

Best Practices

Although the general conditions of Muslim women present a gloomy picture, but now and then, one comes across instances which dispel the gloom and allow us to hope. These may be seen as good practices, which occur all over, in remote areas, in big cities, in the same very gullies, and mohallas, which are repositories of unending tragedies. A few examples are given below:

One Jamaat at Vijayawada

In the last fifty years Muslim women of Vijayawada have been praying in different mosques of the city without any criticism or resistance from the Muslim clergy. What is unique in Vijayawada is that some of the mosque committee members and mutavallies (custodians) themselves have started the practice. At some places the initiative has come from the women. Mutavallies have made special arrangements inside the mosque for the convenience of the women Namazis. The Ahle-Hadis Masjid Committee has built a separate room for women to offer prayers. The Imam is the same for both the men and women. Both men and women offer the prayers in a single jama'at.

(Press report from Vijayawada)

Praying in Lucknow

On August 15, 1997, women of Lucknow led by 18 year old Sadaf Rizvi broke a century old tradition by offering Friday Namaz at the 213 year old Asafi Imambara, also known as the Bada Imambara, one of Lucknow's most prominent landmarks. The next week nearly 150 women turned up to offer their prayers. Support for women's participation in the Namaz in the mosque came from a renowned scholar Maulana Kalbe Sadiq, Vice President of the Muslim Personal Law Board. "Times are changing" he said, recalling how a decade ago during the time of his father the late Maulana Kalbe Abid, a similar move had evoked a very poor response. "Their participation in the Friday Namaz will have a far-reaching impact on the life of the Muslim women", the Maulana said. "That is the day for sermons; and so it will offer women an opportunity to know about their real rights and prevent them from being misguided".

(The Observer, dated 29.8.1999)

Dowryless marriage in Hyderabad

At Hafiz Baba Nagar, Hyderabad two friends Sultana Begum and Sabira Begum decided

to arrange a marriage between their children Samina, 19 years and Shabbir Ahmed, 23 years. Sultana Begum, mother of the girl, was happy about the proposal but regretted that due to her poverty, she could not give any education to Samina. Sabira Begum, mother of the boy decided she did not want to accept any dowry. "What I wanted was a 'Shareef Bahu' and that is what I got, Now I will educate my daughter-in-law, specially because I did not get any education myself", she said to the Commission.

(NCW's visit to Hyderabad – 21-22 February, 2000)

Self worth in Indore

Two girls Roohi and Sadia appeared before the Commission in Indore. Both of them had been the victims of dowry torture. In the case of Roohi, her parents decided not to let her suffer. They extricated her from a bad marriage and helped her to stand on her feet. In the case of Sadia, she fought against marital torture inflicted on her after her husband had taken her to Hyderabad. She finally managed to leave him and return to her parents. Not only that, she recovered every article of her dowry and made herself independent.

(NCW's visit to Indore – 12-13 August, 1999)

Empowerment at Pondicherry

This event occurred in Karikul District. In Sualeh Nagar, which is primarily a Muslim area, there was an effort made to involve Muslim women in the Mangalam Programme which is an NCW initiative for the empowerment of women. The area Headman, Panchavarnam, was reluctant to allow this intervention. When asked if he could let his wife attend Mangalam for one day since it would inspire other women to follow suit, he said, "No! My wife is very moody and will not listen to anyone's instruction". Having been persuaded to try out just once, he reluctantly agreed. But the effect of Mangalam was such that the same man who was not even willing to let a single woman go from Sualeh Nagar, offered to cook food and look after the housework so that the women, including his wife, could attend the Mangalam group sessions.

