Abstract

HUMAN RIGHTS AND WOMEN: A STUDY OF VIOLENCE AGAINST MUSLIM WOMEN IN BARAK VALLEY

Violence against women is one of the most pervasive of human rights violations which denies women equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms. As a violation of human rights, violence against women causes women to be deprived of their right to fully take part in social and economic life. Moreover, it underpins many physical and mental health problems, and in some instances causes loss of life. The impact of violence is not only visible on the health and lives among women who experience violence, but also on their children, families and society as a whole. It not only restricts itself to the physical torture but at the same time psychological, sexual and economic violence too.

Violence against women cuts across religion, culture, race, class and geographical boundaries. India is no exception to that. But as the socio-economic fabric of the Indian society represents a multicultural and heterogeneous setting, the nature and forms of oppression and exploitation of women also differs in Indian society. Besides, a significant variation is noticed among women of different religions in respect of literacy, education, employment, social status, marriage system, participation in social and development programmes etc. Due to such variation women of all sections are not equally aware of their rights. Muslim being generally a socio-economically backward community, the problem of such ignorance is seen more among women of Muslim community. Thus, the nature of oppression of Muslim women is a two-way process. On the one hand, they are oppressed due to the patriarchal social set up and on the other their exploitation is accentuated due to the socio-economic backwardness of the community which contributes to the sustenance of an ultra

patriarchal set up. The issue of socio-economic backwardness of the Muslim community was very profoundly established after the announcement of the Report of the Sachar Committee in 2006. The Committee noted with concern the low socio-economic status of Muslims, higher poverty, lower literacy and educational attainments, higher unemployment rates, lower availability of infrastructure and lower participation in decision making bodies. In this backdrop, it is obvious that the backwardness of the Muslim women will be deeper compared to their male counterparts. Besides, the socio-religious perception of the community acts as a deterrent to the progress of women.

Most of the atrocities against Muslim women are related with Muslim Personal Law like polygamy, oral divorce, property rights and so on. Apart from that, law of maintenance after divorce also seriously infringes the issue of gender equality in Muslim society. To substantiate the same, the example of Shah Bano Case may be cited. Shah Bano, a Muslim divorced woman, approached the apex court for maintenance for her life from her husband. The Supreme Court in its judgement applying Criminal Procedure Code Section 125 accepted her appeal and delivered the judgement in her favour. The Muslim leadership in India objected to the judgement as it goes against the Muslim law, according to which a divorcee can get maintenance only for the 'Iddat' period (i.e., a period of waiting for 3 months after divorce is pronounced). The Muslim leaders felt that the Supreme Court has no right to go against the Muslim law. The Government of India conceding to the opinion of the Muslim leaders enacted a bill in the Parliament in 1986, and according to this, the Muslim law on the maintenance of divorced woman was restored back. Since independence, successive Indian governments have avoided taking any legislative measure to end discrimination in such laws. Such a policy contradicts India's commitment to the Convention on the

Elimination of all Forms of Discrimination against Women (1979) which upholds the principle of equality among men and women.

It is in this background, the present study is intended to explore the overall situation of the violence against Muslim women in Barak Valley of Assam. The nature, forms, causes and consequences of violence against Muslim women in Barak Valley have been investigated in the present study.

The main objectives of the study are outlined below-

1) To analyze the existing legal framework that deals with the rights of women, both international and national.

2) To study the socio-economic profile of women under study.

3) To study the nature and forms of violence against Muslim women in Barak Valley.

4) To find out the causes and consequences of violence against Muslim women in Barak Valley.

5) To assess the awareness, knowledge and perception of Muslim women regarding socio-legal and constitutional protective measures.

The present study focuses on the following research questions:

a) Is the existing legal framework of women's rights in India sufficient for protecting the rights of Muslim women?

b) What is the nature and forms of violence against Muslim women in Barak Valley?

c) What are the causes and consequences of violence against Muslim women in Barak Valley?

d) How far the Muslim women in Barak valley are aware about the existing legal and constitutional safeguards?

