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ISLAM AND WOMEN : INDIAN **PERSPECTIVE**

AUTHORED BY - PRASHANT DALAKOTI & PIYUSH DWIVEDI

Introduction

Religion has a purpose to regulate individuals' conduct on moral lines. Religion gives meaning and purpose to people's lives. Likewise, the purpose of the practice of religion is to achieve the goals of the salvation of oneself and others and to render due worship and obedience to Allah. Religion becomes an ancient source for humans to fall back to and regard its rule as life governing. From the point of view of a source of law, religion is surely archaic. Surely, this cannot lead us to a presumption that because religion precedes the legislative and other sources of law, it is irrelevant. As civilizations have come a long way, there often arises a prima facie conflict with respect to orthodox practices and notions of equality and most often women are at the centre of things. Islam and the Muhammadan legal system have found itself in the forums of discussion revolving around gender equality. With 24.9% of the world population following the religion¹ the proposition seems genuine. The question of gender equality with respect to women's rights constitutes one of the most important and topical issues in the human rights and Islamic law discourse, particularly in relation to the human rights practices of modern muslim states. A lack of clarity appears on the issue of women freedom and independence vis-à-vis Islam. Much to the credit of distortions and misunderstandings of the sayings of the religion. We seek to look into women and its ever evolving relation with Islam

Status of Women in Pre Islamic Era

Under the customary tribal law existing in Arabia at the advent of Islam, as a general rule women had virtually no legal status. The Constitution or of Arab society when the laws of Islam came into force was that of a people which had not yet completely lost its nomadic habits and

¹ Wikipedia, the free encyclopedia, available at : https://en.wikipedia.org/wiki/List_of_religious_populations (last visited on December 19, 2022)

characteristics.² The tribe acted as the main functional unit of Arabian society and was composed of people with connections to a common relative. These tribes were patriarchal and inheritance was passed through the male lines. The tribal leader enforced the tribe's spoken rules, which generally limited the rights of the women. Women were often considered property to be inherited or seized in a tribal conflict.³ In the nomadic Bedouin tribes, tribal law determined women's rights. The polytheistic Bedouin clans placed heavy emphasis on kin-related groups, with each clan clustered under tribes. In Ancient Arab women had no legal rights, instead they were treated as an object of sale and exploited by their father as their father used to sell them in marriage to the highest bidder and marriage was not treated as sacrament in Ancient Arab. They had no legal rights; in youth they were the goods and chattels of the father; after marriage the husband became their lord and master. Polygamy was universal, divorce was easy and female infanticide was common.⁴

It is seen that there were patterns of violence against girls and women , including killing female infants who were deemed to be a liability. The Arabs in Jahiliyyah (the time of ignorance or pre-Islamic period), according to the Quran, used to bury their daughters alive. It is mentioned in the Quran as follows :

“When news is brought to one of them, of (the birth of) a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has received! Shall he keep this (child) despite the contempt (which he feels for it) or shall he bury it in the dust? Oh, evil is indeed whatever they decide!”⁵

Arabs regarded the birth of a daughter as a calamity. The reasons could be the concern of an economic burden brought on by an increase in female offspring, and secondly, the fear of the humiliation often experienced when females were kidnapped by a hostile tribe and afterwards preferred their captors to their parents and brothers.

² Abdul Rahim, *Muslim Jurisprudence*, 31 (Allahabad Law Agency, Allahabad, 2nd edn., 2014)

³ *Early World Civilizations* (Lumen), available at :

[https://human.libretexts.org/Courses/Lumen_Learning/Book%3A_Early_World_Civilizations_\(Lumen\)/Ch._07_The_Rise_and_Spread_of_Islam/08.4%3A_Women_in_Pre-Islamic_Arabia](https://human.libretexts.org/Courses/Lumen_Learning/Book%3A_Early_World_Civilizations_(Lumen)/Ch._07_The_Rise_and_Spread_of_Islam/08.4%3A_Women_in_Pre-Islamic_Arabia) (last visited on December.20,2022).

⁴ Niaz A. Shah, “The Position of Women in Pre- and Post- Islamic Arabia, in *Women, the Koran and International Human Rights Law*” 25-44 (Brill, vol. 4, 2006)

⁵ The Quran 16:58-59.

