Western Feminist Movement and "Women Protection Bill 2006" in Pakistan: An Analytical Study

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Abstract
The 'feminist movement' has had a long history from its beginnings about two centuries ago. This can be regarded as one of the outbreaks of French Revolution. Historians of feminist movement divide the movement into three waves. The movement arose as a response to perceived failures of the second-wave and often focused on “micro politics”. Much has been achieved as the outcome of the women’s historical struggle and the effects of feminist movement on the transformation of societies are comprehensive and global. In Pakistan, since women’s issues cannot be viewed in isolation from global issues, the issue of women’s autonomy and development has, over the past three decades, gradually come to be acknowledged as one of the core issues facing the nation. The practical struggle for ‘women rights’ in Pakistan kept on developing for the last three decades after the inaction of Hudood Ordinance 1979, which was enacted to fulfil a fundamental condition of constitution of Pakistan. Women rights activist groups and some religious scholars too, proclaimed the Hudood ordinance a controversial issue with an urge to amend it and remove the objectionable clauses. In later years, multidimensional efforts have been made to revoke or amend the Hudood Laws by some N.G.Os and enlightened political parties. Eventually, the new bill was passed by the parliament in November 2006 called “Protection of Women (Criminal Laws Amendment) Act, 2006”. This bill created a wide spread controversy and opposition by various political and religious parties in the country.

Keywords: Feminist Movement; Hudood Ordinance; Women Rights, Islam

I. Introduction
Issue of gender is as old as the human being is. The first female (Eve) was born through a male (Adam) who is the origin of human race, then it went forth from these two and hence, The Creator multiplied the males and females on the earth. (Al-Quran, 4:1). The concern started with the spread of men and women, though its form and nature changed time to time and it appeared in patriarchal or matriarchal societies during the turning out of the human history.
II. Feminist Movement

The Women’s Movement, started with the struggle of women themselves, though with some notable men supporters, to win an effective recognition of their equal status with men as citizens of the political community. A number of these social, cultural and political movements, theories and moral philosophies concerned with gender inequalities and discrimination against women are called feminism or feminist movement. Feminism is also described as an ideology focusing on equality of the sexes (Webster’s new world dictionary of American English, 1988 ‘feminism’, p. 498) and a doctrine or movement that advocates equal rights for women. (Collins cobuild advanced learner’s dictionary 2006, ‘feminism’. p. 527) Feminism as a Western movement originated in eighteenth century after the Industrial Revolution. In England, during the 18th century, one of the main goals of the feminist movement was the eradication of legal disabilities imposed upon women by English common law. These laws were discriminatory of women, derived partly from feudal customs of the region and partly from the idea of the Biblical literature that attributes to Eve and all her female descendants an inferior and even evil nature. The Industrial Revolution and its need for women's contribution to the work force was another aspect which brought strength to the feminist movement and helped its advocates gradually break down most of those discriminatory laws. Women for so long had been deprived of their rights and the ideology of this movement geared them to claim their overdue rights. Many individuals arose at this time creating an awareness of women’s rights.

In 1789 the outbreak of French Revolution meant that individual rights, reason, citizenship, and the sovereignty of the people were no longer simply ideas, but part of an assault on hereditary power. Their abstract quality was shed as they became part of politics. They gained historical legitimacy and lost their innocence, all in a few short years. It is hard for us to imagine the impact of such an extraordinary event. Power, which had seemed absolute, was overturned. The new dawn of liberty brought fervour of hope. (Rowbotham, 1992, p.27)

Historians of feminist movement divide the movement into three phases called three waves. The term ‘first wave’ was used retrospectively after the ‘second wave’ to describe a newer phase of feminist movement in terms of its targets to achieve. (Freedman, 2003, p. 17) This period primarily focused on the attainment of suffrage for women. It was first seriously proposed in the United States at Seneca Falls Convention New York on July 19, 1848, in a general declaration of the rights of women prepared by a group of women leaders. The early leaders of the movement in the United States were usually also advocates of the abolition of slavery. The National Women Suffrage Association was formed in 1869 to agitate for an amendment to the U.S. Constitution. Many other organisations took part in this long struggle for women’s suffrage. In 1920, the nineteenth amendment to the U.S. Constitution granted nation-wide suffrage to women. (Stevens, 1995, p. 46-50) British suffrage movement was started in the late years of the nineteenth century by some influential personalities among the advocates of women rights in Britain. In 1903, a militant suffrage movement emerged through an organisation; Women Social and Political Union. After the First World War, a limited suffrage was granted to the women, and in 1928, voting rights for men and women were equalised. (The Columbia Electronic Encyclopaedia.© 1994, 2000-2006) But as society settled down into certain patterns after the end of the Second World War, and as certain
developments became clear, the campaign was characterized as ‘the Second Phase’ of feminism. This phase called ‘second wave’ was quite distinct from the first phase in calling attention to new problems, raising new issues, making new claims, and — in general, and on many quite specific matters — becoming more radical. ‘Revolution’ rather than ‘Reform’ was in the air, and was called for. Second wave of feminist movement refers to a period of feminist activity beginning in the early 1960s and lasting through the late 1980s. It was concerned with independence and greater political action to improve women’s rights. Second wave of feminism focused as much on fighting social and cultural inequalities as further political inequalities. If first-wave of feminism focused upon absolute rights such as suffrage, second-wave feminism was largely concerned with other issues of equality, such as the end to discrimination. (Freedman, 2003, p. 33) Third wave of feminist movement began in the early 1990s seeking to challenge and expand common definitions of gender and sexuality. The movement arose as a response to perceived failures of the second-wave. Third wave feminists often focus on “micro politics,” and challenged the second wave's paradigm as to what is, or is not, good for females. (Gillis, Howie & Munford (eds), 2007, p. 57-61) Although much has been achieved as the outcome of the women’s historical struggle, the effects of feminist movement on the transformation of societies cannot yet be fully known or equally seen everywhere.

