



SOCIAL GLOBALIZATION AND INTRODUCTION OF NEW LEGAL NORMS: A STUDY IN THE LIGHT OF THE TRIPLE *TALAQ* ORDINANCE 2018

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I. INTRODUCTION

It is an admitted fact that globalization is a process that promotes the diffusion of ideas and norms of equality for women, though some societies resist such changes. Better conditions in women's lives will equip them with greater opportunity for empowerment. In fact, globalization creates such an environment by the exchange of ideas and sharing of cultural values between two nations. It is also true that women need support in many respects as they have not yet received their share of rights even in modern societal life. A commonly accepted definition of globalization includes not only economic, but also political, cultural, social, and technological interactions across countries.¹ In other words, globalization also represents the spread of ideas, information, values and people, going beyond the flow of goods, capital and services or market exchanges.² It is thus affecting almost all different dimensions of life including political as well as economic and social life of all. It influences women's life and welfare as well. This paper studies in detail whether globalization can be used for improving women's rights and if so, to what extent it is used and how to utilize it more effectively for benefits of women. It may enhance 'women's status' or 'women's rights', which allow women better access to resources and ensure their standing in legal and social institutions without discrimination.³ Globalization can provide the seeds for cultural transformations that improve the conditions of women. There are views that show that economic globalization positively affects women's rights.⁴ But in order to understand whether globalization will reduce the causes of gender discrimination, a focused look beyond its effect on economic activities of women shall be done. Such a study that deviates from the outcomes of women's economic activities and concentrates on fundamental rights of women and focuses on social globalization only can reveal how far it is useful in bringing the desired social norms.

Social globalization can be understood as information flows, personal contacts, and cultural sharing across countries.⁵ It can influence women's rights because it can promote the spread of ideas, norms and civil actions worldwide by facilitating contact and communication across people indifferent countries.⁶ Potrafke and Ursprung also show that both social and economic dimensions of globalization are positively associated with women's institutional

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¹Axel Dreher, "Does Globalization Affect Growth? Empirical Evidence from a new Index", 38(10) *Applied Economics* 1091-1110 (2006).

²Cho, S.Y, "Integrating Equality - Globalization, Women's Rights, and Human Trafficking Economics of Security", Working Paper 69, Berlin: Economics of Security7 (2012).

³Christian Morrison & Johannes P. Jütting, "Women's Discrimination in Developing Countries: A New Dataset for Better Policies", 33(7) *World Development* 1065-1081(2005).

⁴Eric Neumayer & Indra de Soysa, "Globalization, Women's Economic Rights and Forced Labour", 30(10) *World Economy* 1510-1535(2007), Eric Neumayer & Indra de Soysa, "Globalization and the Empowerment of Women: An Analysis of Spatial Dependence via Trade and Foreign Direct Investment", 39(7) *World Development* 1065-1075(2011), Richards, David & Ronald Gelleny, Women's Status and Economic Globalization, 51 *International Studies Quarterly* 855-876 (2007)

⁵*Supra* n.1.

⁶Rosenau, James N, *Distant Proximities: Dynamics Beyond Globalization* (Princeton University Press, 2003).

rights.⁷ While economic globalization mainly reflects the flows of goods and services for the interests of capital, social globalization connects people and enables them to exchange ideas and information, besides pursuing solidarity in shared causes of human rights and gender equality.⁸ People living in countries with a high level of social globalization are more likely to express and respect opinions different from tradition and conventional thinking, as well as demonstrating increased cohesion in shared causes for change.⁹ In this respect, social globalization could lead to societal tolerance and acceptance for progress in women's rights and their alternative roles.¹⁰ Positive effects can be stronger for women because women would not lose but rather benefit through changes challenging the established male-dominated societal structures which social globalization may bring about.¹¹ As women's rights are deeply grounded in culture and value systems,¹² cultural exposure and proximity with other diverse cultures can have a positive impact in reducing discriminatory cultural practices against women.

Social globalization can therefore create changes in the perceptions and attitudes towards women and thus, the impact of social globalization on women's rights is arguably stronger than that of economic globalization. In particular, social globalization will have a positive impact on women's social rights, granting equality in family matters and self-governance because these rights directly reflect societal perceptions and attitudes towards women.¹³ In this respect there are similar views¹⁴ while focusing on the diffusion of women's rights through international interconnectedness.

