

## Evolving Traditions: The Need for Legal Frameworks for Hindu Marriage Dissolution in Bangladesh

Susmita Das\*

**Abstract:** Dissolution of Hindu marriages is an unresolved legal issue in Bangladesh, due to the absence of specific legislation. Rooted in Hindu Shastra, marriage is viewed as an indissoluble tie that persists even beyond death. However, practical realities necessitate the reconsideration of this perspective, as now-a-days the number of Hindu couples willing to end their marriage facing irreconcilable issues is increasing. This article examines the critical need for enhancing a formal legal framework for dissolution of Hindu marriages, highlighting how Hindu law has historically evolved to meet societal demands and should continue to do so. The paper begins with exploration of the sanctity and permanence traditionally attributed to Hindu marriages, contrasting this with the current legal vacuum in Bangladesh regarding marriage dissolution. It delves into the informal methods currently resorted to by couples seeking separation, assessing these methods, their implication and legal standing. It emphasizes that reforming Hindu marriage laws to include dissolution mechanisms does not undermine religious sanctity but rather aligns with the historical adaptability of Hindu law to contemporary needs. Given the extensive writings that suggest legislative measures to formalize the dissolution of Hindu marriage, the author finds it unnecessary to reiterate those recommendations. Instead, the author concludes with an argumentative discussion on the reasons behind the resistance to legal reforms and its rationality. By establishing a formal legal framework for dissolution of Hindu marriage, Bangladesh can ensure humane outcomes for individuals in distressed marriages, fostering a more inclusive and equitable legal system.

**Keywords:** Hindu marriage dissolution, Hindu Shastra, indissoluble marital bond, informal separation methods, legal vacuum, contemporary social need, marriage law reform, equitable legal system.

### 1. Introduction

Hinduism places a very high value on marriage from religious context. The general concept of marriage under Hindu law is that it is an unbreakable sacred tie between man and woman which continues even in the next world. It is considered to be a *samskara* (sacrament), and not a mere social contract. (Khan, 2015) According to ancient Hindu scriptures marriage is the last of the ten sacraments (Sundaribai v. Shivanarayan (1908) and is a sacred union between man and woman for the performance and fulfilment of religious duties. Procreation of children and giving legality to intercourse are not the sole purpose of marriage under Hindu Dharma Shastra. It is believed that a man is only the half of himself until he takes a

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\* Lecturer, Department of Law, Eastern University, Dhaka.

wife. (Khan, 2015) That means only marriage can complete a man until that he is half born and all his religious duties are half performed. Since dissolution of marriage would mean that a person is being severed from half of himself, the idea of dissolution is not approved under Hindu law.

However, dissolution of Hindu marriage is allowed under Mitakshara school in special cases if it is allowed by the custom from which the couple belongs. (Mulla, 2018) But there is no similar practice under Dayabhaga School. Since the Hindus of Bangladesh are governed by the Dayabhaga School any Bangladeshi Hindu married couple cannot get a divorce even if they want it. No act has been enacted regarding divorce in Bangladesh whereas, our neighborhood country India has already enacted a befitting act called *The Hindu Marriage Act, 1955* which is applicable to all the Hindus living in India. In Nepal, there are also specific laws regarding divorce of people of Hindu community. Though in Bangladesh we have specific laws regarding divorce for the Muslim and Christian Community, little attention has been paid to reform or, modify Hindu personal law in Bangladesh since our independence. With the progress of the society the ideas and values relating to marriage are also evolving. Laws are becoming more humanitarian. Considering all these, dissolution of Hindu marriage should be permitted by law on certain grounds.

### **1. The Absence of Legal Provisions Regarding Hindu Marriage Dissolution in Bangladesh**

An act named The Hindu Women's Right to Separate Residence and Maintenance Act, 1946 was enacted in the British period which allows Hindu married women to claim separate residence as well as alimony from her husband on certain grounds. As per section 2 of the said act, the grounds for claiming separate residence are:

- 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 a concubine in the house or habitually resides with a concubine;
- 7) For any other justifiable cause;

Provided that a Hindu married woman shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by change of her religion or, fails without sufficient cause to comply with a decree of a competent court for the restitution of conjugal rights.