(NCW's visit to Pondicherry - 23-25 February, 2000)

Campaign in Mumbai against Triple Talaq

In Mumbai, a campaign was launched by a non-feminist Muslim group against triple talaq. The Public Complaints Centre (PCC) alongwith Raza Academy decided to protest against the misuse of talaq and to target both husbands and the Qazis who write such Talaqnamas. Abdul Maniyar, Chief Organiser of the PCC observed that triple talaq was increasingly being used to get rid of wives for as flimsy a reason as, in one case, a strand of grey hair. A wife married for nearly a month and a half was reportedly discovered colouring half an inch of her hair that had turned grey. The husband, "feeling cheated" into marriage with an "old" woman, instantly divorced her. Maniyar spoke of wives divorced for having bad breadth, cold or a sinus, for going to their mother's house without their husband's consent or because the husband believed she was using

black magic to dominate him. If the husband does not say the talaq words himself, he gets the local Qazi to send a talaqnama by post. The PCC planned action such as storming the wrongdoer's house or blackening the unscrupulous Qazi's face in public.

(The Indian Express, dated 28.11.99)

Pathan Shamim in Ahmedabad

Pathan Shamim is a woman aged 30. She is one sister among seven brothers. She married out of her own choice at the age of nineteen. She had one son but her marriage did not work. At the time of marriage she had promised herself that she would never become a burden on her family. So she decided to stand on her own feet and started out by becoming a milk vendor. She tried several other trades such as cycle and scooter repair. Finally she decided to become a taxi driver. She now plies a taxi between Ahmedabad and Mumbai and can drive for seventeen hours at a stretch without getting tired. For these long journeys she hires her taxi to families and earns over Rs.15,000 a month. She had been branded and heckled by the male society, but she firmly stood her ground. She spoke about how it felt to be in a male bastion like taxi driving. "I love my work and I am good at it. No one hesitates to hire my taxi for long journeys because of my sex". She said "Purdah is not about wearing a burqa; it is about modesty and dignity in one's own eyes". She has placed her son in a boarding school and registered him under her own name. She is one of India's most empowered women.



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(Ahmedabad Public Hearing dated 11.2.2000)

Empowerment in Muzzafarpur

In Muzaffarpur, Bihar there is an area Chaturbhujsthan that has a concentration of Muslim prostitutes. The women were influenced by a local NGO, Adithi, to place their daughters at its centre for skill training. A woman DM from the area took interest in the work and gradually these girls became proficient in cutting, stitching and embroidery. National Minorities Development Finance Corporation provided them with working capital and got a NIFT trained designer to come to Muzaffarpur and work with them for six months. Now they are getting orders from all over, even from Toronto, Canada. Each girl wants working capital to start her own business.

(NCW's visit to Muzzafarpur in April, 1998)

Conclusions and Recommendations

Having heard and seen the misery of Muslim women, it is difficult to reconcile the provisions in the Constitution telling the State what it has to do for the women of the Minorities with the reality that stares us in the face. As stated elsewhere in the report, some high level measures have been taken such as the creation of Commissions for Women, Minorities and Human Rights. The much-talked about 15 Point Programme and the National Policy on Education were significant initiatives. Had these brilliantly crafted documents been pressed into service for the advancement of Minority women, we would not have witnessed the shocking misery of their daily lives. But, as stated by all the actors, the women, the officers, the NGO's, these initiatives have fallen into disuse and there seems no urgency or desire to act upon them any more.

Sixty million Muslim women's backwardness in all walks of life has assumed alarming proportions. Today, at the national level, almost two-thirds of them are illiterate; in the two States having a large number of Muslims, Assam and U.P, illiteracy among women is 73.5% and 85% respectively. Haryana has 98% illiterate Muslim women. In Hearing after Hearing the Commission observed that the abuses of personal law and bruises of family violence are ultimately rooted in their lack of education. No education and widespread ignorance has made them blind to the abuse of their personal laws which are used as instruments of torture rather than as celebration of their rights.