II. INTERNATIONAL ORGANIZATIONS AND THEIR ROLE

International interconnectedness means not only sharing of economic resources but also commitments to the international organizations such as the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW and similar Conventions are an important driving force for diffusing gender equality worldwide and such multicultural contacts at the personal level can influence people's exposure to new ideas, values, and norms more directly than integration at the country level.¹⁵ Sweeney also investigates the effects of CEDAW and democracy on the spread of attainment of women's rights in particular economic rights.¹⁶

Important international governmental organizations like United Nations (UN) and World Bank and its Conventions have promoted the diffusion of ideas and norms supporting improvements in the status of women. From its inception, the UN has addressed issues concerning women. In the late 1940s and 1950s the UN established a Commission on the Status of Women and sponsored a Convention on the Political Rights of Women. After a long

⁷Potrafke, Niklas & Heinrich W. Ursprung, "Globalization and Gender Equality in Developing Countries", 28(4) *European Journal of Political Economy* 488-505 (2012).

⁸ *Supra* n.2 at 3.

⁹ *Supra* n.6.

¹⁰ *Supra* n.2 at 4.

¹¹ *Ibid.*

¹² Simmons, Beth, *Equality for Women: Education, Work and Reproductive Rights, Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, 2009).

¹³ *Supra* n.2 at 8.

¹⁴ Gray, Mark M., *et.al.*, "Women and globalization: A study of 180 countries, 1975–2000", 60(2) *International Organization* 293- 333 (2006).

¹⁵ *Supra* n.2 at 4.

¹⁶ Shawna Sweeney, "Government Respect for Women's Economic Rights: A Cross National Analysis, 1981-2003", in Shareen Hertel & Lanse Minkler (ed.), *Economic Rights: Conceptual, Measurement, And Policy Issues* (Cambridge University Press, 2007).

lapse, the UN declared a 'Decade for Women' (1976 to 1985) and held a series of international conferences on women in 1980 (Copenhagen), 1985 (Nairobi), and 1995 (Beijing). The conferences established a Bill of Female Rights which addressed violence against women, health, employment, education, and poverty. In 1995 it resulted in a Platform for Action. These conferences on women worked to channelize the ideas for global women's movements into commitments at the level of nation-states through formulating a policy action. The Beijing Conference, and later the UN Assembly introduced an innovative approach for addressing women's inequality called 'gender mainstreaming' and demanded governments to make gender equality an explicit and central part of all policy and planning. UN showed its commitment towards gender inequality through the General Assembly by adopting the CEDAW in 1979. It called for government action on several policies designed to support women, such as maternity leave and access to childcare. Though many nations were reluctant to ratify it, CEDAW became the main international legal document on women's rights.¹⁷ Its existence created a source of legitimacy with which women could justify their claims to their own national governments. The World Bank has also addressed women's issues. It appointed an advisor on Women in Development in 1977, but paid little attention to gender issues prior to the 1980s.¹⁸ In the light of the UN conferences and Conventions, the World Bank also began increasing staff for gender work in 1987. It started to integrate women's issues into lending and development programs. After the Beijing Conference, the World Bank assessed their programmes for women and took input from women's NGOs in its policy processes and allocated more money on women's health, education, and microfinance.¹⁹ Thus, international organizations have actively articulated and diffused transnational norms of gender equality.²⁰ They have empowered women's groups and organizations, which can use international treaties and declarations to press their governments to live up to their commitments in the area of gender equity so as to bring domestic reforms.²¹ As said before, it is true that since 1990s the UN has called all countries to adopt gender mainstreaming and gender budgeting, but it found many difficulties at the level of implementation since the compliance rate among national government agencies is very low.²²

At the same time, it is to be admitted that these conferences had fostered the growth of a transnational feminist movement.²³ Non-governmental organizations held meetings parallel to the UN Conferences and attendance at the NGO forums increased.²⁴ These grassroots connections complemented and supported the connections made among official governmental delegates. The increasing number and activism of women's NGOs ensured that other UN conferences and specialized agencies would also address the gender dimension.²⁵ Women's concerns have come up prominently in a variety of UN conferences including the 1994 Earth

¹⁷ Keck Margaret, E. & Sikkink Kathryn, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, New York, 1998).