If we go through this provision, we will see that it has only permitted separate residence and maintenance to the wife by the husband. There is no mention of any kind of dissolution under this Act. That means, the wife may get the decree of separate residence and maintenance from the competent court by establishing all or, any of the above-mentioned grounds. However, it does not mean that the marriage is dissolved. The marital status remains the same. That is why, The Hindu Women's Right to Separate Residence and Maintenance Act, 1946 is no solution to the Hindu couples trapped in troubled marriage who only want to get rid of the marital bond.

The only law that has been enacted regarding Hindu marriage is The Hindu Marriage Registration Act, 2012, under which Hindu couples may register their marriage and collect marriage certificate. Whereas, for Muslims there are Acts named, Dissolution of Muslim Marriage Act, 1939, The Muslim Marriages and Divorces (Registration) Act, 1974, for Christians there is The Divorce Act 1869.

In the case of Nirmal Kanti Das Vs Sreemati Biva Rani (1994) it was held that, all citizens of Bangladesh regardless of their religion have the right to institute suits under the Family Courts Ordinance 1985 claiming dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of child and so, a Hindu woman can file a suit for maintenance under the said ordinance. In the case of Pochon Rikssi Das Vs Khuku Rani Dasi and Others (1998), it was held by a special bench of the High Court Division that the Family Courts Ordinance, 1985 is applicable to all citizens irrespective of their religions. The Court also mentioned that the said Ordinance has not taken away the right of any citizen belonging from any religion to institute suits under this Ordinance. Since, The Family Courts Act, 2023 has been enacted repealing the Family Courts Ordinance, 1985, it can be said that above mentioned judicial decisions will be applicable to the family courts established under the Family Courts Act 2023 as well. But there still remains an issue unaddressed and that is since under Hindu Personal law the concept of divorce is not approved whether the Act of 2023 will override the personal law in this regard. The rational answer to that question should be 'No'. Because in order to entertain a suit for divorce it is necessary to approve the concept of dissolution under the Hindu personal law. Since, divorce is unapproved under Hindu personal law it is not possible to ensure right to sue for divorce under the Family Courts Act 2023. Firstly, right of divorce has to be ensured. The question of right to sue in the Family Courts comes later. Secondly, there is no judicial precedent where it has been specifically declared by the court that suit by a Hindu man or, woman for divorce will be maintainable under this Act. Moreover, a provision clarifying the vagueness could easily be incorporated in the Family Courts Act, 2023. The law makers have very cautiously ignored the issue while enacting this Act. However, Hindu Couples can seek help from Family Court only when the marriage is solemnized by the Special Marriage Act, 1872. (Masum, 2023)

It should be mentioned that, in 2015, the High Court Division has issued a rule on the Government asking it to explain the reason 'why a Hindu woman would not be allowed to divorce her husband as there exists no right to do so in the Hindu personal laws?' -following a writ petition filed by Bangladesh Human Rights Foundation led by Chief Executive Alena Khan and aggrieved individual Arpita Das for enforcement of her fundamental rights. (Bangladesh Human Rights Forum and Arpita Das Vs Government of Bangladesh, 2014) The petitioner claimed that the Hindu laws on marriage and divorce are inconsistent with the fundamental rights which are guaranteed in the articles 26(1), 27, 28, 31 and 32 of the Constitution of Bangladesh, as well as article 3, 5, 7 and 16(1) of the Universal Declaration of Human Rights. It is also mentioned by the petitioner that as Bangladesh has ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) that has focused on the same rights and responsibilities for both men and women. It is necessary to ensure the enforcement of the provisions of CEDAW by enacting necessary laws.

Lack of formal legal mechanism to end marriage often results in prolonged unhappy married life. It also leads Hindu Couples to resort to informal agreements or, settlements to separate which lacks legal recognition and protection. In the absence of legal framework these settlements are mostly arbitrary and disadvantageous to Hindu women. Furthermore, the informal settlements often leave children in unstable environments without proper legal

protection and support arrangements. Not only that. As divorce is not socially accepted women facing difficulties in marriage do not seek separation even by informal ways because of fear of social stigma and ostracization. Thus, individuals are forced to remain in toxic and abusive relationships without any hope for a legal remedy.

