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Gender Disparity in the Hindu Community of Bangladesh: The Necessity of Reforming Hindu Law to Protect Hindu Women's Rights

SUNANDA CHAKRABARTY* AND MD. IFTEKHAR ALAM TALUKDER**

ABSTRACT

The Sanatan Dharma, or eternal law, upheld by Hindus derives its highest authority from the Veda, under which women were traditionally accorded honour and dignity. That position was progressively eroded following the compilation of the Manusmriti, whose harsh strictures on women are widely regarded as the origin of the gender disparity that persists in Hindu personal law today. This article examines that disparity as it survives in contemporary Bangladesh, where Hindu marriage, divorce, adoption and inheritance remain governed by uncoded Shastric Hindu Law, and situates it against a comparative account of India's codified Hindu personal law and Bangladesh's own constitutional and international obligations. Adopting a doctrinal, reform-oriented qualitative methodology, the article draws on statute, reported case law and scriptural sources from both jurisdictions, together with the Bangladesh Law Commission's unimplemented 2006 Hindu Law Bill and the 2025 Report of the Women's Affairs Reform Commission, to trace precisely where Hindu women in Bangladesh remain without binding registration, marriage and divorce, equal adoption or equal inheritance rights. It concludes with legislative recommendations directed at removing that disparity while remaining faithful to the underlying spirit of Hindu scripture.

Keywords: Hindu Law, Bangladesh, Gender Disparity, Women's Rights, Personal Law Reform

I. INTRODUCTION

Hindu Law, in its organic sense, is a body of rules and regulations founded on the scriptures and norms of the Hindu religion, and in its general sense denotes the system of personal law applicable to Hindus.¹ Hindus refer to their religion as Sanatan Dharma, the eternal faith, and the law that flows from it governs the personal affairs of Hindus marriage, adoption,

* Author is an LL.M. Student at the Department of Law, Jagannath University, Dhaka, Bangladesh.

** Author is an LL.M. Student at the Department of Law, Bangladesh University of Professionals, Dhaka, Bangladesh.

¹ MD AZIZUL HAQUE, HINDU LAW IN BANGLADESH: THEORY AND PRACTICE 18 (1st ed. 2014).

guardianship and inheritance by birth or by religious belief.² The Hindu community is the second-largest religious community in Bangladesh, comprising approximately 7.95 per cent of the population according to the last 2022 census.³

Hindu Law recognises two categories of sources: ancient sources, comprising the Sruti (Veda), the Smriti, the commentaries (Nibandhas) and custom, and modern sources, comprising statute, case law, the doctrine of *factum valet*, and principles of justice, equity and good conscience.⁴ Two schools of Hindu jurisprudence exist, the Mitakshara and the Dayabhaga; Bangladesh follows the Dayabhaga school, which rests on the doctrine of religious efficacy rather than proximity of blood, under a body of Shastric law that remains, in many respects, vague and ambiguous.⁵

Following the Liberation War, Bangladesh adopted secularism as a constitutional principle, yet that commitment has not been extended to Hindu personal law, which remains substantively the law inherited from British India. India's experience since Partition supplies the natural comparator: within a decade of independence, India codified Hindu marriage, divorce, adoption, maintenance and succession in a series of statutes enacted between 1955 and 1956, notwithstanding fierce resistance from traditional Hindu religious opinion that had earlier defeated the original Hindu Code Bill in 1951.⁶ Bangladesh undertook no equivalent reform; even Pakistan, of which Bangladesh was then a part, modified Muslim law to some degree in the 1960s, while Hindu personal law was left untouched throughout.⁷

That comparative record matters for a further reason: it demonstrates that codification of Hindu personal law along egalitarian lines is achievable without severing a Hindu community from its scriptural inheritance, since India's reforms were themselves defended, at the time, as consistent with rather than destructive of Hindu tradition. The prolonged absence of reform in Bangladesh has left Hindu personal law unsettled across several core areas. The right to own property, right to divorce and remarry remains among the most contentious freedoms denied to Hindu women in Bangladesh;⁸ no statute makes registration of a Hindu marriage mandatory;⁹ a married Hindu

² MD AZIZUL HAQUE, *HINDU LAW IN BANGLADESH: THEORY AND PRACTICE* 18 (1st ed. 2014).

³ BANGLADESH BUREAU OF STATISTICS & STATISTICS AND INFORMATICS DIVISION, *POPULATION AND HOUSING CENSUS 2022* (2022).

⁴ MOHAMMAD ATAUL KARIM, *HINDU LAW IN BANGLADESH: INTERSECTING RELIGION, TRADITION AND LAW* 52 (1st ed. 2023).

⁵ *Id.* at 69, 72.

⁶ Archana Parashara, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (1st ed. 1992); Kanak Kanti Karmakar, *Hindu Personal Laws in Bangladesh: Challenges and Prospects of Women's Rights*, 6 *Int'l J.L. Mgmt. & Human.* 2540, 2543 (2023).

⁷ Karmakar, *supra* note 6, at 2553.

⁸ A. Turan, *Hindu Women's Divorce Rights*, *THE DAILY STAR* (Feb. 24, 2015).

⁹ A. Mogumder, *Hindu Women's Right to Inheritance*, *THE DAILY STAR* (Aug. 24, 2021).

woman cannot hold sole ownership of property beyond limited categories of stridhan; and Hindu women remain excluded, in substantial part, from the right to adopt a child, whether their own relation or an orphan. This article accordingly examines that disparity across marriage, divorce, adoption and inheritance, identifies the legal and social loopholes responsible for it, situates the analysis within Bangladesh's constitutional and international human-rights obligations and its own unimplemented 2006 Hindu Law Bill, draws throughout on India's comparative reform trajectory, and considers the 2025 Report of the Women's Affairs Reform Commission before concluding with specific legislative recommendations.

