1 The Legal Status of Women in Islam

THE STATUS OF WOMEN BEFORE ISLAM

It is a well-known fact that the condition of women in general before Islam was dismal. The history of human civilisation testifies that the woman, who gives birth to man as mother, was humiliated, treated harshly and reduced to the position of being ‘a maid’ rather than a dignified woman. Women were held in bondage to their husbands, who could keep them or divorce them at their will and pleasure. Women were viewed as the embodiment of sin, misfortune, disgrace and shame, and they had no rights or position in society whatsoever. Indeed, society was confused about the very nature of women and even questioned whether God had granted them a soul. Hence, they were deprived of all opportunities to develop their personalities and their individualities, and make full use of their abilities to the benefit of their society. Women in those societies were also denied all rights of inheritance and ownership. Rather, they were considered as objects of inheritance. A woman was classed not as a person but as a thing, divisible like property; she was an object of scorn and contempt. These inhuman practices were prevalent at the time in most ancient societies.

However, in the Arabian peninsula (the birthplace of Islam), the situation of women prior to Islam was markedly worse. Women in this time of ignorance before Islam (Jahiliyya) were in subjugation either to their kinsmen or their husbands. They were considered a chattel to be possessed, to be bought, to be sold or to be inherited. Men had absolute domination over them. They were not individuals themselves, they either belonged to their father or to their husband. The widow(s) of a man were very often inherited by his sons just like any other property. After inheriting them from their father the sons could then easily marry them. Women had no independence or power over issues relating to their well-being and they were excluded from any active role in the social and political affairs of their society. It has been stated that ‘at annual gatherings and fairs women were made to dance naked and poets sat around composing poems on various parts of their body and movements’. In other words, they were treated as sex objects with no respect at all for their dignity.
Women in pre-Islamic Arab times were also considered to be a heavy burden on the family. The birth of the daughter was embarrassing for the father, who considered it a disgrace and a matter of shame. Therefore, the Arabs of that time practised widely ‘female infanticide’: burying their female child alive. This custom was common among the Arabs and it was even viewed as a generous act. The Quran described the mentality of ignorance underlying such a practice as such: ‘When the birth of a girl is announced to one of them, his face grows dark and he is filled with inward gloom. Because of the bad news, he hides himself from men: should he keep her with disgrace or bury her under the dust? How ill they judge!’.

‘When the sun is folded up; when the stars fall down and the mountains are blown away; when camels big with their young are left untended and the wild beasts are brought together; when the seas are burning and men’s souls are reunited (with their bodies); when the infant girl, buried alive, is asked for what crime she was slain; when the records of men’s deeds are laid open and heaven is stripped bare; when Hell burns fiercely and Paradise is brought near: then each soul shall know what it has done’.

One of the social reasons for such an attitude was that, in pre-Islamic times, there were often inter-tribal blood feuds, which demanded male members to defend their tribes. Hence men were in much greater demand than women. In addition, in the tribal conflict, the enemy always aimed at capturing women and taking them as prisoners so that they could collect heavy ransoms. Failing to do so, they would keep them as slaves. In both cases women were considered a liability to their own tribes. For if they paid ransom, they would lose money, if not, then the chastity of their women as well as their honour were at stake. ‘The Arabs did not welcome the birth of a baby girl, and this was so because of the nature of their society. Wars and invasions never ceased and taking revenge never stopped. All these things depended on the male, but a woman was unable to do any of these tasks, in addition to it, she was the desired loot for (the) service (of the enemy) in the eyes of the enemy, or she was for his entertainment’. For these reasons, the Arabs believed that their own daughters constituted a heavy burden on them and the easiest way to get rid of them was to kill them immediately after they were born.

Moreover, men in the Jahiliyya society enjoyed an absolute right over women in matters related to marriage and divorce. He, the man, had unlimited rights of marriage and divorce. He could take as many wives as he wished and could discard a wife at will. The idea of a fixed institution of marriage was absent from the pre-Islamic era. There were only different kinds of sexual union which were characterised by the looseness of marriage bonds and the lack of any defined legal system: ‘If one takes