## **2. Historical Context: Evolution of Hindu Law to Adapt to Changing Societal Needs**

Hindu law is an ancient legal system, deeply rooted in Dharma having a rich history of continuously embracing evolution to meet the changing social, economic and cultural needs of society. (Kane, 1975) Because of such resilience and adaptability, Hindu law remains relevant to this day. Its longevity can be attributed to the ability of Hindu Law to evolve with time while preserving its core principles. The Privy Council, in the case of *Mookka Kone vs Amma Kutti* (1928), recognized that Hindu law is not static or rigid but undergoes continuous progression while adhering to its core values. The laws as expounded from Shrutis and Smritis in the Sanskrit Commentaries and Digests, along with customary practices, forms the basis of Hindu personal law. (Mulla, 2018) These texts have undergone significant reforms and are often supplemented and modified by evolved customs and traditions to address contemporary issues, reflecting a progressive adaptation to modern values. Some of the key legal reforms in Hindu personal laws are discussed here.

- A. **The Hindu Marriage Act, 1955:** The Hindu Marriage Act, 1955 is a landmark legislation enacted by Indian Parliament introducing provisions for divorce, recognizing various grounds such as cruelty, desertion, adultery and mutual consent. This Act is a significant departure from traditional Hindu ideas which consider marriage as an inseparable tie.
- B. **The Hindu Succession Act, 1956:** It is another revolutionary legislation enacted by India which aims to eliminate gender discrimination in inheritance law and ensure equal rights to inherit property by both men and women.
- C. **The Hindu Adoption and Maintenance Act, 1956:** By enactment of this act India has standardized the adoption process of Hindus, ensuring that both girls and boys can be adopted, adopted children and biological children will have same rights, mothers can take and give in adoption, orphan children can be adopted and so on. None of these were approved under the Shastric Hindu law.

Apart from enactment of legislation judicial precedents are also being established which play an important role in reformation of Hindu law. For instance, the case named *Rama Pandey v. Kailash Nath Pandey* (1976) upheld the right of divorce on the grounds of cruelty, reinforcing the importance of personal freedom in marital relationship.

The above discussion highlights the remarkable adaptability of Hindu Personal law despite its ancient origin. Historically, vouchsafed Brahmin lawmakers, through devotion and extensive study and interpretation of the Shrutis and Smritis texts crafted laws that respected sacred principles and ideas while meeting societal needs. The evolution of Hindu law would not have been possible if it were rigid and unchanging. The current form of Hindu law is clearly the result of reform and adaptation to the changing condition of the society. Enactment of new laws addressing different contemporary issues is a part of such adaptation. A Hindu majority country like India has brought remarkable reform to its Hindu personal law for a progressive society in order to uphold human rights. Reformation is a practical necessity. But in Bangladesh reformation in Hindu Law has been proven to be extremely difficult. The

active Hindu groups like ‘Bangladesh Matua Mahasangha’, ‘Bangladesh National Hindu Grand Alliance’, ‘Hindu Law Amendment Prevention Committee’, ‘Jago Hindu’ treat any effort of reformation as unnecessary political interference in the Hindu cultural traditions considering such attempts as an affront to their divine law and tradition. (Biswas, 2022) They hold the rigid view that Hindu law is divine, so these can in no way be reformed or, modified or, amended by human authority. This mindset, coupled with the influence of hardliners on the broader Hindu community, is hindering progress on critical issues such as the right to seek divorce, women’s right to inheritance and the adoption of a girls and orphan. It is crucial to examine the history and evolution of the Hindu jurisprudence to understand that Hindu law has historically embraced reform and modification to establish rights and duties of people and for the betterment of the society.

### **3. Informal Methods of Hindu Marriage Dissolution and Their Legal Standing**

In Bangladesh, Hindu couples are often seen to resort to several informal methods to dissolve their marriages due to the absence of formal legal provisions in this regard. One common method is mutual consent where both parties agree to live separately and disputes of finance and property are facilitated through community mediation where respected community leaders or, elders from both sides facilitate these agreements. In most cases, the community-mediated agreement includes one-time monetary payment from the husband to the wife as compensation and to ensure her financial security post-separation.