II. REVIEW OF LITERATURE

The existing literature converges on the conclusion that Hindu personal law in Bangladesh has remained substantively unreformed since independence, notwithstanding a constitutional guarantee of equality. Huda's study of gender injustice under Hindu Law traces the origin of discrimination to the primacy accorded to male progeny and to the absence of any statutory provision for divorce, situating these deficiencies against the equality guarantees of the 1972 Constitution.¹⁰ Karmakar similarly frames the problem as more social than legal in origin, arguing that gender norms, rather than any single defective statute, obstruct compliance with the equality provisions that already exist, and calls for codification of Shastra-based rules with proper regard to Bangladesh's international obligations.¹¹ Agarwal identifies discriminatory treatment across Hindu marriage, adoption and guardianship, and proposes measures to reduce that bias notwithstanding the constitutional prohibition on discrimination by sex, religion and caste;¹² Bhuiyan situates the problem historically, observing that no reform was undertaken for Hindu minority women following the 1947 Partition, so that the reforms subsequently enacted in India never extended to the Hindus of Bangladesh.¹³

On property, Zahur and Halim each demonstrate that Hindu women's property rights remain governed by colonial-era legislation affording them, at most, a limited life interest;¹⁴ Alam and Begum identify the principal obstacles to reform as social resistance within the Hindu community and fear of religious conversion.¹⁵ Most recently, and most significantly for present purposes, the Women's Affairs Reform Commission's 2025 report has moved the reform

¹⁰ SHAHNAZ HUDA, *COMBATING GENDER INJUSTICE: HINDU LAW IN BANGLADESH*, S. ASIAN INST. ADVANCED LEGAL & HUM. RTS. STUD. (2011).

¹¹ Karmakar, *supra* note 6, at 2540.

¹² Varun Agarwal, *Addressing the Discrimination in Hindu Marriage System in Bangladesh*, 4 INT'L J.L. MGMT. & HUMAN. 987 (2021).

¹³ RABIA BHUIYAN, *GENDER AND TRADITION IN MARRIAGE AND DIVORCE: AN ANALYSIS OF PERSONAL LAWS OF MUSLIMS AND HINDU WOMEN IN BANGLADESH* 86 (2010).

¹⁴ Mahua Zahur, *Hindu Women's Property Rights: Bangladesh Perspective*, 1 BRAC U. J. 79 (2016); Sadeka Halim, *Status of Hindu Women: Spheres of Human Rights Violation in Bangladesh* (2011).

question from academic literature into formal state policy, recommending amendment of Hindu inheritance law as part of a broader Uniform Family Code.¹⁶ A recurring theme across this literature is that the discriminatory features of Hindu personal law in Bangladesh are not confined to any single institution, and this article accordingly offers an integrated analysis across marriage, divorce, adoption and property, read together against Bangladesh's constitutional and international obligations, its own Law Commission proposals, India's comparative reform trajectory, and the 2025 Commission's findings — an approach most prior single-issue studies have not undertaken.

III. METHODOLOGY

This article adopts a doctrinal, qualitative, reform-oriented legal methodology. Primary sources comprise applicable statutes, statutory instruments and reported case law from Bangladesh and, comparatively, from India; secondary sources comprise books, peer-reviewed journal articles, government reports, newspaper commentary and reliable online material, including scriptural commentary. The literature was reviewed by “scanning and skimming”,¹⁷ supplemented by a “snowball” method of source identification, in order to trace the existing gender disparity mostly in the fields of Hindu marriage and divorce, in the case adoption, the right to inheritance, to identify the constitutional, international and comparative standards against which that disparity should be measured, and to develop legislative recommendations capable of eliminating it while remaining faithful to the underlying scriptural tradition.

IV. HINDU MARRIAGE: CONCEPT, CASTE AND POLYGAMY

A. Definition and Essential Rites

Shastric Hindu Law is the governing law for the Hindu marriage in Bangladesh, under which marriage is treated as a religious sacrament rather than a civil or transactional contract.¹⁸ Ancient Hindu Law recognised eight forms of marriage—Brahma, Daiva, Arsha, Prajapatya, Asura, Rakshasa, Gandharva and Paisacha—of which only the first four received approval.¹⁹ For validity, a Hindu marriage additionally requires two essential rites, as the higher judiciary confirmed in *Amulyan Chandra Modak v. State*: the joggo or homa (invocation before the sacred

¹⁵ M. Shah Alam, Review of Hindu Personal Law in Bangladesh: Search for Reforms, 8 *Bangl. J.L.* 15 (2004); Ferdousi Begum, Analysing Hindu Women's Right to Property in Bangladesh: Absolute Interest versus Limited Interest, 6 *Kathmandu Sch. L. Rev.* 103 (2018).

¹⁶ WOMEN'S AFFAIRS REFORM COMMISSION, REPORT OF THE WOMEN'S AFFAIRS REFORM COMMISSION 2025, CH. 11 (Apr. 2025).

¹⁷ I.R. ARITONANG, S. LASMANA & D. KURNIA, THE ANALYSIS OF SKIMMING AND SCANNING TECHNIQUE TO IMPROVE STUDENTS IN TEACHING READING COMPREHENSION, 1 *PROJECT: PROF'L J. ENG. EDUC.* 101 (2018).

¹⁸ MANUSMRITI CH. 9, VV. 26, 95-96, AS REFERRED TO IN B.M. GANDHI, FAMILY LAW, VOL. 1, 80 (1st ed. 2012).

¹⁹ SADIQUL ISLAM SAGAR & ABM EHSAN ULLAH KHAN, OUTLINES OF HINDU LAW (2015).

fire) and the saptapadi (seven steps taken jointly around the fire).²⁰ India's Hindu Marriage Act 1955 altered this position fundamentally, converting Hindu marriage from a sacramental into a broadly transactional institution founded on legal equality of rights and remedies between spouses, and prescribing, under section 5, conditions including monogamy, sound mental capacity, a minimum age of 21 for the groom and 18 for the bride, and observance of prohibited degrees of relationship unless custom permits otherwise.²¹ No equivalent statute exists in Bangladesh.