¹⁸ Nuket Kardam, *Bringing Women in: Women's Issues in International Development Programs* (L. Rienner Publishers, 1991).

¹⁹ Hafner-Burton, *et.al.*, "Mainstreaming gender in global governance", Paper for the mainstreaming gender in European Public Policy Workshop, University of Wisconsin-Madison.14-15 (2000).

²⁰ *Supra* n.14.

²¹ Irene Tinker, "Non-governmental organizations: An alternative power base for women?" in Mary K. Meyer & Elisabeth Prügl, (ed.), *Gender Politics in Global Governance* 101 (Rowman & Littlefield Publishers, Inc., 1999).

²² Nurazizah N, "The Paradoxical Impact of Globalization on Women's Political Representation: A Review of Situations In Southeast Asia", 6(1) *Journal of Government and Politics* (2015), available at: <http://journal.umy.ac.id/index.php/jsp/article/view/226/441> (last visited on Nov. 8, 2018).

²³ *Supra* n.17.

²⁴ Jacqui True & Michael Mintrom, "Transnational networks and policy diffusion: The case of gender mainstreaming", 45(1) *International Studies Quarterly* 27-57 (2001).

²⁵ Jutta Joachim, "Framing Issues and Seizing Opportunities: The UN, NGOs, and Women's Right", 47(2) *International Studies Quarterly* 247-74 (2003).

Summit in Rio de Janeiro, the 1995 International Conference on Population and Development, the 1993 World Conference on Human Rights, and the 1995 World Summit for Social Development.²⁶

III. IMPACT OF CEDAW ON THE RIGHTS OF WOMEN

There are substantial effects of the CEDAW for women's equality in many countries like Pakistan where the adoption of the CEDAW has culminated in a new debate over women's roles, promoted women's movement and even pushed the government to establish an autonomous National Commission for women. It created a definite paradigm shift in women's access to power albeit slowly and in limited quarters.²⁷ Similarly in Turkey, the CEDAW brought the issue of women's rights to the national agenda leading to creation of women's agencies and these women's organizations that emerged have used CEDAW to bring necessary changes.²⁸ Costa Rica passed its far-reaching statute on equal rights for women.²⁹

It is true that cultural change is necessary for institutional change, which ultimately brings improvements in women's lives.³⁰ Changes in attitudes and values are key for women to achieve greater equality in institution like family and changes in institutions can alter culture too. International organizations and declarations designed to promote women's equality can shape national attitudes. As discussed above, institutions such as CEDAW can act as mechanisms for change.

IV. FAMILY LAW REFORMS AND DIVORCE RIGHTS OF WOMEN: A COMPARATIVE STUDY

Though expanding international ties open the way to improvements in the quality of life and status of women, they in no way imply that globalization is good for all women everywhere.³¹ The innovative measures of CEDAW had influenced the prospective thinking like an egalitarian society promoting gender equality. But countries may not follow a uniform pattern of legal norms though the whole world is considered as a global village. For example, many Muslim countries had introduced changes and had brought reforms in their personal laws regarding triple *talaq*. Still it is seen that various schools of thought in different countries varies in their approach on this issue. It is one of the hottest topics of debate between jurists who favor the three-is-three position and those who favor the three-is-one position. Overview of reforms carried out by many Muslim states will give a clear picture that they differ on many aspects and also how and when these reforms were initiated.

Egypt was the first county to deviate from the majority of Muslim jurists in 1929. It provided that a divorce accompanied by a number expressly or implied, shall count only as a single divorce and such a divorce is revocable except when three *talaqs* are given, one in each

²⁶ *Supra* n.21.

²⁷ Anita M Weiss, "Interpreting Islam and women's rights implementing CEDAW in Pakistan", 18(3) *International Sociology* 581-601 (2003)

²⁸ Celik, Yasemin, "The Effect of the CEDAW on Women's Rights in Turkey", Annual meetings of the American Political Science Association, (Sept. 2004).

²⁹ Rojas, Roberto, "Los derechos humanos en la política exterior costarricense", 1(1) *Revista Costarricense de Política Exterior* 5-14 (2001).