As regards marriages, a woman was not a free agent in contracting marriage. There is some evidence that parents were open and unwilling to give their daughters to be possible mothers of enemies of their tribe. This reluctance however would not greatly diminish the frequency of marriages with aliens, since women were continually captured in war and marriages with captives were of constant occurrences.⁶ There was even a practice of marrying a woman by force.

There was no restriction as to the number of wives and Arab could take the only limit imposed by his means, opportunity and inclination. Unrestricted polygamy which was sanctioned by usage, was universally prevalent.⁷

Advent of Islam

Muslims regard the Quran as the most important miracle of Muhammad, the proof of his prophethood, and the culmination of a series of divine messages revealed by the angel Gabriel. As discussed earlier the ancient Arabs were primarily living in tribes. The mission of Prophet Muhammad was to purify their souls and to lift up the human beings from the debts of moral and spiritual degradation to a conception of purity and justice. The key themes of the early Quranic verses included the responsibility of man towards his creator; the resurrection of the dead, God's final judgment followed by vivid descriptions of the tortures in Hell and pleasures in Paradise; and the signs of God in all aspects of life. Religious duties included belief in God, asking for forgiveness of sins, offering frequent prayers, assisting others particularly those in need, rejecting cheating and the love of wealth, being chaste, and not killing newborn girls.⁸

Prophet Mohammed (PBUH) emphasized upon the importance of women as mother, wife, daughter and sister by stating the number of verses revealed upon him. Considering the fact that before the advent of Islam, the pagan Arabs used to bury their female children alive, and treat women as mere chattels and objects of sexual pleasure possessing no rights or position

⁶ W. Roberston Smith, *Kinship and Marriage in Early Arabia* 74 (Adam and Charles Black, London 1903)

⁷ *Supra* note 2 at 35

⁸ *Early World Civilizations* (Lumen), available at :

[https://human.libretexts.org/Courses/Lumen_Learning/Book%3A_Early_World_Civilizations_\(Lumen\)/Ch._07_The_Rise_and_Spread_of_Islam/08.6%3A_The_Quran](https://human.libretexts.org/Courses/Lumen_Learning/Book%3A_Early_World_Civilizations_(Lumen)/Ch._07_The_Rise_and_Spread_of_Islam/08.6%3A_The_Quran) (last visited on December.20,2022)

whatsoever, these teachings of the Quran were revolutionary.⁹ Contrary to the older belief, Islam regards men and women as being of the same essence created from a single soul.

On Equality of Women : In Islam there is absolutely no difference between men and women as far as their relationship to Allah is concerned, as both are promised the same reward for good conduct and the same punishment for evil conduct. The Quran says:

*And for women are rights over men similar to those of men over women.*¹⁰

On Relationships and Marriage : The Prophet of Islam (peace be upon him) said, "Women are the twin halves of men." The Qur'an emphasizes the essential unity of men and women in a most beautiful simile.

*They (your wives) are your garment and you are a garment for them.*¹¹

Islam respects women. The Quran calls her muhsana - a fortress against Satan because a good woman, by marrying a man, helps him keep to the path of rectitude in his life. It is for this reason that marriage was considered by the Prophet Muhammad (peace be upon him) as a most virtuous act. He said: "When a man marries, he has completed one half of his religion." He enjoined matrimony on Muslims by saying: "Marriage is part of my way and whoever keeps away from my way is not from me (i.e. is not my follower)."

*And among His signs is this, that He has created for you mates from among yourselves, that you may dwell in tranquility with them; and He has put love and mercy between you. Verily in that are signs for those who reflect.*¹²

In an era filled with wars, widowhood was common and a great concern of The Prophet. The Prophet Muhammad (peace be upon him) upheld the cause of widows. Most of his wives were widows. In an age when widows were rarely permitted to remarry, the Prophet encouraged his followers to marry them. He was always ready to help widows and exhorted his followers to do the same. Abu Hurairah reported that the Prophet said: "One who makes efforts (to help) the widow or a poor person is like a mujahid (warrior) in the path of Allah, or like one who stands

⁹ Prof. Abdur Rahman, "Women in the Quran and the Sunnah", available at : https://www.iium.edu.my/deed/articles/woman_quran.html (last visited on December 20,2022)

¹⁰ The Quran 2:226

¹¹ The Quran 2:187

¹² The Quran 30:21

up for prayers in the night and fasts in the day."¹³

On Divorce : Whenever it becomes impossible for both the parties to Marriage to live together peacefully they can have a recourse to Divorce. Though, The Prophet (PBUH) said that among the things permitted in Islam, divorce is the worst one and it must be avoided as far as possible¹⁴.

