage Registration

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>No Response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>118 (67.42%)</td>
<td>29 (16.58%)</td>
<td>28 (16%)</td>
<td>175</td>
</tr>
</tbody>
</table>

The above Table, based on the general questionnaire survey, shows that the majority of Hindus are in favour of marriage registration. The majority of the students questioned were also in favour as evidenced by the Table below. One female married student narrated how her cousin had faced difficulties due to non-registration. The cousin had had an affair with a boy and married him by performing saptapadi and his putting a vermilion mark on her forehead. After she became pregnant, he abandoned her and denied the marriage which she had no way of proving.

### Table 4: Student Responses: Introducing Provision for Hindu Marriage Registration

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>No Response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>34 (68%)</td>
<td>2 (4%)</td>
<td>14 (28%)</td>
<td>50</td>
</tr>
</tbody>
</table>

All in all, introduction of Hindu marriage registration will be the least contentious of issues and the Government is already considering it. Dhiraj Nath, former advisor to the caretaker Government, in a personal interview, opined that marriage registration is absolutely necessary and that, moreover the presence of witnesses should also be made mandatory.

**Indissolubility of marriage - lack of provision for divorce:**

As discussed earlier, due to the sacred nature of Hindu marriages, there is no provision for divorce amongst the Hindus of Bangladesh. One respondent gave an example of her sister having to go to India to seek dissolution of her marriage and then remarry. A woman or a man cannot, even in the direst of circumstances, end her/his marriage. However, unlike a man who can make a life with another woman, a woman cannot. Although permanence of the marital tie is wished for amongst all communities, the reality is that situations arise when it is no longer possible to continue in a marriage. The majority of the Hindus of Bangladesh are in favour of marriage registration. One cousin had had an affair with a boy and married him by performing saptapadi and his putting a vermilion mark on her forehead. After she became pregnant, he abandoned her and denied the marriage which she had no way of proving.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>No Response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>125 (62.5%)</td>
<td>45 (22.5%)</td>
<td>5 (10%)</td>
<td>175</td>
</tr>
</tbody>
</table>

Table 5: Opinion Regarding Introducing System of Dissolution of Marriage in Bangladeshi Hindu Law

<table>
<thead>
<tr>
<th>For</th>
<th>Against</th>
<th>No Response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>118 (67.42%)</td>
<td>29 (16.58%)</td>
<td>28 (16%)</td>
<td>175</td>
</tr>
</tbody>
</table>

From the above, it is abundantly clear that the respondents were in favour of marriage registration. The majorities of Hindus of Bangladesh are in favour of marriage registration. Dhiraj Nath, former advisor to the caretaker Government, in a personal interview, opined that marriage registration is absolutely necessary and that, moreover the presence of witnesses should also be made mandatory.
The permanence of the marital tie is wished for another woman, a woman cannot. Although the direst of circumstances, end her/his marriage. Then remarry. A woman or a man cannot, even in such situation, end their marriage.

The respondent gave an example of her sister having to respond.*

Conversely, amongst the Hindus of Bangladesh. One cousin had had an affair with a boy and married him by performing saptapadi.*

As discussed earlier, due to the sacred nature of saptapadi, the Hindu concept of divorce is anathema. For the majority of the respondents, the only way to opt out of the marital relationship is through death. Since divorce is not allowed, a Hindu wife cannot permanently escape an unhappy or even unsafe marriage. Therefore, in reality, there are many cases where the restriction on divorce is not being followed. In conclusion, absence of a requirement of consent whether due to minority or insanity, the right of unlimited polygamy for the male, a bar on inter-caste marriages, the indissolubility of marriage in all circumstances however dire, lack of ways to prove a marriage due to the absence of registration of Hindu marriages are the characteristics of Hindu marriages in Bangladesh which contribute to gender injustice.

### 6.2. Guardianship of children

Under Hindu law in Bangladesh there are four types of guardians.

(a) Natural guardian: The father is the natural guardian of the person and property of his minor children. The mother comes next, but the father in Bangladesh has the power to appoint by will some other person who supersedes the mother. The Bangladesh High Court, in the 2010 case of Chandra Shaha vs. The State and Ors. held that in the “case of married Hindu girl the natural guardian is the husband.”

(b) Testamentary Guardian: In Bangladesh, a Hindu father may, by will, appoint any person as the guardian of his minor children’s person as well as property. The person he so appoints will have precedence over all others including the mother. This means that the mother has to give up her right to guardianship even after the death of the father to anyone the father has chosen.

(c) De Facto guardian: Hindu Law recognizes the rights of a person who has no rights in law, but has nevertheless shown and acted in fact in the interests of a minor, to deal not only with the person but also, like a natural guardian, with the property of a minor.

(d) Court appointed guardian: The Family Court may, under the Guardians and Wards Act of 1890, appoint a guardian for a minor when he or she has no suitable guardian. Under the law, as well as under established case law, the best interests of the child will have priority and must be given paramount consideration.

From the above, it is abundantly clear that the Hindu male has the complete dominance to act as guardian of the minor even to the extent of taking away the mother’s right upon his death, by way of will.

### 6.3. Maintenance

Since no divorce exists, there is no question of post-divorce maintenance under Hindu law. The only relief is provided by an act of 1946 which allows for separate residence and maintenance of the wife. The Hindu male is in certain cases overburdened by his responsibilities to provide maintenance in all cases. He has the personal and absolute legal obligation to provide maintenance to certain persons based on his relationship to them, irrespective of whether he has inherited any property or not. This duty extends to the wife, infant children and aged parents. A Hindu wife has the right to be maintained by her husband and this right is based on the very existence of the marital relationship. The Hindu wife is however obliged to live and co-habit with her husband in order to be entitled to maintenance, and if she lives separately for no justifiable reason her right is suspended. Since divorce is not allowed, a Hindu wife cannot permanently escape an unhappy or even unsafe marriage. On the other hand, a Hindu husband can abandon or desert his wife/wives and marry again since, as mentioned earlier, Hindu law permits polygamy but prohibits polyandry. A Hindu man is not obliged to treat his concurrent

<table>
<thead>
<tr>
<th>Table 6</th>
<th>Student Responses Regarding Introducing System of Dissolution of Marriage in Bangladeshi Hindu Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>Against</td>
</tr>
<tr>
<td>38 (76%)</td>
<td>5 (10%)</td>
</tr>
</tbody>
</table>

Field work has also shown that, even if disallowed by the Hindu law followed in Bangladesh, in practice many people devise ways to get out of a marriage, generally by swearing an affidavit. Rana Dasgupta, of the Hindu, Buddha and Christian Oikya Parishad, who is an experienced lawyer, describes how Hindu couples in reality opt out of a marriage: “the husband and the wife as first party and second party, enter into a written agreement stating that their marriage has broken down due to irreconcilable differences and that they have reached a compromise and mutually agreed to end their marriage. The parties then get married to others”. There have been situations when such agreements have been challenged and one or either of the parties has been accused of adultery or bigamy. Therefore, in reality, there are many cases where the restriction on divorce is not being followed. In conclusion, absence of a requirement of consent whether due to minority or insanity, the right of unlimited polygamy for the male, a bar on inter-caste marriages, the indissolubility of marriage in all circumstances however dire, lack of ways to prove a marriage due to the absence of registration of Hindu marriages are the characteristics of Hindu marriages in Bangladesh which contribute to gender injustice.
wives equally, unlike a Muslim husband. In order to provide relief in justifiable cases where she is not able to reside with her husband, in 1946, provisions were made for a Hindu wife to leave her marital home and claim maintenance (Huda, 2003:14).

The Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946 provides that:

Notwithstanding any custom or law to the contrary a Hindu married woman shall be entitled to separate residence and maintenance from her husband on one or more of the following grounds:

1. If he is suffering from any loathsome disease not contracted from her;
2. If he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him;
3. If he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish;
4. If he marries again;
5. If he ceases to be a Hindu by conversion to another religion;
6. If he keeps in the house or habitually resides with a concubine;
7. For any other justifiable cause.

A Hindu wife's right to live separately and demand maintenance is made dependant on several factors such as her chastity, her continuing Hindu beliefs and her compliance with a court's decree for restitution of conjugal rights. This law continues to be in force in Bangladesh while in India it has been repealed by the Hindu Adoption and Maintenance Act of 1956. In the quite recent Bangladeshi case of Gopal Chandra vs. Mitali Rani Chandra it was held that:

“Hindu marriage is a sacrament and inseparable. If the husband tortures and neglects his wife and her living with her husband is not safe, she is entitled to separate residence and maintenance.”

The Family Court has exclusive jurisdiction to decide a suit for maintenance irrespective of faith. A Hindu wife is not debarred from bringing a law suit for her maintenance against her husband under the Family Courts Ordinance 1985.11

Under Hindu Law, a daughter on marriage ceases to be a member of her father's family and becomes a member of her husband's family. After marriage therefore, she is entitled to maintenance from her husband and after his death out of his husband's estate. If her husband dies without leaving any property, then her father-in-law, if he has sufficient property of his own, is morally, though not legally bound to maintain her [Satish Ch.Pal vs. Mst. Majidan Begum [(1958) 10 DLR 271].

When the participants at the FGD at Brahmonbaria, Chittagong, were asked whether it is right to say that a Hindu wife should support and maintain her husband if he was ill or for any other reason unable to maintain the family, most respondents opined that this naturally happened in the normal course of events. One explained: “during the marriage ceremony, the groom promises in front of the holy fire that he will maintain his wife. So if a husband is incapable to maintain his wife or family then the wife should take responsibility”. The women were all in agreement and opined that when their husbands are unable, naturally they maintain the family: “it is our culture helping each other, we are one unit”. There was general agreement that a Hindu daughter should also be given the legal responsibility to maintain her aged or ill parents. However, it was emphasized that she should only be given this duty provided she had the financial means to undertake it and also if she was given the right to inheritance as a daughter. Most respondents however believed that maintaining parents is the essential duty of sons, since they remain at their father's house, whereas daughters, upon marriage, have to go to other families. After marriage, a Hindu woman's primary duty is towards her husband and his family.

6.4. Adoption

Considering the importance given to having a male issue, Hindu law allows for the adoption of a son. In ancient times, many types of substitute sons were recognized. Now however, the main one continuing in existence is the dattaka form, where the son of one family is formally handed over to an
adoptive family who accepts him and he then becomes, for all purposes, the child of that family. The Appellate Division of the Supreme Court of Bangladesh held in the case of M/S Anath Bandhu Guha vs. Sudhangsu Sekhar Dey,\(^9\) that Hindu law does not make any distinction between a natural son and an adopted son in the matter of inheritance and “(w)hether it is in the adoption of personal law or secular law, the adopted son has the same status with the natural son”.

Under the orthodox Hindu adoption laws followed in Bangladesh, discrimination against women is apparent at every stage of the process. The father has the primary right to take and give in adoption. A Hindu male can adopt irrespective of the fact that he is a bachelor or a widower; he does not even need to be a major as long as he has reached the age of discretion. It is immaterial that his wife, if he has one, disagrees with the adoption or even if she is, to his knowledge, pregnant. He can however only adopt if he does not already have a son, grandson and so forth, either natural or adopted. On the other hand, a single Hindu woman in Bangladesh has absolutely no right to legally adopt. In the case of a married woman, she can only adopt with her husband’s permission. Under the Bengal School, a widow can only adopt with the direct or indirect permission of her husband given before his death. As in marriage, the parties must belong to the same caste, i.e. inter-caste adoption is forbidden. The law of adoption also prohibits the adoption of a boy with physical or mental disabilities. In the case of Abdul Mannan alias Kazi vs. Sultan Kazi,\(^10\) it was clarified that an orphan cannot be given or taken in adoption, unless established by custom. Thus, the Hindu law of adoption in Bangladesh is characterized by a bar on inter-caste adoption, the lack of a legal right to adopt a daughter or an orphan and the dominance of the male to take in adoption whatever his status. The most discriminatory provisions by far are the prohibition to adopt a daughter/girl and the bar on inter-caste adoption. The constitutionality of such provisions is questionable since they clearly contradict the Constitutional guarantees of non-discrimination on the basis of caste and sex. Despite the constitutional right to freedom of religion guaranteed by Article 41 of the Constitution of Bangladesh, the Hindu law of adoption may nevertheless be considered as blatantly discriminatory against the girl-child and on the basis of caste. Research has shown that even though legally disallowed, informal adoption of girl children is widely practiced in Bangladesh among all communities (Huda, 2008). In the case of Bimal Chandra Chowdhury vs. Subramanya Krishna Chowdhury 46 DLR 90, it was held that “if anyone wants to challenge any adoption in Court, the limitation for the action is six years from the date of taking adoption”. It should be noted that adoption is not mentioned in the Family Courts Ordinance of 1985 as falling within the jurisdiction of the Family Court.