B. Caste and a Woman's Choice of Partner

In practice, under Bangladeshi Hindu personal Law, ordinarily, both the bride and the groom must belong to the same caste; the Special Marriage Act 1872 remains the only statute permitting inter-caste marriage, solemnised by a priest in compliance with that Act rather than under Shastric rites.²² The burden of this restriction falls unevenly on Hindu women: a Hindu man who marries outside his caste risks social censure, but a Hindu woman who does so more frequently forfeits the protection of her natal family altogether, since she is expected to relocate into her husband's household and kin network, leaving her without the independent recourse a man in the equivalent position more often retains. The requirement also curtails the autonomy Hindu scripture itself is capable of supporting: the Bhagavad Gita teaches that caste is properly determined by an individual's qualities and conduct rather than by birth,²³ and the requirement arguably conflicts with Article 28 of the Constitution, which prohibits State discrimination on grounds including caste and sex alike.²⁴

C. Polygamy

Bangladesh follows the classical interpretation under which Hindu Law permits unlimited polygamy for men, with children of such marriages treated as legitimate, while polyandry remains illegal and exposes a Hindu woman who practises it to arrest.²⁵ In focus of Section 5, 11, and 17 of the Indian Marriage Act they have abolished polygamy for Hindus; where a marriage which is bigamous is void without need of a court declaration, though a court may make such a declaration on a party's petition, and the Indian Penal Code renders the offence

²⁰ Amulyan Chandra Modak v. State, 35 DLR 160 (1983).

²¹ The Hindu Marriage Act, No. 25 of 1955, § 5 (India); Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India, in *Women and Law in India* (1st ed. 2004), as discussed in Karmakar, *supra* note 6, at 2543-44.

²² Karmakar, *supra* note 6, at 2544-45.

²³ Bhagavad Gita ch. 4, v. 13.

²⁴ Bangl. Const. art. 28.

²⁵ Karmakar, *supra* note 6, at 2545 (citing Shahnaz Huda, Combating Gender Injustice: Hindu Law in Bangladesh, S. Asian Inst. Advanced Legal Stud. (2011)).

punishable.²⁶ No corresponding right of remarriage exists for a Hindu woman in Bangladesh: upon marriage, a Hindu widow is treated in law as though she were dead, so that a woman denied the possibility of a second marriage suffers a disparity with no parallel among Hindu men. Nor does Hindu Law in Bangladesh require a husband to obtain his wife's consent before taking a second wife, compounding the disparity.

V. AGE OF MARRIAGE, GUARDIANSHIP AND THE PROBLEM OF PROOF

A. Age and Guardianship

The Child Marriage Restraint Act 2017 applies uniformly across religious communities in Bangladesh and prescribes minimum ages for marriage, yet it penalises the parties involved without affecting the validity of the marriage itself, so that underage marriage remains lawful notwithstanding the fine it attracts.²⁷ The consequence falls disproportionately on Hindu girls rather than boys, since it is overwhelmingly the bride, not the groom, who is married below the statutory age in practice, and a girl married in childhood acquires none of the statutory protections such as maintenance, inheritance, or a right of exit which a validly proven adult marriage would afford her. Bangladesh's Dayabhaga law additionally permits a guardian to arrange the marriage of a ward, with the mother ranked low among those recognised as suitable guardians for this purpose, and a Hindu child married before a specified age has no statutory right to repudiate that marriage upon reaching majority, unlike a Muslim girl, who may exercise an equivalent "option of puberty"—a further respect in which a Hindu girl in Bangladesh is left without a remedy her Muslim counterpart possesses.²⁸ India's Hindu Marriage Act 1955, by contrast, both fixes a minimum age under section 5 and renders a marriage solemnised in violation of that age void, giving the age requirement genuine legal force that its Bangladeshi counterpart lacks.²⁹

B. The Registration Problem and Amulyan Chandra Modak

In Bangladesh, Hindu marriage are conducted mostly obeying the ritual norms, without proper documentation, and because no statute imposes a binding obligation to register a marriage, disputes over whether a marriage occurred at all are common, typically where a husband denies the marriage to avoid its consequences.³⁰ The higher judiciary's treatment of *Amulyan Chandra Modak v. State* illustrates the resulting evidentiary difficulty. The complainant alleged that she

²⁶ The Hindu Marriage Act, No. 25 of 1955, §§ 5, 11, 17 (India).

²⁷ The Child Marriage Restraint Act, No. 19 of 1929 (Bangladesh); Karmakar, *supra* note 6, at 2545.

²⁸ Karmakar, *supra* note 6, at 2546.

²⁹ The Hindu Marriage Act, No. 25 of 1955, § 5 (India).

³⁰ Karim, *supra* note 4, at 93-94.

had been induced into a private exchange of garlands that she believed constituted a valid marriage, and that the accused subsequently repudiated the relationship on learning of her pregnancy; under the Penal Code 1860, section 493, the trial court convicted the accused for his deceitful inducement of such a lawful marriage, but the appellate court acquitted him, holding it improbable that a girl of seventeen or eighteen could reasonably have believed a marriage solemnised without the customary rites—proper attendance of relatives, new clothing, bangles, and the vermilion mark—to be valid in the absence of the saptapadi and homa.³¹ The case illustrates that, in the absence of documentation or registration, questions of proof of marriage will continue to defeat Hindu women's legal claims, whether those claims concern the legitimacy of children, maintenance, criminal prosecution in dowry-related matters, a widow's pension, or a spousal visa.³²

In 2012 Bangladesh has enacted the Hindu Marriage Registration Act for the purpose of supply documentary evidence for a marriage, yet section 3(2) of the Act renders registration voluntary, stating only that a marriage “may” be registered, without attaching any consequence to non-registration or affecting the validity of an unregistered marriage.³³ Two decisions of the higher judiciary confirm the practical consequence: in *Utpal Kanti Das v. Manju Das*, a wife who is failed to seek maintenance for the burden of proving her marriage in the absence of registration or other credible evidence,³⁴ in *Karatala Lakshmi Bihar v. Hriday Ranjan Chowdhury*, the court reached an identical conclusion on materially similar facts.³⁵ The Bangladesh Law Commission had proposed an equivalent voluntary scheme as early as 2006, so that the 2012 Act's central defect—registration without consequence—is not a drafting oversight so much as an inherited and unaddressed policy choice, discussed further in Part Seven below.

