

## **Status of women in The Constitution of India, International law and Muslim Law:- A modern perspective**

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### **Abstract**

Human consciousness in modern world is conditioned by the concept of Human Rights and Human dignity for both men and women. The laws and customs regarding women drawn up during the ancient and medieval period are unlikely to be accepted by women today. They no longer accept their subordinate position in the society. They demand equal status and rights with men. The Constitution of India Guarantees equal rights and status to the women population of India under Article 14 which states that the state shall not deny to any person (men or women) equality before law and equal protection of law within territory of India. Article 16 of the Constitution provides that there shall be equality of opportunity for all citizens (including women) in matters relating to employment or appointment to any office under the state. The Constitution has a special Article 15(3) for women to improve their status which provides that state may make special provisions for women up liftment. The idea for the protection of the human rights and fundamental freedoms for men and women equally was first conceived in the Atlantic charter in 1941 and in the declaration of the U.N 1942. The article first of the charter of U.N provides that fundamental freedoms for all without distinction as to race, sex, language or religion shall be one of the purposes of the U.N. However the discourse on women's rights has transformed the basic tenets of international law about women. It is often said that civil and political rights are first generation rights, economic, social and cultural rights are second generation human rights and group rights and right to self determination are considered 3<sup>rd</sup> generation human right. and lastly it can be also argued that women's rights are the fourth generation rights. India being a signatory to a number of conventions has shown world that it has faith in the promotion and protection of human rights. The ratification of International conventions also signifies that it intend to be in the forefront of the world human rights movement. The human rights for women should be considered as the collective rights of women as a person with the capacity to decide of act on her own behalf. The importance of human rights discourse in relation to the rights of the women is that it bring in the issues of entitlements and legal provisions for implementations, so that women rights are not seen as abstract concepts but as leaving issues.

Religion has been the first and foremost law of society. Religion too has strongly shaped a gender contour of social operations and in each religion Women's status has been made inferior to men by the clergy while interpreting religious scriptures. Muslim women also continue to face denial of many human rights granted to them even by religion however due to the Patriarchy interpretation of holy books by scholars of medieval times they continue to suffer not only in non-Muslim countries but in Muslim majority countries as well. One reason is their ignorance of Islam in general due to illiteracy and secondly accepting religion pronouncements totally and uncritically.

**Key words:-** *Consciousness, protection, freedom, generation, ratification, convention, patriarchy.*

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### **I. INTRODUCTION**

The status of women has always been in discussions and debates throughout the world among all sections of the society. The reason is obvious that women has been for thousands of years kept in total subjugation in all male dominant societies. It was considered a divine law that women were inferior to men and has to submit herself to the will of her father, husband or any male member of the family. However, this theory is no longer applicable as it lost its relevance gradually after the Renaissance movement in west and emergence of modern democracy in recent past because human consciousness in modern world is conditioned by the concept of Human Rights and Human dignity for both men and women. The laws/customs regarding women drawn up during the ancient and medieval period are unlikely to be accepted by women today. They no longer accept their subordinate position in the society. They demand equal status and rights with men.

The lack of understanding of women's rights as human rights is reflected in our legal systems too as women rights are hardly perceived as human rights. This dichotomy has perpetuated the secondary status to women.

