

WOMAN , RELIGION AND FAMILY LAWS

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Woman is a human being first! It is high time she realises this; it is high time she starts looking for roots of her suppression, and raising her voice against the injustice. This should be starting point of her struggle.

If we go back over centuries to locate the origin of her secondary status, we will realise that before culture and civilisation came into existence, the woman was more free and was at par with man as compared to to-days woman. With the formation of an organised society, the status of the woman started declining.

Before man realised his own role in process of procreation, the woman's capacity to produce a new human being was looked upon as something mysterious. But once he realised his own role in reproduction, the halo around woman disappeared.

Although it is believed that the origin of woman's suppression is related to her weakness during pregnancy period, it is observed that in spite of above, she was not given secondary status in the pre-historic period. During pregnancy period, she was entrusted with less strenuous jobs like protection of grain stocks, maintaining fire, and some other agricultural work. And most important is that, this work was not considered inferior.

The era of aggression brought the culture of victor and vanquished, and this was the beginning of the enslavement of women. The conquered men were used as labourers while the women were used in bed and to give birth to children. So the status of the woman slave declined even further.

In India, amongst the Dravidians the women were quite free. But even in the Aryan culture the woman had her own personality. She was entitled to thread ceremony and education and she could ever become a teacher - an "Acharya" and perform a "Yagya". She could marry according to her own will, she could remarry after her husband's death. She could leave with dignity even in her widowhood. But the era of aggression ended it all. The decline in the status of the vanquished women also resulted in decline the status of the women in general.

In the subsequent period the Vedas proliferated in volume and the accent on recital and chanting of Vedas increased. The normal period of education of 8-10 years from the thread ceremony to marriage was declared to be

insufficient for a woman to study and acquire knowledge of Vedas. Somewhere during this time, the woman lost her right to recital of the Vedas and forfeited her duties during "Yagnya" to the man. Her place by the side of the man performing the "Yagnya" was reduced to a mere formality.

The woman lost her right to learn the Vedas, her thread ceremony became superfluous and soon was replaced by an early marriage. Service of Guru (Guruseva) was substituted by that of the husband (Patiseva). Her duties during "Yagnya" were replaced by household duties. On losing her right to learn the Vedas and her religious duties, she was soon regarded as a Shudra. It was further declared that she was not entitled to perform the "Yagnya" by herself. During Vedic period marriage and birth of a son was acknowledged as being means to attain heaven and hence the woman had a place of her own. In the following period, Hinduism became more spiritual, and woman came to be depicted as a source of undesirable sexual pleasures. The "Puranas" condemned her as being extremely lascivious. The natural attraction between man and woman soon came to be viewed as an obstacle in the path of the "Moksha". 'Manu' tells men to beware of his mother, sister and daughter.

And hence, in order to exercise restraint over woman, 'Manu' says:

पिता रक्षति कौमारे, माता रक्षति यौवने

रक्षति स्वामिनि पुत्रा, न रक्षति स्वात्म्यं जरीति।

(Woman does not deserve freedom and therefore she is to be protected by the father during childhood, husband during the youth, and son during old age)

With the end of her right to the thread ceremony and education, the age of marriage came down to 8. There no longer remained the question of her consent. Lack of education resulted in stunting of mental and intellectual personality.

She could aspire for her well-being in the next world only through her husband, as he alone had access to education and right to learn the Vedas. The husband then became God. With increasing accent on chanting of the "Mantras", there was a division of other social chores and duties. The mental tasks went to the "Shudras". In the earlier times, the "Kshatriya" women had a right to "Swayamvara" and could accompany her husband at war. A "Draupadi" could discuss religion and someone like "Tribhuvandevi" of Orissa could become a Monarch. But culture of 'Mantra' chanting increased its dominance and this influenced women in other communities and started the process of their enslavement.

The necessity of woman in the process of procreation was recognised. She was considered as a "bag of skin" in which the man planted his seed. He was the farmer and she was the farm. The produce of the farm belonged to the farmer

"क्षेत्रभूता दमना नास्ति,
कीज भूतः दमनः पुत्रान् - " (मनुस्मृति १.३३)

and so did she become his property. Another factor was abduction of the enemy's women, which was seen as a means of humiliation. This was the situation after the rise of "Manusmriti" in India.

Status of women in Pre-Islamic and Islamic era:

Were the things different in Arabia where Islam was born? Ancient Arabs were cattle raising Nomads. They were a brave, courageous and independent people constantly struggling against the hardships with the desert. According to some Muslim scholars, women did not have any legal rights in those days. Before the marriage she would be the property of her father and after marriage that of her husband. Polygamy and child sacrifice were common. The husband used to pay an amount to the bride's father during marriage. If a man desired respectable offsprings, he would invite a tribal chief to have intercourse with his wife. The marriage was a commercial transaction. The question of the brides' consent never occurred. The man could also desert his wife. The woman had none of these rights, neither did she had a right to 'inheritance'. On the death of a man, his women, like his belongings, would pass to his heir. The heir was entitled to physical relations with these women, except for his mother. It was during such time that the Prophet Muhammad was borne and reared.