Respondents participating in the field work were more or less all aware about the fact that adoption was legal under Hindu law, although they were unsure about the details or what the religious precepts on adoption were. 3 students said that there was no adoption in Bangladesh; 22 said they knew that it was allowed amongst Hindus while 25 were completely ignorant about the system.

Many were unaware that females and orphans cannot be adopted. Those who knew explained that according to Hindu Shastras, sons are necessary to participate in the essential shradhha ceremony and therefore it is extremely important to have a son:

“That is why we see that couples who do not have sons prefer to adopt sons. However, our mentality is changing every day and nowadays people adopt girls as well as orphans. According to Hindu religion, one must hand over (as guardian) the child to its possible parent, at the time of adoption. Since people are more aware now about their rights, usually a written deed is maintained, which gives some sort of safeguard to the adopted child. Otherwise it may be very difficult to claim property if somebody denies the adoption. As far as girls who are adopted are concerned, they get all rights and facilities except property rights. Adopted girls are handed over by their adoptive parents during marriage as their own daughters. According to Hindu religion, as Hindu daughters do not get any rights to property in normal circumstances, in the presence of sons, adopted girls do not either. However, even in the absence of nearer heirs, an adopted daughter cannot inherit, unlike a natural daughter. If a person wishes, he or she...
can give the informally adopted daughter property by way of will.” (FGD - Chittagong Division).

In Khulna, the entire group agreed that girl children should be legally adoptable and that single women and widows should also have the right to adopt. However, they were of the opinion that the child to be adopted should be below the age of 18.

Even in Habiganj, Sylhet, where the respondents were quite conservative, all were in agreement that a girl child should be capable of being adopted and a single woman and widow should have the right to adopt. Rana Dasgupta, General Secretary of the Hindu, Buddha and Christian Oikya Parishad, agreed that there should not be any problem or objection from the community if legislation is adopted to allow for the adoption of a girl. However, “when it comes to the question of giving them rights to inherit property, controversy will arise.”

6.5. Succession

Under the law followed in Bangladesh, a Hindu woman may have two types of property:

(1) Inherited property over which she has limited rights only; and
(2) Stridhan property over which she exercises absolute control.

Inherited property:

Under the classical Dayabagha law, there are five female heirs and they are the widow, daughter, mother, father’s mother and father’s father’s mother. Women who inherit from a male, hold the property as owners but subject to certain limitations. Such property is commonly known as widow’s estate. The term widow’s estate is used to signify property which a widow inherits from her deceased husband, but all types of property inherited by a woman, whether it is a daughter, mother or grandmother, possess the same characteristics as a widow’s estate, which entitles her to limited rights. Limited as opposed to absolute interest gives the holder the right to enjoy the property during her lifetime but no power of alienation. A Hindu widow enjoys life interest in the estate of her deceased husband. She cannot generally alienate such property except on grounds of legal necessity. At the woman’s death, such property devolves upon the next heir of the deceased owner, i.e. the reversioner. The transfer by a Hindu widow of the property of her husband without legal necessity is not valid and the reversioner can get its restoration.” The case of Nurunnabi vs. Joynal Abedin [29 DLR (1977) 137] demonstrates the right of a Hindu widow in Bangladesh over the property of her deceased husband, as well as her right to alienate such property only in limited cases:

The sole reason for giving her right of inheritance to her husband’s property, according to the Texts of Hindu Law is the spiritual benefit she may render to the departed soul as his wife. Acts of unchastity by a woman, which may be of different grades, may not amount to disavowal of her marital relationship and de facto abandonment of her character as the widow of the deceased husband.

Unchastity of the widow is a ground to render her incapable to confer spiritual benefit on her late husband thereby barring her right to inherit husband’s property. Remarriage of widow disentitles her from inheriting her late husband’s property.

Widow’s right to her husband’s property is subject to certain restrictions i.e. she has the right to alienate the property absolutely for what is known as “legal necessity” namely for payment of husband’s debts, for performance of acts which conduce to the spiritual welfare of the husband, for discharging obligation of her husband for her own maintenance and for the preservation of the estate. Widow has got life interest and after her death, the property shall go to the heirs of her husband and not to her own heirs.

Although reported cases on other Hindu family matters are few and far between, questions of widow’s right to alienate property inherited from her husband has been the subject of much judicial scrutiny. The courts have in many instances dealt with the question of whether a Hindu widow’s transfer of property was on the grounds of legal necessity. In the case of Jitendra Mistry vs. Abdul Malek Howlader and others [7 MLR (2002) (AD) 174] for example, it was held that:

“To repay the debts and to perform religious
rituals for the salvation of the departed soul are recognized legal necessity. The legal necessities have to be established by cogent and consistent evidence.”

A Hindu woman faces discrimination as regards her right to inherit. The widow’s right to inherit simultaneously with the son/s is a statutory innovation introduced by the Hindu Women’s Right to Property Act of 1937 which in Section 3 (1) lays down:

When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son....

The above also applies to the widow of a predeceased son as well as to the widow of a predeceased son of a predeceased son. Although extending the widow’s right to inherit along with the son/s, the law continues to limit her rights over the inherited property. Section 3(3) of the Act of 1937 provides that: “Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Woman’s estate, provided however that she shall have the same right of claiming partition as a male owner.”

The Hindu daughter in Bangladesh is completely excluded from inheritance in the presence of a son. When a man dies leaving only one or more daughters and no male issue, such daughter(s) right to inherit is solely dependant on her/their having a son or being capable of giving birth to a son. In all cases, if and when a female inherits, she gets a limited estate. In the Bangladeshi case of Abdul Gani Khan vs. Tamijuddin Howlader [5 DLR (1953) 440], it was clearly stated that in no circumstances is a daughter who is barren, or widow without male issue or mother of a daughter entitled to succeed. It was further held: “(U)nder the Bengal School all daughters cannot succeed to the property of their fathers but some of them may and can; and it enumerates that the first to inherit is the unmarried daughter and then a married daughter having a male child succeeds and she excludes married but barren daughters and married widowed daughters”.

Stridhan property:

Stridhan property is such property over which a Hindu woman has absolute control as opposed to property over which her rights are limited. Derived from the two words “stri” i.e. woman, and “dhan” which means property, stridhan is generally comprised of gifts received by a woman. For example, gifts made before the nuptial fire and at the bridal procession, gifts from relatives such as the mother, father, brother, parents-in-law constitute stridhan.

Firstly, over such property, a woman has full power of disposal and secondly, upon her death, it devolves on her own heirs. The three things which determine whether a property is stridhan or not are the source of acquisition, the School to which the woman belongs to and her status (whether she is single, married or widowed). Her rights over such property are absolute as opposed to property inherited by her (as discussed above), over which her rights are limited. Field work shows that the majority of Hindus are aware about the daughter’s lack of inheritance rights in the presence of son/s and women’s limited rights over inherited property. Different views exist starting from the more radical, i.e. the giving of equal and absolute rights to daughters in all circumstances and cases, to more moderate views that Hindu daughters should, like daughters under Muslim law, inherit half of their brothers share. Again, many expressed their abhorrence for the dowry system which according to them is the bane of Hindu society and results in many families becoming penniless. Dowry is construed to be a sort of “pre-mortem” inheritance based on which women are often deprived of rights to inheritance.

FGD participants in Dhaka division observed:

“Since Hindu women get all the necessities of life at the time of their marriage, they do not get the right to inherit property absolutely. Even though nowadays, in exceptional cases, widows and daughters are getting property rights, the majority of women continue to be deprived of such rights. A wife should get absolute rights to her husband’s property. The State can take initiatives to ensure equal inheritance for men and women.”
One religious leader who participated in the above FGD was of the view that the dowry system of Hindu marriage comes from demand of inheritance rights of women.

The fear that giving Hindu women absolute rights to property and rights to inheritance, will tempt greedy Muslim boys into seducing them into marriage and forcing them to convert to Islam was expressed over and over again. One respondent, an advocate of a District Court, expressed his concern that conversion will harm the Hindu population. “What will happen if a Hindu man or woman converts and ceases to be a Hindu? It is unclear whether s/he should inherit properties,” he asked. The participants came to the consensus that in case of conversion from Hinduism, a person should not inherit property and that this should be made into law. They also opined that the State should deal with the question of vested property before introducing any changes (See note 25).

Nevertheless, many of the respondents strongly supported the rights of a daughter to inherit even in the presence of a brother. In Khulna, the view was expressed that since both sons and daughters are the children of their parents and have the same rights and duties towards them, the father should also have the same responsibilities towards his sons and daughters. However, if a daughter converts into another religion there should be certain prohibitions to her inheriting. Participants at the FGD in Habiganj, Sylhet, agreed that daughters should have rights to inherit property, but one person opined that a brother's son who participated in his uncle's shraddha should get a portion of his uncle's property. Thus the participants were divided in their opinion as to whether there should be changes in the system of inheritance. Those against were concerned that women would convert, while others thought the law should be in accordance to religious rules only. As one respondent opined: “Giving daughters the right to inherit in all circumstances and cases is against the Shastras and if we do anything against religion, we will lose our religion”.

As regards giving full rights of inheritance to women, Sree S.K. Dutta of Khulna said he had spoken to many Hindus some of whom are in favour. However, many are concerned that Muslim men will not only marry and take over their wives' portions, but also force the other members (maybe the brothers of the deceased) with adjoining properties to leave:

“Supposing a man has five brothers and his daughter gets a part of his property through inheritance or by will or gift (if she has a brother who inherits, excluding her). She then marries a Muslim man and becomes a Muslim herself. Socially, it may become impossible for the other family members to continue to live next to a Muslim; and in many cases they are forced to leave.”

Sree Dutta opined: “my sister will not inherit anything but a Muslim sister will get half of her brother's share”. His opinion, quite logically, is that in all cases, both under Muslim and Hindu law, daughters and sons should get equal shares. As regards acceptance by the Hindu community of reforms, he gave the example of the laws against the sati system or for widow remarriage and how difficult it was for social reformers like Raja Ram Mohan Rai and others to introduce them. “Many will be against changes” but once a law is enacted, even if opposed now, later on it will eventually be accepted.

As regards inheritance, the women were all in agreement that daughters should get rights even if there is a son: “however it has to be ensured that the practice of dowry is banned in reality”. According to one person, “in many cases a father spends more on dowry for his daughter at the time of her marriage than the valuation of the property which the son/s eventually gets”. When asked individually, most said son and daughter should get equal shares. However one respondent said that since it is the son/s duty to take care of the parents, daughters should have fewer rights. The participant however agreed that in many cases, in practice it is actually the daughters who look after aged parents and not sons. Although the agreement was that both should inherit, there was disagreement as to the share daughters should get. Like many others elsewhere, a few were of the opinion that daughters should at least get something, “perhaps like under Muslim law, half of their brother's share.” (FGD, Jessore District, Khulna Division).

In the Rangpur Division, 24 out of the 25 respondents were in favour of giving a right of
There is widespread agreement that it is unjust for daughters to be completely excluded from inheritance in the presence of male siblings, but there also exists potential problems in legislating change in this regard. If we are to identify the major hurdles from the empirical investigation, the concerns are: firstly and most importantly the feeling of insecurity of the minority community which is even more pronounced in the case of daughters and which prompts many Hindu families to send their female children to India; secondly, the thorny issue related to vested property (see note 25) which has time and again been mentioned as a major cause of insecurity. The third concern is the escalating practice of dowry demands which means that parents oftentimes end up paying more than the daughter would have inherited, such that it is considered to be a kind of pre-mortem inheritance, but which in reality belongs to the husband and his family and not to the daughter. Rana Dasgupta, General Secretary of the Hindu, Buddha and Christian Oikya Parishad, has some suggestions which may be more acceptable: the giving of absolute rights to the Hindu widow who are sometimes treated badly by sons and daughters-in-laws and therefore whose well-being should be ensured and the giving of temporary rights to a share of property to unmarried daughters. After marriage such property should revert back to the brothers. It should be mentioned that a brother inheriting property from the parent is under a legal obligation, arising out of his possession of such property, to maintain all those whose maintenance it was the parents duty to ensure, which includes unmarried sisters. However in many cases sisters are neglected and not given such maintenance.