Methodology and Study Area: The study has been conducted in Barak Valley of Assam, comprising three districts- Cachar, Karimganj and Hailakandi. The study is exploratory and descriptive in nature. In order to study the issue of violence against Muslim women in Barak Valley, both primary and secondary data have been collected. For the purpose of collecting primary data for the study, a total of 75 Muslim women victims of violence (25 reported cases from each district) of Barak Valley have been interviewed using the interview schedule. Name and address of the victims have been collected from the Family Court, District Courts and NGOs working for women. Thus, District Level Committee for Crime Involving Women, Cachar; Wodwichee, Hailakandi; District Women Cell, Karimganj; and District Courts of Cachar, Karimganj and Hailakandi had been contacted for this purpose. Research concerning women's experiences of violence is considered 'sensitive' because it has the potential to bring up memories that are emotionally disturbing and painful. Thus, all efforts were made to ensure a caring and empathetic relationship for each woman to feel safe and supported during the interview process. The Ethical and Safety Recommendations developed by the World Health Organization was followed in this respect (WHO, 2001).[1]Apart from this, case studies of five women victims of violence have been conducted to supplement the quantitative descriptions. Books, journals, newspaper reports and various other reports pertaining to the violence against women, authentic texts of Muslim law, English translation of the holy Quran, and different books and articles on the Shah Bano Case or related to Muslim Personal Law constituted the secondary data.

[1] World Health Organization (2001). Putting women first: Ethical and safety recommendations for research on violence against women, Retrieved from http://www.who.int/gender/violence/womenfirtseng.pdf.

The present study has been divided into five chapters:

Chapter-I: Introduction- This is an introductory chapter. It consists of the statement of the problem, review of literature, theoretical perspectives of the study, operational definition of violence against women, objectives of the study, research questions, significance of the study, methodology and limitations of the study. A brief description of each chapter is also presented in this chapter. **Chapter-II: Human Rights and Women: International and National Instruments**-This Chapter has been divided in two parts. In Part- A, an attempt has been made to study the United Nation's efforts in laying down the standards for protection of rights of women. Various rights conferred to women by various international conventions and declarations as human rights are discussed in details. Part-B deals with the rights of women in India. In this part, rights and privileges of women conferred by the Indian Constitution are discussed. Besides various legislations relating to women for the protection and promotion of their rights are discussed and analysed in details. **Chapter –III-Muslim Personal Law in India and Women: A Critical Analysis**- In this chapter, an attempt has been made to study the origin and development of Muslim Personal Law in India and the status and rights of women in Muslim Personal Law. In addition, the movement for change in the Muslim Personal Law since independence and the issue of Shah Banu Case and the subsequent demand for a Uniform Civil Code have also been discussed in this chapter. **Chapter-IV-Violence against Muslim Women in Barak Valley: A Holistic Perspective from an Empirical Study**- This chapter is the core of the study. It deals with the socio-economic profile of the respondents, explores the nature, forms, causes and consequences of violence against Muslim women in Barak Valley on the basis of primary data. For the convenience of presentation, this chapter has been divided into five sections: Section 1- Profile of the study area i.e., Barak Valley and the Socio-economic profile of the respondents. Section II- Nature and Forms of Violence

against Muslim Women in Barak Valley. Section III- Causes and Consequences of Violence against Muslim Women in Barak Valley. Section IV- Awareness and Perception of Muslim Women regarding the Socio-legal and Constitutional Protective Measures. Section V- Case Studies of the Victims. **Chapter-V-Major findings, Conclusions and Recommendations**- This chapter presents the major findings, conclusion and recommendations.

Major findings, Conclusions and Recommendations

The summary of findings and conclusions of the study are grouped as under –

Human Rights and Women: International and National Instruments

Both at the international and national level, equality of men and women constitutes one of the vital human rights concerns. The United Nations from the time of its setting up has been lively in advancing the rights of women. The United Nations has committed itself not only to captivating the universal recognition of women's equal rights in law, but also to exploring ways of giving all women equal opportunities and to exercise their rights. Several measures have been taken in India in this regard including the rights granted under the Constitution, Criminal laws, and other Social Welfare Legislations etc.. The Government of India has enacted laws, made policies from time to time for all round development of women's personality and to provide them equal opportunity, dignity and human rights in all aspects of their life. Indian judiciary is also playing a vital role in protecting women's rights. Further, India has ratified various Conventions and human rights instruments committed to secure equal rights for women, key among them is the Convention on the Elimination of Discrimination against Women (1993).

