

Hindu Marriage Registration in Bangladesh: A Critical Legal Analysis, Evaluation and Recommendations

Md. Abdul Matin Bhuiyan

Associate Professor

Department of Law, Primeasia University, Dhaka, Bangladesh.

&

Naba Akter

Department of Law, Primeasia University, Dhaka, Bangladesh.

Abstract

Hindu Marriage Registration Act, 2012 has been made as it is expedient and necessary to enact provision related to hindu marriage registration with the aim of protecting the documentary evidence of classical marriages of hindus. There are some loopholes regarding marriage registration in the Hindu Marriage Registration Act, 2012. It is necessary for Bangladesh to turn these loopholes into proper rules because the people of the hindu community of Bangladesh are constantly facing various problems. For the greater interest of all hindus presenting some laws have mentioned in the recommendations which they will be bound to obey and if they do not obey will be brought under punishment.

Keywords: *Hindu Marriage Registration Act, 2012, Bangladesh, Loopholes, Punishment, Witness, Online registration, recommendations.*

Introduction

Hindu marriage means approved marriage solemnized among the followers of hindu religion and solemnized in accordance with their prevailing customs and usages according to hindu sastra. A marriage registration is very important to prove the legal status of the marriage and to ensure the rights of the woman at the time of divorce or other miscellaneous destructive situations in the conjugal life of a couple. There is no uniform and mandatory provision for all the communities for the registration of marriage. This is the most important problem because the parties of marriage can easily complete their marriage ceremony without any registration. After analyzing the historical aspect of the marriage registration law in Bangladesh it is clear that the development of marriage registration laws in our country is not well standardized as it is required in our social reality rather there are many weaknesses in the existing marriage registration law, particularly, in hindu, buddha and tribal communities. There was no provision for the registration of a hindu marriage before 2012 in Bangladesh. The national parliament of Bangladesh has enacted the Hindu Marriage Registration Act, 2012 making the marriage

registration optional for protecting the rights of the hindu woman. Due to some provisions of the Hindu Marriage Registration Act, 2012, people are facing various problems, so emphasis should be placed on this matter.

Materials and methods

The methodology in this paper combines the recall enquiry of the post and the analytical use of the recent literature available in the field of hindu marriage registration in Bangladesh. With a view to address the basic issues in this paper, hindu marriage registration system in Bangladesh have been discussed. In addition, other relevant documents and works in the hindu marriage registration in Bangladesh have been consulted. Moreover, the intention of the Hindu Marriage Registration Act, 2012 in Bangladesh is meticulously examined to find out its loopholes and suggest appropriate recommendations for Bangladesh in its perspective. The study is basically qualitative in nature where both primary and secondary sources have been used. As well, a combination of analytical methods and current legislative methods, together with future legislative techniques, was used in the study.

Hindu Marriage

In the patriarchal society of Rig Vedic Hindus, marriage was considered as a sacramental union, and this continued to be so during the entire period. In the Shastric Hindu law, marriage has been regarded as one of the essential sacraments for every Hindu. Every Hindu must marry. The Veda ordains that Dharma must be practiced by man together with his wife and offspring. He is only perfect who consists of his wife and offspring. For a Hindu, marriage is essential not only for begetting a son in order to discharge his debt to the ancestors but also for performance of other religious and spiritual duties. The institution of marriage is considered sacred even by those who view it as a civil contract. According to Satpatha Brahmana, wife is considered the half of the husband. Man is only half, not complete until he marries. Manu declared that mutual fidelity between husband and wife was the highest dharma. According to Mahabharata, by cherishing the woman one virtually cherishes the Goddess of prosperity herself. Wife under Hindu law is not only a “grahpatni,” but also a “dharma patni” and “shadharmini.” The wife is her husband's best of friends. She is the source of “Dharma”, “Artha”, “Kama”, and “Moksha”. The husband is known as “bharthi”. He is supposed to support his wife. He is also known as “pati” because he is supposed to support her.