He started to preach against idol worship and said that there was only one God, and that he was God's messenger. The attitude of this new religion towards women was revolutionary. He stopped female infanticides, he brought down the number of wives from infinity to four and gave the equal status to all the 4 wives. Woman first time got the right for 'inheritance'. So in short, woman was given the status of a human being as compared to that of the property. Woman was regarded with more humanitarian aspects with the advent of each new religion. But she still remained an inferior human being. She could never become a Pope or Khalifa or Shankaracharya and never had the power of justice. This is because of the contradictions that are found in almost every scripture of religion. Even in Manusmriti, in spite of derogatory remarks to woman, the woman's mothership is worshipped.

'यत्र पूज्यते नार्थसिद्धिः, रमन्ते तत्र देवतः -'

i.e. where a woman is worshipped, God chooses the place for himself.

It is a fact that the Quranic images of woman or the vedic images of women are much distorted by the later interpreters.

One example of distortion is of the Ayat 33, Sura 32 of the Holy Quran. The original statement is "O! The women of the Prophets clan, you are unlike the rest of the women. If you want to remain pious, you should not talk in whispers, so that (undesirable) temptations do not arise in the listener. Do not go about decked up, as in pre-Islamic time, but remain in your own houses."

Whereas Abul-Ala-Mandudi interpretes the above as "If required a woman can talk with man but her voice should be subdued and unattractive, as her voice represents the woman herself, that also should not reach outside without reason. So she should not give the call for prayer (Ajaan) from Masjid. Now you yourself will understand why it is not justified that the woman should sing or dance or she should entertain people by her looks and dancing or sing an air by her melodious voice, or act in the films or visit clubs or theatres, with men, or have co-education in schools and colleges. This indicates that her working place is her house and not parliament. She is meant for doing the household duties and not for working in the offices and factories alongwith men or ruling the state."

The Law and Woman:

Muslim law:

The Muslim law is based on a four-fold principles. They are "Qoran", "Sunna", "Ismā" and "Iztehad". Out of these "Iztehad" means conscience - the conscience of eminent scholars. This path of Iztehad was closed from 10th Century onwards and was replaced by "Taqlid". "Taqlid" means blind imitation. This further had a bad impact as far as the women's status is concerned.

In a society in which the woman's going out was restricted, her rights were also restricted. The laws were such that justice was done on the basis of evidence. But while noting down the evidence the value of a Man's evidence was considered four times greater than that of a woman. Man has the right of oral divorce by saying "Talaq" 3 times. A woman can have "Khula" which is not readily available. She got the right of inheritance, written right of Khula. According to Islam, marriage is a contract. In this contract the amount she gets from her husband for her marital duties is known as "Mehtar" which she gets at the time of divorce. But in some sections of the Muslim society this amount is limited from Rs. 11 to Rs. 125. This obviously is very

insufficient though man can marry 4 times and has the right to divorce, Holy Quran specifically says that if possible marry only once and the Allah does not like divorce. But to-days Muslim men ignore this.

The laws changed from time to time. The Britishers framed " The Muslim Personal Law", but these rights remained unaffected. Even in this democratic country like India, the Muslim woman lost her provision of maintainance after divorce by the brute majority. After the Shah-Bano case, Muslim women got excluded from Article 125 of I.P.C.

Because of the changing times, the Muslims cannot follow most of the principles laid down by Shariat. But they were very adamant about woman's standing in the society so much so that they were even ready to die for the same. We got to see this reality during Shah-bano episode.

According to some part of Intellegensia, the Muslim personal law is the identity of the minority community. But does the identity of the community depend on the suppression of the identity of their womenfolk?

Even in the Islamic countfies like Pakistan, Iran, Turkstan etc. the Muslim laws are reconsidered and retouched. Even if we take the reference of the prophet's life, we see that he tried to prevent his son-in-law, Ali, from remarriage and his own wife Ayesha bitterly opposed him from his next marriage. But in this so called progressive and democratic country we seem to be going back over centuries. After the Shah-bano case, Muslim woman got excluded from the article 125 of IPC and lost her right for maintenance of divorce, and now we fear that she will even get excluded from the "disolution of Muslim Marriages Act of 1939".

The Revivalism - A threat to woman's existance:

With the present trend of revival of age old religions, women seem to be loosing their land against freedom. Further, we can give the example of Iran or Pakistan. Even in India the rising communalism has seen the demand of Sikh personal law. Deorala sati episode shows the revival of the outdated practice of widow burning.

The rising communalism is closely linked with the concept of political and social systems. The political leaders seem to use thereligious feelings of masses for their own selfish reasons. The support of the politicians, even our eminent Prime Minister for the Talag bill or some of the MLAs for the Deorala Sati episode emphasises my point. Does this mean that injustice done by brute majority of masses is justified?

We should stress the point that laws should be based on humanitarian ground, conscience, justice, and equality and not just on the basis of majority.