The remedy for this lies not in placing the blame on their personal laws but in educating them, so that they understand for themselves the spirit of their laws and in giving them the capacity for insisting on their proper application. All the social evils prevailing in the Muslim society, which were amply reflected in the Public Hearings, can be eradicated only if the women are given, on a war footing, both awareness and education. The National Commission for Women, under its parliamentary charter is meant to act as the conscience keeper of the nation with respect to the constitutional commitment to gender justice and protection of women. It is with this mandate in mind that NCW has framed a few recommendations for consideration of the Government in particular, and at the same time is addressing the Muslim community and civil society.

Undoubtedly, some of their problems are common to the problems faced by women belonging to the other minority groups and, in many cases, even by the women of the majority community. Solutions, therefore, can be no different for the Muslim women and have to be found in consonance with the needs of other women similarly placed. Therefore in making our recommendations, a two pronged strategy is suggested: general recommendations, which apply to all women in similar circumstances, and specific recommendations which apply only to Muslim women.

GENERAL RECOMMENDATIONS

1. There are several schemes of the Government - both at the central and state levels-run by various state agencies for the socio-economic advancement of Minority women. But as the

Commission discovered during all its Public Hearings, information about them is just not available at the ground level, with the result that women are unable to take advantage of them. It is essential that this situation should be corrected and information about such programs/schemes, whether run by the Central Government or the State Government, should be compiled at one place, be made available to women and NGOs and be disseminated widely. The nodal agencies should be clearly identified, the procedures laid down, and the required program made available in one place so that those interested do not have to run from pillar to post. This would include information on such programs such as the Rashtriya Mahila Kosh, National Nutrition Policy, ICDS, National Crèche Fund, Indira Mahila Yojana, Balika Samridhi Yojana, scheme for hostels for working women, scheme for support to training and employment, Rural Women's Development and Empowerment Projects, Minorities Development Finance Corporation, Maulana Azad Education Foundation etc. This information could be disseminated through Panchayats district authorities, social organisations, Wakf boards, and other minority organisations, which are active among the people. The general complaint is that the procedures prescribed under various schemes are so cumbersome and harrowing that most women (generally illiterate or semi-literate) and NGO's working among them find it impossible to access these schemes and programmes. It is therefore recommended that the procedures be made simple and user friendly so that maximum access by the target group is ensured.

2. Lack of education has been identified by one and all as the single most important cause for the backwardness of the women, be they Muslim or non-Muslim. While efforts have been made in the last five decades for the advancement of female education, it has been accepted that the goal of universal primary education has eluded us. Female education has specifically suffered. While making efforts for universal primary education, it is evident that special steps and programs would need to be launched for bringing the Minority women within the net of education for all. Since the Muslim women suffer from peculiar social disadvantages, which inhibit the growth of education among them, some concerted effort in their case would be necessary. Under the Prime Minister's 15-Point Program and also the National Education Policy launched in 1986, certain districts throughout the country were identified as educationally backward in relation to the Muslims where special efforts were required for their upliftment. Unfortunately none of these good intentions could be translated into positive action and even after almost twenty years there is no discernible improvement in the ground situation. Therefore there is a need to make an assessment of what had been promised and what has been done, and identify the lacunae that have prevented the programs in delivering the desired results. During the Public Hearings it became evident that to achieve the best results, the best effort has to be made. Muslim concentrated area institutions need the best teachers, best facilities and best infrastructure and not be packed with losers and left overs.
3. During the Public Hearings the Commission came across complaints that Muslim girls desirous of admission into schools/colleges had been refused admission in their neighbourhood institutions by being told that they should seek admission in their own community run institutions. It is well known that Muslim parents are generally reluctant to send their female children, even grown up girls, to far off institutions where they may have to travel in public transport over a long distance. Thus even when there is an urge on the part of Muslim parents and girl children for education, the social and religious prejudices of the unkind society act as a barrier. There is a need to prescribe severe and deterrent penalties in such cases, both against the persons responsible and the institutions.

