

HUMAN RIGHTS OF MINORITY WOMEN

Ms. Shatakshi Anand*

Conceptual Framework

The right you get by the virtue of being born as human is called human rights. The right to breathe freely in the air as if you are equal to everyone else is human rights. You need no documentations and no declaration; you just need to be human to get that right.

The concept of 'Human Rights' is not new, but the first major initiative for protection of human rights at international level was taken by the United Nations on December 10, 1948, when the General Assembly adopted the "Universal Declaration on Human Rights" (UDHR). It says: 'The General Assembly proclaims this "Universal Declaration Of Human Rights" as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction'.

It was recognized that the dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. It treats men and women at par and gives them equal rights as it further says: 'Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom'. The declaration was adopted by vast majority of member states including the Islamic states except Saudi Arabia.

* Student, 3rd year, B.A. LL.B., Symbiosis Law School, Pune.

The Universal Declaration on Human Rights contains 30 Articles. Although nowhere in the declaration any discrimination on the basis of gender has been made, the reference of gender/ women has come in Article 2 and Article 16.

- Article 2 says: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.
- Whereas the Article 16 gives equal status to men and women in respect of marriage, during marriage and at its dissolution. It says, 'Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution'.

As per the Declaration, everyone has the right to freedom of opinion and expression and everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. It further says, everyone has the right to recognition everywhere as a person before the law. All are equal before the law and are entitled without any discrimination to equal protection of the law All human beings are born free and equal in dignity and rights. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

If you take out the gist of the entire declaration, it simply means that no justification can be there for discriminating against a person. Women, male, black, white, disabled etc all are equal, human beings deserving equal rights and respect like others.

Religion is the faith that makes a person believe in the existence of a supernatural power that guides him in all spheres of life. People lay their origin to religion. The sense of belongings to this world is derived from the religion you practice. Religion gives majority people an identity. It instills an element of hope in the person, every bad or good situation; it's the religion that gives a person a hope to go on. Losing a religious identity is like losing oneself. But a major question is what if the religion and human rights come in conflict?

Underlying the stance that the concept of human rights is fundamentally secular and therefore outside of, and even antithetical to, the worldwide view of religion. In the words of A.K. Brohi, a legal scholar who served as a federal minister in the Pakistan government,

“There is fundamental difference in the perspectives from which Islam and the west each view the matter of human rights. The western perspectives may by and large be called anthropocentric in the sense that man is regarded as constituting the measure of everything since he is the starting point of all thinking and actions. The perspective of Islam on the other hand is the ocentric-god conscious. The believer has only obligation or duties to god since he is called upon the divine laws.¹

This leaves the person in a paradoxical situation. If the divine law is depleting a person of his human rights, then the person feels in a fix and doesn't know what to do. The United Nations declarations make him feel independent and capable to ask for his rights but the religious laws sometimes pull them back? So is the remedy only to shun the sense of affinity towards religion? Muslim women in particular find themselves in a quandary when they initiate or participate in a discussion on human rights whether in the west or the Muslim societies. Based on their life experience, most Muslim women who become human rights activists or advocates feels strongly that virtually all Muslim societies discriminate against women from cradle to grave. This leads many of them to become deeply alienated from Muslim culture in a number of ways. This sense alienation often times leads to anger

¹ Chatterjee, Mohini, *Feminism and Women's Human Rights*, vol. 2, Aavishkar Publisher, 2004.

and bitterness towards the patriarchal structures and system of thought which dominates most Muslim societies. Muslim women often find much support and sympathy in the west so long as they are seen as rebels and deviants within the worlds of Islam but many of them begin to realize sooner or later that while they have serious difficulties with Muslim culture they are also not able to identify with the western culture. This realization leaves them to feel-isolated and alone. Much attention has been focused on the sorry plight of Muslim women who are poor and oppressed but hardly any notice has been taken of the profound tragedy and trauma suffered by self aware Muslim women of today who are struggling to maintain their religious identities and personal autonomy in the face of both imperialism of western secular culture and the intricacies of Islamic tradition culture.²

For these women, some remedy must be searched within Islam so that women maintain their identity yet are treated as equals. United Nations could not be so trapped in its secular discourse that it would persist in its refusal to deal with the fact that for millions of people whose life are rooted in belief rather than unbelief, human rights become meaningful only when they are placed within the framework of their belief-system.