VI. DIVORCE, JUDICIAL SEPARATION AND MAINTENANCE

A. The Absence of Divorce under Shastric Law

Under the Dayabhaga tradition that governs the majority of Bangladesh's Hindu community, the matrimonial bond is regarded as unbreakable, so that Shastric Hindu Law contains no statutory provision for divorce; dissolution is available only where sanctioned by local custom, which is difficult to establish in practice.³⁶ Yet Shastra is not, in fact, devoid of authority

³¹ Amulyan Chandra Modak, 35 DLR at 160; Penal Code, 1860, § 493; Karmakar, *supra* note 6, at 2553-54.

³² Karmakar, *supra* note 6, at 2554-55.

³³ The Hindu Marriage Registration Act, 2012, § 3(2) (Bangladesh).

³⁴ *Utpal Kanti Das v. Manju Das*, 50 DLR (AD) 47 (1998).

³⁵ *Karatala Lakshmi Bihar v. Hriday Ranjan Chowdhury*, 40 DLR 137 (AD).

³⁶ SHAHNAZ HUDA, REGISTRATION OF MARRIAGE AND DIVORCE IN BANGLADESH: A STUDY ON LAW AND PRACTICE (1999).

favourable to dissolution: the Parashara Samhita recognizes that “another husband of a woman may take where her first husband has been unheard of for a prolonged period, has died, for a religious order husband has abandoned worldly life, is impotent, or has been outcasted grounds that, on marriage to a second husband, operate to dissolve the first union”.³⁷ That scriptural authority has not been carried into Bangladeshi statute, a gap the 2006 Law Commission Bill also failed to close.

B. Comparative Grounds for Divorce and Judicial Separation

In a view of legal development under section 13 of the Indian Hindu Marriage Act which permits divorce for either spouse on the grounds of cruelty, involving adultery, desertion, conversion, unsoundness of mind, and certain communicable diseases, with a wife additionally entitled to separation for the reason of any of this, such as husband’s bigamy, rape, sodomy or bestiality, and, where she was married before repudiating her attaining majority under the “option of puberty” as she was at before the age of fifteen.³⁸ Section 13B, inserted by the Marriage Laws (Amendment) Act 1976, further permits divorce by mutual consent, though a 2010 attempt to add irretrievable breakdown of marriage as a fresh ground failed despite Cabinet approval.³⁹ Section 10 of the same Act permits either spouse to petition for judicial separation, relieving the petitioner of the obligation to cohabit, without dissolving the marriage itself.⁴⁰ Bangladesh has no equivalent statute: a Hindu woman’s only recourse is separate residence and maintenance under the Hindu Married Women’s Right to Separate Residence and Maintenance Act 1946, available on grounds including the husband’s loathsome disease, remarriage, desertion, conversion, cruelty, or keeping a concubine, but withheld where the wife is unchaste or has, without reasonable cause, refused to comply with a decree for restitution of conjugal rights.⁴¹ Crucially, this Act permits separation but not remarriage, so that separated Hindu women in Bangladesh remain legally married for life.

The human cost of this gap is illustrated by the case of Minati Karmakar, a young Hindu woman subjected to sustained physical and mental abuse by a husband dissatisfied with her dowry, who, on seeking legal redress, discovered that Hindu Law afforded her no mechanism of divorce, leaving separate residence and maintenance for which her marital status first had to be established as her only, and markedly incomplete, remedy.⁴² Her situation is illustrative rather

³⁷ Parashara Samhita ch. 4, as discussed in Karmakar, *supra* note 6, at 2547-48.

³⁸ The Hindu Marriage Act, No. 25 of 1955, § 13 (India).

³⁹ The Marriage Laws (Amendment) Act, No. 68 of 1976, § 13B (India); Karmakar, *supra* note 6, at 2548.

⁴⁰ The Hindu Marriage Act, No. 25 of 1955, § 10 (India).

⁴¹ The Hindu Married Women’s Right to Separate Residence and Maintenance Act, No. 19 of 1946, § 2 (Bangladesh).

⁴² Karmakar, *supra* note 6, at 2554 (citing Huda, *supra* note 10).

than exceptional; the same structural gap confronts every Hindu woman in Bangladesh seeking to leave an abusive or otherwise untenable marriage.

C. Maintenance

India's Hindu Adoptions and Maintenance Act 1956 obliges a Hindu husband to maintain his wife for life; under section 18(2), a wife may live separately without forfeiting maintenance where the husband is guilty of cruelty, desertion, bigamy, conversion, or keeps a concubine, and the Act further obliges a father-in-law to maintain a widowed daughter-in-law unable to support herself, while imposing a reciprocal duty on daughters, not merely sons, to maintain infirm parents.⁴³ Bangladesh's 1946 Act affords comparable, though narrower, grounds for separate residence and maintenance, but imposes no equivalent duty on a father-in-law or on daughters, and proof of the underlying marriage remains, as discussed above, a precondition to any such claim.⁴⁴

VII. HINDU WIDOWS' REMARRIAGE

Under orthodox Hindu Law, a widow was traditionally expected either to immolate herself upon her husband's funeral pyre or to observe perpetual widowhood; the Hindu Widows' Remarriage Act 1856, promoted by the reformer Ishwar Chandra Vidyasagar, displaced that expectation.⁴⁵ The reform carries a significant cost, however: under section 2 of the Act, a widow who remarries forfeits her rights and interests in her deceased husband's property, which pass instead to the next heir as though she had died, and under section 3 she additionally loses her position as guardian of her children.⁴⁶ Widow remarriage accordingly remains lawful in Bangladesh but socially resisted, leaving widows to choose between remarriage and the retention of their property and parental rights—a statute enacted to relieve one disability having, in this sense, imposed another.