³⁰ Ronald Inglehart & Pippa Norris, *Rising Tide: Gender Equality and Cultural Change Around The World* (Cambridge University Press, 2003).

³¹ *Supra* n.14.

tuhr.³² The Sudanese law of 1935 provides that pronouncement of all divorces by the husband is revocable except the third one, along with a divorce before consummation of marriage, and a divorce for consideration.³³ The Syrian law of 1953 combined the provisions of the Egyptian and the Sudanese laws by providing that if a divorce is coupled with a number, expressly or implied, not more than one divorce shall take place and every divorce shall be revocable except a third divorce, a divorce before consummation, and a divorce with consideration, and in this law such a divorce would be considered irrevocable.³⁴ Morocco and Iraq also moved in similar terms in 1957 and 1959 respectively.³⁵ Jordan, Afghanistan, Libya, Kuwait and Yemen also adopted similar laws in 1976, 1977, 1984, 1984 and 1992 respectively.³⁶ These Muslim countries accepted Ibn Tamiya's opinion as the guideline for their personal laws on this topic. The list includes the United Arab Emirates and Qatar and Bahrain being the latest countries.³⁷

As per Article 30 of the Tunisian Code of Personal Status, 1956, divorce pronounced outside a court of law will not have any validity whatsoever. Under Article 32, divorce shall not be decreed except after an overall inquiry by the court into the causes of the divorce and fails to bring about reconciliation. In Algerian law, divorce will be established after an attempt of reconciliation by the judge who shall not exceed a period of three months.³⁸ Similarly, Sri Lanka's Marriage and Divorce (Muslim) Act, 1951 as amended up to 2006, provides that a husband intending to divorce his wife is under a duty to give notice of his intention to the *qazi*. *Qazi* shall try for reconciliation between the spouses through the help of the relatives of the parties and of the elders and other influential Muslims of the area. However, if after thirty days of giving notice to the *qazi*, attempts at reconciling the spouses remain fruitless, the husband, if he desires to proceed with the divorce, shall pronounce the *talaq* in the presence of the *qazi* and two witnesses.³⁹ Under the family law of the Malaysian state of Sarawak, a husband who desires to divorce his wife has to request a court to look into the causes of proposed divorce and advise the husband not to proceed with it. However, if the differences are irreconcilable, then the husband may pronounce one divorce before the court.⁴⁰ The procedure laid down in the laws of Algeria, Sri Lanka, and the Malaysian state of Sarawak seems to be in harmony with the procedure of *talaq* in Islamic law.

³² Art. 3 of Law No. 25 of 1929, as amended by Law No. 100 of 1985 Concerning Certain Provisions on Personal Status in Egypt quoted in Muhammad Munir, "Reforms in triple talaq in the personal laws of Muslim states and the Pakistani legal system: Continuity versus change", 2 *International Review of Law* 2-12 (2013).

³³ *Ibid*.

³⁴ Art. 92 of Law No. 34 of the Law of Personal Status of Syria of 1953.

³⁵ Art. 51 of Book Two of the Mudawwana of 1957 and 1958 of Morocco and Art. 37(2) of Law No. 188 of 1959: The Law of Personal Status of Iraq.

³⁶ Art. 90 of Law No. 61 of 1976: The Law of Personal Status of Jordan, s. 145 and s. 146 of the Civil Law of 4 January 1977 of Afghanistan, s. 33(d) of Law No. 10 of 1984, Concerning the Specific Provisions on Marriage and Divorce and their Consequences. For Kuwaiti law, see s. 109 of Law no. 51 of 1984 regarding "al-Ahwal al-Shakhsyah" (Personal Law), available at: <http://www.gcc-legal.org/MojPortalPublic/DisplayLegislations.aspx?country=1&LawTreeSectionID=1386>. (last visited on Sep. 7, 2018). Art. 64 of the Republican Decree Law No. 20 of 1992 Concerning Personal Status of Yemen.

³⁷ For the UAE, see, s. 103(1) of Qanun al-Ahwal al-Shakhsiya (Personal Law) of UAE No. 28 of 2005, <http://www.gcc-legal.org/MojPortalPublic/DisplayLegislations.aspx?country=2&LawTreeSectionID=6107>, available at: (last visited on Sept. 7, 2018). See, s. 108 of the Qanun al-Ushrah (Family Law) of Qatar, No. 22 of 2006, available at: <http://www.gcc-legal.org/MojPortalPublic/DisplayLegislations.aspx?country=2&LawTreeSectionID=6107> (last visited on Sept. 7, 2010).