Human Rights and Minority Women

The Holy *Quran* is supposed to be a record of the exact words revealed by God through the Angel Gabriel to the prophet Muhammad. It contains 114 chapters, *Suras* and is prime source of every Muslim faith and practice. It deals with all the subjects, which concerns human beings, wisdom, doctrine, worship and law. But its basic theme is the relationship between God and its creatures. It provides guidelines for a just society, proper human conduct and an equitable economic system.

Although Islam does not prohibit women from working, but emphasizes the importance of housekeeping and caring for the families of both parents. Many interpretations of Islamic law hold that women may not

² *Ibid.*

have prominent jobs, and thus are forbidden from working in the government. This is an example of violation of the principle of equality.

Men are considered superior to women. As per the Holy *Quran*, men have authority over women because Allah had made one superior to the other because they spend their wealth to maintain them. It says, "And they (women) have rights similar over them (husband) to what is reasonable, but men have a degree over them." (2:228) Men are commanded even to beat their disobedient wives even if he merely fears highhandedness in their wives (quite apart from whether they actually are highhanded). The *Quran* says: "Men are protectors and maintainers of women, because Allah has made one of them to excel the other, therefore the righteous women are devoutly obedient.As to those women whose part you see ill conduct, admonish them, refuse to share their beds, beat them."(4:34). This completely justifies a clear cut domination of the male over female subjecting her to a inferior position. Religion authorizes a person to command the others body mind and soul and if the person refuses then she is an outcast from her own religion. It is a terrible state of women.

A Muslim man inherits more than a female. The *Quran* says, "Allah commands you as regards your (children's (inheritance) to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half". (4:11) That is a man shall inherit twice as much as female. Some scholars say that men inherit more than women because the male is the bread earner and the women will be supported by her male relatives but there are circumstances possible where the sister would be in more need of finances than the wealthy brother. The very concept of being maintained by the man depletes the women of her autonomy and self respect. She not considered a human of equal strata.

The *Quran* gives special status to men in case of marriage. As per sura 4:3 of the *Quran*, a man is allowed to become polygamous upto four wives and also the slave girls are considered as the personal property for their male owners as per sura 4:24. The *Quran* also gives the

ease of divorce to the men, which accommodates the men, but not the women. In most of the cases she needs her husband's permission. Women can be divorced by their husbands with or without cause, but she can only seek divorce from her husband with her husband's consent. This is the most arbitrary provision of Islamic law. While a Hindu woman can imprison her husband for sharing her part of love with another wife, Muslim women have to swallow this poison down their throat. They cannot rebel, because it is their religious law and the man is doing justice to the society by giving equal love and care to three weak women.

Further a divorced woman is not allowed to re-marry her ex-husband even if she wishes to do so without satisfying certain conditions that is only if she marries another man and then this second man divorces her. The *Quran* clearly says: 'And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then if the other husband divorces her, it is no sin on both of them that they reunite.' (2:230)

A Muslim woman's legal testimony is only half of a man's only except in the event that she is accused of adultery. The women are considered deficient in intelligence compared to men. The *Quran* says, "And if there are not two men (available), then a man and two women, such as you agree for witnesses, so that if one of them (two women) errs the other can remind her." (2:282). This is nothing but a mere way of saying that female are not that trustworthy or knowledgeable than man. This presumption takes away her right. There is no justification to the arbitrary discrimination. Supreme Court had gone ahead and tried to give women equal rights in divorce law in the *Shah Bano* case³, but unfortunately the ruling government pulled back the society to the previous stage and brought about an entire enactment to sooth the male prevalence over Muslim society. Even the secular provision of the Cr.P.C. will be applicable to the couple only if the male counterpart gets ready for it. Human rights of the Muslim Women are in a

³ Mohd. Ahmed Khan v. Shah Bano Begum (1985 SCR(3) 844).

pitiabile situation and needs serious pondering and amendments.

Empirical Research Analysis

Objective:

1. To gauge the readiness of the Muslim women for changes in the law.
2. Their view about the human rights problems

Methodology

Primary research was done by discussing with women the problems and then they were asked to write their views in blank sheets.

Universe

The research was conducted on 50 women, the area being Mussalleypur haat of Patna district, Bihar.