VIII. ADOPTION

Hindu Law recognises adoption principally to secure a male heir capable of performing the *shraddha* rites and continuing the family lineage, a purpose that has structurally shaped Bangladesh's discriminatory rules of adoption.⁴⁷ Under existing practice, the biological father

⁴³ The Hindu Adoptions and Maintenance Act, No. 78 of 1956, § 18 (India); Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (1st ed. 2003), as discussed in Karmakar, *supra* note 6, at 2548-49.

⁴⁴ The Hindu Married Women's Right to Separate Residence and Maintenance Act, No. 19 of 1946 (Bangladesh).

⁴⁵ Sharmin Aktar & Abu Sayed Muhammed Abdullah, *Comparative Study on Hindu Law between Bangladesh and India*, 29 ASIAN AFFS. 61 (2007).

⁴⁶ The Hindu Widows' Remarriage Act, No. 15 of 1856, §§ 2-3.

⁴⁷ VIJENDRA KUMAR, EMERGING TRENDS IN SONSHIP AND ADOPTION UNDER HINDU LAW, NALSAR L. REV. 96 (2003).

holds the primary right to give or receive a child in adoption, regardless of whether he is a widower or bachelor, and irrespective of his wife's consent or pregnancy; no Hindu woman, married or single, may adopt independently, inter-caste adoption is barred as in marriage, and a boy with a physical or mental disability may not lawfully be adopted.⁴⁸ In *Abdul Mannan alias Kazi v. Sultan Kazi*, the court held that an orphan cannot be given or accepted in adoption unless established by custom, so that adoption of an orphan—a category of child arguably most in need of a family—remains generally unavailable.⁴⁹ This position sits awkwardly with the Rigveda's own account of adoption's purpose, under which sons and daughters alike are described as serving complementary filial and ritual functions, suggesting that the exclusion of daughters from eligibility for adoption reflects later interpretive practice rather than an unambiguous scriptural command.⁵⁰

India's Hindu Adoptions and Maintenance Act 1956 offers a workable comparative model. Section 7 permits any male Hindu of sound mind to adopt a son or daughter, subject to his wife's consent if living and capable of consenting; section 8 permits any sane, unmarried, divorced or widowed Hindu woman of eighteen or over to adopt independently, and the Act recognises the adoption of orphans and of children irrespective of physical or mental disability.⁵¹ A future Bangladeshi adoption statute could readily adapt these provisions without disturbing the religious character of adoption as an institution.

IX. SUCCESSION AND PROPERTY RIGHTS

A. The General Position

A Hindu woman's property in Bangladesh is divided into two categories: *stridhan*, over which she holds absolute rights, and inherited property, over which her rights are limited.⁵² Under the *Dayabhaga* scheme, only five categories of female relative the widow, the daughter, the mother, the father's mother and the father's father's mother could originally inherit at all; statutory amendment subsequently extended that list, but the class of eligible female heirs remains closed and exhaustively defined rather than a general entitlement.⁵³ Where a woman does inherit, her interest is ordinarily a limited, or life, interest—a “widow's estate” rather than an absolute one, and cannot be alienated except in narrowly defined circumstances of legal necessity, as the High

⁴⁸ Karmakar, *supra* note 6, at 2555-56.

⁴⁹ *Abdul Mannan alias Kazi v. Sultan Kazi*, 12 DLR 31 (1979).

⁵⁰ Rigveda, Mandala 3, Sukta 31, v. 2, as discussed in Karmakar, *supra* note 6, at 2549.

⁵¹ The Hindu Adoptions and Maintenance Act, No. 78 of 1956, §§ 7-8 (India).

⁵² Huda, *supra* note 36.

⁵³ The Hindu Women's Right to Property Act, No. 18 of 1937, § 3(1) (Bangladesh); Karmakar, *supra* note 6, at 2556-57.

Court Division confirmed in *Jotindranath Mandal v. Gouri Das*, holding that a widow inherits her deceased husband's property under section 3 of the Hindu Women's Right to Property Act 1937 but does not become its absolute owner.⁵⁴

B. Position of the Hindu Widow

Under the 1937 Act, a widow or, where there are several widows, all of them jointly inherits the same share as one son, but holds it only as a restricted owner, with the property reverting on her death to the next heir of her deceased husband rather than descending to her own heirs.⁵⁵ India's Hindu Succession Act 1956 abolished the concept of a limited widow's estate entirely: a Hindu widow in India inherits jointly with her deceased husband's son, daughter and other Class I heirs, holds that inheritance in absolute ownership, and is no longer required to remain chaste as a condition of inheriting.⁵⁶ The Yagnavalkya Smriti itself supports an equal, rather than merely a life, interest for the widow, providing that where a deceased man leaves three sons, the property should be divided into four shares, with the widow taking a share equal to that of each son—a scriptural position considerably more generous than the restricted estate Bangladeshi statute presently affords.⁵⁷

C. Position of the Hindu Daughter

Where a son survives, a Hindu daughter in Bangladesh is excluded from inheritance altogether; even where a daughter inherits in the absence of a son, her interest remains a limited one.⁵⁸ India's 1956 Act places daughters in the same class of heirs as sons, so that daughters married or unmarried inherit jointly and equally with sons, widows and mothers, without distinction based on marital status or capacity to bear a son.⁵⁹ That reform was strengthened by the Supreme Court of India's 2018 decision in *Danamma v. Amar*, applying the 2005 amendment to the 1956 Act to confirm that daughters possess property rights equal to those of sons by birth, irrespective of whether the father survived the amendment's enactment.⁶⁰ Scriptural authority again supports a more generous position than Bangladeshi statute currently allows: the Manu Samhita requires a brother to give an unmarried sister residing in the paternal home one-quarter of the family property, and provides that where a deceased man leaves a widow, a brother and an unmarried sister, each should take an equal share; the Narada Smriti further provides that, where the verses

⁵⁴ *Jotindranath Mandal v. Gouri Das*, 27 BLC (HCD) 1 (2022).