The sacramental aspect of marriage under Hindu law has three characteristics: (1) That it is a sacrament union, which means that marriage is not to gratify one's physical needs; but is primarily meant for the performance of religious and spiritual duties; (2) a sacramental union implies that a marriage once entered cannot be dissolved on any ground whatsoever; and (3) a sacramental union also means that it is a union of soul, body and mind. It is a union not only for this life, but for all. lives to come. The union is not only for this world, but also for other worlds.

Definition of Hindu Marriage

Marriage, according to the Hindu law, is a holy union for the performance of religious duties. Marriage enables man and woman to find their partners in life. Marriage in hindu law is an institution which is

essential for the procreation and continuation of life. The characteristic traits of two individuals are thereby transmitted to their progeny. It is a ceremony whereby two souls are brought into union spiritually, mentally and physically in the sacred bond of matrimony. Whilst disciplining one, marriage enables one to satisfy one's emotional and physical needs in a religious and socially acceptable way. In Hindu dharma, marriage is viewed as a sacrament and not a contract. Hindu marriage is a life-long commitment of one wife and one husband, and is the strongest social bond that takes place between a man and a woman. For a Hindu, marriage is the only way to continue the family and thereby repay his debt to his/her ancestors. In Hindu view, marriage is not a concession to human weakness, but a means for spiritual growth. Man and woman are soul mates who, through the institution of marriage, can direct the energy associated with their individual instincts and passion into the progress of their souls.

In ancient Hindu Law marriage is the last sacrament among the ten sacraments. It is a sacred tie which can never be broken. It is a relation from birth to birth. According to smriti it is not only sacred and religious relation but also holy union. Marriage refines, improves and ennobles the character of human beings. Thus the features of the hindu marriage is a sacrament and not of a social-legal character.

Classification of Hindu Marriage

In ancient hindu society there were eight different types of hindu marriages. Among them four were approved forms and four were unapproved forms.

Approved forms of marriage are

1. Brahma Marriage.
2. Daiva Marriage.
3. Arsha Marriage.
4. Prajapatya Marriage.

Unapproved forms of marriage are

1. Gandharva Marriage
2. Asura Marriage
3. Rakshasa Marriage
4. Paishacha Marriage

Among the eight types all did not have religious sanction. The last four were not religiously defined and were condemned. Beside these there was another type of marriage prevalent in ancient hindu society which was called 'sayambhara marriage'. In this marriage the father of the girl formally invited a good number of bride-grooms in his place. Then the girl selects her expected bride-groom presenting a garland. This type of marriage was conducted in the elite class of the society.

Brahma Marriage

In Brahma marriage once the boy completes his brahmacharya (student hood), he is eligible to get married. His parents then approach the parents or guardian of a girl belonging to a good family and asking them for the hand of their daughter for their son. The father of the girl also carefully chooses the bridegroom who is well versed in Vedas and of a noble character. This is how a brahma marriage was arranged. There was no system of dowry. So the girl's family did not have to give any dowry to the boy's family. There was the ritual of kanyadaan where the father uses to gift his daughter to the

boy. Among the eight types this is regarded as the highest type of marriage by the dharmasastra. Formerly such marriages were necessarily confined to brahmans but now hindus belonging to any class may marry in the brahma form.

Daiva Marriage

In Daiva Marriage the girl is married to a priest during a sacrifice. In this type of marriage the girl's family wait for a reasonable period for a suitable man for their daughter but when nobody turns up they go looking for a groom in such places where a sacrifice is being conducted. Here the girl is groomed with ornaments and married to a priest. According to the sastras Daiva marriage is considered inferior to brahma marriages because it is considered degrading for the womanhood to look for the groom. So another feature of this marriage is that the father of the bride gains benefit from the groom or groom's guardian.

Arsha Marriage

In Arsha marriage the bride is given by her father in exchange for two cows received from the groom. This type of exchange of cows is done only for religious purposes. If it is done for the non-religious purpose the marriage will not be considered as Arsha marriage.

Prajapatya Marriage

This form of marriage is not very materially different from the brahma form except in this that the groom appears to be the suitor for marriage and he may not be a bachelor, and in which the father gifts his daughter with the condition that "you two be partners for performing secular and religious duties".