4. To remove the scourge of illiteracy among the Muslim women, special campaigns to motivate the parents to send their children to schools need to be launched. Given the general poverty among the Muslims, there is a tendency to hold back the girl child at home to help in domestic chores, to take care of infants while the elders go out to work, or in the belief that 'what will a girl do with education?'. Hence the need for creating awareness among the families, particularly the women, that education is the only vehicle for social and economic transformation and advancement of the individual as well as the society.
5. Given the poverty of most Muslim families, it was observed that women engage in home-based work such as handicrafts and cottage industries, so that they continue to look after the children while earning a living. To make education relevant to the girl child, who has observed this pattern of work in her home, vocational training as part of the curriculum would have greater attraction and meaning and would need little or no persuasion. The girl child's 'homework' could be helping her mother in the very things she does for a living.
6. It has been observed that there are social prejudices against Muslims at various levels, which inhibit them from taking full advantage of the available educational facilities. Such prejudices have even seeped into textbooks in schools. This not only hardens the attitude of the children of one community against the other but also creates a negative impact on impressionable minds, which is also injurious to the overall objective of national integration. Girl children are singled out for 'protection' by parents and prohibited from attending school for fear of exposing them to such situations. Hence the need to cleanse the textbooks of all such prejudices.
7. To protect the interests of various sections of the society, particularly the weaker sections and the Minorities, the Government has set up various Commissions like the National Commission for Women, National Commission for Minorities, the Scheduled Caste and Scheduled Tribes Commissions etc., at the central and state levels. Within certain limits and constraints, these Commissions have done substantial and noteworthy work, particularly to draw the attention of the society to the specific problems that these groups suffer. Some states have either not set up such commissions and some have even wound them up for unconvincing reasons. Given the frequency of violation of human rights and minority rights, there is a need to strengthen these Commissions and give them powers to prosecute the offenders who violate or undermine the rights of these sections. While doing so, it has to be ensured that the states which have as yet not formed such Commissions do so and no Commission once formed is allowed to be wound up.

SPECIFIC RECOMMENDATIONS

Our study has revealed that Muslim women suffer from two-dimensional disabilities, one as women, like any other woman in Indian male dominated society and two as members of the Muslim community that places them at a disadvantage in the social ladder of society. The second disability stems from the biased interpretation of the Muslim Personal Law by the conservative sections of their community. This disability became evident in the Public Hearings. A Muslim woman may not step out of the house, she must not mix with the members of the opposite sex, she must be modest in her ambitions, accept the fact that education and career is not for her but only for the men, she must be married off immediately at puberty and many more such prejudices, inherited through the uninformed channels. It is unfortunate that the Muslim society in India has

refused to take note of the strides that women, including Muslim women, all over the world have made, or even the women in India belonging to other communities are making. Thus the Muslim woman in India is left far behind in the run up to a better tomorrow. While there is little role for the Government in this matter, it is the Muslim society itself which must take note of the fast changing scenario all over the world and bring their traditional law in line with the needs of the modern society. Therefore, besides the general recommendations made above, the National Commission for Women would like to address the Civil Society at large and the enlightened sections of the Muslims, in particular, to rid itself of the outdated and antiquated practices which are nothing more than distortions of their traditional law. In consideration of this need NCW addresses some of its concerns for the consideration of the Muslim intellectuals, lawyers and theologians.