⁵⁵ Karmakar, *supra* note 6, at 2551.

⁵⁶ The Hindu Succession Act, No. 30 of 1956 (India); Paras Diwan, *Modern Hindu Law* 361 (1993).

⁵⁷ Yagnavalkya Smriti ch. 2, v. 123; Bishnu Smriti ch. 18, v. 34, as discussed in Karmakar, *supra* note 6, at 2551.

⁵⁸ Alam, *supra* note 15.

⁵⁹ The Hindu Succession Act, No. 30 of 1956 (India), as amended by Act No. 39 of 2005.

⁶⁰ *Danamma v. Amar*, (2018) 3 SCC 343 (India).

of the Smriti conflict or are ambiguous, the conflict should be resolved through conscience, reasoned argument and discussion—a principle Bangladesh's own Civil Courts Act 1887 echoes in directing courts to apply justice, equity and good conscience where no specific rule governs.⁶¹

X. POSITION OF WOMEN IN HINDU SCRIPTURES

The Veda, or Sruti, constitutes the highest source of Hindu Law, and its constituent texts accorded women a position of considerable honour during the Vedic era.⁶² The Rigveda affirms that men and women hold equal rights in a father's property and expressly sanctions the remarriage of widows, while the Atharvaveda condemns polygamy in terms that sit uneasily with its later toleration under Shastric Hindu Law.⁶³ The disparity that nonetheless developed is traced to the period after the Vedic era, and in particular to the Manusmriti, whose harsh treatment of women marks the point at which the more egalitarian spirit of the earlier scriptures began to be displaced by narrower interpretation. Because the Veda itself is composed in Sanskrit, a language largely inaccessible to the contemporary Hindu laity, religious leaders retain considerable interpretive latitude—latitude that, on the account offered here, has too often been exercised to entrench disparity rather than to recover the more egalitarian position the scriptures themselves support.

XI. CONSTITUTIONAL AND INTERNATIONAL OBLIGATIONS

The Constitution of Bangladesh is the supreme law of the land, and any existing law inconsistent with its provisions is, to the extent of that inconsistency, void.⁶⁴ Article 27 guarantees equal protection of the law, and Article 28(1) prohibits State discrimination on grounds of religion, race, caste, sex or place of birth; Article 28(2) affirms equal rights for women in every sphere of public life, and Article 28(4) permits special provision for the advancement of women, a power not yet exercised in this field.⁶⁵ Yet, as the Women's Affairs Reform Commission observed in 2025, no article of the Constitution expressly guarantees equal rights in marriage, divorce, guardianship or inheritance, leaving a legal vacuum that discriminatory personal laws continue to occupy.⁶⁶

⁶¹ Manu Samhita ch. 9, v. 118; Bishnu Smriti ch. 18, v. 34; Narada Smriti ch. 1, v. 40, as discussed in Karmakar, *supra* note 6, at 2552; The Civil Courts Act, No. 12 of 1887, § 37(2) (Bangladesh).

⁶² Huda, *supra* note 10.

⁶³ পবিত্র বেদে নারীদের সম্মান ও অধিকার, VEDIC SANATAN HINDUISM (Apr. 11, 2023).

⁶⁴ Bangl. Const. art. 7.

⁶⁵ Bangl. Const. arts. 27, 28.

⁶⁶ Women Affairs Reform Commission Takes Aim at Constitution, Personal Laws Governed by Religion, Dhaka Trib. (Apr. 19, 2025).

As a State party to a range of international instruments, Bangladesh has undertaken obligations difficult to reconcile with the position described above. Bangladesh has entered reservations to Article 2 and Article 16(1)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW), the latter requiring States parties to secure the same rights and responsibilities during marriage and at its dissolution; Bangladesh accepts the remainder of Article 16, including equal rights and responsibilities as parents and free and full consent to marriage.⁶⁷ Bangladesh has similarly reserved Articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights 1966 insofar as they concern equality between men and women in matters of inheritance, while accepting Article 23 of the International Covenant on Civil and Political Rights 1966, which requires States parties to secure equal rights and responsibilities of spouses during marriage and upon its dissolution, and to protect any children of the marriage.⁶⁸ Because Bangladesh is a dualist State, these treaty obligations do not take direct domestic effect without implementing legislation, so that their practical force depends entirely on Parliament's willingness to legislate—a willingness that has, to date, been largely absent in respect of Hindu personal law.

XII. THE BANGLADESH LAW COMMISSION'S 2006 HINDU LAW BILL: AN UNFINISHED REFORM

The Bangladesh Law Commission, a statutory body established in 1996, drafted a comprehensive Hindu Marriage, Adoption, Maintenance and Succession Bill in 2006 addressing the principal defects discussed above.⁶⁹ The Bill's marriage provisions largely tracked the reforms later enacted in 2012: section 5 required monogamy, capacity to consent, and absence of prohibited or sapinda relationships, while section 5(g) expressly permitted marriage between persons of any caste; section 8 provided for registration through a government-appointed Hindu Marriage Registrar, but section 8(4) specified that the absence of registration would not affect a marriage's validity—the same voluntary-registration defect subsequently carried into the Hindu Marriage Registration Act 2012.⁷⁰ Section 10 permitted judicial separation on grounds including habitual assault, drunken violence, sustained mental cruelty, and a husband's maintenance of a concubine, but the Bill was silent as to maintenance

⁶⁷ Convention on the Elimination of All Forms of Discrimination Against Women arts. 2, 16(1)(c), Dec. 18, 1979, 1249 U.N.T.S. 13; Karmakar, *supra* note 6, at 2542.

⁶⁸ International Covenant on Economic, Social and Cultural Rights arts. 2-3, Dec. 16, 1966, 993 U.N.T.S. 3; International Covenant on Civil and Political Rights art. 23, Dec. 16, 1966, 999 U.N.T.S. 171; Karmakar, *supra* note 6, at 2542-43.