7. Hindu law in India and Bangladesh: Comparisons, Contrasts, Contradictions and thoughts

As discussed in some detail earlier, despite the fact that the majority of the population of the Republic of India are Hindus, in the 1950’s major reforms were introduced to Hindu personal laws in India. It should not be taken for granted that such reforms were accepted without consequent protest from orthodox Hindus. After the Indian Constitution came into effect in 1951, the Hindu Code Bill was debated, vehemently opposed and eventually lapsed. Eventually in the mid-50’s, four separate acts dealing with various issues were enacted. These include:

The Hindu Marriage Act of 1955
The Hindu Adoption and Maintenance Act, 1956
The Hindu Succession Act, 1956
The Hindu Minority and Guardianship Act, 1956

7.1. Marriage

The Hindu Marriage Act of 1955 of India deals with a variety of marriage related matters including dissolution of marriage, a hitherto unacceptable phenomenon, as far as Hindu marriages were concerned. The Act now supersedes the personal Hindu law as far as it relates to matters covered...
under the Act. The major changes introduced into the law of marriage included the distinction between sacramental and civil Hindu marriages, conversion of Hindu marriage into a monogamous union and a provision for the dissolution of marriage (Parashar, 1992:113). The first and most significant change brought about by the Act was the transformation of the Hindu marriage from a sacramental to a contractual union. The Act was based on a formal concept of equality where the spouses had equal rights and obligations towards each other. Both men and women were granted equal rights to matrimonial remedies and ancillary reliefs (Agnes, 2004:83).

Section 5 of the Act put forward certain conditions for the validity of a Hindu marriage in India. Although worded simply, each portion significantly addresses and changes the requirements of valid Hindu marriages in India, whereas these requirements are still applicable in Bangladesh. Section 5 details the required conditions for a valid Hindu marriage in India. It states:

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

(i) neither party has a spouse living at the time of the marriage

(ii) at the time of the marriage, neither party
   (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
   (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
   (c) has been subject to recurrent attacks of insanity or epilepsy;

(iii) the bridegroom has completed the age of [twenty-one years] and the bride the age of [eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of

By discussing each portion of Section 5 and each sub-section separately we hope to not only shed light upon the reforms made to the _Shastric_ law of marriage in India, but also to compare the position of the law in Bangladesh.

_Caste considerations:_ At the very beginning, the phrase “any two Hindus” is by itself very significant as it deals head on with the issue of inter-caste marriages which are prohibited by religious law. The necessity that the parties should belong to the same caste continues to be a legal requirement in Bangladesh under Hindu personal law. Inter-caste marriages in Bangladesh may take place only under the Special Marriage Act of 1872. It may be argued that such caste-based disparity is ultra _vires_ the Constitution of Bangladesh which pledges and reiterates the principle of non-discrimination based on caste. Fieldwork however shows that despite the prohibitions regarding inter-caste marriages, in reality such marriages are taking place and not only under the Special Marriage Act of 1872, but also with religious approval and are solemnized by priests or _purohits_.

_Monogamy:_ The next requirement is that neither party should have a spouse living at the time of the marriage, which clearly imposes the condition of monogamy. The Indian Act deals strictly with cases of polygamy and imposes punishment under the Penal Code. Section 17 states:

Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal (45 of 1860) Code shall apply accordingly.

Thus, a marriage contracted during the subsistence of an existing marriage is void. According to some, this is in keeping with the ideal view of a Hindu marriage as a holy union between two persons. It is alleged that in India, polygamy was not generally permitted and a second marriage was only allowed in particular cases and under strict conditions. Thus:

Monogamy was the rule and ethos of the Hindu society which rejected the second marriage altogether. The influence of religion in all
marriage did not allow polygamy to become a part of Hindu culture. Therefore noting the various enactments which dealt with the marriage throughout the length and breadth of this Country, it became necessary for the parliament to amend and codify the law relating to marriage among Hindus and that is how the enactment of Hindu Marriage Act 1955 was passed.16

Thus in post-colonial India, Hindu males who did not previously come under the purview of the Sections related to bigamy under the Penal Code were by virtue of the HMA so brought. In terms of civil consequences, under Section 11, a marriage in contravention of Section 5 (i) will be null and void.17

Contrary to the above and whatever may be the real interpretation of religious law, under the classical law followed in Bangladesh, not only polygamy but unlimited polygamy for men has been and continues to be considered as legal under Hindu law and the children born out of such marriages are considered as legitimate. Thus, although polyandry is prohibited in Bangladesh and a Hindu woman may be prosecuted under the Penal Code; polygamy for males is permitted. In India, Section 5 (i), 11 and 17 deals with the offence of polygamy. A bigamous marriage is in India void ab initio without a declaration by a Court to that effect although the Court may so declare at the behest of a party.

Age of marriage and guardianship: One of the conditions prescribed under Section 5 for a valid Hindu marriage is that the bridegroom must have completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage. Hindu Shastriya law not only allows child marriages but encourages underage marriages, especially for girls. The Act of 1955 thus takes a big step by not only delineating a minimum age but also declaring marriages below such ages as invalid. In Bangladesh, the Child Marriage Restraint Act of 1929, which applies to all communities, also prescribes the same minimum ages but merely makes the persons connected to such marriages punishable whilst the marriage continues to be valid. Therefore in Bangladesh, child marriages amongst Hindus (and Muslims) are legal albeit punishable, although the age of marriage has increased generally for a variety of reasons. In cases of minority, Dayabagha law prescribes a list of requisite guardians, as does the Mitakshara law, applicable in most parts of India. Although initially the Indian Act of 1955 provided a new list of guardians applicable for both Schools, giving the mother priority after the father and before other relatives, in 1978 Section 6 was omitted. Under the prevailing Dayabagha law in Bangladesh, a guardian may validly give a ward into marriage. In the list of acceptable guardians under this School, the mother’s name comes much later. Additionally, unlike Muslim law (and the codified Indian Hindu law) in which, when a child is married under a certain age, an option exists whereby the child upon reaching maturity may opt out of the marriage, there is no such option under Bangladeshi Hindu law.

Consent, mental and physical capacity: Under Section 5(1)-(ii), at the time of the marriage, neither party must be incapable of giving a valid consent to it due to unsoundness of mind or insanity even if recurrent; or even if capable of giving a valid consent, neither must suffer from a mental or a physical disorder which renders her/him unfit for marriage or the procreation of children. Capacity to consent has therefore been made a condition of the marriage and in pursuance of that, the concept of guardianship of marriage has been made obsolete.

Ceremonies of marriage: As mentioned earlier, Hindu marriages are celebrated with various elaborate ceremonies and rituals, some of which are essential while others, although considered extremely important for the participants, are not. The Hindu Marriage Act addresses the question of ceremonies and simplifies it. In Section 7, the law lays down the ceremonies for a Hindu marriage:

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

There appears to be some confusion as to whether Saptapadi involves the taking of seven steps before or around the sacred fire but the word satpaak used in Bengali seems to signify that it
means ‘around’ instead of just in front of the fire since the word ‘paak’ means circling. Mulla uses the word ‘before’ while Mayne referring to the cases of Sitabai vs. Vittabai [1959 Bom 508 1959 Nag LJ 10] and Bhorilal vs. Kanshaliya [1970 Raj 83 1969(2) Raj LW] states, somewhat confusingly, that the ceremony of Saptapadi consists of the taking of seven steps and it is not necessary to go around the fire seven times.

That the ceremonies are important is agreed by all. According to Mayne, the status of husband and wife is the result of the performance of the marriage rites, whether prescribed by the sastras or by custom (Mayne, 1995:135). However, as evidenced by field research and case law, in Bangladesh wide deviation and discrepancies exist as to what is considered to be essential to establish a valid marriage relationship. This leads to problems relating to the proof of marriages as was evidenced by the case of Amulya Chandra (discussed earlier). Many respondents questioned as to whether the ceremonies should be simplified agreed, although most on grounds of expense and time. Another Bangladeshi case may be referred to for the purpose of showing the kinds of problems that arise due to a lack of settled procedure to prove a marriage and the confusion as to what are the required ceremonies. In the case of Utpal Kanti Das vs. Monju Rani Das, the parties were both Shudras. The wife Monju Rani had started a claim initially in the Family Court, Satura, claiming maintenance from Utpal Das on the basis of their having been married “according to the Hindu Shastra” at a Kalimandir “in presence of several persons”, and later having confirmed the marriage by affidavit. Subsequently, Utpal Das abandoned Monju Rani after she allegedly refused to accede to dowry demands, and he remarried. Utpal denied being married to Monju. The court disbelieved that there was a marriage between them and dismissed Monju Rani’s claim, upon which she appealed to the Additional District Judges Court of Manikganj. The latter Court reversing the decision, held that there was in fact a marriage between them and issued a decree for maintenance. This was again confirmed by a single bench of the High Court Division. The propriety of the HCD’s decision was thereupon called into question before the Appellate Division. The counsel for the appellant husband argued that the marriage was inexisten in law because the essential ceremonies of the Hindu marriage, namely the saptapadi and the invocation before the sacred fire, had not been performed. Furthermore, since there exists no evidence that these two ceremonies were performed “the marriage even if performed was not completed”. The findings in the lower courts neither denied that these rites had been performed nor positively affirmed the contrary. The Highest Court however held that there had been in fact a valid marriage and that, once the celebration of a marriage in fact is established there shall be a presumption of there being a marriage in law and observance of the essential ceremonies.

The Court also added that “nuptial rituals in Hindu Shastras are so complicated that an exact observance of their details is not easy and is beyond the comprehension of their details by the ordinary participants or the attendants of the ceremony”.

The above case confirms the necessity for two things: one is the registration of Hindu marriages in Bangladesh and secondly the simplification of the ceremonies.

Provision for registration of Hindu marriages in India: For the purpose of facilitating the proof of Hindu marriages, the HMA makes provision for marriage registration. Under Sec. 8, the State Government, through the State Legislature, may make rules providing for the parties to a marriage to voluntarily have the particulars relating to their marriage entered in a Hindu Marriage Register. The Section makes it optional for the State Government to decide whether or not to make registration compulsory. In cases where it is so made, punishment in the form of a fine is to be imposed for non-compliance. However, the validity of any Hindu marriage shall in no way be affected by non-registration [Sec.17 (5)].

Who cannot legally marry: Prohibited and Sapinda relationships

As in all other family laws, in Hindu law also there are certain degrees of prohibited relationships within which a marriage is void.

The parties must neither be within the degrees of prohibited relationship nor sapindas to each other, unless custom or usage permits. The Hindu
Marriage Act of 1955 defines in Section 3 (f) (i) and (ii) what prohibited relationship and sapinda means, thereby simplifying the concepts in a manner. Under classical law, a difference is made regarding the Sapinda relationship between the Mitakshara and the Dayabagha Schools. Although both Schools agree that marriages cannot take place between sapindas, there is a difference between the two Schools as to what the term connotes. Under the Dayabagha School “pinda” means the ball of rice which is offered to a deceased person by his relations at his last rites or shraddha ceremony. Therefore, under the Bengal School, sapindas are those who are competent to offer pinda to a person and those to whom he is competent to offer pinda to upon death. In Bangladesh which follows the Dayabagha School, sapinda relationship is thus dependent on the efficacy to participate in the funeral or Shradha ceremony so as to confer the most religious advantage upon the deceased person and other ancestors. Those who are within the prohibited degrees of relationship include a host of relationships and in some cases, the courts find it difficult to unravel the relationships. Under the Mitakshara School, sapindas are generally persons related by body, blood or consanguinity.

It is to be noted that the definition of sapinda relationship under the Indian Act is different from what is understood under the ordinary Hindu law. Under this definition, it extends only as far as the third generation in the line of ascent to the mother and the fifth in the line of ascent to the father, the person concerned being counted as the first generation (Mayne, 1995:164). The Act of 1955 defines sapinda relationship as follows:

Section 3(g) states that two persons are said to be within the “degrees of prohibited relationship”

(i) if one is a lineal ascendant of the other; or
(ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or
(iii) if one was the wife of the brother or of the father’s or mother’s brother or of the grandfather’s or grandmother’s brother of the other; or
(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation.- For the purposes of clauses (f) and (g), relationship includes-

(i) relationship by half or uterine blood as well as by full blood;
(ii) illegitimate blood relationship as well as legitimate;
(iii) relationship by adoption as well as by blood; and all terms of relationship in those clauses shall be construed accordingly.

7.2. Dissolution of marriage and judicial separation

(Traditionally a Hindu Marriage is a sacrament (samskara) which leads to the life-long union of the spouses. The modern Indian Hindu law, however, has emphasized the contractual aspects of marriage and has legislated away the expectation that a Hindu marriage should be a supernaturally sanctioned, indissoluble union (Menski, 2001:25).

The dominant view among scholars has been that classical Hindu law did not permit divorce, mainly because it infringed the ideal of sacramental marriage, seen as the central foundation of Hindu family law. Menski however goes on to add that despite the latter, there exists much evidence of various ancient customary forms of divorce among Hindus (Menski, 2003:427). Breakdown of marital relations is a fact of life and in acknowledgement of this and unlike the Bangladeshi Hindu law, Indian Hindu law has incorporated concepts of

- Judicial Separation
- Divorce
- Nullity of Marriage; and later on
- Divorce by mutual consent.