1. As has been brought out above, the Muslim traditional law governing marriage, divorce or inheritance or any other aspect of life has not been codified. To start with, it is necessary that the entire gamut of traditional laws governing the family life of the Muslims be codified into an intelligible compendium understood by the wider section of the Muslim society. For this purpose a committee of Muslim intellectuals, Muslim lawyers and Muslim theologians, all categories to include women, may be formed who should work out a most acceptable and forward looking code that should govern the family matters of the Muslims. This code should clearly define the rights and the roles of the Muslim women in society as conceived by the Shariah. This code should also take into account the strides that the Muslim women have made in other Muslim societies in the world and their counterparts in India with whom they have to compete in their daily life. A codified law would enable the Muslim women to know their rights and duties in the society in relation to men and ensure that the rights given to them are observed and enforced.
2. During its Public Hearings in all parts of the country, NCW found that the Muslim women complained most bitterly against the practice of polygamy and triple talaq. While men of no other community or religious order enjoy the sanction of a second marriage while the first wife is still living (although it is also a fact that this does not stop or deter non-Muslims from polygamy either), the Muslim men often indulge in this practice due to their greed for dowry or to punish the first wife. The absurdity of this practice became apparent when some non-Muslims simply changed their names and pretended to convert to Islam for the convenience of getting a second wife, but continued to adhere to their original name and religion, thus bringing Islam in disrepute. To correct this situation, second marriage while the first wife is living should be made as difficult as possible. The permission of the first wife for the second marriage, as is the practice in other Muslim countries, should be made mandatory.
3. NCW has long been an advocate of compulsory registration of marriages. Like registration of births and deaths, registration of marriages should be made compulsory for which purpose a designated authority could be appointed. Village panchayats all over the country, could be authorised to perform the function of Registrar of Marriages. Muslims marriages already have some sort of registration/obligation, since the Nikahnama is a proof of marriage. In the case of non-Muslims there is no such obligation and therefore no proof exists. Registration of marriages is a modern practice all over the world and making it mandatory for every one in the country would help in settling many matrimonial disputes later. This would make it difficult for a Muslim to marry a second time while his first wife was living, since registration of the second marriage

without the permission of the first wife would be illegal and hence not recognised according to the Muslim Code.

4. The testimonies recorded at the beginning of this Report are a stark picture of the pathos of Muslim women who have experienced untold suffering because the old and antiquated system of *instantaneous verbal triple talaq*. Listening to them and observing their wretched condition, the National Commission for Women would like to see this scourge banned forever and the Muslim women freed from its tyranny. It is for the Muslim theologians, intellectuals and scholars to find a way within the ambit of Shariat. Whatever way is found, it is recommended that women constitute no less than half of decision makers for the community in this regard.

5. Linked to the question of divorce is that of the maintenance that a divorced woman should receive and the duration of the period she should receive this maintenance. Muslim women in courts of laws at various levels have repeatedly questioned the 1986 Law passed after the judgement of the Supreme Court in the Shah Bano case at the behest of the conservative section of the Muslim society. As indicated above, if the Apex Court upholds the judgement of the Bombay High Court, much of the injustice that the 1986 legislation did to the Muslim women would be rectified and their right to receive maintenance from the husband restored. If, however, this did not happen, some corrective action would be necessary.

The provision for maintenance in the 1986 Act beyond the period of *iddat* is vague and imperfect which leads to the destitution of the woman. It raises a larger question how a woman belonging to a particular religion could be deprived of her fundamental rights under the Constitution i.e. to be treated equally with non-Muslim women of other communities, notwithstanding the fact the Constitution recognises the rights of the minorities to follow their religious practices? Constitution is the basic law of the land which determines the rights and obligations of the citizens on an equal footing without fear or favour. How can a citizen have less of a fundamental right just because he or she belongs to a particular religion? It is therefore necessary that Civil Society and the democratic government accepts the principle that any practice or custom of any section of our society which impinges upon any of the democratic principles or the sacrosanct fundamental rights guaranteed under the Constitution of India would have to fall in line. This matter was brought up at the review of India's implementation of the Convention for Elimination of All Kinds of Discrimination Against Women (CEDAW), an international agreement to which India became signatory in 1993. There are people who think that the performance of sati by a woman in the observance of her traditional custom is her business and the state should not come in her way. Yet the State has passed anti-sati laws and abolished the practice altogether because it is repugnant to the modern concepts and violates the right to life. Depending on what happens in the Apex court on the judgement of the Bombay High Court, the State should not sit idle if for some reason the Supreme Court is unable to uphold the Maharashtra Judgement.