Muslim Personal Law in India and Women

During the Muslim rule in India, the Muslim rulers administered Islamic law in criminal matters. However, in personal matters different religious communities were allowed to practice their own personal law. Thus, Muslims were governed by Muslim personal law whereas the Hindus were allowed to follow their respective laws in the personal matters. So the presence of different personal laws can be seen in practice during Muslim rule in India. During British rule, though they changed the procedures of criminal law they did not interfere with the personal laws of the Hindus and Muslims. An attempt was made to codify the personal laws by Britishers during their last years, the basic systems of "personal law" continued to be in operation until the time of independence. The two important legislations related to Muslim personal law during the British period were, the Shariat Act 1937and the Dissolution of Muslim Marriage Act, 1939. After independence, the Constitution of India has maintained the law as it existed during the time of its introduction. The policy of the government of India since independence is non-interference in the matter of personal laws of the Muslims. Though a substantial amount of legislation on some of the personal laws has been enacted, the various personal laws in existence in India are proof of this policy of the Indian government. Under the Constitution, Muslim law has been recognized only in respect of marriage and divorce, infants and adoption of minors, intestacy of wills, successions, joint family and partitions. Shariat or Muslim law does not apply to crimes.

It is observed that there are certain provisions in the Muslim personal law in India which are not in accordance with the principle of gender equality. Provisions like oral divorce, polygamy, inheritance and maintenance after divorce seems to be discriminatory towards women. Besides, it is seen that after the judgement of Shah Bano Case (where Supreme Court sanctioned maintenance order under section 125 of the Criminal Procedure Code), Muslim fundamentalists

organized a huge campaign against the Shah Bano decision. A large number of Muslims were mobilized across the country to stage demonstrations. In response, women's organizations, progressive Muslims and civil liberties organizations joined together to support the Shah Bano judgement. Despite strong opposition, Parliament passed the Muslim Women Protection of Rights on Divorce Bill 1986-which denied Muslim women the right to maintenance under section 125 of the Criminal Procedure Code. Since the Shah Bano Case there is a growing demand for a uniform civil code in the country.

The religious personal laws are justified under the right to religious freedom and the state's commitment to the protection of group rights. The state is committed to a policy of secularism in the so-called private sphere, but allegedly does not interfere with religious laws in the so-called private sphere, even when these laws conflict with constitutional guarantees. Muslim women are simultaneously included and excluded from equal citizenship, as the state's guarantee of equality does not extend to the private sphere of the family. Thus, Muslim women are explicitly discriminated against within the family, and the state does little to enforce constitutional guarantees of equal citizenship in the family as part of its commitment to a policy of multiculturalism and accommodating Muslim group rights.

Socio-economic Profile of the Respondents

- The present study includes respondents belonging to different age groups starting from below 18 to 46 years and above. Of the total respondents who took part in the study, a good number of the respondents (34.67%) belong to the age group between 19-25 years old, followed by 30.66 % in the age category 26-35 years and 21.33% in the age group 36-45 years. A small percentage of the respondents i.e., 2.67% and 10.67% belongs to the age groups below 18, and 46 and above respectively.

The data clearly dispels that age is not a barrier for violence and it can happen at any age level. However, from the data of the present study, it is obvious that women between the age group of 19-25 and 26-35 are at a higher risk of being subjected to violence than women of other age groups.

However, prevalence of violence in older women was found to be less. It is supposed that older women have better crisis management skills than younger women and therefore they are likely to experience less domestic violence. Again prevalence is less in very young women (below 18 years). This may be due to short duration of marital life they spent.

- Violence is seen more among the illiterate women. It is often recognized that victims education have a direct bearing on their strength and capacity to fight against violence and to exercise appropriate legal measures against the culprits. The study reveals that majority of the respondents (46.67%) are illiterate, 28% have the education up to middle level, and 12% of them have the education up to secondary level. Another 8% of the respondents have the education up to primary level. 4% and 1.33% are higher secondary passed and graduate respectively.

- In the present study, as regards the victims' ages at the time of marriage, it was found that 41.33% were married between the ages of 18-28 years. But it is shocking that about 36% of the women victims got married below the legal age of 18 years. As many as 6.67% of the victims did not know their age at the time of marriage and 16% are married between 29-39 years of age.

- Of the total women victims surveyed, 54.67% of them are married, 42.66% are separated and 2.67% are divorcee. It has been found in the course of field study that those who have taken recourse to legal assistance normally don't stay with their abusers.

- In terms of occupational status and usual activities of the respondents, it was found that a vast majority of them i.e., 74.67% are housewives and the rest (25.33%) are working women.

- The study indicated that the majority of women are economically dependent as they didn't have an independent income. In the present study it has been found that 74.67% of the respondents have no earning source, 16% are earning less than 1000 per month and 5.33% are earning in the range of rupees 1001-2000 per month. Only 2.67 % belong to income group of rupees 2001-3000 and 1.33% in the income group of 3001-5000.