The Quran says, if a woman senses oppression or desertion from her husband, the couple shall try to reconcile their differences, for conciliation is best for them. Selfishness is a human trait, and if you do good and lead a righteous life, God is fully Cognizant of everything you do.¹⁵

Apart from these, Islam aimed to establish a cooperative and strong society. Some other structural changes for women included mehr and restricted polygamy. The Prophet Mohammed (PBUH) converted the custom of bride price of tribal Arabia to mehr which would be a future security to a married woman.¹⁶

In an era of unlimited polygamy, the Prophet (PBUH) restricted the number of wives to four with an injunction that each wife be treated with equal dignity and affection.¹⁷ The verses of the Quran for having four wives are as follows:

*“If you fear that you shall not be able to deal justly with the orphans, marry a woman of your choice, two or three, or Four, but if you fear that you shall not be able to deal justly (with them) then only one.”*¹⁸

On Inheritance : Following the introduction of Islam, it was decreed that no one, whether male or female, feeble or powerful, ill or well, abandoned or legally adopted, should be denied inheritance after their parents passed away. Women and children in the Arabian Peninsula were not permitted to retrieve any inheritance bestowed by their parents before the arrival of Islam, as per Qatadah (companion of Prophet Muhammad). In Surah al-Nisa verses 7 and 33 of the Qur’an, the means of distributing inherited money is mentioned. According to Imam al-Tabari’s work Tafsir, during the Jahiliyyah era, women and children were not allowed to inherit anything. To overcome this oppression, the Qur’an states that as a daughter, wife, and mother, women are entitled to a share

¹³ *Supra* note 9

¹⁴ Aqil Ahmad, *Mohammedan Law*, (Central Law Agency, Allahabad, 27th edn., 2021)

¹⁵ The Quran 4:128.

¹⁶ Flavia Agnes, *Women & Law in India*, 33 (Oxford University Press, UK, 2016).

¹⁷ *Ibid.*

¹⁸ The Quran: Al-Nisa 4:3

of the inheritance, as stipulated in Surah al-Nisa, verses 11-12.¹⁹

Rights of Women and Developments in India

We have now seen the shift in the situation of women after the advent of Islam. What the religion changed. The Quran is the direct revelations of the words of God. The Prophet (SAW) with his preachings gave a message of equality and compassion towards women. We now seek to analyze the rights of muslim women in contemporary times and how the law has developed around them to treat women with dignity in India.

Property Rights

In India, Muslim do not have classified rights over property. They are governed by Shia and Hanafi School of law. They are governed by Muslim Shariyat act law, 1937. Women had always full and absolute control over the property which she acquired by any way. There are some classification of property which may acquire by Muslim woman as follows: -

a. Property rights of Muslim Daughter

In inheritance, the daughter's share is equal to one half $\frac{1}{2}$ of the son's in keeping with the concept that a woman is worth half a man. Daughters have rights of residence in parent's houses, as well as the right to maintenance until they are married. They may acquire property by the wills but it must not exceed $\frac{1}{3}$ rd of the total property of the person who made the will.

b. Property rights of Muslim Wife

Islamic law provides financial security to a Muslim woman, by virtue of marriage. At the time of marriage, a Muslim wife is entitled to receive total money or property from her husband which is also known as Dower (Mahr). A Muslim cannot give more than $\frac{1}{3}$ rd of his property by will, through this the wife may inherit a higher amount of will when there are no heirs for the estate as prescribed by the law.

c. Property rights of Muslim Widow

In Islamic law, a widow gets $\frac{1}{8}$ th share in case there are kids and $\frac{1}{4}$ th share when there are

¹⁹ Abur Rahim, *The Principles of Muhammadan Jurisprudence*, (Allahabad Law Agency, Allahabad, 8th edn., 2017).

no children. If more than one wife, the property share may come down to 1/16th.

