

PAKISTANI WOMEN GAIN EQUALITY WITH MEN

By

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In the East, feminism is a comparatively recent phenomenon. Education, newspapers, the growth of liberalism under the impact of the West, and the rise of nationalist movements - these factors were chiefly responsible in awakening women and instilling in them the desire and determination to win their rightful place in their respective countries' affairs.

What, however, gave a tremendous impetus to this movement for equality with men at various levels was their active participation in the movements for freedom. As was the case with their counterparts in other countries of the East, Pakistani women fought the battle of freedom alongside their men and bore with courage and fortitude the trials and tribulations of the freedom struggle.

Significant as the women's role in the freedom movement was, it came as an eye opener. For one thing, the progressive sections in the country felt that women could no more be denied legal equality with men. For another, in the wake of freedom, the women, convinced as they were of their ability to share equally alongwith men the responsibilities of freedom and nationhood, began agitating for their "inalienable rights."

But, during the initial years, Pakistan, confronted as she was by a host of crucial problems, could hardly attend to social reforms - crying though the need for it was.

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To this vital task, however, the Pakistan Government turned its attention as soon as the country had acquired a reasonable measure of political stability and economic viability. And a beginning was made in 1955 when a high-powered Commission was set up to go over the entire range of marriage and family laws (which had become outmoded and were, moreover, a source of chronic injustice to women), and to suggest suitable modifications in the light of Islamic injunctions and modern requirements.

The Commission completed its work in June 1956. Its report, however, was shelved by successive governments who were too weak to implement its provisions some of which were revolutionary in nature. The new regime which assumed power in October, 1958, acting with characteristic courage and boldness accepted the report (March 1960). The Muslim Family Laws Ordinance which was promulgated by President Mohammad Ayub Khan (March 2, 1961) seeks to implement some of the major recommendations of the report. These are to go on the Statute Book with effect from June 1 this year.

The laws relating to marriage and family relations form an important and substantial part of the larger mass of the Islamic Law. The prophet, during his own life time, expounded and administered this law in the true spirit of the Quran to ensure equity and justice.

In the centuries following his death, however, the law slowly lost its dynamic character and ceased to grow. This was because the later Muslim theologians and jurists failed to exercise independent judgments in legal matters to meet the challenge of new situations. On the other hand, they increasingly relied on the judgments of their predecessors which had gradually become outmoded.

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So that before long, a substantial part of the Islamic Law came to be in many respects undefined, vague, conservative and rigid, sundered as it was from the true spirit of Islam.

When the British came to the Indian sub-continent they discreetly adopted a policy of non-interference in the personal laws of the different religious communities and so left the Muslims to be governed by the Islamic Law as it existed then. The interests of justice demanded that this law which had remained static for so long, should be reconstructed and liberalised to meet the new social needs. But a foreign power could hardly be expected to do this with the result that most of this law remained uncodified and without any legislative sanction. Nor did the British make any attempts to simplify the procedural laws of the courts to ensure expeditious justice.

The unprogressive rigidity of the Islamic Law and the complicated, dilatory and expensive procedure of the British judicial system exposed women to grave injustices and inequities and deprived them of a great measure of security in marriage. In the business of marriage and home-making which is the supreme business of woman's life, she enjoyed very little freedom of her own. She came to exist more or less as an appendage to her more powerful and authoritarian partner, particularly among the illiterate class. She was exploited not only by the husbands but by her own parents, brothers and other male relatives. They could do almost anything to her: give her away in marriage without her consent, or even sell her like cattle to the highest bidder.

"The "mehr" (marriage dower by the husband to the wife) which was meant to give her some economic status and security in marriage had become an institution in name only. For most husbands it was no more than a bogus transaction, and in some divorce cases they even defended themselves on the plea that "mehr" was something never meant to be paid. The wife had neither the courage nor the means of enforcing payment because of the insurmountable difficulties involved in litigation and the inordinately long delays in obtaining justice.

Again, if the husband decided to take a second wife, the first one had no alternative but to bear the calamity in patience and resign herself to the will of God. The husband might, or might not, allow her to live with him in his house; in most cases she had to vacate and go over to her parents to pass the rest of her days in agony and penury. The law allowed her maintenance but she could hardly afford to claim it -- again, due to the cumbersome and complicated judicial procedure.

Or, if the husband so chose, he could get rid of his wife by pronouncing the word "divorce" three times in one sitting, and the woman's fate was sealed. No such easy and ready-made recipe, however, was available to the wife if she wanted to get rid of an undesirable husband.