⁶⁹ Bangladesh Law Comm'n, Report on the Proposed Hindu Marriage, Adoption, Maintenance and Succession (Codified) Act (2006); Karmakar, *supra* note 6, at 2558.

⁷⁰ Bangladesh Law Comm'n, *supra* note 69, §§ 5(g), 8(4); Karmakar, *supra* note 6, at 2559.

following such separation, unlike the 1946 Act it would have displaced.⁷¹ Section 13 permitted divorce on grounds of conversion, incurable mental illness, asceticism, prolonged absence and the husband's polygamy, closely tracking the Parashara Samhita's five traditional grounds discussed in Part 6.1 above, though without acknowledging that scriptural source, and without any accompanying provision for divorce registration.⁷² The Bill's adoption provisions required a wife's consent before a married man could adopt, and permitted a single, divorced or widowed woman to adopt, but left the existing bar on inter-caste adoption untouched notwithstanding that the same Bill removed the equivalent bar on inter-caste marriage.⁷³ Most significantly, the Bill's succession provisions placed daughters in a second class of heirs, entitled to inherit only where no first-class heir—a category confined to sons, grandsons and widows—survived, thereby reproducing, in codified form, the very gender disparity the Bill was ostensibly drafted to remove.⁷⁴ The Bill was never enacted, and the voluntary registration model it proposed passed into law in 2012 without the accompanying reforms to divorce, adoption and succession that might have made registration meaningful.

XIII. THE 2025 REPORT OF THE WOMEN'S AFFAIRS REFORM COMMISSION

Following the political transition of 2024, the interim government constituted a ten-member Women's Affairs Reform Commission in November 2024, chaired by Shireen Huq, founder of the women's rights organisation Naripokkho, with a mandate to identify measures for eliminating discrimination against women and achieving substantive gender equality.⁷⁵ The Commission conducted forty-three internal meetings and thirty-nine consultation sessions with women's organisations, indigenous and marginalised communities, and labour groups across several divisions, before submitting its 318-page report to the Chief Adviser, Professor Muhammad Yunus, on 19 April 2025.⁷⁶ The report sets out 433 recommendations across seventeen chapters, organised in three phases: immediate measures for the interim government, measures for the first term of an elected government, and longer-term aspirational reforms.⁷⁷

Of direct relevance to this article, the Commission recommended that an ordinance be issued to establish a Uniform Family Code guaranteeing equal rights in marriage, divorce, inheritance

⁷¹ Bangladesh Law Comm'n, *supra* note 69, § 10; Karmakar, *supra* note 6, at 2559-60.

⁷² Bangladesh Law Comm'n, *supra* note 69, § 13; Karmakar, *supra* note 6, at 2560.

⁷³ Bangladesh Law Comm'n, *supra* note 69; Karmakar, *supra* note 6, at 2560-61.

⁷⁴ Bangladesh Law Comm'n, *supra* note 69, § 46; Karmakar, *supra* note 6, at 2561.

⁷⁵ Women Affairs Reform Commission Takes Aim at Constitution, Personal Laws Governed by Religion, *supra* note 66.

⁷⁶ *Writ Filed Challenging Legality of Women Affairs Reform Commission Recommendations*, THE BUS. STANDARD (May 4, 2025).

⁷⁷ *Women's Reform Commission Report and State Accountability*, PROTHOM ALO (May 19, 2025).

and maintenance to women of all religious communities, to be applied on an optional basis in the first instance so that no community would be compelled to abandon its existing personal law immediately.⁷⁸ For the subsequent term of an elected government, the Commission recommended amendment of the Muslim and Hindu inheritance laws specifically, to secure women a fifty per cent share of property, together with amendment of the Guardians and Wards Act 1890 to establish equal guardianship rights over children, and withdrawal of Bangladesh's outstanding reservations to CEDAW.⁷⁹ The Commission's own findings noted that, whereas Muslim personal law at least confers on daughters a defined half-share relative to sons, Hindu personal law in Bangladesh leaves daughters' inheritance rights more restricted still, and in many circumstances effectively absent, a finding that corroborates, from an independent official source, the analysis of Hindu succession law set out in Part 9 above.⁸⁰

The report's reception illustrates both the difficulty and the necessity of reform along the lines this article proposes. Several of the report's recommendations, particularly those concerning Muslim inheritance law, provoked sustained public and political opposition, including a writ petition before the High Court Division challenging their constitutionality and consistency with religious law.⁸¹ Notably, however, opposition to the Commission's Hindu law recommendations has not come only from outside the community: some Hindu community representatives have publicly maintained that questions of Hindu family law reform should be resolved by the Hindu community itself rather than imposed by a state commission, echoing the pattern of resistance from religious leadership that also met India's reforms in the 1950s and that this article's own recommendations must anticipate.⁸² Independent research published later in 2025 similarly documents that civil-society efforts to reform Hindu marriage registration and inheritance in Bangladesh have achieved only partial success, meeting resistance from both the State and conservative Hindu religious leaders.⁸³ The Commission's report, whatever its ultimate legislative fate, nonetheless marks the first occasion on which the specific disparities in Hindu succession law identified by this article's literature have been formally acknowledged in an official government document, and its eventual implementation - even if only through the

⁷⁸ ১৯ এপ্রিল প্রধান উপদেষ্টার কাছে প্রতিবেদন জমা: নারীর জন্য ৩০০ সংরক্ষিত আসন, বিয়ে-তলাক, উত্তরাধিকারে সমান অধিকার দেওয়ার সুপারিশ, PROTHOM ALO (Apr. 19, 2025).

⁷⁹ *Id.*

⁸⁰ *Women's Affairs Reform: A Step towards Ending Gender Discrimination but Implementation a Tall Order*, THE BUS. STANDARD (Apr. 21, 2025).

⁸¹ Writ Filed Challenging Legality of Women Affairs Reform Commission Recommendations, *supra* note 75.