d. Property rights of Divorced Woman

A divorced woman, after *talaq*, is eligible for maintenance up to 3 months by her husband till the *iddat* period is over. Post which, the responsibility for maintenance reverts to the women's parental family. If the divorced woman has financially independent children, who are in a position to support the mother, the responsibility is again on them. Section 125 of Criminal Procedure Code, 1973 states that every woman can claim maintenance from her husband. Husband who has sufficient means and who refuses to take care of his wife or maintain her whoever needs it the courts makes it mandatory for such husbands to maintain their wives with monthly payments.

e. Property of Muslim Mother

A Muslim mother qualifies to receive and inherit from her children, provided they are independent and capable to earn for themselves. If her dead son had children, she is eligible to get 1/6th of his property. If the dead son has no children, she is eligible for 1/3rd share of the property.

Marriage and Divorce Rights

In Islam Marriage is recognized as the base of the society and considered as a contractual union of two parties where consent is the most important ingredient of valid marriage. The term 'Nikah' is used to describe marriage which means "the Union of Sexes" which became a civil contract in Muslim Law, as intended by the Prophet Mohammed.

a. Age of Puberty

In case the girl marries a minor, she is entitled to a dissolution of her marriage before attaining the age of 18 years. Even the consummation of marriage before the age of puberty does not deprive the wife of her right to repudiate the marriage. The age for marriage for a boy is also at par with the age of a girl. He is also eligible for marriage on attaining puberty which in the present time is generally considered 15 years.

b. Right to get Mahr

One of the important rights of women who are getting married is entitlement of Dower (Maher). Maher is the necessary condition to the marriage. If it is not specified then it is void. Where the marriage is consummated, the wife is entitled to the whole amount; if not, to the half dower.²⁰

c. Divorce Rights

Divorce is another important feature of marital rights. Where there is a valid wedlock, the right of divorce parallel exists. A wife cannot divorce her husband of her own accord. She can divorce the husband only when the husband has delegated such a right to her or under an agreement either by Khula or Mubarat.

Apart from these two kinds of divorce there are three other categories which are as follows:

- i) Talaq-i-tafweez : An agreement made between the parties to marriage whereby it is provided that the wife should at liberty to divorce her in specified contingencies is valid. Such an agreement can be entered before or after marriage. Such delegation of power of divorce to the wife may be permanent or temporary, that is for a specified duration. But the condition should not be opposed to public policy and should be a reasonable condition. ²¹
- ii) By Dissolution of Muslim Marriage Act, 1939 : As per the rules, here are the ways in which a Muslim woman in India can divorce under Dissolution of Muslim Marriage Act, 1939. It states the ground which a muslim married woman can prove in the court of law to get divorce.

While the process for a woman to seek divorce remains a judicial remedy, her male counterpart holds the right to pronounce divorce to move out of the matrimonial relationship. The power to divorce to a muslim man creates inequality. The Supreme Court through its decision and subsequent legislations have weighed in favour of women , curtailing the unfettered power of men in granting divorce and providing social and financial security to divorced women.

²⁰ Mulla, *Islamic Law* 269 (Lexis Nexis: Buttersworth Publications)

²¹ Swetha Ravidas, “Divorce under Muslim Personal law talaq and talaq-e-tafweez” April 25, 2020, *available at* : <https://legalsarcasm.com/legal-notes/divorce-under-muslim-personal-law-talaq-and-talaq-e-tafweez/>. (Last visited on December 24,2022)

The Supreme Court delivered a judgment favoring maintenance given to an aggrieved divorced Muslim woman even under secular legislations holding that a woman has a right to claim maintenance under Section 125 of Cr.PC as the Code is a criminal law and not a civil law.²² The case led to the passing of The Muslim Women (Protection of Rights on Divorce), 1986. According to this Act, Muslim women were entitled to a 'fair and just' amount of money within the 'iddat' period. In later judgments, the Supreme Court of India interpreted the act in a manner reassuring the validity of the case and consequently upheld the Shah Bano judgment.²³ On the issue of triple talaq and the power and correctness of the irrevocable form of talaq, in the hands of muslim man, the Supreme Court held the practice of *Triple Talaq* unconstitutional. The majority upon lengthy discussion came to the conclusion that *Triple Talaq* is not an essential religious practice.²⁴ The Muslim Women (Protection of Rights on Marriage) Act, 2019, which had been approved by the President of India, went into effect retroactively on September 19, 2018, maintaining the initial ordinance that had been issued. The Act reaffirms the unconstitutionality of the practice of triple talaq and also makes provision for imprisonment for the crime of pronouncing triple talaq.