³⁸ See, Art. 49 of Law No. 84-II of 9 June 1984, Comprising the Family Law of Algeria.

³⁹ See Marriage and Divorce (Muslim) Act, 1951 as amended till 2006 [Cap. 134] s. 27 and R. 1 & 2 Second Schedule.

⁴⁰ See s. 43 and s. 45(1-4) of Ordinan 43 Tahun 2001, Ordinan Undang-Undang Keluarga Islam, 2001, Negeri, Sarawak.

Coming to India and Pakistan, which lie very close to each other, a variety of differences can be seen. The Constitutions of both the countries have a commitment to ensure gender equality under the International human rights' law. Though personal law is exempted in particular way, the judiciary has tried to reform many aspects of law from a feeling of obligation to protect human rights. But there are differences in directions and aspects that were reformed in these two countries, though geographically the two of them lie near. Pakistani judges interpreted it in such a way that in a divorce proceeding initiated by the wife, 'the consent of the husband is not necessary as the wife's right to divorce is on equal footing with that of the husband.'⁴¹ In other words, if the husband has a unilateral right, the wife too should not be denied such a right. In essence, '*khula*' is equated to '*talaq*'. This is nothing short of recognizing a wife's right to unilateral right to no fault divorce.

V. INDIAN SCENARIO AND THE ORDINANCE AGAINST TRIPLE TALAQ

But in India this development cannot be seen, except in a very few cases. Here wife's right to divorce was not extended, though there were some restrictions put to control husband's right to divorce. But the prevailing case law has a trend advocating a norm that *talaq* without a valid cause or not preceded by reconciliation is invalid. But it is promoting injustice also when the judiciary dictates it in the absence of legal norms as the aggrieved person has to wait for a long time, in the absence of specific legal norms. So, such reforms should be brought by legislators in tune with other progressive legislations in other countries, in order to make law specific and beyond confusions through activism. In this context, social globalization can be used as an effective tool. Otherwise it will lead to chaos and unrest in the society as the decision in *Rahmat Ulla v. State of U.P.*⁴² was considered against the spirit of Islamic law and as if rewriting of it, unknown to the overwhelming majority of Muslim jurists. Recently such an initiative was taken up after the decision in *Shayara Bano*.⁴³ After 33 years of the controversial *Shah Bano*⁴⁴ maintenance case, now Indian legal scenario is hot with debates about triple *talaq*. The debate is successfully framed as an Islam-versus-women's rights issue as done in *Shah Bano*. As the current *Shayara Bano*⁴⁵ matter goes, the disagreement is between those who see Islamic law opposing the idea of equality in the Constitution and those who argue that triple *talaq* is not Islamic and not as rightful by Quranic verses.⁴⁶ Thus, the result was that through the majority judgment Supreme Court set aside the triple *talaq* and the Chief Justice invoked Article 142 for putting an injunction on husbands from divorcing their wives for the next 6 months through this rare and extraordinary jurisdiction and sought for a legislation to end this evil. This finally culminated in an attempt to pass a Bill for this, but it failed. In this situation, the Government brought out an Ordinance namely, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 on September 19, 2018.⁴⁷

The Ordinance has its own strength, contradictions and issues, but it is to be admitted that it is a progressive step. Section 2(c) specifically provides that the jurisdiction related to any information related to triple *talaq* can be entertained by the magistrate in the area where

⁴¹ Muhammad Zubair Abbasi, "Women's right to unilateral no-fault based divorce in Pakistan and India", 7(1) *Jindal Global Law Review* 81-95 (2016).

⁴² Writ Petition No. 45 of 1993

⁴³ *Shayara Bano v. Union of India*, W.P No 118 of 2016, Writ Petition (C) No. 118 of 2016, (2017) 9 SCC 1.

⁴⁴ *Mohd. Ahmad Khan v. Shah Bano Begum* (1985) 2 SCC 556.

⁴⁵ *Supra* n. 43.