The goals as well as the impact of the feminist movement are different in diverse societies and vary from country to country. The feminist movement came to have more faces than one with variations of analysis and emphasis, observed by the writers. But the target, as well as the main outcome or impact of the feminist movement is common to all societies as a universal gesture i.e. ‘equality’ of women and men or the ‘emancipation’ of women from male dominance. Feminists reject the conservative view that women are bound to particular roles and status because of their biological difference from that of men. (Anderson, 2001, p.239) A slogan of ‘full equality for women in a truly equal partnership with men’ is spread widely as a claim for total equality and adequate similarity, that there is no difference that could justify discrimination on the ground of sex (Freeman 1979, p. 557-574). It was claimed that men and women were equal, as an absolute matter of fact, and so should be treated in the same way. Women needed neither protection nor privileges. Any such idea was a prolonged outcome of the assumption of their inferiority. All that women wanted was autonomy and freedom; with that they could stand on their own feet. In the wake of this emphasis a lengthy list of demands came for the global changes in different societies which would make this possible. Abolition and amendments in existing laws was the first step to be taken in this regard to improve the status of women in the society. A number of social, cultural, moral and political measures were to be observed yet further. This legal aspect of the feminist movement proved to be helpful and appropriate in most of the countries. But many of the goals of feminism as conceived in Western society were not necessarily relevant or exportable across cultural boundaries. Muslim societies like Pakistan have been radically different from that of Western Europe and America in terms of heritage and history, and hence, the demands of Muslim women and society are entirely different. In Pakistan, the issue of women’s autonomy and development can not be viewed in isolation from global impact of the feminist movement. This struggle has, over the past three decades, gradually come to be acknowledged as one of the core issues of Pakistan. At the highest levels, gender issues have been, and continue to be, studied and analyzed within the overall national social, political and economic context. The feminist movement in Pakistan, under the global
impact, also initiated with the same legal struggle and legislation process regardless of the fact that those legal rights which Western women sought in reform of English common law were already granted to Muslim women in the seventh century. This created high level controversy of thoughts among different groups. Complications appeared in legislation process and legal procedure. The issue should have been addressed practically on the basis of philosophical and legal grounds provided by Islam which declares equal rights though not identical, for women and men.

III. Hudood Ordinance 1979

The male dominant society of Pakistan has been build up on cultural and social grounds through the times for which social and cultural measures should have been taken to make a change. On the contrary, a legal conflict has been extended over the last thirty years, especially between the groups having orthodox and the liberal points of view. A number of NGOs on one hand, and some religious parties on the other hand, monopolized the issue elevating its intensity. In 1979, an ordinance, called the Hudood Ordinance was promulgated as a part of the process of Islamization in Pakistan which banned adultery, fornication, rape and prostitution (Zina), bearing false testimony (Qazf), theft and drinking alcoholic beverages. Hudood Ordinance was enacted to fulfil a fundamental condition of Islamic state and constitution of Pakistan, as ‘zina’ (adultery) was not a crime according to Pakistani law up till then. Subsequently the National Assembly ratified the ordinance and raised it to the status of Hudood Laws. This ordinance, regardless of its impact on Pakistani society, initiated a big legislative dispute among the belligerent groups in the name of the struggle for women rights that kept on developing for more than twenty five years. Much has been said and written (For instance; Hashmi (2004), Farooq (2004), Women aid Trust (2003) proclaiming the Hudood ordinance a controversial issue with an urge to amend it and remove the objectionable clauses. Actually, the enactment of Hudood Ordinance has never been enforced in their true spirit since 1979. This led to provide a solid ground to the opposers of Hudood Ordinance for the amendments in the laws. Flaws were there, no doubt, in procedure and implementation of the law, not the law itself. But the law itself was considered objectionable, discriminatory to the women rights, and hence, a serious struggle was made to amend Hudood law.