Nature and Forms of Violence

- It is emerged from the study that majority of the victims 72% have been abused by their husbands. 26.67% of the respondents have been abused by their husbands and in-laws jointly. A small per cent of the respondents i.e., 1.33% of the respondents have been abused by other person.

- A vast majority of 61(81.33%) out of total 75 respondents are found to be physically abused in one form or the other. This indicates that violence in the form of physical attack is a common feature for an overwhelming majority of the victims under study.

- With regard to the nature of physical violence, it is found that out of 61 respondents 27(44.26%) are found to be victims of pushing, shaking and throwing something at victims, 21 (34.43%) reported physical violence in the form of slapping and twisting arm, 12 (19.67%) in the form of kicking or dragging, and only 1 (1.64%) are threatened using weapon. Informal discussions with the victims further reveal that a good number

of these women have to face the attacks not only of one form but rather of different forms simultaneously.

- 58 (77.33%) respondents have experienced psychological/ emotional violence in one form or another.

- As regards the nature of psychological violence it is found out that out of 58 respondents 11(18.97%) are found to be victims of accusations on character or conduct, 19 (32.76%) reported psychological violence in the form of insult for not bringing dowry, 2 (3.45%) in the form of insult for not having a male child, 21 (36.20%) are found victims in the form of humiliation in front of others and 5 (8.62%) are abused psychologically in the form of limiting contact with family and friends. Further informal discussions with the victims further reveal that a good number of these women have to face the attacks not only of one form but rather of different forms simultaneously.

- Out of the total respondents, 59 (78.67%) respondents are found to be economically abused in one form or the other.

- As regards the nature of economic abuse, it is found that out of 59 respondents 23 (38.98%) respondents have not been provided money for maintenance, 11 (18.64%) respondents have been forced to leave the house they live in, 13 (22.03%) respondents wage have been forcibly taken away, 12 (20.35%) respondents have been abused by 'not allowing use of clothes, articles or things of general household use'.

- The study reveals that only a small portion of the respondents i.e., 7 (9.33%) has experienced sexual harassment.

- It is found in the present study that out of 7 respondents who suffer sexual violence, 4 (57.14%) respondents are found to be

sexually abused in the form of forced sexual intercourse and 3 (42.86%) are abused in the form of any other act of sexual nature to abuse, degrade, humiliate or otherwise violative of dignity.

Causes and Consequences of Violence

- In the present study dowry demands has emerged as a major cause of violence against women. For 25.33% of the respondents, dowry is cause of domestic violence.20% of the respondents are victimized due to financial stress of the family, 17.33% reported patriarchal structure of society as a reason for their victimization. Further, 14.67%, 12%, 6.67% and 4% are found to be victims of violence because of alcoholic nature of husband, spouse suspicion of wife, extramarital affairs of the husband and polygamy respectively.

- An analysis of the consequences of violence at the personal level shows that 56% of the respondents are injured by the violence inflicted on them, 29.33% of the victims are denied of basic needs like food, cloth and shelter. Violence erodes women's self confidence and leads to problems such as depression. The study shows that 74.67% of the victims have suffered mental depression. Suicide or attempted suicide or thoughts of it are referred in a number of studies as an aftermath of violence. It is found in the study that 12% of the victims have thought of suicide.

- As regards the consequences of violence at the family level the present study shows that for 72% of the victims, their relationship with husband has been affected, for 58 .67% of the victims, their relationship with the children have been affected. Family is a network of relationships and violence in the family could affect the relationship in multiple ways. For 52% of the

victims their interaction level between family members has been affected.

- An analysis of the consequences of violence at the societal level shows that 45.33% of the victims' relationship with neighbours has been affected. A friend in need is a true friend. Friend in times of stress is a blessing for most of the victimized women. Majority of the victims 82.67% states that the relationship with their friends is not affected as a result of violence. Greater proportions (72%) of the victims have no complaints regarding the attitude of society toward them

Awareness

- As expected, a vast majority of the respondents (98.67) are unaware of rights guaranteed to women in India Constitution. Only 1.33% of the respondents have some knowledge on the rights of women in Indian Constitution.

- It is noticed that 14.67% of the respondents are aware of the fact that giving and taking dowry are prohibited by law while a vast majority of the respondents (85.33%) are not aware of the fact.

- It is found that an overwhelming majority of the respondents 78.67% are unaware where only 21.33% are found to be aware of Domestic Violence Act, 2005. It can be assumed that those who are aware are informed about the Act by different stake holders, whom they approached for their cases.