Gandharva Marriage

Gandharva marriage is more like a love marriage. Here the bride and the bridegroom get married with the will and consent of each other but without the knowledge of their parents. This kind of marriage is similar to the love marriages of today's generation. It is not considered a right kind of marriage as it is done against the will of the parents. So it is an inferior kind of marriage according to sastras.

Asura Marriage

Asura marriage is a marriage where the bride's father or any other person entitled to give away the bride takes sulka or price for giving the bride in marriage. There shall not only be a benefit to the father, but that benefit shall form a consideration for the sale of the bride. When this element of consideration is absent, such a marriage cannot be described as Asura marriage. This is a marriage which amounts to sale of the daughter.

Rakshasa Marriage

Bride is taken by force and then persuades her to marry. This is not considered as the right kind of marriage as forcing somebody to marry. This type of marriage was allowed only to the khatriyas or military classes. This was a marriage by capture primitive tribes regarded women as prizes of war, part of the plunder in a fair fight. This form was common in many other ancient civilizations. It appealed to the warrior instinct of the khatriya, and was sometimes practiced by them. Hindu scriptures describe this form of marriage as forcible abduction of a maiden from her home, while she cries and weeps, after

her kinsmen have been slain or wounded and their house was broken. Thus, it caused many fights and battles in ancient times for women.

Paishacha Marriage

Paishacha marriage is the eighth and last type of marriage. It is considered as the most inferior type of marriage. In this type the girl's wish is not considered whether she wants to marry or not instead she was forced to marry an even the bride's family is also not given anything in cash or kind. She is seized against her wish. And the marriage is done against the will of the girl and her family. Men would marry a woman, whom he had seduced while she was asleep, intoxicated or insane. This kind of marriage was later prohibited.

Critical Analysis, Evaluation and Loopholes of Hindu Marriage Registration Act, 2012

1. Section 3(2) of the Hindu Marriage Registration Act, 2012 says that even if the marriage is not registered, the validity of the marriage will not be impaired, so it is clearly understood that hindu marriage registration is not mandatory but hindu marriage registration is necessary for the validity of marriage.
2. Section 6(2) of the Hindu Marriage Registration Act, 2012 states that any party who has married in accordance with hindu customs prior to the coming into force of the act may, on application in the prescribed manner, register the marriage in accordance with the provision of this act and even in cases where it has not been made compulsory but marriage registration should be made compulsory.
3. Witness is very necessary at the time of marriage registration to prove the validity of marriage which is not mentioned in hindu marriage registration act 2012.
4. Section 5 of the Hindu Marriage Registration Act, 2012 states that a hindu man under the age of 21 or a hindu woman under the age of 18 who is married will not be eligible for registration under this Act. But hindu marriage registration has not mentioned anything about when they can do marriage registration or whether they can do marriage registration at all.
5. This law does not mention any punishment if it is not followed properly but the violator of this law should be brought under punishment.
6. Section 8 of the Hindu Marriage Registration Act, 2012 says that the duty of marriage registrar is not a government job, but since hindu marriage registration is a government job, the job of the marriage registration should be brought under the government job.

Recommendations

1. Importance of marriage registration and it should be online
Hindu Marriage Registration Act 2012 is applicable to all Hindus residing in Bangladesh. Section 3(1) of this Act states that notwithstanding anything contained in any other law, custom, usage, hindu marriage shall be registered in the manner prescribed by the rules for the purpose of preserving documentary evidence of hindu marriage. And section 3(2) of this Act states that notwithstanding anything contained in sub section (1) a hindu marriage not registered under this act shall not thereby impair the validity of any marriage solemnized in accordance with the

hindu scriptures. According to the section 3(2) of the Hindu Marriage Registration Act, 2012 states that if a hindu marriage is not registered under this Act, the validity of the marriage as per hindu scriptures shall not be impaired. That means the marriage is valid even if the marriage is not registered. That is, marriage registration is not mandatory. According to the section 6(2) of the Hindu Marriage Registration Act, 2012, it states that any marriage performed in accordance with hindu religion, customs, and rituals before the coming into force of this Act shall be registered in accordance with the provisions of this Act on application by any party in the prescribed manner. That is before the implementation of this law those who got married following hindu religions rituals can also do marriage registration but it is not made mandatory for them. It should be made mandatory for them. Marriage should also be illegal in their case without marriage registration. Since marriage registration is not made mandatory under this Act, most of the hindus are reluctant to register their marriages due to non-registration of marriage. Many people are refusing marriage very easily.