No proper system existed for the registration of marriages. Most marriages were solemnised without any written agreements entered into. This give rise to a number of complications. At times two men claimed to have been married to a single woman and the law felt helpless in the absence of any documentary evidence. Similarly divorce became a matter of dispute because often there was no one to prove or disprove it.

Such has been the state of the family laws so far, and it obviously worked to the great disadvantage of the woman. And this not because Islam in any way wanted the woman to become subservient to man or to occupy a secondary place in society. On the other hand, Islam enjoins upon its followers to observe the highest principles of justice, equality and fairplay in their conduct, particularly in family relationships where the need for the maximum happiness and security cannot be over-emphasised.

For instance, Islam regards marriage as a civil contract through which the woman can ensure all the security she desires. She can obtain equal right to divorce. She can ask for dissolution of marriage by bringing in proof of the incapacities of a husband for marital life and of physical cruelty or ill-treatment. She can demand a divorce merely by expressing her unwillingness to live with a husband on the condition that she foregoes the whole or part of her "mehr". She can claim equal justice in every respect from a husband who has taken a second wife. And she is entitled to inherit property from all sides, and the property she inherits or earns is her own. ✓

Such are the rights that belong to the woman under a truly Islamic dispensation. But for a long time now, they have fallen into disuse. The Muslim women had failed to invoke them for centuries now. And now when the emancipated among them are out to claim them, they are hamstrung in their endeavours by the conservative circles who wish to maintain the status quo, and the complexity of procedure in the law courts.

The new ordinance seeks to rationalise some of the family laws within the broad framework of Islamic principles. Its main provisions relate to polygamy, registration of marriages, divorce, maintenance and inheritance.

Curbs have been placed on polygamy. Second marriages are to be contracted only when there are valid reasons for them and the husbands are in a position to support both wives and their children in the standard of living to which they have been accustomed. These circumstances will have to be explained to the satisfaction of an Arbitration Council to be set up by the Government and necessary permission for second marriage obtained. Defaulters will be liable to a fine of Rs.5,000/- or imprisonment up to one year or both.

Also, the entire amount of "mehr" will become payable to the first wife. As a deterrant to defaulting husbands, this money can be realised as arrears of land revenue. The first wife will also be entitled to sue the husband for dissolution of marriage on the ground that he has taken a second wife without her permission. ✕

These restrictions on polygamy are in complete conformity with the original Islamic Law embodied in the Quran which allows polygamy on the express condition that the husband looks after both wives well and also treats them on an equal footing. Unfortunately this condition came to be increasingly ignored, thus giving rise to unrestricted polygamy.

The new rules for divorce are on similar lines. As soon as a divorce is pronounced the husband must give notice to the chairman of the Union Council of his area who will try to bring about a reconciliation. Failing this, the divorce will become effective after three months, or, in case of pregnancy, after the delivery of the child, whichever is later.

During this period it will be open to the husband to revoke the divorce. Even if the divorce becomes effective after three months, the husband can yet remarry his former wife. But the right of remarriage will be lost in the case of a third divorce. Failure to give proper notice of divorce to the authorities will invite the same penalty as applies to a second marriage without permission.

The ordinance provides for the registration of all marriages and for this purpose special registrars will be appointed. Failure to get a marriage registered will be punished with imprisonment up to three months or a fine of Rs.1,000/-, or both.

The Arbitration Council will also fix a reasonable amount of maintenance for a neglected wife and the money has been made realisable as arrears of land revenue.

The children of a person who predeceases his own father will inherit the share of their father to which he would have been entitled if he were still alive.

The age limit of marriage in the case of girls has been raised to 16 years.

These and other provisions relating to guardianship of property, etc., go a long way in securing for women all the rights to which they are entitled in a civilised community. The ordinance does not give any new rights to women; it only seeks to interpret liberally the rights already granted them by Islam and sets up proper machinery to implement them.

The reason behind this approach is that Islam is not a static but a dynamic religion; while it lays down certain fundamental principles which must be observed, it leaves

enough scope for human intelligence and reason to interpret those principles to suit the requirements of a given situation.

The provisions of the ordinance have been welcomed by all enlightened sections of the people, especially the women's organisations which have been clamouring for the woman's right of equality with man. The conservative religious circles have, however, disapproved some of the provisions on the ground that they constitute unnecessary interference in the personal liberty of the individual as well as go against the age-old customary interpretation of the Islamic Law.

But perhaps there can be no two opinions that the proposed modifications in the family laws represent a significant advance in the emancipation of Pakistani womanhood.
