



ATROCITIES OR PRIVILEGES OF MUSLIM WOMEN UNDER PERSONAL LAW (WITH SPECIAL REFERENCE TO TRIPLE TALAAQ)

By Zehra Saman

From Jamia Millia Islamia, New Delhi

ABSTRACT: Islam came to the world as resurrection and reawakening the world about the basic human rights in those barbaric times. It provided immense respect and place she deserved in the society. But in today's world, the Muslim women are not in any better position to stand for her rights. Talking about discrimination, unfair treatment and violence against women, we cannot refuse to include these women from that catalog. The necessity to be verbalize about the right to education, right to marriage, divorce, provisions regarding domestic violence, triple talaq etc and see if they are really privileged or oppressed as the world sees them.

PURPOSE/MOTIVATION: Being judged and criticized as a Muslim woman gave me an open mind to research and investigate through this work whether Muslim women are being oppressed or are honored and advantaged under Islamic law and to explore what is their position in Islam, what rights do they have for real? This study aims to have a progressive approach towards the interpretation of the Holy Quran and Hadiths and by going through the relevant provisions in Indian Personal Law, Constitution, so called historical blunder of 1986, Sec.125 Cr.P.C. relating to the political, social and legal rights of women.

This study will explore the status and rights of women in Islam by comparing and analyzing the different schools of thought and also by studying the reasoning and understanding of women's role by Muslim feminists and to what extent they must be followed.

METHODS: Under a cross-sectional analysis, this study aims to analyze the men-women equality in Islam and Quran on special precepts for women and the legislation on women across the world, especially in India.

INTRODUCTION

The gender justice is the fundamental concept in Islam. The justice is the most desired purpose of the God as mentions, 'And surely Allah enjoins justice and benevolence (to others)'¹. Also, the other verse provides that, "And We desire to bestow a favour upon those who were deemed weak in the land, and to make them the leaders, and to make them the heirs."² Justice i.e., fairness and equal opportunity to all means making things reachable to everyone may or may not by same means. The Quran talks about justice and words like, adl, ihsan and rahmah are attributed to it. The Holy Quran talks about not only justice but distributive justice. In the Holy Quran, distributive justice is not in relation to economical matters in particular but also social and political matters for instance, the obligation of Zakaat on the rich people is an example of exclusively matchless model of distributive justice in the Quran. It not only provides economical rights to the poor section of the society but also other rights including right to respect and dignity and political rights as mentioned in

¹. Quran, 16:90.

². Quran, 28:5.



the aforementioned verse that even a poor can be a king in Islam. For instance, if the man is given physical strength over woman then it comes with the duty to protect and maintain her. Whereas, cooking food for husband or nursing the children is not on the woman as a duty.

As the gender justice is the central concept, there are number of verses in the Holy Quran which are addressed to both the genders as *mominat-momineen* and *muslimat-muslimeen*. None is given any preference over one another and supports the notion of gender justice. Also, there is one chapter called, Surah Al Nisa (it's an Arabic word which means The Woman), in the Holy Quran which is completely dedicated to the women. But not a single verse is for men.

The Prophet S.A.W was reportedly saying- As regards the wives he told men, 'the most valuable possession of the man is a virtuous wife. And the most virtuous among you in the sight of Allah is he who is nicest to his wife.'

Here, we can see that if the wife is virtuous then she'll be the most valuable to the husband but husband cannot be virtuous in the sight of the God until and unless his behavior towards the wife is nicest but if not then he'll be accountable for it.

When coming to the mothers, the Prophet SAW was reported to be saying that beneath the feet of mother is the bliss of paradise. And in respect of the daughters, the sayings of the Prophet (peace be upon him) was in this way that, "blessed are the parents to whom daughters are born and they raised them up well without discrimination between them

and their male children. There's a great reward for such parents".

The Muslim women have their own personalities, autonomous and self-reliant. It can be reflected from these verses- O women! Remember that the pious among you will enter Jannah (paradise) before the pious men.

The rights of women are mentioned before the rights of the men, as men prone to their nature and due to their strength can easily snatch their rights from women.

And women shall have rights; Equitably similar to the rights against them, But men have a degree over.³

It is provided in the next chapters in the Holy Quran that-

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than other, and because they support them from their means.⁴

Here it's evidently observable that they are protectors because they are given more physical strength than the women. That's their duty to protect women from any kind of mischief, harm or hurt. But they are maintainers because they have to provide women out of their earned resources.