### **Objectives of the Paper**

01. Status of Women at International level.
02. Status of Women in Constitution of India.
03. Status of Women in Islam.

#### 01:- Status of Women at International Level

Women and Children are the first victim of Human rights violations any where from the dominant sections of the state. Women's rights are more fragile and have weaker implementation procedures and women usually suffer due to inadequate financial conditions from childhood to old age. One of important reason for women's subjugation is that the absence of legal intervention to protect women in the society and at home devalued women's role and kept the dominance of patriarchy at peak always. The idea for the protection of the human rights and fundamental freedoms for men and women equally was first conceived in the Atlantic charter in 1941 and in the declaration of the U.N 1942. The article first of the charter of U.N provides that fundamental freedoms for all without distinction as to race, sex, language or religion shall be one of the purposes of the U.N. However the discourse on women's rights has transformed the basic tenets of international law about women. It is often said that civil and political rights are first generation rights, economic, social and cultural rights are second generation human rights and group rights and right to self determination are considered 3<sup>rd</sup> generation human right. and lastly it can be also argued that women's rights are the fourth generation rights. The history of women rights movement could be traced back to the 1700's and the 1800's. The first country to take place in favour of women's rights was in Seneca falls, New York. Later the marriage protest by Lucy Stone and Henry Blackwell advocates the rights of women. They protested against the laws that bound women in their husbands control and supported that women should have their own identity and should exist outside the control of their husbands.

National organisation for women (NOW), this organisation in U.S worked for the equal opportunity to women, So that as humans their full potentials could develop.

Europe saw the 1st ever proto-feminist movement in the 19<sup>th</sup> century. The well known Female Moral reforms society gave the women a significant representation. Ever since the historical times, women have actively participated in building the society.

The women rights movements in west struggled tooth and nail to achieve main human rights in the shape of equal rights with men in the choice of work, right to education, equal pay for equal work, political rights etc. It was only after world war II and women rights movement was accepted as a part of the international Human rights agenda. The U.N. set up a commission for women in 1946 to promote women's rights. The commission on women makes recommendations to the economic and social council of U.N. on problems requiring attention in the field of women's rights. Accordingly, U.N. adopted a convention on the political rights of women in 1952 to legalize women's right to vote in formation of Government of a country. U.N declared 1975 as a women year and 1975 to 1985 decade of women to focus on the stand against the discrimination against women. There had been three international women conferences sponsored by the U.N during women's decade. The first conference was held at Mexico City 1975 wherein a declaration on the equality of women and their contribution to the development of peace was upheld and the period 1976-1985 was declared as the U.N decade for women with equality, development and peace. Copenhagen in 1980 world conference on women was held in Copenhagen where in it was declared that domestic violence had serious social consequences and perpetuated itself from generation to generation and women must be protected from domestic violence and rape. And at Nairobi in 1985 where in a blue print for action until the year 2000 was adopted against the violence against the women. And the fourth world conference on women was held in Beijing 1995 wherein it was undertaken to promote gender inequalities in education and health, increasing burden of poverty on women, violence against women, effects of armed conflict on women and inequality in economic policies etc. The world Conference in Vienna on human rights 1993 laid down stress on "the full and equal participation of women in political, social, economic and cultural life at national, regional and international levels and eradication of discrimination on the grounds of sex is the priority objects of international community.

These conferences have greatly influenced international awareness of the rights of women and provided a link between the national women's movement and international community. In 1989 the U.N adopted the convention for the elimination of all forms of discrimination against women which came into force in 1981 is regarded as an international bill of rights for women. Subsequently a U.N committee on the elimination of discrimination was set up to monitor compliance with the convention, known as the women's convention vis-a-vis to abolish existing laws, regulations, customs, and practices found discriminatory against

the women and to establish legal protection of the rights of the women on an equal basis with men. The world congress on human rights held in New Delhi in 1990 recommended that national laws be examined and revised in order to remove discrimination against women in areas marriage, inheritance, matrimonial property and matrimonial relations. It has recommended the establishment of family courts.

The human rights for women should be considered as the collective rights of women as a person with the capacity to decide or act on her own behalf. The importance of human rights discourse in relation to the rights of the women is that it brings in the issues of entitlements and legal provisions for implementation, so that women rights are not seen as abstract concepts but as living issues. International human rights law refers mainly to the obligations of States to individuals within their jurisdiction. When states fail to assure realisation of human rights to the individuals within their jurisdiction international obligations arise. Thus obligation to provide human rights of individuals is mainly intra-national and in some cases inter-national. Thus, a State is not free to treat its nationals as it pleases despite the fact that it is sovereign. The greatest impact of human rights law has been to erode the absolute control which a State had in the classical period. The idea that the human rights could be protected by international community in addition to states developed gradually. Violation of human rights of both men and women was considered as a source of international conflict and protection of human rights was regarded as necessary for the international peace. Despite of great progress made in the arena on women rights in the 20<sup>th</sup> century in theory and policy formation.