Judicial separation: Under Section 10 of the Act of 1955, either party may petition the court for a decree of judicial separation on certain grounds. The consequence of such separation is that it no longer becomes obligatory for the petitioner to cohabit with the respondent. In Bangladesh, the law recognizes the right of a Hindu wife on certain grounds to live separately from her husband and demand maintenance. The Hindu Married Women’s Right to Separate Residence and
Maintenance Act of 1946 provides certain grounds which are similar to the grounds provided in the Hindu Adoption and Maintenance Act, 1956 applicable in India (see page 24).

**Divorce:** In Bangladesh, divorce under Hindu law is not permitted unless custom, which may be very difficult to prove, allows it. Indian Hindu couples may now permanently dissolve their marital tie on a variety of grounds. Section 13 of the Hindu Marriage Act of 1955 provides that either party to the marriage may petition the Court to obtain a decree of divorce on the grounds provided in the Act. These include the commission of adultery, cruelty, desertion, conversion to another religion, unsoundness of mind, mental disorder whether continuous or intermittent, certain diseases such as leprosy and venereal disease and so forth. Renunciation of the world and presumption of death are also grounds for divorce, as is the non-resumption of cohabitation for a year or more after a decree of separation or the failure to comply with a decree for restitution of conjugal rights. Section 13 also allows the wife additional grounds upon which she may petition for dissolution of the marriage and these include the husband’s polygamy, rape, sodomy and bestiality. The Indian Act finally incorporates the principle of Option of Puberty which has always been recognized under Muslim law. A wife married below a certain age may, upon attaining a certain mature age, repudiate the marriage contracted by her guardian. Under Bangladeshi law, although child marriages are allowed and practiced under Hindu law, no such option exists.

In 1976 by the Marriage Laws (Amendment) Act, a further ground of divorce, i.e. divorce by mutual consent, was introduced by Section 13B in India. Attempts to incorporate a further ground for divorce, i.e. irretrievable breakdown of marriage, were made with the Marriage Laws (Amendment) Bill of 2010 and went as far as gaining the approval of the cabinet, but have not, for a variety of reasons, been successful.

The introduction of the concept of dissolubility of what has been for centuries considered as a sacramental union was of course rigorously opposed. However, proponents pointed out that not only has such dissolution been practiced amongst the lower classes of Hindu society, but that the religious texts themselves allow divorce in certain circumstances. Menski convincingly argues the existence of customary Hindu divorces despite the traditional view of marriage as indissoluble and states that:

“(T)raditional Hindu divorce law was much more liberal and flexible than many writers admit. The apparent contradiction could be resolved by recognizing that divorce is evidently a violation of the shastric high–caste ideal of Hindu marriage as a *samskara*, but has always been a part of Hindu social life as a whole. Most authors, however, prefer simple dogmatic statements relying on - and in turn reinforcing - the axiom that traditional Hindu law did not permit divorce, nor even knew such a concept” (Menski, 2003:430).

Not only customarily, but also through legislation, several States in India, before the adoption of the all-encompassing Hindu Marriage Act of 1955, had statutorily recognized Hindu divorce. This and the fact that customary dissolution has long existed have been conceded by the Act of 1955 in Section 29(2) which states that “(n)othing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.”

Field work in Bangladesh showed that although by and large the belief exists that Hindu marriage is indissoluble, when faced with certain situations where one or the other party to the marriage wishes desperately to end it, the simple mechanism of declaring the end of the marital tie through an affidavit has been resorted to and accepted. Some respondents report that when this has the chance of being contested by the opposite party, they have to resort to the complicated route of going to India to avail of the more liberal laws there. So far, no evidence could be unearthed as to any legal challenge or consequence of such a divorce. Some women, after dissolving their marriages through affidavits, have subsequently married other men and as the law now stands in Bangladesh, the validity of such marriages could be legally challenged.

**Nullity of marriage:** In India, Section 11 of the Act of 1955, provides that any marriage solemnized after the enactment of the Act shall be
null and void and may, on a petition by either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5. These include bigamy and parties being within the prohibited degrees or being sapindas to each other. Under Section 12, a marriage shall be voidable and may be annulled by a decree of nullity on the grounds of lunacy or idiocy, consent obtained by force or fraud and pregnancy by some other person.

7.3. Maintenance

The Hindu Adoption and Maintenance Act, 1956 deals with the issue of Hindu adoption and maintenance in India. Section 18 imposes a duty upon a Hindu husband to maintain his wife during her lifetime. On certain grounds, similar to those under the Act of 1946, under which a Hindu woman in Bangladesh may claim separate residence and maintenance, in India now a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance on certain grounds specified in Section 18(2) of the Act of 1956. These include: desertion or abandonment, such cruelty which causes a reasonable apprehension in her mind that it will be harmful or injurious to her life, the fact that he is suffering from a virulent form of leprosy, has another wife or keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere, or has converted to another religion. However, under the law, chastity is a condition precedent to such maintenance. The Act of 1956 also imposes a legal duty on a father-in-law to maintain his widowed daughter-in-law if she is unable to maintain herself from any other source. Another innovation made by the Act is that it imposes a duty not only on a son, as it is the case under the orthodox law followed in Bangladesh, but also on a daughter to maintain aged or infirm parents (Section 20). Both parents of illegitimate children are also responsible for the child’s maintenance. In all of the above cases, such obligation extends so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property. In cases of the husband being incapable of maintaining the wife, the law makes the wife who is capable, also responsible for maintenance.

Menski notes that modern “Hindu law in its gender-focused enthusiasm (Sections 24 and 25 of the HMA) has even gone as far as granting Hindu men the right to be maintained by the wife after divorce” (Menski, 2003:485). In order to obtain maintenance, whether after divorce or within the marriage, as well as to establish many other claims related to marriage, proof of marriage is essential. Menski (2003:485-486) opines that a woman’s claim to maintenance after divorce needs to be supported by evidence of her relation to the man through whom, or from whose estate she wishes to claim. Effective financial protection of women and children is sought to be achieved by holding men, primarily husbands and fathers, responsible for the maintenance of female family members, both within marriage and after its termination (Menski, 2003:485-486).

7.4. Adoption

The Hindu Adoption and Maintenance Act of 1956 of India has clearly steered away from all the religious and sacramental aspects of adoption, transforming it into a secular institution for which a religious ceremony is not necessary (Diwan, 2003:217). Under Section 7, any male Hindu who is of sound mind and not a minor has the capacity to take a son or a daughter in adoption with the proviso that if he has a wife living who is capable of consenting he cannot adopt without her permission. Unlike the classical law followed in Bangladesh, under Section 8 of the Indian Act, any sane Hindu female who is a major can adopt a son or daughter provided she is single, widowed or divorced and has not completely and finally renounced the world or ceased to be a Hindu.

As regards who may be validly adopted, Section 10 of the Act states that the adoptee must be a Hindu who has not been already adopted, is unmarried and has not completed the age of 15 years. In the case of age and marital status, dispensation may be obtained if custom permits. Other conditions include that in the case of a female adopting a son or of a male adopting a daughter, the adopting parent must be at least 21 years older. Orphaned, illegitimate children as well as children, boys and girls, with physical and mental disabilities may now be adopted (Kumar, 2003:103), unlike in Bangladesh.
7.5. Succession

The Hindu Succession Act of 1956 codified the law of succession of Hindus in India and introduced a uniform law of succession, applicable irrespective of the School. The new law is based on the Mitakshara principle of nearness of blood, consanguinity or proximity of relationship and not on the Dayabagha principle of religious efficacy. Thus, the modern Hindu law of succession is essentially a secular law. Religious or spiritual considerations are absent (Diwan, 1993:371).

The Act of 1956 gives women (i) the right to hold property as absolute owners; (ii) the status of co-heirs with their brothers in the father’s property; and (iii) makes a daughter’s inheritance share equal to that of sons (Mukhopadhyay, 1998:98). The debate over awarding daughters and sons equal and absolute shares in inheritance was heated at every step. It was alleged that it would result in the destruction of the Hindu joint family which is patrilineal in orientation (Mukhopadhyay, 1998:98). By comparison, under the mainly uncodified law followed in Bangladesh, women, whether widow (or widows, when there are more than one) or daughter(s), continue to have limited rights of inheritance or what is referred to as limited estate. Abolition of the limited estate of females in India is one of the most significant changes brought about by the Act of 1956. Under Section 14 of this Act:

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner.

Section 14 declares the absolute ownership of a female over all types of property except those about which there is any instrument prescribing limited right. In the explanation to Section 14, the meaning of the term property is clarified. Property over which a woman now has full rights “includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.” Section 14 has been given retrospective effect and converts an existing woman’s estate into stridhan or absolute estate subject to two conditions, possession and ownership (Diwan, 1993:361).

Indeed, the most important reforms which, despite initial opposition, were eventually made into law were those related to women’s property rights. Unlike in Bangladesh, a Hindu female in India inheriting property in any capacity whatsoever, has absolute rights over such property and can dispose of such property in any manner she wishes whether by sale, gift or otherwise. She therefore becomes full owner of such property and upon her death the property devolves on her own heirs and not on the reversioners or heirs of the deceased person from whom she inherited the property. By virtue of the Act of 1956, the property of a Hindu male is divided equally between his sons, daughters, mother and widow. As mentioned earlier, the Act did away with the difference in the rules of succession amongst the two Schools and lays down, for a male Hindu, four Classes of heirs which are contained in Schedule I of the Act. All the heirs belonging to the first Class take simultaneously, i.e. all have a share in the property. Earlier (and even now in Bangladesh) heirs would take according to precedence excluding heirs who followed later. The female heirs of a male who have a place in the first Class under the Act of 1956 include:

Daughter; Widow; Mother; Daughter of a pre-deceased son; Daughter of a pre-deceased daughter; Widow of a pre-deceased son; Daughter of a pre-deceased son of a pre-deceased son; Widow of a pre-deceased son of a pre-deceased son.

The male heirs include:

Son; Son of a pre-deceased son; Son of a pre-deceased daughter; Son of a pre-deceased son of a pre-deceased son.

Female heirs predominate in Class I. All the heirs within Class I, if in existence at the time of the death of the propositus, inherit together. So if a male Hindu in India dies leaving behind widow, daughter, mother and son, they would all inherit together, each getting one share.
Heirs of a Hindu female: The Act propounds a definite and uniform scheme of succession to the property of a female Hindu who dies intestate (Desai, 1990: 819). To put it very simply, Section 15 states that the property of a female Hindu dying intestate shall devolve:

(a) firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;
(b) secondly, upon the heirs of the husband;
(C) thirdly, upon the mother and father;
(d) fourthly, upon the heirs of the father; and
(e) lastly, upon the heirs of the mother.

7.5.1. Position of Hindu widow after and before the Act of 1956 -- Comparative analysis

A Hindu widow in India, after the enactment of the Act of 1956, now inherits her deceased husband’s property together with her son, daughter and anyone else from Class I who may be in existence. There is no widow’s estate anymore and a Hindu widow inherits absolutely, unlike a widow in Bangladesh. Under Section 10 of 1956 however, when there are more than one widow, they together inherit one share. Unchastity of widow is no longer a bar to her inheriting property. In Bangladesh, as mentioned earlier, by virtue of the Hindu Women's Right to Property Act of 1937, a widow (or if there are more than one widow, all of them together) take the same share at the same time as one son but she or they take as limited owner.

7.5.2. Position of Hindu daughter after and before the Act of 1956 -- Comparative analysis:

In Bangladesh, unlike a widow, in the presence of a son, a Bangladeshi daughter is excluded from inheritance. In the absence of son/s, the daughter inherits but only in default of the widow or widows. The situation is different in India where, by the Act of 1956, a daughter inherits simultaneously with any heirs under Class I including the son and the widow. To reiterate, daughters and sons thus inherit equally in India, which is a major shift from the traditional law, and they get absolute right. Moreover, all daughters, irrespective of their capacity to give birth to a son, take property and no difference is made between married and unmarried daughters, or any priority given to daughter(s) who have or may have a male issue. In Bangladesh, as mentioned earlier, the daughter's right to inherit from her father is based on her having a son or having the capacity to give birth to one, and when she does inherit, her rights are that of a limited owner.

Under the Dayabagha School in Bangladesh, the grounds under which a female may be excluded from inheritance include unchastity. In India however, unchastity is no longer a ground under which a female, including a daughter, may be deprived of a share. After the adoption of a daughter was legalized by the Hindu Adoption and Maintenance Act, 1956, the adopted daughter was also included within the definition of daughter under Class I heirs.