The light should be thrown at full verse which says, "Men are in charge of women by (right of) what Allah has given one over the other and what they spend (for maintenance) from their wealth. So righteous women are devoutly obedient, guarding in (the husband's) absence what Allah would have them guard..."⁵

So it's observable that the above verse which mentioned that "Men have a degree over women" is further explained that how men

³. Quran, 2:228.

⁴. Quran, 4:34, translated by Yusuf Ali.

⁵. Quran, 4:34, translated by Sahih International.



are a degree above than women because they're the protectors and maintainers, in the latter verse. A degree over them means in terms of rights. They both have equal and similar rights against each other. But as the man is maintaining the woman out of his wealth and protecting her, so the woman should remain loyal to the husband and do not deceive him in his absence. None other right is mentioned other than this. Not only this, a woman do not have an obligation on herself to maintain her or the family. She's the Minister of home and manages the affairs. There's additional verses to bring the attention at is, that the Holy Quran further mentions in the subsequent chapters- The Believers, men and women, are protectors, one of another; they enjoy what is just and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Apostle.⁶

Here both are called as the protectors of one another. It is unquestionably apparent that the term protector, here, is not used for the physical force and strength but to guard each other in the terms of practicing the Islamic duties towards God. Therefore, the expression 'protector' or 'more strength than another' cannot be measured as a superior quality. Rather, it is a duty on the believer man to protect the woman from any kind of injury and exploitation.

The Prophet (peace be upon on Him) in His famous "last Sermon" delivered at Mecca, he appendixes a warning in these words:
Fear God in the matter of women,
Verily women have rights against you,
As you have rights against them

It's clear that the rights men have against women are similar and equal as the rights women have against them. But the duties they both have against each other are different due to the reasons attached to their biological, political and social factors. The concept of distributive justice plays crucial function in making things and rights available and accessible to all, including man and woman, poor and rich, old and young, master and slave, etc. The reason of putting more responsibilities and duties on the shoulders of man is not that a woman is inferior to him but due to the biological, socio-political and economical reasons. A woman can enjoy that status lavishly of being maintained, honored and protected but if she has none to maintain her in those circumstances, she is free to go out for her livelihood and other necessary engagements.

RIGHTS OF THE WIFE-

From the right to marry to choose the spouse and dissolution of marriage, the Islamic laws have provided provisions regarding these all. The Holy verses of Quran states that, "do not obstruct them from marrying their husbands, if they mutually agree in a normal way"⁷. The women at the time of Prophet SAW were free to choose their spouses. In one incident, one woman reached at Prophet's house and narrated that my father has married me to his nephew and I'm not happy with this. The Prophet SAW called on her father and entrusted the matter to her directly but she then allowed what her father did, once her father was present there. She further added that I wanted women to know that the fathers do not have anything in this regard⁸.

⁶. Quran, 9:71.

⁷. Quran, 2:232

⁸. Al-Bukhari, Sahih, Nikah, bab yankih al-abu wa ghayru-hu al-bikr wa-l-thayyib illa bi-rida-ha.



Abu Huraira reported that the Prophet said a grown up girl should be asked before giving her away in marriage. If she remains silent, its permission from her but if she denies then there should not be any compulsion on her.⁹

The right to consent and right to contract marriage are same for both the men and women. The consent given in marriage by man or woman is equally essential. The Prophet SAW got revelation from Allah through the archangel Jibrael that the marriage of Fatima RA and Ali RA is fixed by the Allah SWT. The Prophet rushed towards his home soon after this and enquired Fatima RA in this regard for her permission and then only given her hand in the hands of Ali RA. Though there was a revelation from God in the same regard and who can understand this more than the Prophet, himself. But the concern behind this was to make people aware of the right a woman and a daughter have.

The system of dowry is totally forbidden in Islam. In its place, women are given dowry or dower, which is given not as a favor on her but as a token of respect. There's no maximum value of the amount of dower a husband will provide to his wife¹⁰. And give the women (on marriage) their dower as a free gift, but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer.¹¹ Though the share of inheritance for the wife is one fourth but if the husband leaves child after him then one eighth. Whereas, a man gets the half of the property of his wife and if there is a child left after her in such case, one fourth. This difference is due to the principle of the

distributive justice which is the fundamental base of Islam. The men are the maintainers of their wives and their families, as well. Notwithstanding the rights in relation to use and dispose off of property are same of both husband and wife. As said by Justice Aftab Hussain Saikia,¹² that the marriage confers no right to any party over the property of other. The wife have similar rights like her husband, she can use, dispose off her property and make contracts in its regard without interference by her husband.