Another practice involves arbitration sessions organized by local community leaders such as Pourashova Mayor or, Union Councilor where both parties present their grievances. The arbitrators may ask the couple to take some time before ending the marriage. They are often given 6 months for mutually solving their issues and reconsider their decision. If situation remains the same after 6 months the arbitrators reach a mutually acceptable resolution. The community leaders may declare them separated. Following this declaration parties give their signatures on the mutual agreement and later on they may get the agreement notarized. This cannot be considered as legal document of dissolution of marriage.

For instance, in a case from Chattagram, a couple who had been married for ten years decided to get separated because of irreconcilable differences. They approached a local religious leader to be their mediator. In the mediation an agreement was facilitated between the parties where the husband consented to give a monetary payment to the wife. This arrangement allowed the couple to part ways amicably without legal interference. (Biswas, 2018)

The informal methods are socially accepted within the Hindu Community providing a practical, albeit unofficial solution for married individuals seeking separation. Communities’ acceptance of the informal methods of dissolution makes it easier for the separated couple to live a healthy social life without the worry of social stigma. But the informal methods do not offer complete solution to every problem that arises from the separation. For example, the agreement of separation which is a result of arbitration or, mutual consent or, private divorce is not a legally recognized document. Hence, when the money promised to be paid by the husband as financial support to the wife is not given to her, she cannot approach court for enforcement of the agreement because under the State law they are not allowed to get divorce let alone any alimony or, property claims. So, when the question of legal enforcement comes the informal document of separation is of no use.

While writing this paper, the author has personally interviewed three Hindu women in Narsingdi district. All of them got separated from their husbands by community-mediated

agreement where the husbands were ordered to pay specific some of money to the wives. In one case the husband paid one-third of the money that was agreed to be paid. The other two did not pay any money at all and the wives are now living miserable life with children. The wives approached to the mediators but in vain because the mediators can only direct the parties to pay the money. Mediators cannot take any legal action against either party under the informal agreements. One of the women interviewed by the author told that, the shalish process is ineffective for women. Through this informal process husbands are released from all marital obligations by paying a minimal sum of money to their wives. However, this amount is not adequate to give her financial support, especially since she has no other source of income. Tragically, even the small sum agreed upon has not been paid, and the mediators are reluctant to enforce their own decisions. Meanwhile her husband has remarried and is living happy life. Consequently, mediation tends to bring more misery to women while benefitting men. This situation indeed underscores the need for formal legal reforms to safeguard the rights of women.

#### **4. Arguments for Enacting a Legal Framework for Hindu Marriage Dissolution**

The urgency of a legal framework for the dissolution of Hindu marriage in Bangladesh cannot be denied given the inequities embedded in the narrow interpretations of the religious texts. The lack of legal provisions has caused and still causing suffering to both Hindu men and women. The neighboring countries like India and Nepal have undergone remarkable reforms to address these issues. They have incorporated legal framework for divorce and ensured better protection of rights. But in Bangladesh we are following the same outdated concept of inseparability of Hindu marriage.

Many articles and research papers have recommended creating new laws for the dissolution of Hindu marriages. They suggest legislative measures to formalize the process and ensure fair and just proceedings. Given the extensive writings on the topic and examples of similar legislation in the neighboring countries, the author finds it unnecessary to reiterate the recommendation part. Instead, the author will explore why progress is slow and what is causing legislators to hesitate. Here the author has examined from different perspective if there are valid reasons for resisting legal reform and holding onto the concept of inseparability of marriage as per the ancient Hindu law.

- A. Polygamy and the Concept of Marriage:** The Hindu law permits a man to have more wives than one at the same time while restricting women to one husband. (Khan, 2918) The idea of polygamy was not something mentioned in ancient scriptures. Rather it was gradually introduced in the society for different reasons like sonship, unchastity of wife, invalidity of inter-caste marriage etc. (Olivelle, Patrick, 1986) Acceptance of polygamy in the society is a proof that Hindu law has not always been rigid about marital relationship. The acceptance of polygamy raises critical questions about the traditional concept of marriage as indissoluble, soul-to-soul relationship under Hindu law. How can a man have multiple soul connections when a woman cannot? This sounds irrational. Still polygamy got approval on the basis of social needs. It should be noted that at that time laws were mostly male-dominated, women were deprived in many ways. While making laws little attention was given on equal rights of men and women. But at present legislatures' primary aim is the establishment of equality and non-discrimination. Now, the point is if by wider interpretation of traditional laws soul-to-soul relationship can be established by a man with several women to meet up social needs, then allowing couples to mutually end their marriage when it no longer holds love and respect should also be reasonable. No