#### 02:- Status of Women in Constitution of India.

The Constitution of India Guarantees equal rights and status to the women population of India under Article 14 which states that the state shall not deny to any person (men or women) equality before law and equal protection of law within territory of India. The Constitution also provides under Article 15 that every female citizen has a right to access to shops, public restaurants, hotels and places of public entertainment and no restrictions can be imposed on female citizens etc. Article 16 of the Constitution provides that there shall be equality of opportunity for all citizens (including women) in matters relating to employment or appointment to any office under the state.

The Constitution has a special Article 15(3) for women to improve their status which provides that state may make special provisions for women upliftment. The Constitutional 73 and 74 amendment in 1992 made a provision for 33% of Panchayat and municipalities by virtue of Article 243 D and 243 E. The amendments are considered as mile stone towards the socio-economic upliftment of women in India. Similarly Article 51-a (e) cast a duty on every citizen to renounce practices derogatory to the dignity of a women.

Supreme Court of India has played a pivotal role for the implementation of Constitutional and legal provisions in its judgements about women empowerment. In *Vishaka and others vs State of Rajasthan* AIR 1997 Supreme Court p.30 n Supreme Court held that in absence of any domestic law to check sexual harassment of working women at all working places International conventions and norms are significant for providing guarantee of gender equality and right to work with human dignity. The court observed that each incident of sexual results in violation of fundamental rights of gender equality and the right to life and liberty. It was on the basis of this judgement government of India passed protection of women from sexual harassment of women at work places 2004 and protection of women from Domestic Violence Act 2005. In *Apparel export Promotion Council V.A.K Chopra* (AIR 1999 S.C.P 625) the Supreme Court held that the message of International Conventions such as the convention on elimination of all forms of Discrimination against women and the Beijing declaration which directs all states to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. Similarly in *Madhu Kishwar vs State of Bihar* (AIR 1996 s.c p 2178). It was observed by Supreme Court that the convention on elimination of all forms of discrimination against women is an Integral Scheme of the Fundamental rights and the Directive Principles of state policy.

Although the role of Supreme Court is important but it should expand the reach and ambit of the fundamental rights rather than to attenuate its meanings and content only. It should interpret Constitution in such a liberal way so that the rights provided to women are made available to women citizens of the country. It is because rights provided, moreover the big hurdle is also that Indian Constitution does not guarantee these rights absolutely and unlimited. The rights and freedoms enshrined in Constitution are restricted, controlled and regulated thus the restrictions stipulated in the Constitution on these freedoms are not inconsistent with the covenant on Civil and Political rights of United Nations. Although it is difficult to lay down any hard and fast rule of universal application of freedoms and rights guaranteed to women in India and while imposing restrictions only in case of a necessity of the situation and must strike a balance between the deprivation of these freedoms to women and the danger sought to be avoided.

India being a signatory to a number of conventions has shown world that it has faith in the promotion and protection of human rights. The ratification of International conventions also signifies that it intend to be in the forefront of the world human rights movement. However the attitude of the government towards Human

rights of citizens especially of women is lethargic and indifferent India's signatory to convention on the elimination of all forms of discrimination against women but the status of women continues to be deteriorating. They are subject to suppression the role of Government is therefore crucial. A substantial programme is required to be framed in the legal as well as at the administration level. Government has to make its effective policies and enact laws in a way so that the rights of women who are most vulnerable group of the society being less educated, ignorant, marginalized and poor be violated. It is because enactment of laws alone can't make reforms in the social and economic conditions of women unless there is a strong administrative setup available on ground. The women of India is still living in a sub-human conditions due to abject poverty, bad health, lack of education. There can be no human rights as long as there exist deprivations of basic rights to women such as right to work, health care education and a good shelter.