The Holy Quran orders the man to live with his wife on terms of love and equity. The kindest of his behavior should be for his wife. But the Holy verse which says, 'Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next)-refuse to share their beds, (And last) beat them' (Quran, 4:34) is criticized for being against women and promoting domestic violence. As the men are the protectors and maintainers of the women.¹³ She is not supposed to be subordinate or servitude but the women are supposed to be obedient and loyal to her and guard her chastity and property of her husband in his absence. This provision of beating the wife is not to injure her severely. It's the last resort after trying the other ways out. When the wife is rebellious but still giving divorce is not preferable when she is not loyal. The man cannot be violent the scholars said that use stick of miswak or something which will not cause severe injury to her. However, it should be noted that this provision is limited to such circumstances

⁹. Trimidi, Abu Daud.

¹⁰. Quran, 4:20.

¹¹. Quran, 4:4.

¹². Chief Justice of Indian Courts.

¹³. Quran, 4:34.



only. A man cannot use it to beat her for stupid reasons or in any situation.

TRIPLE TALAQ AND MUSLIM WOMEN

The Muslim Personal Law Act, 1937 allowed the husband to divorce his wife through pronouncement of talaq thrice in one sitting. The historical verdict by the Supreme Court was welcomed by majority in Muslim community. Triple Talaq was held as unconstitutional. But the recent bill which lately got assent by the President of India is controversial and contentious. In the survey done for the purpose of this study suggests that majority of the Muslims are supportive of the verdict regarding Triple Talaq when questioned if they support it or not. But the 62.2% believe that dowry system is greater evil than domestic violence which was voted by 45.9% but triple talaq was seemed to be the greatest evil of the society by only 13.5% of the population. On being asked that whether they think that they think that the divorced women must be maintained by the parents as instructed under the Sharia Law. They responded in yes by 54.1% however, 29.7% believe that the maintenance provisions under the Indian Personal Law are better but 16.2% responded in negative. Another question which was enquired was that whether they think that the punishment of the husband for 3 years of imprisonment is what in their opinion. 70.3% responded that it is further harassment of wife whereas, 29.7% believe it to be favoring the wife.

Coming to the Triple Talaq Bill is full of flaws and imperfections. It was initiated with good intentions but badly enacted. The needless staying in the marriage by wife when her husband is in jail for 3 years. While grounds for divorce includes the imprisonment of husband. The scope of

reconciliation between husband and wife is diminished by sending the husband to the jail. Where the arguments surrounded that the marriage in Islam is civil contract it cannot attract criminal punishment, the bill aims to punish the husband for the pronouncement of talaq thrice in one sitting otherwise divorce is not punishable. But it is equally arguable in the light of natural justice, secularism and right to equality that special penal code cannot be made for a particular group or gender group of any specific community. The pronouncement of Triple talaq was declared as an offence which is cognizable and non bail able offence. The bill is nothing with the objective to punish the Muslim husband but a penal code for triple talaq which is against the Art.14 and 15 of the Indian Constitution.

The bill also come out as a propaganda as the Government states that in the Shayara Bano's case the government's position in the Supreme Court stands vindicated. The problem of the abandonment opportunity is every society and every man belonging to any religion. The bill attributes only to further harassment of the Muslim women and creating the gender lines to divide them and tearing apart their families. The bill provides anything for the economical empowerment of the wife. The Magistrate will give an order to provide her subsistence allowance where every secular law (whether it is the 1986 Act or Sec.125 Cr.P.C.) gives the woman provisions of maintenance. Hence it results in reducing her rights in comparison with her female counterparts of other religions.

CONCLUSION

The Islam talks about the gender justice rather than gender equality as the purposes of the man and woman are different from each other due to the biological, spiritual, political



and economical factors. The kind of discrimination and inequality we see today is the mere outcome of the societal and cultural influence of the time. The Muslim wife is having similar rights against their husband. Where the husband can divorce her by Talaq ul Ahsan and Talaq ul Hasan, the wife can choose the option of Khula. Whereas, the attempt to ban Talaq ul Biddat (Triple Talaq) was promising but the bill is not. The bill of 2019 is badly drafted with flawed language. The bill is against the fundamental rights, beyond the test of reasonableness, we do not require such law when we already have 1986 legislation, Sec.125 of Cr.P.C. The social reform and legal reform go together. There is need of reforming the laws from the core of the Muslim community regarding the triple talaq and maintenance.