6. Presently, the woman can only file cases of divorce and torture by the husband where the couple lived last. It has been observed in such cases the woman, unable to support herself at her husband's place, moves to her parent's house, which may be at some other place. Filing cases at the place of the original residence not only becomes cumbersome but too expensive, and due to these logistical and financial reasons, many women are unable to seek justice. To

mitigate this hardship, an amendment of the law in this regard is necessary that would enable the woman to file suit for maintenance or relief of any other kind, at a place of her choosing.

7. To protect the rights of the women, some Muslim organisations have drafted a Nikahnama and referred it to the Muslim Personal Law Board for adoption. At present there is no set format for the Nikahnama and, most often, it is a vague document leading to several interpretations and problems later. NCW endorses the request already made to the Muslim Personal Law Board that a standard Nikahnama, such as the one drafted by women activists, be approved and adopted and that it should be made mandatory in future for all Muslim marriages.
8. The Muslim girl child should become the first focus of attention of Central and State Governments. Data for the Muslim girl child must be made available in order that problems of discrimination are identified and government schemes are properly targeted. It is recommended that the Registrar General of Census make available disaggregated data for Muslim girl child from 0-10 age group for the 2001 Census. Since nutrition data is available all over the country where ICDS operates, it is recommended that for a start, this data should be disaggregated in pockets where there is concentration of Muslims and be made available for the use of policy makers.



Appendices

CONSTITUTIONAL PROVISIONS AFFECTING WOMEN

The preamble to the Constitution of India resolves to secure to all its citizens:

JUSTICE, Social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

1. To attain these national objectives, the Constitution guarantees certain Fundamental Rights to all its citizens. Again the Directive Principles of State Policy enunciated in the Constitution embody the major policy goals of a Welfare State. Concretised together with the Fundamental Rights, they provide the vision of a new India's socio-political order. While the Fundamental Rights are justiceable and enforceable in courts, the Directive Principles are not. But they are, nevertheless, fundamental in the governance of the country and the State is charged with a duty to apply these principles in making laws (Article 37 of the Constitution).
2. It will be noticed that while the Constitution guarantees certain Fundamental Rights and freedoms such as freedom of speech, protection of life and personal liberty, that may be termed positive rights, there are certain indirect rights such as prohibition of discrimination or denial of equal protection.
3. Indian women are the beneficiaries of these rights in the same manner as Indian men. Article 14 ensures that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Again Article 15 prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them. However, Article 15(3) empowers the State to make any "special provision for women and children", overriding the fundamental obligation of non-discrimination among citizens, inter-alia of sex. This provision has enabled the State to make special provisions for women, particularly in the field of labour legislation like the Factories Act, the Mines Act, etc.
4. Article 16(1) guarantees that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". Again Article 16(2)

guarantees that "no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of, any employment or office under the State". This obligation not to discriminate in matters relating to employment or appointment to any office under the State has thus ensured a significant position and status for Indian women.

5. Some of the Directive Principles of State Policy concern women indirectly or by necessary implication. There are a few others, which are women specific. The ones which concern women directly and have a special bearing on their status are :
- Article 39(a) which directs the State to frame its policy for ensuring that the citizens, men and women equally, have the right to an adequate means of livelihood;
 - Article 39(d) which directs the State to ensure that there is equal pay for equal work for both men and women;
 - Article 39(e) which directs the State to ensure that the health and strength of workers, men and women; and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and
 - Article 42 which directs the State to make provision for ensuring just and humane conditions of work and maternity relief.

Thus the Fundamental Rights and the Directive Principles are the instruments for attaining our national objective of Justice, Liberty and Equality. By adopting the principle of adult franchise, the Constitution seeks to establish a democratic republic. The special attention given to the needs of the women in the Constitution to enable them to enjoy and exercise their right to equality of status, along with other special provisions aimed at their participative role in society seeks to make a 'social' revolution. It is clear that the Constitution contemplates attainment of an entirely new social order where all citizens have given equal opportunities and no discrimination takes place on the basis of race, religion, creed or sex.