Therefore, marriage registration should be mandatory and if marriage registration is not done, the marriage should be declared illegal. If such a rule is made then every marriage will be registered and of course it should be online registration and the subjects to be filled up in the online registration portal are:

1. Name
2. Father's name
3. Mother's name
4. Address
5. Age
6. Nationality
7. Gender
8. Occupation
9. Religion
10. Marital status (How many time he/she is married) and in the case of multiple marriage if he/she is divorced or not)

Two copies of photograph and copy of NID card / copy of birth certificate will be required at the time of hindu marriage registration. During hindu marriage registration all the above should follow the same rules for both bride and groom.

Reason for making marriage registration mandatory and why it should be online

- Marriage certificate confirms that the children are born out of a legal marriage so the rights of children as well as the woman concerned are also legal.
- Marriage certificate enables widows / spinsters to claim bank money and insurance benefits after the death of the spouse.
- The process of registration not only gives legal recognition to the relationship, but it also affords certain securities to both the husband and wife.
- Determination of succession properly as a result of registration is easier.
- Recovery of dowry and maintenance received by the wife or can claim.

- It is easy to determine the parentage of the child.
- Child marriage can be prevented as result of registration.
- Recently it seems from various incidents that even if there is no proof of polygamy in the case of Hindus due to lack of marriage registration, the husband or wife can deny it very easily. So a marriage certificate is the most authentic proof of marriage.
- Since in the case of hindu marriage, after the death of husband the wife has the right to exercise these powers:
 - Limited interest
 - Legal representation
 - Management of the property

So that marriage certificate is required in order to get all the right.

- If the marriage is child marriage or forced marriage then marriage certificate is required to repudiate the marriage.
- Online marriage registration makes all the information easily available at fingertips. As a result of online marriage registration, all the information of the online marriage portal is integrated and there is no chance of fraud.

2. Importance of Witness for Hindu Marriage Registration

A witness is a person who observes the wedding ceremony. Witnesses were historically required to make sure that the wedding was done legally, that neither party was being forced into the marriage and that the officials carried out their job correctly. If ever the wife or husband denies the marriage then it is possible to ensure whether the marriage has taken place through the witness, Hindu Marriage Registration Act 2012, here no witness is mentioned. Witnesses shall be ensuring that the marriage has taken place by performing the essential ceremonies between bride and groom and those essential ceremonies are:

- The invocation before the sacred fire
- Sapthapadi

So if the essential ceremonies are not maintained in the marriage then the marriage will not be registered. It cannot be ensured that a hindu marriage is completed without witnesses and the essential ceremony between bride and groom is completed without witnesses. At the time of marriage registration proper information and evidence is needed including witnesses who are able to prove that the marriage has been completed by performing the proper essential ceremonies between bride and groom.

3. Conditions of witness

- The person who attends is at the age of 18 (for female), 21 (for male).
- Must be a sound person.
- He/She must be a hindu person.
- A person who is capable of giving free consent.
- Two witnesses are mandatory at the time of marriage registration. Witnesses can be anyone. In case of two witnesses at the time of marriage, both of them can be male person, or 2 female and 1 male person.

- At the time of marriage registration the name of the witness and their signature should be kept on the marriage registration paper and at the time of marriage two copies of the witness's photo and copy of national identity card or copy of birth certificate should be submitted.

4. Bar to marriage registration

- Before the registration of marriage it shall be ensured that husband and wife have free consent. If a bride below 18 years or groom below 21 years of age are forcibly married and it is known according to their statement at the time of marriage registration that they do not have free consent, then the marriage registration will not be done and their marriage will not be considered as valid.
- If a person after marriage gets married again without divorce from the present wife, the next marriage will not be registered and as long as marriage exists between a hindu husband and wife, they cannot enter into a subsequent marriage and it will not be registered. Since more than one marriage is applicable in other religions, the marriage will not be registered if the bride and groom marry in other religions.