religious scripture aims to force individuals to remain in a relationship that is soulless just to uphold religious sanctity. It is neither logical nor, compassionate. Religion should not mandate suffering under rigid interpretation of sacred texts, but should support human dignity and peace of mind.

**B. Flexibility of the Special Marriage Act, 1872:** In Bangladesh, The Muslim Personal Law (Shariat) Application Act, 1937 regulates the marriage for Muslims. The Christian Marriage Act, 1872 governs marriage laws for Christians. Hindus follow their sacred religious texts' principles concerning marriage. Marriage is considered to be a civil contract between man and women under Muslim law. On the contrary, Hindu law treats marriage as a religious sacrament, not a mere contract. Each religion has their own rules and regulations that needs to be followed to get married. The regulations governing marriage like the marriageable age, eligibility of being bride or, groom, requirement of witnesses, performance of religious rituals vary depending on the faith to which the intended couple belongs. However, it may so happen that one individual of one faith have a relationship with an individual of any other faith. When two people belonging from two different religion want to get married, then the religious restrictions become a hindrance for such a marriage. Preventing individuals to marry anyone from different religion is a clear violation of his or, her constitutional rights *i.e.*, right to life and freedom to profess, practice and spread any religion given respectively under article 32 and 41 of the Constitution of Bangladesh. Bangladesh has incorporated The Special Marriage Act 1872 to validate inter-religion marriage and hence has upheld fundamental rights ensured in the Constitution. This act has made marriage lawful for those who do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion, and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion and to legalize certain marriages the validity of which is doubtful. (The Special Marriage Act, 1872) In addition to legalizing interfaith marriage this act has also given freedom to the couples married following this act to get divorce under the Divorce Act, 1869. If such flexibility is acceptable for interfaith couples, then why should two individuals from same religion not have the freedom to end their marriage if it turns out to be irreconcilable? It is unjust to deny the right to dissolve marriage to Hindu couples willing to do so. This disparity highlights the need for a coherent legal framework that ensures equality regardless of their faith.

**C. Instances of Reformation Brought in Hindu Law**

According to Hindu law, marriage is seen as an indissoluble sacred bond between husband and wife. This principle has led some hardliners and active religious organizations and Hindu leaders to view the dissolution of marriage as a violation of religious principles. But is this truly the case? Does reforming the law really mean disrespecting religion? Is reformation an unknown concept in Hindu law? Let's delve into the questions. The concept of adoption in Hindu law is not explicitly mentioned in the Vedas, the primary source if Hindu Law. Instead, it was introduced out of the necessity of ensuring sonship, as sons are essential for performing last rites. (Khan, 2015) Since not all couples have biological son, adoption became an alternative. Over time, the practice of adoption was adapted to meet societal needs, gaining legal and social validation through customary practices. These customs were eventually codified into law and incorporated into legal framework. If the then Hindu law makers had seen adoption laws as an affront to the religious practice, adoption laws would never been established. Similarly, the concept of remarriage for Hindu widows was

not present in religious texts, but over time, as people became more aware of human rights and need for equal treatment, laws were eventually introduced to allow Hindu widows to remarry. This change did not defame the religion ensured basic human rights. The practice of Sati, where a widow would immolate herself on her husband's pyre, was also abolished. This practice was seen as a disgrace for the widow if her husband died first. However, with leaders like Raja Ram Mohan Roy, these superstitious ideas were challenged and ultimately eradicated by enacting laws. Holding onto such outdated ideas brings disrespect to religion, not dignity. From these discussions, it is evident that reformation has historically been part of Hindu personal law and is not a sudden, alien concept. So, why do legislators in Bangladesh hesitate to introduce divorce laws, which are urgently needed by the Hindu community, out of fear of sparking religious sentiments? Such reluctance of the law makers is not benefitting the community at all.