To sum up the present Hindu law of intestate inheritance in India, male and female Hindu heirs are now treated as equal without any distinction. Other notable changes, especially considering the practice in Bangladesh, is that disease, deformity or defect are no longer grounds for exclusion from inheritance (Sec.28); neither is unchastity in the case of female heirs.

In Bangladesh, a Hindu suffering from mental defects such as idiocy or insanity, or physical defects such as deafness or dumbness may be excluded from inheriting property she/he would have normally inherited.

It should also be noted that unlike Muslims, who can will away only a third of their property (unless the other heirs consent), any Hindu who is a major and of sane mind can make a will or gift of his entire property. It naturally implies that a Hindu father wishing to give property to a female or otherwise enhance their shares can use the provision of will or gift under law. However, there are procedural complications. For example a Muslim in Bangladesh may register a gift or hiba and the costs are by law very low. On the other hand, in the case of a gift or a will under Hindu law, probate is necessary and the stamp fees depend on the valuation of the property which can translate into a large sum that many are unwilling to pay.
8. Hindu Law in Bangladesh: Possibilities for Reform

The need for introducing reforms in the Hindu law of Bangladesh, whether extensive or limited, is undeniable. The question is the way to go about introducing such reforms that will be acceptable to the Hindu community. There are several methods which can be adopted but the most feasible need to be targeted. The various possibilities are discussed below.

8.1. Uniform Family Law

As mentioned earlier in the study, although uniform laws exist in most matters, in the case of personal and family matters, each religious community by and large continues to follow its own laws. In Bangladesh, some laws pertaining to personal matters are uniform, for example, the Child Marriage Restraint Act, 1929, the Dowry Prohibition Act, 1980, the Family Court Ordinance 1985, etc., but most are not. This state of affairs is replicated in all three countries of the Subcontinent. For several decades, many women’s rights groups in Bangladesh have persistently demanded the enactment of a uniform family code or law which would apply to all, irrespective of religious affiliation, with the purpose of reforming existing family laws and removing discriminatory provisions related to women. Different organizations such as Ain O Shalish Kendra and Mahila Parishad (BMP) have drafted Uniform Family Codes (UFC) or Uniform Family Laws (UFL)(BMP, 2006). In a personal interview, Ayesha Khanam,20 President of the BMP, described how they came about working on a uniform family code. When addressing women’s rights, the issue of family law reform became inevitable. Since without equality it is impossible to promote women’s rights, the BMP mulled over a uniform family law: “We consulted regional and international instruments as well as relying on our personal experiences with women. BMP has been promoting the idea of a uniform family code for several decades now and the effect of our endeavors have been positive. Progress has been made, for example now, by law, Bangladeshi women married to foreigners can transmit their Bangladeshi citizenship to their children, unlike earlier; again for identification of a child the name of the mother must also be mentioned along with the father’s”. As regards changes in Hindu personal laws, Ayesha Khanum noted that there were pro-change and anti-change groups within the Hindu community itself and the latter’s hesitation was due in part to the lack of security felt by the minority communities. She advised caution and suggested that in order to change Hindu law one should proceed strategically.

The UFL deals with, amongst others, the following issues:

- Obligatory marriage registration;
- Monogamy;
- Essential requirement of consent of both parties to a marriage;
- Minimum age requirement for marriage;
- Dissolution of marriage available for both parties on usual and new grounds;
- Compulsory registration of divorce;
- Maintenance: providing for compulsory maintenance for divorced women for life or until their remarriage. Imposing the duty upon the wife to maintain her husband when the husband is incapable of earning a living due to illness, etc.;
- Adoption: allowing all communities to formally adopt children of both sexes and extending the jurisdiction of the Family Court to address questions related to adoption;
- Succession: Providing for the equal rights of males and females to inheritance, recognizing the Doctrine of Representation and giving jurisdiction to the Family Courts.

Although the demand for the adoption of a uniform family code has in no way disappeared, even its most enthusiastic supporters have to a certain extent been faced with the realization that by and large such radical changes are not feasible at the present time for social, cultural and political reasons. The reality is that a vast number of people from all religious communities are not favourably disposed to such laws given their strong commitments to their respective religions.21 Given the patriarchal and paternalistic context of Bangladeshi society and the strong belief in personal laws being the epitome of religious identity, the attempt to enact a uniform law appears to be too risky for any political
Government to attempt at present, especially with the resurgence of religious fundamentalism.

Even in India, where the Constitution specifically provides for the enactment of a uniform code, personal laws still continue to govern family matters. Article 44 of the Constitution of India provides that: “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” This essentially means that even though there is a constitutional mandate to introduce a civil uniform family law irrespective of religion, it has so far proved impossible. Thus, even in India, with the rise of Hindu nationalistic politics, the idea of a uniform civil code and Hindu law have collapsed in political rhetoric and as a consequence, the uniform civil code has become a suspect idea. The debate on this issue has more or less died as a scholarly concern and feminists have quietly withdrawn from arguing for a uniform civil code as a means of gender-justice laws (Parasha and Dhanda, 2008: Xi). In the Indian case of Pannalal Bansilal Patil vs. State of Andhra Pradesh it was held that:

“Uniform law for all persons may be desirable. But its enactment in one go may be counterproductive to the unity of the nation.”

However, the proponents of a uniform family law have not given up, but merely postponed their battle. For example, Verghese (2003) opines in favour of a uniform code and states that it has been wrongly posited as an assault on religion and religious identities. What it essentially aims at is secular reform of property relations in respect of which all religious traditions have grossly discriminated against women. A uniform civil code is, therefore, foremost a matter of gender justice. But male chauvinism and greed have joined with religious conservatism to forge an unholy alliance to perpetuate a major source of gender discrimination, thereby impeding the modernisation of social relations and national integration (Verghese 2003).

According to him, the need for the enactment of a uniform family code is also necessary given the globalization, diversification and multiculturalism which have become the norm in all societies. Verghese notes that “with growing education, migration and economic and social mobility, unknown and earlier socially prohibited relationships (for example, inter-caste, inter-regional, inter-community marriages and divorce and the acquisition and disposal of self-acquired property by women) are becoming increasingly common.” (Verghese 2003)

The field work for the present research also shows clearly that within the Hindu community in Bangladesh, the ground level reality is that marriages are breaking down, registration is becoming more and more necessary and inter-caste marriages are no longer considered an abomination. Thus, “A liberal, forward-looking uniform civil code may be expected to win many adherents, especially from those with cross-cultural backgrounds. This could in time induce custodians of faith to look inwards and seek to codify and reform age-old personal laws in conformity with current modernising and integrative tendencies or risk losing their flock.” (Verghese 2003)

There are two options regarding the enforcement of a uniform family code, either an optional code or a law which mandatorily replaces all personal family laws. There are proponents both for and against either of the above. Some seek a middle ground and support the enactment and enforcement of a uniform family code, but only as an option available for those who want to abide by it. Verghese (2003) holds that uniform civil code and personal laws do not represent an either/or choice and that one does not mandate the obliteration of the other, it only makes available an option. On the other hand, according to Parashar (1992:261), at face value it is “eminently desirable that the State provides a law that incorporates sex-equality but if any individual does not want to give up their religious personal laws they can continue to be governed by religious personal law”. However making such a law optional may not have the desired effect since most South Asian women have little or no voice and decisions affecting their rights and lives are taken by men, whether fathers, husbands or sons, who are considered to be the decision-makers. If the Code is made “optional, then it is almost certain that the majority of women will not be able to take advantage of the enhanced legal rights which it provides” (Parashar, 1992: 261).

Whatever may be the debates regarding the type
of uniform family laws it has been generally agreed that until the time is right for their adoption, there should be attempts made to reform the laws of the different communities. Holding out in the hopes of uniform laws and not making any changes at all would be like throwing away the baby with the bath water. The general agreement is that redress is immediately necessary.

8.2. The Special Marriage Act, 1872 (applicable in Bangladesh) and the Special Marriage Act of 1954 (applicable in India)

In 1872, the Special Marriage Act was enacted to facilitate the marriage of persons marrying outside of their respective religions or, in the case of Hindus, outside of one's caste. It continues to apply to Bangladesh but India, in 1954, enacted a fresh and more liberal law related to the issue. The Act of 1872, which continues to be the law in Bangladesh, applies to marriages between persons neither of whom professes the Hindu, Sikh, Christian, Parsi, Buddhist, Jain or Muslim religion, or between persons each of whom is either Hindu, Buddhist, Sikh or Jain. The Act of 1872 allows mixed marriages or inter-religious marriage. When a Muslim, of either gender, wishes to marry a person of another religion under this Act, he or she [as well as the person (s)he wishes to marry] must declare that they do not profess any religion (Huda, 2003:15). The two persons, unless they are both members of the Hindu or associated religion who wishes to marry under this Act, are forced to renounce their religion (Pearl and Menski, 1998:15).

India in 1954, as part of its attempts at modernization, enacted a new Special Marriage Act, which extended the scope of who could marry under the Act. It did away with the requirement under the Act of 1872 of persons belonging to certain religions having to declare non-adherence to any religion. The Special Marriage Act of 1954 is a secular law of marriage and divorce applicable to those parties to a marriage which voluntarily chose to be governed by it. Any two Indians, irrespective of the religion they profess, can voluntarily choose to be governed by the provisions of this act (Mahmood, 1978: 28-29). An existing marriage solemnized under any of the prevailing personal laws can be turned into a secular marriage by registration under the Act. A couple married under the Special Marriage Act of 1954, or whose marriage is registered under the provisions of the said Act, will be governed, in matters relating to intestate and testamentary succession, by the Indian Succession Act of 1925 (Mahmood, 1972: 178-179). The Act was passed with ease in 1954 and with comparatively little controversy (Mensi, 2003:216).

The Act of 1954 is a self-contained law which in itself provides for the registration of marriages, the restitution of conjugal rights, judicial separation, nullity of marriage, divorce and maintenance. It also deals with the issues of legitimacy and custody of children. The main objective behind enacting the new Special Marriage Act in India was to provide a special form of marriage available for the people of India (and all Indian nationals in foreign countries), irrespective of the religion or faith followed by either party to the marriage. The parties may observe any ceremonies for the solemnization of their marriage, but certain formalities are prescribed before the marriage officer can register the marriage. The necessary requirements for a legal marriage under the Special Marriage Act of 1954 include:

- Monogamy: it makes the offence of bigamy punishable under Section 44;
- Both parties must be capable of giving a valid consent to the marriage;
- Neither party must suffer from any mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children, nor be subject to recurrent attacks of epilepsy or insanity;
- The Act lays down minimum ages for marriages at twenty-one for the groom and eighteen for the bride;
- The parties must not be within the degrees of prohibited relationship, unless allowed by custom.

As mentioned earlier, all marriages, even those after the fact, may be registered under the Act so that the couple may opt to be governed by the secular regime rather than religious laws. This provides a viable option for parties to be governed by uniform and equal laws regarding succession and other matters. In the case of Bangladesh, enactment of a new law or modification of the law
of 1872 may be more easily achievable than either a uniform family law or major reforms to personal laws considered contrary to religious precepts. The enactment of a new Special Marriage Act, adapted to the specific context of the country, may therefore be an easy way out of the whole debate about reforms of personal laws. It would also take into account the choice of the parties, without neither imposing a mandatory uniform and non-religious law, nor forcing people to abide by antiquated religious norms against their wishes. It may also be a way to avoid the contentious debate about whether the State has the moral authority to meddle in religious matters. Providing an option to parties may by far be the best and most comprehensive solution to the problems of discrimination. This law will not only potentially obviate the problems related to polygamy and succession for both Muslims and Hindus but also, in the case of Hindus, the lack of provisions for registration and divorce, inter-caste marriages and other issues.

8.3. Reforming personal laws

Reforming particular aspects of the Hindu personal laws to make them less discriminatory and more in consonance with the principles of human rights and justice will go a long way towards addressing some of the more crucial problems faced by women and others of the Hindu community. It is pertinent to point out that reforms are necessary not only for women but for Hindu men as well. Lack of registration, inability to dissolve the marital tie and the lack of inheritance of daughters also affect men, as was made evident from the field work. Many forward-looking Hindu men support the reform of Hindu laws. Although uniform family laws, according to many, can ensure equality and justice, the time may not be right and the solution may lie in keeping within the framework of Hindu laws and making the necessary reforms. Endeavours to widely reform the laws of a minority population is problematic to say the least, as evidenced clearly by the Indian situation. Although statutory enactments have redressed many of the problems contained in Hindu law in India, the Indian Muslim law continues to be backward. Unlike Bangladesh, where the MFLO of 1961 introduced reforms, there have been no changes made to the applicable Muslim law in India. Indian Muslim men still continue to have the right to pronounce the irrevocable triple *talaq*, an intervening marriage is necessary before a couple can remarry and a husband can commit polygamy without any sort of intervention. Again, the Muslim law in Bangladesh gives grandchildren of predeceased parents the right to inherit from their grandparents while in India they are excluded. A substantial portion of the Indian Muslim community has, by and large, been vehemently opposed to any interference with their personal laws as evidenced by the Shah Bano fiasco. Again, the reforms made to the law of the majority, i.e. Hindu law in India, are much wider in scope than the changes made by the MFLO 1961 to the Muslim law in Bangladesh. It is also true that any attempt to introduce bold changes to the law of the majority in Bangladesh is fraught with acute problems. These issues must be kept in mind when advising reforms to the Hindu law in Bangladesh, since they are concerns which are in the minds of the community.