Exceptional and objective conditions

- If the wife is not capable of reproduction then the husband can have a subsequent marriage but in this case the wife's consent is required. If the wife has free consent then the subsequent marriage will be registered otherwise the marriage will not be registered.
- If the wife has not been known for a long period of time. In this case the husband can marry in subsequent time without divorcing the present wife. Therefore it can be said that when there is an exceptional and objective condition a husband can marry subsequently without divorcing his present wife. If there are exceptional and objective conditions then the marriage registrar will inform the bride from the marriage registration office that the groom is already married and if the bride has free consent then the marriage registration will be done. Otherwise the marriage registration will not be done if the bride has free consent then this is informed by the marriage register and bride consent will be recorded in the marriage registration report.
- Both husband and wife have to maintain these rules. It applies to both husband and wife.
- Brother and sister, Step brother and step sister, Uncle and niece, Aunty and nephew cannot marry each other. If they marry each other they will not be registered. Because these are prohibited degrees.
- When the bride or groom or both are unsound mind or have a mental disorder or one of them who is not capable of procreation of children or insane person then their marriage will not be registered.
- If a boy or a girl is married forcefully or by kidnapping or pay-of-prize in this case marriage will not be registered.

5. Section 5 of the Hindu Marriage Registration Act, 2012

Notwithstanding anything contained in any other law, the marriage of any hindu male below 21 years of age or any hindu female below 18 years of age shall not be registered under this Act. So if bride and groom marry without attaining the age of 18 (for female) and 21 (for male) then marriage registration will be done when they attain the age of 18 (for female) and 21 (for male) but in that case there is a punishment system according to the “Ballo Bibaho Nirodh Ain 2017 ”(The Child Marriage Restraint Act,2017)

6. During the registration of marriage, some restrictions may be maintained. Otherwise the marriage registration will not take place. Since hindu girls are not entitled to the property of their father or husband at the time of hindu marriage registration, some of dowry must be paid to the bridegroom. It should be minimum of one lakh taka. Dower can be either prompt or deferred. If it is prompt dower then in this case it has to be paid on the day of registration at the register office or if it is deferred dower then it has to be paid after the marriage or at the time of divorce. It will be mentioned in the marriage certificate and marriage registration portal that prompt dower or deferred dower is given at the time of marriage.

7. Punishment

Hindu Marriage Registration Act, 2012 nothing has been said about the punishment for violating this Act. Violation of this law can be prevented if a strict penal action is taken for violation of this law. There is no punishment for the Hindu Marriage Registration Act, so there may be reluctance among people to maintain it. Since the violator of this law is not brought under punishment. People are easily violating the law, but if strict punishment is brought in this regard, then this law can be properly observed.

Purpose of punishment

- To restrain the wrong-doer from repeatedly indulging in crime.
- To set an example for others to deter and prevent them from committing crimes or violating laws.
- By making it impossible or difficult for a criminal to commit the offence again, at least in certain ways.
- By providing an opportunity for the reforming of offenders.

Some punishments should also be given if the witness gives a false statement. Witness means to provide information from a known fact to an unknown subject in a logical manner. False witness means a person who deliberately gives false testimony. On the other hand we can say that a false witness is one who stands up and swears before others that something untrue is true, especially with the intention of hunting someone else or ruining his reputation. If someone gives false statement in case of hindu marriage registration should be punished for a term which may extend to one year imprisonment or fine two lakhs taka or both.

Conclusions

Though there are some loopholes in the Hindu Marriage Registration Act 2012, Laws which are being violated can be stopped by making appropriate rules. Otherwise, law breaking mentality, harassment and chaos will increase in the society. The main purpose of making law is to maintain law and order in

the society. A fair and beautiful society can only be created when every person obeys the law. A better and an orderly family and society can only be created when a law is made and enforced. So it can be said that in the Hindu Marriage Registration Act 2012, it is possible to create a sound law by adding the new dimensions which are discussed in the article.

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