### 03:- Status of Women in Islam

Religion has been the first and foremost law of society . Religion too has strongly shaped a gender contour of social operations and in each religion Women's status has been made inferior to men by the clergy while interpreting religious scriptures. Muslim women also continue to face denial of many human rights granted to them even by religion however due to the Patriarchy interpretation of holy books by scholars of medieval times they continue to suffer not only in non-Muslim countries but in Muslim majority countries as well. One reason is their ignorance of Islam in general due to illiteracy and secondly accepting religion pronouncements totally and uncritically. There are two extremes among Muslim women one who are illiterate or educated in traditional Islamic literature at home and second is of those women who are totally indifferent and consider religion as an impediment in realising women rights. They go beyond to the extent even reject religion aggressively. Both of these extremes do not help towards the upliftment of average Muslim women. These women are in overwhelming number and needs helping hand to fight for their human rights in a Muslim society. This can be done only through the medium of their religion i.e. Islam by re-reading, re-interpreting religion in the light of Holy Quran and life of Prophet Muhammad (Peace and blessings of Allah be upon him).

There is more than enough in the Quran favouring rights of women but these Quranic Verses have been so far ignored or interpreted in favour of men. Thus two things are important, one reading the Quran from Women's perspective and second from social, cultural and democratic perspective. Since medieval cultural perspective has seriously affected our understanding of Quran. Women scholars like Fatima Merssini from Morocco having both Islamic and modern education is a best example among Muslim women who shown a way forward to Muslim women in her work "The Veil And The Male Elite". She has critically examined the holy Quran and sayings of holy Prophet.

Islam is one of those religions that has discussed in detail women's rights both in the Quran and in the formation of Islamic law called Shariah (the way). The rights of women pertaining to education, marriage , divorce, Property ,inheritance, custom of children, evidence, rewards and punishments but over the time these rights were overlaid with the advent of feudal and patriarchal prejudices. However democratic politics and both capitalist and socialist economies have brought about a new consciousness about the rights of women and Muslim societies too incorporate new changes in their lives which include rights of the women. Women are no longer described as the weaker sex and are treated par with men. What is needed for the upliftment of women folk is the Islamic approach to the problem in a women's perspective rather than a patriarchal approach. Any scripture which has to be acceptable to the people to whom it has been revealed must have immediate relevance for them. The holy Quran and the teaching of the holy prophet Muhammad (pbuh) has been very fair to the cause of the women. However, cultural prejudices have played a big role in denying these rights to the women. The kind of Purda (veil) observed by the Muslim women by covering entire body including their faces is an example . All that the Quran requires of women is that they should not display their sexual charms, but dress in a dignified manner. Quran was the first scripture to have conceded so many rights to the women in a period when women were very oppressed in the major civilisations namely the Byzantine, Sassanid etc . The Quran never intended to place undue restrictions on the movements of women nor did it require them to completely hide their faces while moving out of the house. Before the advent of Islam women enjoyed no rights what so ever and where treated no better than the commodity. The prophet (Pbuh) said that one to whom a daughter is born and who does not bury her alive, does not humiliate her nor prefers a son to a daughter will be sent by Allah to paradise. Another tradition of prophet makes hell fire prohibited to one who has to go through trials and tribulation due to a daughter and yet who does not hate her and behaves well towards her. The holy Quran considers both men and women having originated from one living being and enjoy the same status. The Prophet has said that half of the knowledge of Islam should be acquired from all of my companions and other half from his wife Aisha . The Quran does not speak of man having a slight edge and social superiority over women. However, men considered themselves superior to women by virtue of their earning power and spending of their wealth on women. The Prophet has reported to said that no one should beat his wife like a slave and at night he will be with her again on her bed. The only thing the Quran permits is men are the guardians of women as God

had favoured some with more than others and because they spent their wealth on them. Therefore, the women who are virtuous and should be obedient to God. The Prophet Muhammad (pbuh) in his last sermon advised the Muslims to remember his advice that women gave their youth to you, you have no right to maltreat them except when they indulge in open defiance of sexual conduct and in that case too you have no right over them except to isolate them in bed.