9. Initiatives for reform of Hindu law in Bangladesh

Several bodies have shown concern and commitment to try and reform the Hindu law of Bangladesh.

**Bangladesh Law Commission**

The Hindu Marriage, Adoption, Maintenance and Succession Related Codified Act, 2006

(Proposed)

The Bangladesh Law Commission (BLC) is a statutory body established by the Law Commission Act of 1996 (Act no. XIX of 1996). The Commission drafted a comprehensive Hindu law bill addressing the most pertinent issues requiring reforms in 2006. Although basically similar to the enactments made in India, there are certain differences and additions. The Bill deals with the following:

**Marriage:** Section 5 of the Hindu Bill of the BLC lays down certain conditions which must be fulfilled before a valid marriage can take place, for

---

*Translated from Bangla by the author.*
example, monogamy, consenting mind, absence of disease, lack of existence of prohibited or sapinda relationship between the parties and so forth. Additionally, the proposed Bangladeshi law clarifies in Section 5(g) that: “A marriage can take place between a male of any caste and a female of any caste. This means that there is no bar to inter-caste marriage.”

Another difference, in comparison to the Act of 1955, is that unlike the Indian Act, the Sections related to guardianship in marriage which have been deleted in India are included, giving the mother preferential rights after the father unlike the presently applicable law of Hindu guardianship in Bangladesh. Section 7 of the two laws are exactly the same, stating that the ceremony of any party may be observed to validate the marriage and where saptapadi is a rite, the marriage becomes valid upon the taking of the seventh step. However, Section 8 of the Bill gives Hindus the option to register their marriage for the purpose of proving its existence. The Government is to appoint a Hindu Marriage Registrar in every district. Section 8(4) clarifies that non-registration will not affect the validity of a marriage. Section 9 deals with the concept of restitution of conjugal rights as in the Indian Act.

Judicial Separation: Section 10 of the Bill deals with judicial separation of the spouses. The grounds on which a party can petition for separation includes those similar to the Act of 1955, such as adultery and cruelty, but gives a list of additional and more detailed grounds. Either party can claim separation on the grounds that the other party:

- Often beats up the petitioner [10 (c)];
- Under the influence of alcohol, enters the home and beats the petitioner mercilessly [10 (d)];
- Without any justifiable cause often curses the petitioner, tortures her/him with mental cruelty [10 (e)];
- For petty reasons gets into arguments with the petitioner so that she/he expresses that she/he is in fear for her/his life [10(f)];
- Misbehaves with the petitioner in front of their children in such a manner which causes acute mental distress [10(g)];
- If the husband keeps another wife or concubine at the place of residence of the wife or habitually lives with another wife or concubine at another place [10(h)]; and
- Any other justifiable cause [10(i)].

Void and voidable marriage: A marriage is declared by the bill to be void on the grounds of bigamy and the parties being within the prohibited degrees or sapindas to each other (Section 11). Under Section 12, a marriage is voidable on the grounds of non-consummation of marriage due to the inability of the defendant, lack of consent, coercion, or the wife having become pregnant by someone else.

Divorce: Section 13 deals with dissolution of marriage on the grounds of conversion, incurable mental disorder, asceticism, disappearance and husband’s polygamy. Like Section 13B of the Indian Act, Section 15 of the bill also introduces “divorce by mutual consent”. The draft Hindu Law Bill also deals with the issues of remarriage after divorce, legitimacy of children born of void and voidable marriages, and so forth. Although, addressing many issues in a gender neutral manner, the proposed law appears to revert to inherent patriarchal ideals in certain cases. For example, although Section 18(1) of the proposed Bangladeshi law prescribes punishment under the Penal Code for bigamy, it grants the Hindu husband the right to marry again if the wife is unable to give birth within 10 years of the marriage. The latter does not take into account that adoption is valid, or the fact that the husband may be responsible for the couple’s inability to have children.

Adoption (Sections 24 to 35): In Bangladesh, as discussed above in some detail, the adoption system is extremely patriarchal and males have the prior right to give and take in adoption. Only sons can be adopted whilst orphans can be adopted only if permitted by custom. The Hindu Law Bill of 2006, drafted by the Bangladesh Law Commission, gives both males and females the right to adopt. Both must be sane, above the age of 40 and neither must have already adopted. A married man cannot adopt without the consent of his wife or wives [Sec.26]. A woman can adopt if she is single, divorced or a widow or if her husband has permanently retreated from all worldly affairs. Both female and male children, below the age of
15 and unmarried, can be adopted unless custom provides otherwise. Under Section 28, the primary right to give in adoption is the father’s, but he has to take the mother’s permission. In the absence of the father, either in reality or legally, the mother, and in her absence, the guardian can give in adoption. An orphan, a deserted or abandoned child or one whose parents are unknown can, with the permission of the Court, be adopted by someone suitable, including the guardian herself or himself [Sec. 28(4)].

Maintenance: The projected Bangladeshi law seeks to give the wife the right to lifelong maintenance from the husband (Section 36). A wife is entitled to separate residence and maintenance on certain grounds specified in Section 36(2), which are more or less the same as those contained at present under the Act of 1946 relating to such matter. Section 37 imposes the duty upon the wife to maintain the husband if, due to any accident or illness, the husband is physically or mentally disabled and has lost his capability to earn and the wife is so capable.

If a widowed daughter-in-law has no other means of maintaining herself, Section 38 makes her father-in-law responsible for her maintenance. This right ceases upon her remarriage. The Bill gives details as to who has the right to and who has the duty to maintain. It also imposes a duty upon both females and males to maintain aged or ill parents, children, whether legitimate or not, unmarried daughters, grandchildren and so forth, when they are unable to maintain themselves (Sections 36 to 45).

Succession under Hindu Law (Sections 46 to 55): Under Section 46 of the draft Bill, the property of a male Hindu will devolve firstly on his heirs contained in the First schedule of the Act. Such heirs will all inherit simultaneously and will exclude the heirs contained in the second class and so on. Property will be divided amongst the heirs in the first class according to the following rules. These heirs include:

1. Son;
2. Predeceased son’s son;
3. Son of predeceased son of a predeceased son;
4. Widow;
5. Widow of predeceased son;

All of the above will together take the property, after providing for the maintenance of unmarried daughters.

The proposed law puts daughters within the second group of heirs, so that they inherit only in the absence of any of the abovementioned persons, which is clearly different from the rights of the Hindu daughter in India who inherits together with a son and equally.

Section 46 (3) of the Bill states that:

(a) Each son will get one share.
(b) A widow or if there are more than one widow all of them together will get an absolute share equal to that of one son.
(c) The heirs of the father’s predeceased son will together get one share.
(d) The property will be divided amongst the children of the predeceased son in such a manner that each son gets one share and his widow or widows get one share.

The Bill details the heirs and the manner in which other heirs in the absence of heirs of the first class will inherit. Under Section 49, a major reform is introduced to the Hindu law of succession in Bangladesh. The section deals with absolute property of females and states:

Whether before or after this law becomes effective, any property, whether movable or immovable (including agricultural property), obtained or earned by a woman, before or after marriage, by way of inheritance, will, gift, sale or from any other source or acquired from any person or earned will be her absolute property and there will be no bar on her disposing of such property by way of sale, gift, mortgage or will.

The heirs of a female Hindu are:

(a) Firstly, the sons and daughters (including children of predeceased sons or daughters) and husband;
(b) Secondly, husband’s heirs;
(c) Thirdly, mother and father;
(d) Fourthly, father’s heirs and
(e) Lastly, mother’s heirs.

Apart from the Law Commission, several other organizations have drafted Hindu Law bills addressing the main issues.

**Human Rights Congress of Bangladesh Minorities (HRCBM)**

*The Hindu Personal and Family Laws Ordinance, 2008*

HRCBM is an international campaigning movement dedicated to protecting the human rights of people in Bangladesh, in particular the religious minorities. It is a non-profit organization and holds a consultative status with the United Nations. The organization drafted the ordinance relating to Hindu personal law, since it was considered “expedient to frame the Hindu Laws to give equal rights to women in respect of property, marriage and adoption” and because of what is contained in Article 28(2) of the Constitution of the Peoples’ Republic of Bangladesh. The proposed law, in the form of Ordinances, is divided into three parts dealing with each issue separately.24

**Succession:** The Hindu Succession Ordinance, 2008, as it is termed, deals with the question of succession. In short, the major points contained in this proposed law are discussed below.

Under Section 8, priority is given to those heirs of a Hindu male who are mentioned in the Schedule of the Act as being Class 1 heirs. These heirs exclude heirs belonging to succeeding classes. The Ordinance includes the daughter as heir of the first Class and gives widow/s, sons, daughters and mother of the intestate one share each and states that “(t)he heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share”. Section 13, like the proposed Bill by the BLC also gives Hindu women absolute rights over all types of property.

The heirs of a Hindu female dying intestate are specified in Section 14. The proposed law also deals with “(s)pecial provisions respecting persons governed by Adibashi and tribe Customs” in Section 16.

**Marriage:** The second ordinance drafted by the HRCBM, the Hindu Marriage Ordinance, 2008, deals with the issue of marriage and is similar to the Indian Act of 1955 and the proposed BLC Bill of 2006. The same conditions apply for a valid marriage (Sec.5) and ceremonies of marriage (Sec.6). The projected ordinance also deals in the same manner with judicial separation, void and voidable marriages, divorce (including divorce by mutual consent under Sec. 12B). Additionally, in Section 18 it specifies that the District Court will have jurisdiction to deal with matters under the ordinance. With the establishment of family courts in Bangladesh to make the disposal of family matters easier, it is confusing as to why this should be so. It should also be pointed out that the Bill of 2006 by the Law Commission does not clarify which court will have jurisdiction over matters mentioned therein.

Section 7 deals with the registration of Hindu marriages for the purpose of facilitating the proof of Hindu marriages. The proposal is to give the Hindu Kalyan Foundation, under the Ministry of Religious Affairs, GoB, the power to make rules relating to registration of Hindu marriages. By Section 7(2), the registration of such marriages may be made compulsory by the machinery of the State.

**Adoption and Maintenance:** The Hindu Adoption and Maintenance Ordinance, 2008 (proposed) mirrors the provisions contained in the Bill of the Law Commission except in a few cases. It does not specify an age with regard to the person taking in adoption, but does state in Section 11(iii & iv) that in the case of a male adopting a female or vice-versa there must be at least 21 years of difference between the adoptee and the adopting parent, while the age difference is 25 years in the 2006 BLC Bill.

In the case of maintenance, the HRCBM document, the BLC Bill and the Indian Act of 1956 contains the same provisions.
Coalition for the preparation of a Draft Hindu Marriage law

Hindu Marriage Act, 2010 (PROPOSED)

Under the initiative of Manusher Jonno Foundation (MJF) and Bachte Shekha, a coalition of 17 NGOs was formed to propose reforms to the laws relating to Hindu marriages in Bangladesh. The above coalition has arranged a series of meetings to discuss the issue and formulate a draft law. It ought to be mentioned that the majority of the individuals connected with this coalition are Hindu women. In July of 2005, Bachte Shekha and MJF arranged several activities at Narail which included roundtable meetings, processions and rallies. At the Consultation on Hindu law reforms arranged by SAILS, Rina Roy of Manusher Jonno Foundation and a member of Naripokkho for over two decades spoke about how she and others were active in the demand for uniform family code.

However, for practical reasons, it was decided that it was now more appropriate to opt for separate reforms within personal laws applicable to each religion. A working group committee named “Hindu Bibaho Ain Pronoyone Naree Jot” (Women’s coalition for the preparation of a Hindu marriage law) was formed. The coalition considered the introduction of provisions for Hindu marriage registration to facilitate proof of marriage as well as provisions for divorce. Said Roy, “after having listened to the complaints of Hindu women separately, then from men and finally from the Purohits i.e. the Hindu priests, we drafted a proposal for reforms. She opines that “any reform of Hindu law should be Hindu community oriented; the demand should come from the community as citizens of the country”. The Coalition collected 3,000 case studies on sufferings of Hindu women and it became clear that there was no point in sticking to demands for marriage registration only and that the issue of dissolution of marriage should also be covered.