- As regards Shah Bano Case, it is found that all the respondents are unaware. After briefing the Case, 28% of the respondents said that Shah Bano and the judgment of the Supreme Court are right. All the divorced women want life-long maintenance.

12% of the respondents opined that according to Shariat both are wrong. 60% have no opinion.

- After briefing about the Muslim Women (Protection of Rights on Divorce) Act, 4% of the respondents opined that it solved the problems of Muslim women, while 36% of the respondents opined that it did not solve the problems of Muslim women. The rest 60% gave no opinion.

- As regards the inheritance of property by women, 45.33% of the respondents are aware, while 54.67% are unaware.

- In the present study few case studies have been conducted with the women. These qualitative descriptions are supplementary to the qualitative descriptions. The case studies give us a clear picture that various forms of violence against Muslim women exist. Women often face multiple forms of violence-physical, psychological, economic and sexual. Moreover, women face multiple forms of violence from different people. The case studies also demonstrate that alcoholic nature, extra-marital affairs of the husband and dowry demands are the main causes of violence against women. Besides polygamy is another cause responsible for violence against women.

Violence against women cuts across religion, culture, race, class and geographical boundaries. However, in case of Muslim women the violence against women is in a sense institutionalized by custom. In most cases Muslim women consider it to be something very natural and Muslim men consider it to be their right to perpetrate violence against women. The Muslim Personal Law in India has a distinct role in evolving this particular phenomenon in the community against women.

Recommendations-

On the basis of the above findings and discussions, the following measures are recommended to eradicate the incidence of violence against Muslim women.

- Reform in Muslim personal law based on the needs of Muslim women, on the principle of equal rights and which is consistent with international human rights standards is an urgent necessity and requires the attention of the Muslim Community.

- Focus should be given to women's citizenship rights. The mobilizing factor must be the pursuit of the common goal of ending gender based discrimination regardless of its social or cultural location. The Shah Bano Case is a milestone for women fighting for the implementation of their constitutional and citizenship rights in India.

- A human rights approach should be adopted to deal with the issue of Muslim women's problems. It is possible for Muslim women to move towards equality through the translation of human rights from a universal to a local context.

- It is crucial for the Muslim women to debate among themselves for their poor socio-economic status and the possibilities of overcoming patriarchal structures within their own communities.

- Muslim women need to participate in the contemporary debate on Islam and women rights and to challenge discriminatory interpretations.

- Muslim women in India in general and Barak Valley in particular find themselves still disadvantaged as regards access to education, power structures, the law, the resources that would equip them to put an end to violence. Things can and will

change only when communities take responsibility for the eradication of violence. Eradicating violence against women, therefore, calls for sustained efforts and a strong political commitment.

- For improving the status of women, the growth of women's organization should be encouraged. It should begin at the grassroots level and proceed to the top like a pyramid. There should be collective action by women against oppressive patriarchal power, with the long term goal of social transformation, which ensure women's rights and their liberation from exploitation, subjugation, degradation and injustice.

- Most of the Muslim women victims of violence in Barak Valley are illiterate and economically disadvantaged. The legal aid and advice should be made easily accessible.

- Out of three districts in Barak Valley, there is only one Family Court. Therefore, establishment of Family Court in each district is urgently required.

- The victims should be given all assistance in getting the legal aid and shelter for those who need it.

- Court procedures should be modernized and the record keeping system should be improved and computerized.

- A massive awareness campaign involving the community, religious leaders, women's organisations, NGOs, and opinion makers at all levels is necessary to counter the present trend of violence against women in general and domestic violence in particular.

- Education can broaden the outlook of women and make aware of their rights. Vocational education should be encouraged so that they can manage their livelihood at the time of crisis.

- There should be more shelter homes in Barak Valley with an increase intake capacity.

- Massive campaigns against alcoholism, dowry etc. should be organized to minimize the occurrences of violence against women.

- There is a need for societal responsibility, especially male responsibility, to mitigate violence against women. The society has to understand the cost associated with violence against women and the fact that women have as much of a right to a happy and violence-free life as anyone else.

- As the name of the victims in the present study were identified from different sources including District Level Committee for Crime Involving Women, Cachar, and Wodwichee, Hailakandi (an NGO), it is observed that the persons engaged for giving counselling are not well trained. Training and professional development is essential for professionals who come into contact with women subjected to violence. There is an urgent need for training to strengthen the understanding of violence against women amongst support givers. There is a need to ensure culturally appropriate services for women who are victims and survivors of violence.