⁸² নারী সংস্কার কমিশনের যেসব সুপারিশে আপত্তি, ITTEFAQ (May 4, 2025).

⁸³ MAHEEN SULTAN ET AL., PROTECTING WOMEN'S FAMILY RIGHTS IN A MINORITY COMMUNITY: HINDU FAMILY LAW REFORM IN BANGLADESH (Inst. Dev. Stud. 2025).

optional civil framework the Commission itself proposed - would represent a materially different legal landscape from the one this article otherwise describes.

XIV. FINDINGS

The analysis above yields the following principal findings. First, Bangladesh has enacted no comprehensive statute governing Hindu marriage, divorce, adoption or inheritance, and inheritance remains governed by the Dayabhaga doctrine of religious efficacy rather than the principle of equal consanguinity India adopted in 1956. Second, although the Hindu Marriage Registration Act 2012 was enacted to provide documentary proof of marriage, registration remains voluntary and without legal consequence, a defect the Bangladesh Law Commission's own 2006 Bill had already built into its proposed scheme, leaving Hindu women unable, in practice, to establish their marital status before a court, as Amulyan Chandra Modak, Utpal Kanti Das and Karatala Lakshmi Bihar each illustrate. Third, Shastric Hindu Law contains no statutory divorce provision, notwithstanding scriptural authority in the Parashara Samhita that could support one, and the 2006 Bill, though it proposed divorce grounds tracking that scriptural authority, was never enacted. Fourth, adoption remains structured to privilege male adopters and male children, excluding orphans in the absence of custom and, in substantial part, excluding women from adopting independently. Fifth, under the Hindu Women's Right to Property Act 1937, a widow acquires only a life interest, and a daughter's claim to inherit at all, where a son survives, is excluded altogether—a position the 2025 Women's Affairs Reform Commission has itself identified as more restrictive than the position under Muslim personal law in Bangladesh.

The loopholes underlying these findings are legal, institutional and social in roughly equal measure. Registration, judicial separation, divorce and inter-caste adoption were each addressed, at least in outline, by the Bangladesh Law Commission as long ago as 2006, yet only the least consequential of these proposals—voluntary registration—was ever enacted, while the reforms capable of giving that registration practical force were not. Social resistance within sections of the Hindu community, reflected both in the muted reception of the 2006 Bill and in some Hindu community representatives' response to the 2025 Commission report, remains a genuine and recurring obstacle, though the Vedic scriptural record itself, as Part 10 demonstrates, does not compel the disparity that later interpretation has entrenched. A further, more institutional finding follows from reading the 2006 Bill and the 2025 report together: successive reform efforts in Bangladesh have tended to address registration and procedure before addressing the substantive rules of divorce and succession that make registration worth

having, so that each reform, taken alone, has improved documentation without improving outcomes.

XV. RECOMMENDATIONS AND CONCLUSION

A. Recommendations

On the basis of the foregoing findings, the following legislative measures are recommended, each achievable through legislative amendment or enactment alone, and each capable of drawing on models already available from India's 1955–56 reforms, Bangladesh's own 2006 Law Commission Bill, or the 2025 Women's Affairs Reform Commission report:

- Registration of Hindu marriage should be made compulsory, with a real consequence for non-registration, rather than repeating the voluntary model of the 2006 Bill and the 2012 Act.
- A dedicated Hindu Marriage Act should be enacted specifying a binding minimum marriageable age tied to the validity of the marriage itself, not merely to its registrability.
- A Divorce Act should be introduced granting Hindu husbands and wives equal rights to seek divorce and to remarry following dissolution, drawing on both the Parashara Samhita's traditional grounds and the fuller ground structure of India's Hindu Marriage Act 1955, including provision for judicial separation and divorce by mutual consent.
- Polygamy contracted without lawful sanction should be made a punishable offence, as it is in India, subject to any narrowly defined exception requiring prior permission of a competent legal authority.
- Sections 2 and 3 of the Hindu Widows' Remarriage Act 1856 should be repealed, so that a widow who remarries no longer forfeits either her property or her guardianship of her children.
- A codified Hindu Adoption Act should be enacted, modelled on India's Hindu Adoptions and Maintenance Act 1956, conferring on unmarried, divorced and widowed women the independent right to adopt, extending eligibility for adoption to daughters, orphans and children with disabilities, and removing the bar on inter-caste adoption that the 2006 Bill left untouched.
- A Hindu Succession Act should be enacted placing daughters, irrespective of marital status, on an equal footing with sons as first-class heirs—correcting the very defect the 2006 Bill itself reproduced by relegating daughters to a second class of heirs.

- The optional Uniform Family Code recommended by the 2025 Women's Affairs Reform Commission should be enacted without further delay, at minimum on the voluntary basis the Commission itself proposed, as an immediate and comparatively achievable first step pending fuller reform of Hindu personal law.
- Any reform process should include structured consultation with Hindu religious and community leadership from the outset, in order to address directly the concern, raised by some within the community in response to the 2025 report, that reform not be perceived as externally imposed.

B. Conclusion

More than five decades after independence, and notwithstanding a Law Commission Bill drafted in 2006 and a Reform Commission report submitted in 2025, Hindu women in Bangladesh continue to be denied rights that a properly codified Hindu Law would secure. The recurring pattern across both episodes—a defect identified, a reform proposed, and implementation left incomplete or entirely absent—suggests that the principal obstacle to reform is no longer a lack of technical legislative drafting, since both the 2006 Bill and the 2025 report supply workable templates, but a persistent absence of political will to see either through to enactment. Hindu Shastric Law is among the most ancient of personal law traditions, and during the Vedic era women were accorded considerable respect, with no significant disparity of social right between the sexes; the principal Hindu scripture, the Veda, itself draws no such distinction. The Hindu community may accordingly proceed with confidence that introducing gender equality into Hindu legislation, and reforming the discriminatory provisions identified in this article, would not compromise the underlying spirit of Shastric Hindu Law, but would instead restore it—provided that reform is pursued, this time, to actual completion.