The holy Quran says: "And whoever does good deeds, whether male or female, and he (or she) is a believer, these will enter the Garden, and they will not be dealt with a whit unjustly." At yet another place it says "I will not tolerate work of any worker to be lost, whether male or female, the one of you being from the other." The Quran further states that men shall benefit from what they earn and women shall benefit from what they earn. It is very clear statement of the fact that the women would benefit from their own earnings and would be the masters of their own earnings. The women's right to own property is so absolute that even if she is rich and her husband poor, he has to maintain her and she should not be obliged to spend anything from her property or income to maintain herself and her children. She is allowed to hold her own property and the husband is made to pay for her and her children sustenance, similarly, the dower (Mahr) amount paid to her is her own. Neither her father nor her husband can claim it. The Quran also encourages the man to give her dower liberally and with pleasure, not with a sense of compulsion however if the wife wishes she may allow her husband to enjoy part or all of it. The holy Quran gave women an independent existence of her own and an active role in life though there were certain constraints in the contextual sense. She does not exist at the pleasure for her male members of the family. There is no bar on a Muslim women going out of house and earning, provided she protects her chastity and restrains her sexual urge. The same thing is demanded of men also. Man in no way is superior to woman in any respect.

It is most unfortunate that in the Islamic states women are seen only in their medieval image and not in the revolutionary Islamic image portrayed in the holy Quran. They are placed in purda (veil) and are relegated to a secondary role within the four walls of the house. The question of Muslim women, their social status and rights cannot be understood without keeping the following things in mind. First of all must noted that Quran makes clear pronouncement in favour of equal rights for both sexes (2:228). However, this vision of Islam for sexual equality could not find practical implementation for number of reasons. The Quranic pronouncement on the other hand, was an ideal which required very different cultural milieu. From sociological view point it was not immediately implementable.

The scriptural understanding is always mediated through culture. The Arab culture was patriarchal and had set its own understanding of women's position. Thus the Quranic pronouncement of sexual equality and understood and implemented through mediation of Arab culture.

To meet the demands of their societies they selectively used the Quranic verses and certain sayings of the Holy prophet (pbuh) to formulate Shariah approach to women problem their status and rights. This became medieval religious heritage, which no one could question. However, under pressure from modern social norms these Quranic pronouncements are being rediscovered by modernists and a debate is raging in the Muslim world today about rights of women in Islam.

## **II. CONCLUSION**

Human rights are international in the sense of it being universal, applying to all individuals. Improving women's status basically means giving them their rights as human beings. But, the scenario today presents a depressing picture a millions of women still wait to be rated as humans. Women have been used as commodities and seen as machines. This characterisation of women itself is the gross violation of human rights. A society which is characterised by prostitution, child abuse, exploitation of women, fear, apprehensions, discriminations, is a clear-cut example of abuse of human rights. Women labourer are still beasts of burden, and people accept this situation. Accepting inequality without blinking an eyebrow leads to acute violation of human rights. Women facing violation of their social, political, educational, economical and cultural rights in the society and family. Women's rights must be seen with renewed vigour and vision. More and more awareness programmes needs to be organised with full use of fourth pillar of democracy i.e., print media, mass-media and social media. The active involvement of civil society is an urgent call of time to accelerate the welfare and of women which consist half of world's population from grass root to top level. Since women's rights have been recognised as an integral, indivisible and inalienable part of universal human right, it is the collective duty of the international community and states to promote and protect the human rights of the women. In this connection, certain bitter realities of women's life should be born in mind. It has been well said that sexism kills and being female is itself a life threatening.

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