In the country like India, where there are many religions and communities, in the absence of common civil code, there always will be demands like Sikh Personal Law. Hence when the minority community is just considered as number of votes, the politicians will not do anything to bring about changes in their religious practices and the Muslim leaders will always resist any change in Islamic practices. This does not reflect their love of Islam but reflects their love for power. The positive changes brought about in the Islamic countries never get reflected in this country because the Indian politicians have always sacrificed Muslim women for the sake of a few number of votes. So the struggle of Indian Muslim women is directed against all those things. So the principle of secularism is very important for equality of women.

Maulana Maudiri, the authority on Muslim Philosophy was strongly opposed the Shariat. According to him the Shariat is responsible for breakage of 75% Muslim homes.

Eminent Muslim thinkers like Sir Sayyad Ahmad Khan and Maulana Azad reconsidered the interpretations of Qoran. But the society criticized them and burned their writings.

Barrister Jinnah, also had misgivings about the separate laws for Muslims. He had said that the personal law will come in the way of the progress of Muslim community.

So, the Muslim personal law should be abolished if welfare of the Muslim community is to be considered.

The roots of the Indian Muslim woman's struggle go back to those progressive Muslim scholars and are also related to the women's struggle in Islamic country.

In Goa, there is no Muslim personal law, but still we don't see that there Islam is affected in any way or the Goan Muslim face any kind of identity crisis. But still the Muslim women in Goa have more security as compared to those from the other parts of the country. So when Jamat-e-Islami tried to demand the personal law on the Goan Muslims, the Muslim women from Goa unitedly opposed it very staunchly.

Another part of the Muslim women's legal struggle is represented by Shahnaz Shaikh, who challenged the Muslim man's right for oral divorce and Akhtarunnisa Syayyad, who demanded legal right for adoption.

The Hindu Woman and law:

The condition of a Hindu woman may be a shade better than that of a Muslim woman. But she is still a secondary citizen in this society. An eminent Magistrate advised Smt. Lata Kamat from Nagpur that she should compromise because she is a woman and her learned lay lawyer did not find anything wrong with this as he was a man. In the Aurangabad Rape case, the imprisonment of 2 years till the day of judgement and Rs. 2,500/- penalty was considered as enough punishment. In this country, where there are many laws in favour of women, there are still cases where a woman who goes to lodge a complaint gets raped in a police station. When a woman complains that her husband hits her, they do not find anything wrong with it, they think that it is a usual practice. So we demand for a completely independent women police force.

The judgements given in the rape cases and the dowry deaths are still not very hopeful. There are many a times gross contradictions found in them. Kidnapping a woman is not liable for punishment, if a motive for kidnapping is not established. The motives stated are marriage, rape, detention, or homicide. There is another example where a neighbour got involved in a criminal case because he helped a 14 years old girl, whose father was bent on selling her to an old man. According to the present Hindu code bill, a woman's father is her guardian till her marriage. Her husband takes over the task after marriage and after his death, her well being is in the hands of the husband's relatives. As the law is very vague about the guardianship of a minor widow, in U.P. the guardianship of the widow passes over to the husband's inheritant. Behind this is the mediaval concept which regards women as a part of property. In this country, slavery is forbidden and punishable. But the law is not very firm about buying or selling of women in bazar. Rape became punishable, but that performed by her own husband is not considered a crime. Intercourse is considered an essential part of rape and though a psychological impact of an attempt is traumatic for a minor girl, it does not have any kind of punishment as per law. Woman's witness is not considered enough to establish the case. The accused from the rape case escapes very easily from the loophole of law by blaming the woman and calling her immoral and characterless, and judges are inclined to accept these arguments.

Though the woman gets possession of her five year old child, the guardianship of the child still remains with the father. The right for guardianship is considered only under certain circumstances. The very fact that she has to establish these circumstances is in itself quite inhuman.

Though the general trend in Indian laws is in favour of women, the above paragraph clearly underlines different lacunae in the present system. Hence the need to modify and make them more specific.

The task:

The different tasks in front of the women's struggle in India include:

- making the present laws more specific and removing the loopholes.
- scraping out the different personal laws and the demand of common civil code is very important for the dignity of women.
- To-day any kind of derogatory remarks about anybody's caste is punishable. The same should apply to that related to women.
- A person guilty of brutality with women should not be allowed to fight an election.
- The judgements should be based on more humanitarian ground and should be sympathetic towards women considering her secondary status in the society.

We all know that merely changing the laws will not have a great impact on the status of women. For this we will have to change the minds of majority, will have to create mass awareness of our problems. Equality should become the attitude of our community. Then and then only any change in the social structure will have any meaning, and for this our struggle will have to be continuous, vigilant and multi-dimensional.

The struggles will be carried on in different countries, on different levels. But we should demand that our cause should be fought on international basis, the way the problem of apartheid is fought to-day. For this we should have an international women's front which can pressurise the rulers of different countries.

O the woman of the world, awake and realise
your own powers! Unite under one flag and fight
for your own legitimate place in the society.

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