STATEWISE POPULATION OF HINDUS AND MUSLIMS IN INDIA

Sl. No.	India / State or Union Territory	Census Year	Total population	Percentage Increase 1981-91	Hindus			Muslims		
					Population	Percentage of total population	Percentage Increase 1981-91	Population	Percentage of total population	Percentage Increase 1981-91
1	2	3	4	5	6	7	8	9	10	11
	INDIA*	1991 1981	816,169,666 659,300,460	23.79	672,599,428 547,794,269	82.41 83.09	22.78	95,222,853 71,728,063	11.67 10.88	32.76
	States									
1.	Andhra Pradesh	1991 1981	66,508,008 63,549,673	24.20	59,281,950 47,525,661	89.14 88.75	24.74	5,923,954 4,533,700	8.91 8.47	10.66
2.	Assam	1991 1981	864,558 631,839	36.83	320,212 184,732	37.04 29.24	73.34	11,922 5,073	1.38 0.80	135.01
3.	Bihar	1991 1981	22,414,322 15,047,293		15,047,293	67.13		6,373,204	28.43	
4.	Bihar	1991 1981	86,374,465 69,914,734	23.54	71,193,417 59,011,070	82.42 82.97	22.72	12,787,985 9,874,963	14.81 14.13	28.50
5.	Goa	1991 1981	1,169,793 1,007,749	16.08	756,821 646,986	64.68 64.20	16.95	61,455 41,317	5.25 4.10	48.74
6.	Gujarat	1991 1981	41,309,582 34,085,799	21.19	36,964,226 30,519,500	89.48 89.53	21.12	3,606,920 2,907,744	8.73 8.53	24.05
7.	Haryana	1991 1981	16,463,648 12,922,618	27.40	14,686,512 11,547,676	89.21 89.36	27.18	763,775 523,536	4.64 4.05	45.89
8.	Himachal Pradesh	1991 1981	5,170,877 4,280,818	20.79	4,958,560 4,099,708	95.90 95.77	20.95	89,134 69,613	1.72 1.63	28.04
9.	Jammu & Kashmir	1991 1981	5,987,389		1,930,448	32.24		3,843,451	64.19	
10.	Karnataka	1991 1981	44,977,201 37,135,714	21.12	38,432,027 31,852,029	85.45 85.77	20.66	5,234,023 4,163,691	11.64 11.21	25.71
11.	Kerala	1991 1981	29,098,518 25,453,680	14.32	16,688,587 14,801,347	57.28 58.15	12.62	6,788,364 5,409,687	23.33 21.25	25.40
12.	Madhya Pradesh	1991 1981	66,181,170 52,178,844	26.84	61,412,899 48,504,575	92.80 92.96	26.61	3,282,800 2,501,919	4.96 4.80	31.21
13.	Maharashtra	1991 1981	78,937,187 62,784,171	25.73	64,033,213 51,109,457	81.12 81.40	25.29	7,628,755 5,805,785	9.67 9.25	31.40
14.	Manipur	1991 1981	1,837,149 1,420,953	29.29	1,059,470 853,180	57.67 60.04	24.18	133,535 99,327	7.27 6.99	34.44
15.	Meghalaya	1991 1981	1,774,778 1,335,819	32.86	260,336 240,831	14.67 18.03	8.09	61,462 41,434	3.46 3.10	48.34
16.	Mizoram	1991 1981	689,756 493,757	39.70	34,788 35,245	5.05 7.14	(-1.30)	4,538 2,205	0.66 0.45	105.80
17.	Nagaland	1991 1981	1,209,546 774,930	56.08	122,473 111,266	10.12 14.36	10.07	20,642 11,806	1.71 1.52	74.84
18.	Orissa	1991 1981	31,659,736 26,370,271	20.06	29,971,257 25,161,725	94.67 95.42	19.11	577,775 422,266	1.83 1.60	36.83
19.	Punjab	1991 1981	20,281,969 16,788,915	20.81	6,989,226 6,200,195	34.46 36.93	12.73	239,401 168,094	1.18 1.00	42.42