- D. Physical and Psychological Suffering:** Lack of legal provision for divorce leaves no option for couples to get untied. That is why, many couples suffer in their soulless, unhappy conjugal life which often become reason of brutal behavior of husband towards wife. Wives falling victim of cruelty of husbands is a common scenario in our country. Though in other personal laws there is option of seeking divorce on the ground of cruelty. But in case of Hindus of Bangladesh the wives can only seek separate residence and maintenance in such circumstances. (Hindu Women's Right to Separate Residence and Maintenance Act, 1856) This is not a solution to free the women from trapped unhappy marriages. The inseparability perpetuates misery and destabilize family life, contrary to the very purpose of law, which is to promote the well-being of the individuals. What is the use of holding onto traditional religious ideas if it fails to ensure betterment of people?
- E. Impact on Children's Upbringing:** One of the primary purposes of marriage is to procreate children and provide them a stable environment for raising children. The quality of the marital relationship significantly affects the well-being of the children. In troubled marriages, where the couples are unhappy, they are often unable to provide a nurturing and positive atmosphere for their children. Children are perceptive and can sense the discord between parents. Even if they do not fully understand the nature of the conflicts, the ongoing violence, cruelty, disrespect, and lack of love between the parents can severely impact their mental health. Such an environment can lead to the development of psychological problems and behavioral issues in children's growth and well-being, it is often better for parents to part ways rather than remaining in a damaging relationship. It is crucial to reassess our priorities: should we strictly adhere to ancient Hindu law concepts that bring suffering to the couples and their children, or should we allow for dissolution to provide a healthier and a more secure life for future generation? It is time to reconsider whether it is logical to risk the well-being of the children to unsure traditional concepts remain unchanged. The welfare of children and their right to a nurturing environment should take precedence over rigid adherence to outdated concepts of Shastric Hindu law.
- F. Reliance on Informal Methods:** Due to the lack of legal framework, couples in troubled marriages often seek alternate options, leading to a rise in the use of informal yet socially acceptable, methods for divorce. This trend indicates that people are not strictly adhering to the outdated Shastric concept of inseparability. Lawmakers and Hindu community organizations must reconsider their stance: Is it better to cling to

outdated laws that people do not follow, leading them to seek informal solutions with limited enforcement, or, to reform traditional laws and provide a legal framework for dissolution? Reforming the laws would help maintain public confidence in the legal system of the country.

From the above discussion, it is evident that the primary argument against introducing the law on dissolution of Hindu marriage is the ancient concept of Hindu law, which views marriage as indissoluble relationship. This stance is often justified by the desire to protect the religious sentiments of the minority community. However, there are numerous rational arguments in favor of reformation in this regard, which are too compelling to be ignored by lawmakers. It appears that the political parties fear that addressing Hindu law reform might significantly impact general election outcomes.

Political parties in Bangladesh should stop viewing the Hindu community merely as a large vote bank and focus on genuine welfare. Hindu committees and organizations should also set aside their personal interests and stop spreading the idea that reform attempts threaten the basic foundation of Hindu law. Instead, Hindu leaders have a duty to enlighten the general public about the necessity of reform. Rather than creating obstacles for lawmakers, they should work together to bring about these reforms for the benefit of the minority community.

## 5. Conclusion

The nature of law, whether civil, criminal, or personal, evolves to meet the changing needs of the society. If laws remain inflexible, they lose relevance and effectiveness. In Bangladesh, Hindus constitute a minority community. They urgently need reforms to their personal laws. Many aspects of Hindu law still rely on traditional Shastric concepts without modern legislative frameworks such as in cases of marriage dissolution. The right to marry and divorce are connected with fundamental right like right to life. It's not that the lawmakers ignore the need for reform in Hindu marriage laws; political considerations, pressure from Hindu committees, public protests, and electoral impacts often overshadow the urgency of change. Genuine national leadership motivated by the public good is essential to reform outdated laws and provide legal remedies for Hindu couples in troubled marriages. It's crucial to remember that religion should serve people's interests, not be manipulated for personal gain, as this can jeopardize a country's law and order.

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