This proposed law deals with the issue of Hindu marriages. It defines the terms Joggo and saptapadi, the former being the recitation of Vedic verses according to the Shastra before the holy nuptial fire and the latter the taking of seven steps by the couple together around the sacred fire. The draft law also defines sapinda and prohibited degrees of relationship. The ceremonies considered necessary for the validity of a marriage include Joggo (or invocation) and saptapadi; there must be full consent of the parties; the bride and groom must be at least 18 and 21 respectively and they must not be within the sapinda or prohibited degrees of relationship. According to Rina Roy, a member of the Coalition, there are many religious and social formalities for a Hindu marriage, such as the exchange of garlands. It was discussed that by giving a precise definition of the marriage ceremony, the validity of many practices would be affected. Therefore, the draft was altered to cover any ceremony, including other social and religious rites.

The draft therefore states that “customary rites and social festivals may be performed”. Later on, the Committee decided to incorporate sanity as one of the conditions of a valid Hindu marriage.

Under Section 6, details are provided regarding the registration of marriages. It provides that the Government by notification shall grant licensed Hindu Purohits (priests) the right to solemnize Hindu marriages at every Village/Union/Upazilla/District level. Such Purohits shall, if all the conditions imposed for a valid marriage are met, and in the presence of two witnesses representing the bride and groom respectively, solemnize the marriage and enter all the details in the register. They shall also, as proof of their marriage having taken place, supply a receipt with the relevant number, seal and signature. Thereafter, the Hindu Marriage Registrar, appointed by Government notification at each Upazilla, shall upon receipt of confirmation from licensed Purohits of the solemnization of a marriage, register such marriage, and on the application of any party, issue a certificate to that effect.

The draft law, unlike the Indian law, does not make monogamy one of the conditions of marriage in Section 5. However, it makes bigamy a punishable offence under Section 13. The husband has a limited right to take another wife in certain cases such as her incurable physical or mental
illness or barrenness. In such cases, the husband may marry again subject to the consent of the wife and with the permission of the court given after it is satisfied from medical and other evidence that such second marriage is justifiable.

Under Section 9, provision is made for divorce, available to both parties on the grounds of cruelty, whether physical, mental, economic or sexual; conversion to another religion, incurable mental illness; communicable disease which is incurable or almost so; and for the wife, if the husband does not give maintenance for two continuous years.

The law formulated by the Committee for reform includes several other issues, all related to marriage and dissolution of marriage under Hindu law.

10. Conclusion

The personal laws of the Hindus of Bangladesh need immediate reforms. That much is evident from the above. How to proceed is however another matter and whether one should be satisfied with small changes such as introducing marriage registration or whether it is necessary to hold out before the entire gamut of Hindu family laws are addressed in their totality is debatable. The Government is justifiably hesitant to interfere with the religious laws of the minority, just as the British had been. One of the justifications put forward against reform is that they would be in contradiction to the *Shastra* based law and therefore against the Hindu religion itself. Professor Shah Alam (2004:18) however finds ample evidence within the Hindu religion and philosophy itself that supports reforms. He (2004:31) criticises the British colonial powers for not being more enthusiastic in incorporating changes to Hindu law. According to him, dynamics of change in Hindu law as it had developed during the period of commentaries give ample reason to believe that had such development continued it would have achieved a higher level of reforms by the time the British quit India. He opines:

“Some of the existing provisions of Hindu marriage, more specifically legal status of a married woman, differential treatment of man and woman in respect of inheritance, guardianship, adoption and the restrictions imposed by the caste system are not in tune with the broader outlook of Hindu philosophy which is one of the richest spiritual and cultural heritages of mankind. Hindu philosophy presupposes fullest growth of human person for the fullest bloom of divine qualities latent in her/him, irrespective of sex, caste, creed, colour, time and place. This is not possible without according equal rights and opportunities to all” (Alam, 2004: 18).

Again, Hindu law according to Jhabvala (1981:2) “was not static or staid, but empiric and progressive”. Jhabvala gives the reference of other authors according to whom the laws contained in the texts only reflected the ideal picture of that “which, in the opinion of the Brahmins, ought to be the law” (1981:2).

The realization that reforms are absolutely essential is not sudden. The demand initially came from the Hindu community itself 25 years ago. Rana Dasgupta (2002) recalled the first initiatives taken in 1986, after the partition of 1947, by the Bangladesh Puja Ujjabon Parishad. On the 31st of January of that year, a discussion meeting was held at the Dhaka Dhakeshwari Mandir. Many participated and the discussion was spearheaded by Justice Debesh Chandra Bhattacharyya. Many aspects of the law were discussed amongst which were (a) polygamy; (b) inter-caste marriage; (c) right to separate residence and dissolution of marriage; (d) maintenance and guardianship; (e) prohibited relationship in marriage; (f) marriage registration; (g) maintenance of dependants; (h) daughter’s inheritance; (i) transforming limited rights to property into absolute rights; (j) equal rights of sons and daughters; (k) adoption and (l) Dharma, temple and Debutter property. (Dasgupta, 2002:139-140).

Shubroto Chowdhury, Advocate, Supreme Court Bar Association reiterated the communities support for reforms and stated at the SAILS Consultation that:

The canvas for reform is very wide and the obstacles are also clear. We, the members of the Mahanagar Puja Committee with the active participation of Justice Debesh Bhattacharya and many others representing the wider Hindu
community, began our quest for reforms in the 1980’s. Even though we were all very active, our initiatives for reform were met with severe protest.

The problems and challenges in incorporating reforms are also quite obvious from the research. One of the other major objections or concerns raised was related to the laws on vested properties.25 The majority of Hindus of Bangladesh regard such laws as a major violation of their rights as citizens of the country. The issue of vested property came up time and again and it is clearly regarded as a cause of insecurity for the Hindu population. Many questioned the justification of even talking about reforms to family laws with such an issue remaining unsettled. Widespread scepticism exists as to whether the recent changes proposed by the Government will benefit the community and therefore the demand was that changes should be well thought out and not hurried. Although the fears regarding the vested property laws may be true, individual sufferers of unjust family laws cannot afford to wait until such time as the matter is settled and the fight for reforms should not be kept pending.

There are strong claims that the Hindu population is dwindling day by day and migration of Hindus from Bangladesh to India is increasing. Official statistics provide ample evidence about the gradual decline in the relative size of the Hindu population in Bangladesh. Since 1961, the relative share of the Hindu population has declined from 18.4 percent of the total population in 1961 to 12.1 percent in 1981, to 10.5 percent in 1991, and further down to 9.2 in 2001 (Barkat and Khan, 2008: 165). At the SAILS Consultation, Rana Das Gupta said that the Hindu population of Bangladesh is declining, whereas the Muslim population in India is increasing and the reason for this is the widespread sense of insecurity felt by Bangladeshi Hindus. According to him, “Hindus have been made to feel disempowered due to changes in the Constitution and the process of Islamization”. J.L. Bhomick on the other hand was not so sure that the Hindu population has decreased. He impressed upon the fact that organizations that are involved and direct the policy making of the minority communities have to be actively pro reform. According to him, the Sanatan religion has no last word and the Hindu dharma believes in quality and not quantity (SAILS Consultation Meeting).

Although communal violence and other types of oppression are very often related to property, rather than any systematic State-sponsored ethnic cleansing, there have been allegations of political repression on minority populations. Whatever may be the cause, it is evident that portions of the minority community, mostly those who are economically and politically disempowered, suffer from feelings of insecurity. The general lack of women’s rights under the Bangladeshi Hindu law also contribute to the feeling of vulnerability of the female Hindu population. In many cases, even where they are legally entitled to rights under Hindu law, the patriarchal Hindu society deprives them of enjoying such rights. At the Maulvibazar FGD, an elderly Hindu widow described how her husband’s brothers had deprived her of the share to her husband’s portion of undivided property after his death. Deprivation of helpless widows by brothers-in-law and other members of the husband’s family is a common occurrence in Bangladesh. Ahmed and Mohsin opines that there is a gendered element in the organization of the minority community and Bengali Hindu women suffer a double-edged layered domination which is from both the points of religion and gender (Ahmed and Mohsin 2005: 57). There are two broad levels at which religion intersects with society and consequently impinges on the rights of women (Silva, 2004:177). First it plays a definitive role at the level of culture. At this level, religion informs societal notions of sexuality, marriage and family. Second, at the level of national polity, religion can also inform policy formulation, dissemination and implementation (Silva, 2004:177).

One aspect regarding reforms was made abundantly clear during the research and that is that any demand for changes or reforms must necessarily and primarily come from the Hindu community itself. Thus, rather than the State imposing changes, changes must be based on the needs of the Hindu community. Otherwise, they will have little effect in practice. In India, despite the manifold changes made to the Hindu system of law in an attempt to achieve some sort of secularism, in practice the modern Indian Hindu family law within the judicial system incorporates the principles and spirit of traditional Hindu law (Menski, 2003:265). It mirrors “the continuing concern for the relativities of justice” “which are
not controllable by state law” (Menski, 2003:265). The purpose was not:

“to reinstate Hindu traditions, but to serve an alternative sophisticated modernist agenda, focused on developing culture-specific form of family law that suits today’s common Hindus and their circumstances of life, rather than to strive towards a system of modern legal rules that resemble the laws of England, or modern ‘filmstar law’.

Most importantly, in the context of a background where the Hindus do not constitute the majority of the population, reforms must not be nor seem to be just paying lip-service to non-discrimination and women’s rights demands. Thus, changes need to be based on demands from the community. Justice Gobinda Chandra Thakur, in a personal interview, also stressed this and said that reforms have to be based on what the Hindu community considers necessary and should not be NGO-driven:

“Before any changes are introduced, the community has to be made aware of the consequences - more importantly, there needs to be wide opinion polling. For example, if divorce is to be introduced, it is necessary to establish by empirical evidence the problems faced by lack of divorce rights.”

Rana Dasgupta poses the question as to who will take the initiative for the reform of Hindu law, whether NGOs, the Government or the conscious portion of the Hindu society (Dasgupta, 2002: 139). He believes that it is the last, i.e. the Hindu society that must take the primary responsibility: “NGOs can assist and the State can be in charge of overall supervision”. Rana Dasgupta at the Consultation meeting was of the opinion, echoed by most others, that only those reforms which are acceptable to the community should be made. For example, there should be no disagreement as to the registration of marriage and to the adoption of a daughter. The problems regarding dowry oppression should be considered and the concepts of dowry and stridhan also need to be clarified.

Aroma Dutta, Executive Director of the PRIP Trust and Member of the Bangladesh National Human Rights Commission, in a personal interview said that the way to go is to ask for everything. There will be problems regarding the introduction of absolute inheritance rights of females as well as divorce rights. In case of the former, i.e. absolute right of inheritance, fears were expressed that if a Hindu woman possesses property, unscrupulous men of other religions (mainly from the Muslim majority community) will seduce them into getting married and to convert (Dutta).

As can be seen from the above research, this fear has been expressed over and over again by the respondents. Any attempt at law reform must endeavour to address the issues that concern the community with a view to finding the best solution possible in order to ensure implementation of a law.

The reforms introduced in India have been discussed in some detail above. However it must be remembered that the contexts of the two countries are not the same. As Dasgupta says:

“Although it is necessary to keep in mind the changes /reforms made in India, they cannot be completely followed or copied. The realities of the country specific social problems must be considered, the scope of how much the existing laws are capable of solving such problems and the gaps must be identified and the necessary changes and reforms recommended.” (2002:139).

As discussed above, many organizations as well as the Government are giving serious thought to Hindu law reform and have already drafted several laws. It is now upon the Government and the Hindu community to determine the details. It is no longer a question as to whether reforms are necessary but when they are to be made and how wide the scope is going to be.
oppression should be considered and the concepts
a daughter. The problems regarding dowry
registration of marriage and to the adoption of
others, that only those reforms which are
can assist and the State can be in charge of overall
portion of the Hindu society (Dasgupta, 2002: 139).
whether NGOs, the Government or the conscious
will take the initiative for the reform of Hindu law,
driven:
NGOs have to be based on what the Hindu community
interview, also stressed this and said that reforms
Justice Gobinda Chandra Thakur, in a personal
to be based on demands from the community.
and women's rights demands. Thus, changes need
be just paying lip-service to non-discrimination
the population, reforms must not be nor seem to
most importantly, in the context of a background
establish by empirical evidence the problems
community has to be made aware of the

As can be seen from the above research, this fear
Hindu community to determine the details. It is no
laws. It is now
Hindu law reform and have already drafted several
implementation of a law.
endeavour to address the issues that concern the
former, i.e. absolute right of inheritance, fears were
introduction of absolute inheritance rights of

A Child Of One’s Own---Study on
Withdrawal of Reservation to Article 21 of the Child
Right’s Convention and Reviewing the Issues of
Adoption/Fosterage/Kafalah in the Context of
Bangladesh (Dhaka: Bangladesh Shishu Adhikar
Forum 2008).