⁴⁶ Seema Chishti, "Why the triple talaq case before Supreme Court is different from Shah Bano's in 1986", The Indian Express, July 25, 2016, available at: <http://indianexpress.com/article/explained/triple-talaq-case-islam-shayara-banu-triple-talaq-case-supreme-court-2933621> 9 (last visited on Sept. 7, 2018).

⁴⁷ Available at: <http://www.prsindia.org/billtrack/the-muslim-women-protection-of-rights-on-marriage-ordinance-2018-5456/> (last visited on Sept. 7, 2018).

the married Muslim woman resides.⁴⁸ This of course is a women friendly approach where jurisdictional aspect is defined by limiting it to the place where she resides. The defining Section 2(b) which decides *talaq* as *talaq-e-biddat* is but a misnomer and is leading to confusions.⁴⁹ While, the word *talaq* indicates other types of *talaq* including *talaq-ahsan*, *talaq hasan* or *talaq-e-tafweez*, which are left untouched by the Ordinance, the use of the word *talaq* throughout the Ordinance is quite confusing leading to further conflicts. This necessitates a rewording of the word *talaq*. Section 6 which provides for the custodial right of children to women in the event of pronouncement of *talaq* is again questionable because if the *talaq* itself is void, she is still having the right to matrimonial home and the marriage is still valid and how can the separate custody be claimed while nothing has been displaced from her as the pronouncement is void. Reformation of personal laws in tune with the ideals of justice is always to be welcomed, but a little bit of caution and avoidance of hasty steps could bring desirable social change more effectively. In bringing about the desired social change in a peaceful way, social globalization can be used as a tool.

VI. CONCLUSION

As discussed above, many scholars opine that social globalization should be a mechanism for promoting norms, values of democracy, human rights and ‘learning processes’ through information exchanges and personal interactions.⁵⁰ Social globalization, if used, offers more opportunities to communicate and form networks with each other and therefore, increases freedom of expression and civil association, making social progress and changes more feasible. This suggests a possible mechanism for transmitting the effects from social globalization to women’s rights.⁵¹ It can enable changes in women’s role in society by decreasing cultural gaps across countries. It is social globalization that improves women’s rights and empowers women. The positive impact of social globalization seems to be logical, given that improving women’s rights in society is closely related to changes in perceptions, attitudes and ideas. Though independent economic resources and opportunities in the era of globalization give women more choices, their position in the social sphere is yet to be improved. It is expected that the more transnational activity people engage in, the more they absorb ideas and norms prevailing in international society as it is having a socialization effect. Socialization is a process through which actors learn the ideas, values, and norms of the social contexts in which they interact.⁵² If a country internalizes norms and ideas diffused through cross-national interactions, it incorporates those norms and ideas into its domestic policies, laws, and institutions.⁵³ But it seems that the impact of globalization on women’s rights is still limited.⁵⁴ It is true that norms and ideas in international society have not been incorporated in the status of Muslim women in India, particularly regarding their marital rights, because of extreme reluctance in India for any changes in Muslim Law, even when it is adopted in Islamic countries. So, it is important to focus on a better utilization of social globalization and bring the desired changes in the family law structure, upholding the equality of both the sexes and it is highly necessary to create an egalitarian society in consonance with human rights jurisprudence. A system either legal or social in which human

⁴⁸ S.2 (c) of the Muslim Women (Protection Of Rights On Marriage) Ordinance, 2018, No 7 of 2018.

⁴⁹*Id.* at s.2 (b).

⁵⁰Easter N-L Chow, “Gender Matters – Studying Globalization and Social Change in the 21st Century”, 18(3) *International Sociology* 443-460 (2003).

⁵¹*Supra* n.2 at 7.

⁵² Harry, A Eckstein, “Culturalist Theory of Political Change”, 82 (3) *American Political Science Review* 789 - 804 (1988).

⁵³ Andrew P. Cortell & James W. Davis Jr, “How Do International Institutions Matter? The Domestic Impact of International Rules and Norms”, 40 (4) *International Studies Quarterly* 451-78(1996).

⁵⁴*Supra* n.2 at 23.

beings are discriminated on the basis of sex must change in tune with human rights. For this, a wider platform of awareness of equality of rights of all and the current changes in the global village is to be known to all, in which definitely social globalization has a role.