Liberty and Freedom of Choice

In contemporary times, we see a lot of examples of alleged clash of individual liberty and freedom with religious beliefs. Especially women's liberty and freedom of choice and its correlation with Islam is at the epicenter of legal, social and political discussions not just in India but around the globe. Incidents across the world have attracted attention of not just jurists but also the general public. Whether it is the freedom of practices like wearing Hijab in India as well as in Iran or the University ban for girls in Taliban led Afghanistan, last year itself, has been occupied with examples to further the debate. The common thread in all such examples is the use of the religion of Islam to dictate terms to women. From an academic point of view, it gives the opportunity to know and trace the evolution of practices and their inherent patriarchal flaws.

²² *Mohd. Ahmad Khan v. Shah Bano Begum And Ors* AIR 1985 SC 945.

²³ *Danial Latifi v. Union of India* (2001) 7 SCC 740

²⁴ *Shayara Bano v. Union of India and Ors.* (2017) 9 SCC 1

Islam does not allow the domination of men over women rather it upholds the rights, dignity, honour and status of women by ensuring gender equality and also equality of rights for both male and female in every area of human life.

In Islam like men, women have various responsibilities towards the family and society as she is considered one of the two important pillars of the society. The teachings of the religion are clear on women choosing their choice of profession. In Islam there is no difference between men and women in regard to work and working is a duty for both. Islam does not like laziness and workless people In Islam women have freedom to choose their occupation but in choosing their profession they must keep in mind that they have some limitations due to their physical structure.²⁵

While the self-proclaimed protectors of religion governing some states uses religion as a tool for oppression. The ill motivated practices like depriving education to girls, are not sanctioned in any religion. In Islam acquiring knowledge is obligatory for both men and women. In this regard an unmarried woman has full freedom to acquire knowledge and nobody can obstruct her from acquiring knowledge.²⁶

Islam ensured political independence of men and women. There is an opportunity for a woman to be involved in politics. She can participate in political conventions, street demonstrations and congregations.²⁷

Concluding Remark

With all the goodness and reasonableness, one would wonder, why often there seems to be a divide between religion and freedom, between practices and independence. The phenomena is true not just for Islam but every other religion like Hinduism and Christianity as well. Among

²⁵ Manjur Hossain Patoari, "The Rights of Women in Islam and Some Misconceptions: An Analysis from Bangladesh Perspective" (Beijing Law Review, Vol.10 No.5, 2019)

²⁶ *Ibid.*

²⁷ A. Rezvani, "Review of the Economic and Political Rights of Women Based on Islam's View" 187-190 (International Research Journal of Applied and Basic Sciences, 2013)

the sources, religion remains the oldest, most ancient sources from which people derive morality and practices. In this sense, certain aspects of religion would inevitably cease to be reasonable and relevant in present times.

In the context of Islam, on one hand there exists ample proof of equality guaranteed by not only Quran but also evolutionary practices. On the other hand there erupts time and again, the struggle of women with religious orthodoxy in achieving equality. How did there emerge a difference, for a religion which is followed with such passion among the believers. To answer the question we must first differentiate between religion and culture.

Are the imposed rules really religious or simply cultural ? Being a muslim and being an independent woman can co-exist and they do co-exist. For most, Islam, like any other religion, gives strength and is a source of empowerment. Imposition of misinterpreted religious doctrines and controlling is a culturally pervasive phenomena and is deeply rooted in patriarchal psychology of societies around the world. While many have evolved to the realization of equality and independence, some still remain gripped in the shackles of archaic attitudes. This is evident from the disparity among muslim nations itself. It is no less than a sheer misuse of power In Islam, and can be observed in other religions and societies, usually men have been the torchbearer of religious preachings. Thus, a patriarchal understanding of state of affairs has eventually developed. Even if we refrain from doubting the fairness and just outlook of the holy men that have guarded religion, the point remains of negligible or no account of a female input or contribution in shaping the religion and its understanding. True understanding of religion does not bind. It is rather liberating. Thus, any resistance to imposition of inequality in the garb of religion must be looked upon with great hope and not as un islamic and a challenge to religious teaching.