IV. Women Protection Bill 2006

Eventually, a new bill was passed by the parliament in November 2006 called “Protection of Women (Criminal Laws Amendment) Act, 2006”. This bill too, created a wide spread controversy and invited opposition of various political and religious parties in the country. As mentioned earlier, every progress in this regard would cause further controversy and difficulties, as the string of the women rights issue in Pakistan has always been grasped from the wrong end. The same happened with "Women Protection Bill 2006". Some of its clauses, which are the amendments in Hudood laws, are taken as a gross violation of Islamic law by the majority of religious scholars and some legal experts. Some legal experts believe that more than being un-Islamic; the procedure of administering punishments in this bill is so haphazard that it is well-nigh impossible for an adulterer to get any sort of punishment. This will result; it is regarded, in further promotion of wickedness and discrimination that will harm women more than men. This bill in the long run will be transformed from a bill for protection of women into an ‘open license for adultery’. The threat to honour and purity of women will be far more intensified. (Women Commission Jama’at Islami 2006, p.13) The legal implications of
the ‘Protection of Women Bill’ are only known to the people who are well versed with the intricacies of the legal system. The picture is being painted from the other side that the bill is going to provide a remedy to those women who are facing severe oppression and hardships due to the Hudood laws. It is regarded as a great relief to countless women. It is also being claimed that the bill does not violate the injunctions of the *Quran* and *Sunnah* (the basic sources of Islamic Law). A realistic study of the bill would cause arriving at the conclusion that the bill modifies the punishment of rape, adultery and false accusation of adultery, which is a clear violation of the injunctions given in the *Quran* and *Sunnah*. (Usmani 2006, p.5) As far the discrimination aspect of the bill is concerned, a progressive organisation active for women rights in Pakistan, Human Rights Commission of Pakistan (HRCP) expresses its acute disappointment that the rights of women have been dealt with in so careless a way.

The implementation of the bill will cause chaos and discrimination in many aspects and the chasm between males and females will be increased contrary to the international struggle for women rights. Some discriminative and different punishments are introduced for the same crime in the Bill. Offence of zina (adultery) is divided into three kinds and all three entails different punishments. This is discriminatory and inequitable as well as derogatory to Islam. Some of the amendments made could be taken as positive. Automatic occurrence of *Hudd e Qazaf* (false accusation of adultery), and some procedural refinements could be quoted in this regard. In zina (adultery) offences, the male partner is subjected to be punished unavoidably while the female partner has so many defenses, and there are very little chances for her to be punished. She can exploit him using her legal position which is more likely to happen in a community like Pakistan. In offence of rape (*Zina* by force), the female partner is exempted from the punishment anyway, only the male is punishable, even if he is a mere object of the offence, as such incidents occur in the society. Punishment of *Qazaf* (false accusation of Zina) is also an amendment in the unalterable Hudood of Allah. This retrenchment in punishment may magnify the chances of occurrence of this offence. To regard every commission of Zina by a girl below the age of sixteen as “Zina by force” and exempt her from punishment is against Islam, current Law and the principle of “equality”, as a boy under the age of sixteen is not exempted from the punishment. Some forms of *Zina* are brought under the category of “Zina by force” (rape), and are transferred from *Hudood* to *Taazir* punishments. Most of the Muslim scholars relate it as contrary to Islam, which seemingly is. But the issue is debatable to some other scholars, who differentiate this offence from that of *Zina* (Adultery) and hence, do not put it under the *Hudd* (unchangeable *Sharia* Law). The provision of Capital punishment for *Zina* by force without any distinction is un-Islamic. Unmarried delinquent cannot be sentenced capital punishment in Islamic Law. This clause is another example of biased phenomenon against men. The abolition of punishments for the attempt of *Zina* or preliminary acts of *Zina* as laid down in the *Hudood* Ordinance 1979 is repugnant to Islam and a violation of human rights too. It is a kind of licence on one side, to the villains of the society to make attempts of *Zina* (or provocation, or to pass lustful remarks) on the pious women. This happened in the society and was regarded so serious an issue that a brand new legislation has to be passed recently called "Women Harassment Bill 2010".

V. Conclusion
All this discussion concludes that the struggle for women rights in Pakistan cannot achieve the goals on the lines same as opted in the West because of the different ideal,
philosophical and legal backgrounds. Pakistani society is a male dominant society due to the social and cultural reasons in spite of the balanced teachings of Islam. Constitutionally and legally, Islam, the state religion of Pakistan, gives equal rights to all the members of the society, based upon the principle of justice to develop a sense of complimentarity among all of them. Practical steps are needed to be taken administratively to change the mind set and the culture in accordance with the Islamic teachings.

References

Al-Quran,