“Personal Laws in Bangladesh: the need for
substantive Reforms” The Dhaka University
Studies Part F; Journal of the Faculty of Law 2004 (15)
(1) June, 103-126.

Anglo-Mohammedan and Anglo-Hindu
Law---Revisiting Colonial Codification Bangladesh
Journal of Law 2003 (7) (1&2) June and December, 1-
22.

“Double Trouble: Hindu Women in
Bangladesh . . . . A Comparative Study”, The Dhaka
University Studies Part F; Journal of the Faculty of

References

Agarwala, R.K. Hindu Law (Allahabad: Central Law
Agency 2005).
Agnes, Flavia. Law And Gender Inequality ---The Politics
of Women's Rights in India; in Women and Law in
India; (New Delhi: Oxford University Press 2004).
Alam, Dr. M. Shah. Review of Hindu Personal Law in
Bangladesh: Search for Reforms Bangladesh Journal
of Law (182) June and December, 15-52.
Barkat, Abul and Khan, Shahnewaz. “State of
Deprivation: Official Record-Based Analysis” in;
Barkat, Abul; Zaman, Shafique uz; Khan, Md.
Shahnewaz; Poddar, Avijit and Uddin, M Taher
(authors) Deprivation of Hindu Minority in
Bangladesh---Living with Vested Property (Dhaka:
Barkat, Abul. “Solution is possible : Why, Where, How” in
Barkat, Abul; Zaman, Shafique uz; Khan, Md.
Shahnewaz; Poddar, Avijit and Uddin, M Taher(authors) Deprivation of Hindu Minority in
Bangladesh---Living with Vested Property (Dhaka:
Pathak Samabesh 2008), 163-182.

BMP. Uniform Family Code (Dhaka, Bangladesh Mahila
Parishad 2006).

Dasgupta, Rana. Inequality --In Behaviour, in Rights
(Oshamya - Achoroney Odhikarey) (Chittagong: Rita
Dasgupta 2002).

Desai, Sunderlal T. Mulla Principles of Hindu Law
Diwan, Paras. Modern Hindu Law (Allahabad: Allahabad

Huda, Shahnaz. A Child Of One’s Own---Study on
Withdrawal of Reservation to Article 21 of the Child
Right’s Convention and Reviewing the Issues of
Adoption/Fosterage/Kafalah in the Context of
Bangladesh (Dhaka: Bangladesh Shishu Adhikar
Forum 2008).

Huda, Shahnaz. “Personal Laws in Bangladesh: the need
for substantive Reforms” The Dhaka University
Studies Part F; Journal of the Faculty of Law 2004 (15)
(1) June, 103-126.

Huda, Shahnaz. Anglo-Mohammedan and Anglo-Hindu
Law---Revisiting Colonial Codification Bangladesh
Journal of Law 2003 (7) (1&2) June and December, 1-
22.

Huda, Shahnaz., “Double Trouble: Hindu Women in
Bangladesh . . . . A Comparative Study”, The Dhaka
University Studies Part F; Journal of the Faculty of

Jhabvala, Noshirvan H --. Principles of Hindu Law
Kumar, Vijendra., “Emerging Trends in Sonship and
Adoption under Hindu Law”, NALSAR Law Review
2003 October (1)(1), 96-111.

Mahmood, Tahir. Family Law in the Muslim World (New

Mahmood, Tahir. “Indian Legislation on Muslim
Marriage and Divorce” in Gangrade K.D. (ed.), Social
Legislation in India Vol. II (New Delhi: Concept

Mayne, John D. Mayne's Hindu Law (New Delhi: Bharat
Law House 1995).

Menski, Werner. Hindu Law ---Beyond Tradition and

Menski, Werner. Modern Family Law; (Surrey:Curzon
2001)

Mukhopadhyay, Maitreyee. Legally disposed -Gender,
Identity and the Process of Law (Calcutta: Stree
1998).

Nussbaum, Martha C. “Religion, Culture and Sex
Equality” in Jaising, Indira (ed.) Men’s Laws Women's
Lives -- a constitutional perspective on religion,
common law and culture in South Asia” (New Delhi:
Women Unlimited 2005).

Parashar, Archana and Dhanda, Amita. “Introduction” in
Parashar, A and Dhanda, A (eds.), Redefining Family
Law in India (London: Routledge 2008).

Parashar, Archana. Women and Family Law Reform in
India ---uniform civil code and gender equality (New

Pearl, David and Menski, Werner. Muslim Family Law

Sharma, Shanchita. ‘Hindu Women in Bangladesh
Suffering for Absence of Marriage Registration’;
htm

Silva, Neluka. The Gendered Nation --- contemporary
writings from South Asia (New Delhi: Sage 2004).

Subramanian, Narendra. “Making Family and Nation:
Hindu Marriage Law in Early Postcolonial India”,
Journal Of Asian Studies (forthcoming);
http://nsubramanian.files.wordpress.com/2010/04/
making-family-and-nation-hindu-marriage-law-in-
early-postcolonial-india1 accessed on 02/05/11

code?’ (The Hindu, 13 Aug 2003).
Notes

2. Personal interview with Aroma Dutta, Member, Bangladesh National Human Rights Commission and Executive Director, PRIP Trust.
4. 35 DLR 1983 160.
6. Onita Goldar vs. Bikash Goldar; Family Court, Rupsha, Khulna; Family Case No. 456/04.
8. 30 BLD (HCD) 584.
9. 15 MLR (AD) 2010 23.
10. Jibon Sharma (Sree) vs. Sree Subasini Sharma and another 15 MLR (AD) 2010 167.
12. 31 DLR (AD) 1979 12.
13. 34 DLR 1982 236.
17. For more see Menski, Werner (2001:189-223).
18. 50 DLR(AD)(1998) 47.
19. For more on the background and arguments of the Hindu Law Commissions for, as well as arguments against, incorporating provisions for divorce in Hindu law see Parashar, Archana (1992).
20. President, Bangladesh Mahila Parishad (BMP).
22. AIR 1996 SC 1023.
23. English translation from Bangla mine.
24. In 2008, a care-taker Government was in charge and the Parliament stood dissolved and therefore the proposed law was in the form of Ordinances.
25. Law relating to Vested Property: The pre-cursors to the Vested Property Act were several pieces of legislation aimed at dealing with the property of Hindu families who had evacuated from the then East Bengal (later East Pakistan) as a result of the partition and thereafter the war between India and Pakistan in 1965. Beginning with the Requisition of Property Act, 1948, East Bengal Evacuees (Administration of Immovable) Property Act of 1951, the East Pakistan Disturbed Persons Rehabilitation Ordinance 1964 and then the Enemy Property (Custody and Registration) Order, 1965, popularly referred to as the Enemy Property Act; the properties of such “enemy” aliens were vested temporarily in the Government. After the independence of Bangladesh by virtue of the Bangladesh (Adaptation of Existing Bangladesh Laws) Order 1972 all Pakistani laws were declared as continuing to be in operation. On the 26th of March 1972, the Bangladesh government enforced the Bangladesh Vesting of Property and Assets Order 1972 (since repealed) which combined properties left behind by Pakistanis with those which had previously come under the Enemy Property Act.

The Vested and Non-Resident Property (Administration) Act of 1974 (since repealed), which gave the Government the right to the management of properties of non-resident Bangladeshis etc., was enacted with the supposed intention of dealing with properties abandoned by Pakistani owners, who had left due to the war of 1971. However, in 1976, by the Enemy Property (Continuance of Emergency Provision) (Repeal) (Amendment) Ordinance (since repealed), the State permanently took over the ownership of such properties instead of returning them to the owners and/or heirs, as promised. The Government thus became not only the custodian, but also the owner of such properties and had the right to manage, administer, control and most importantly dispose of such property. Under this law the Government has taken over so-called enemy properties of Hindu migrants to India.

In 2001, the Vested Properties Return Act (amended later in 2002) was passed with the main purpose of returning certain types of properties vested in the Government to their owners; under this Act the Government was to publish a list of returnable properties. Most of the properties which were declared as enemy/vested had been leased to individuals and in some cases organizations. In the case of individuals, it is alleged that the beneficiaries were people having connections with whichever Government was in power. Barkat quoting analysis made estimates that 536,950 grabbers/beneficiaries throughout the country have been occupying a total of 2.6 million acres of vested land which lawfully belongs to 1.2 million Hindu households (Barkat et al, 2008:108). By the Act of 2001, the sale, gift, mortgage or any other type of alienation of such properties was prohibited. In 2008, a new law was drafted entitled the Vested Property Examination & Resolution Amendment Bill which eventually failed to be made into law due to protests by concerned groups. The Vested Property Return (Amendment) Bill, 2010 was approved by the cabinet, but it was not placed in parliament because of supposed differences among the Hindu leaders.

The VPA has been criticised as a major violation of the rights of citizens, especially minorities, who had property seized in the past, simply on leaving the country. Under the still applicable laws related to vested property, Hindu citizens continue to be deprived of property by certain interested quarters that are politically or economically empowered, with the patronage of the Government. The continuation of this law has been mentioned over and over again by respondents as a reason for their feeling insecure in Bangladesh.
25. Law relating to Vested Property:  The pre-cursers to the
24. In 2008, a care-taker Government was in charge and the
23. English translation from Bangla mine.
22. AIR 1996 SC 1023.
21. See report of the Bangladesh Law Commission on Uniform
20. President, Bangladesh Mahila Parishad (BMP).
19. For more on the background and arguments of the Hindu
18. 50 DLR(AD)(1998) 47.
14. Sekandar Ali Shaikh (Md) and others vs. Sree Dilip Kumar 3
13. 34 DLR 1982 236.
12. 31 DLR (AD) 1979 12.
10. Jibon Sharma (Sree) vs. Sree Subasini  Sharma and another
9. 15 MLR (AD) 2010 23.
8. 30 BLD (HCD) 584.
6. Onita Goldar vs. Bikash Goldar; Family Court, Rupsha,
4. 35 DLR 1983 160.
2. Personal interview with Aroma Dutta, Member, Bangladesh
1. Collector of Madura vs. Mootoo Ramalinga (1868) 12 MIA

1965, popularly referred to as the Enemy Property Act; the
the Enemy Property (Custody and Registration) Order,
Disturbed Persons Rehabilitation Ordinance 1964 and then
of Immovable) Property Act of 1951, the East Pakistan
of Property Act, 1948, East Bengal Evacuees (Administration
India and Pakistan in1965. Beginning with the Requisition
a result of the partition and thereafter the war between

evacuated from the then East Bengal (later East Pakistan) as

Vested Property Act were several pieces of legislation aimed
was in the form of Ordinances.
Parliament stood dissolved and therefore the proposed law

2005
http://www.lawcommissionbangladesh.org/reports/69.pdf
Family Law at

incorporating provisions for divorce in Hindu law see
Law Commissions for, as well as arguments against,

15 MLR (AD) 2010 167.
15. The VPA has been criticised as a major violation of the
rights of citizens, especially minorities, who had property
seized in the past, simply on leaving the country. Under the

any other type of alienation of such properties was
al, 2008:108). By the Act of 2001, the sale, gift, mortgage or

lawfully belongs to 1.2 million Hindu households (Barkat et

occupying a total of 2.6 million acres of vested land which

grabbers/ beneficiaries throughout the country have been

power. Barkat quoting analysis made estimates that 536,950

individuals, it is alleged that the beneficiaries were people

individuals and in some cases organizations. In the case of

a list of returnable properties. Most of  the properties which

their owners; under this Act the Government was to publish

certain types of properties vested in the Government to

2002) was passed with the main purpose of returning

Hindu migrants to India.

Government has taken over so-called enemy properties of

importantly dispose of such property. Under this law the

had the right to manage, administer, control and most

heirs, as promised. The Government thus became not only

properties instead of returning them to the owners and/or

State permanently took over the ownership of such

Act of 1974 (since repealed), which gave the Government

who had left due to the war of 1971. However, in 1976, by

Bangladesh Vesting of Property and Assets Order 1972

March 1972, the Bangladesh government enforced the

declared as continuing to be in operation. On the 26th of

Bangladesh Laws) Order 1972 all Pakistani laws were

properties of such “enemy” aliens were vested temporarily
in the Government. After the independence of Bangladesh

citizens continue to be deprived of property by certain

they again by respondents as a reason for their feeling insecure
continuation of this law has been mentioned over and over

empowered, with the patronage of the Government. The

interested quarters that are politically or economically

in Bangladesh.

referred to as the Enemy Property Act; the