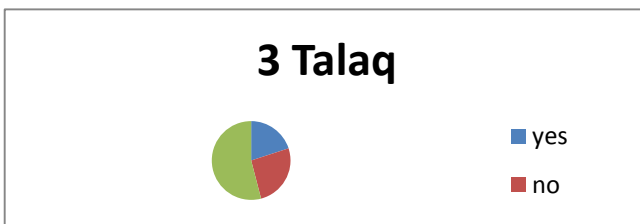
Hypothesis

Women would be somewhat submissive to current law.

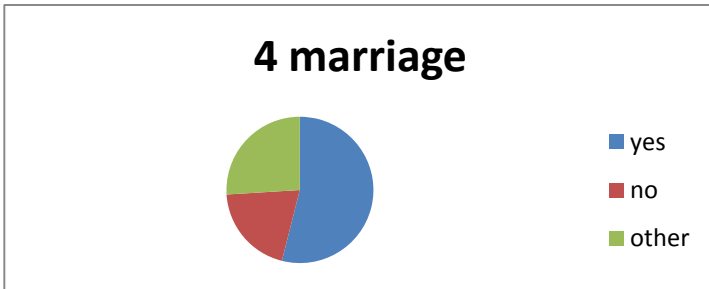
Findings

This was the last group which was only comprised of muslim women. They were asked 3 question:

1. If they wanted the concept of 3 *talaq* to be removed?
2. If they wanted the concept of 4 marriages to be removed?
3. Their concept about *khula*



- Just 20% of the women said that they wanted the concept to be removed.
- 26% said that it should not be removed because it gives time to think. But they also said that if it is given, then wife should be properly maintained.
- Whereas 54% were not sure. They said it was wrong that only male gets this right but at the same time they accepted that is their religion so they were confused.



- 54% of the women wanted the concept of 4 marriages to be removed. They were not ready to share their husband.
- 20% wanted no interference in their sacred law.
- 26% said it was not required to be removed as it is only in books and not in practice.

In the last question,

- 80% of the people said women should get right in *khula*.
- 18% said they had no idea about the concept of *khula*.
- Rest 2% said if women herself leaves her husband, then she should not get any right.

The Hypothesis was somewhat wrong because specially relating to Muslim Marriage issues, women demanded change. Even in *khula* they wanted their right. And the best part of the discussion was that most of them were from very humble families with less or no education. If they wanted to change, I draw another assumption that middle class and upper class of women also demand the same. The summary of the entire finding is that women

are now prepared for change and society needs to remedy them.

Conclusion

While doing the entire research work, the key point which struck me is that there is no personal attack on ISLAM as a religion. The Islamic Feminists believes and respects Islam and is a great protagonist of the same. The interpretation of the religion is made in such an aspect that there is the birth of the patriarchal control. The main motive of these feminists is to shun this control and to bring about equality on the whole. This seems to a great task owing to its roots buried deep since the ancient times, nevertheless there are some remedies which are available for the same.

As the term 'Islamic Feminism' gained currency in the 1990s through the scholars and activists, it would clarify the perspective of a large number of women somewhere between Islamists and secular feminists. While they would not give up their allegiance to Islam as an essential part of self-determination and identity they did critique patriarchal control over the basic Islamic world-view. Islamic feminism did not define these women, and many still reject the term. However, the term helped others to understand the distinction between them and the two dominant approaches for Muslim women's rights.

The impositions of Uniform Civil Code have been open to several discussions. The forefathers truly believed that there is some sort of modernization required before Uniform Civil Code is implemented. Some still fear that ignoring the personal laws, especially the Muslim Law which has been left completely unaltered, would lead to civil war, wide-scale rioting and social unrest. While making the Indian Constitution, its forefathers wanted to adopt the "secular" model of western democracy, but on the contrary it adopted a "secular" state with religious laws for its religious groups. In India, "secular" means "non-intervening in the matter of religion." Drawing from the findings of the research that I conducted, it appears that the basic level of modernization, which is mentioned as prerequisite for the implementation of the Uniform Civil Code has already been achieved. If women, from the

economically lower rung of the society are prepared for change then it has a clear implication that the educated section is already prepared for it. But the time has come where Article 44 of the Indian Constitution which mentions about Uniform Civil Code is the need of the hour, since it respects and keeps religion as the base and brings about equality among the society irrespective of the person's religion.