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					Population	Percentage of total population	Population	Percentage of total population		
1	2	3	4	5	6	7	8	9	10	11
20.	Rajasthan	1991	44,005,990	28.44	39,201,099	89.08	28.09	3,525,339	8.01	41.46
		1981	34,261,862		30,603,970	89.32		2,492,145	7.28	
21.	Sikkim	1991	406,457	28.47	277,881	68.37	30.60	3,849	0.95	18.76
		1981	316,385		212,780	67.25		3,241	1.03	
22.	TamilNadu	1991	55,858,946	15.99	49,532,062	88.67	15.15	3,052,717	5.47	21.14
		1981	48,408,077		43,016,546	88.86		2,519,947	5.21	
23.	Tripura	1991	2,757,205	34.30	2,384,934	86.50	30.02	196,495	7.13	41.84
		1981	2,053,058		1,834,218	89.34		138,529	6.75	
24.	Uttar Pradesh	1991	139,112,267	25.46	113,712,826	81.74	23.11	24,109,684	17.33	36.54
		1981	110,862,013		92,365,968	83.31		17,657,735	15.93	
25.	West Bengal	1991	68,077,965	24.73	50,866,624	74.72	21.09	16,075,836	23.61	36.89
		1981	54,580,647		42,007,159	76.95		11,743,259	21.51	
Union Territories										
1.	Andaman & Nicobar Islands	1991	280,861	48.70	189,521	67.53	55.61	21,354	7.61	31.91
		1981	189,741		121,793	64.53		16,188	8.58	
2.	Chandigarh	1991	642,015	42.16	486,895	75.84	43.24	17,477	2.72	91.74
		1981	451,610		339,920	75.27		9,115	2.02	
	Dadra & Nagar Haveli	1991	138,477	33.57	132,213	95.48	33.45	3,341	2.41	72.93
		1981	103,676		99,072	95.58		1,932	1.85	
4.	Daman & Diu	1991	101,566	28.62	89,153	87.76	28.87	9,046	8.91	26.65
		1981	78,981		69,183	87.59		7,144	9.05	
5.	Delhi	1991	8,420,544	51.45	7,882,164	93.67	51.57	889,541	9.44	84.63
		1981	6,220,406		5,200,432	83.60		461,802	7.75	
6.	Lakshadweep	1991	51,707	28.47	2,337	4.52	29.91	48,765	94.35	27.75
		1981	40,249		1,799	4.47		38,173	94.84	
7.	Pondichery	1991	807,785	33.64	695,991	86.16	34.56	52,867	6.64	44.20
		1981	604,471		517,228	85.57		36,663	6.06	

(Source : Census of India, Series 1, Paper 2 of 1992)

**THE MUSLIM PERSONAL LAW (SHARIAT)
APPLICATION ACT, 1937**
(Act No. 26 of 1937)

(7th October, 1937)

An Act to make provision for the application of the Muslim Personal Law (Shariat) to Muslims^{1***}

Whereas it is expedient to make provision for the application of the Muslim Personal Law (Shariat) to Muslims (***) ; It is hereby enacted as follows :

1. Short title and extent. – (1) This Act may be called the Muslim Personal Law (Shariat) Application Act, 1937.

(2) It extends to the whole of India ²(except the State of Jammu and Kashmir)³.

STATE AMENDMENT

Pondicherry.—In Section 1 after sub-Section (2) insert the following proviso, namely :

"Provided that nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry"—Act XXXVI of 1968, Section 3 and Sch.

2. Application of Personal Law to Muslims.—Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubarat, maintenance, dower, guardianship, gifts trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in case where the parties are Muslims shall be the Muslim Personal Law (Shariat).

STATE AMENDMENTS

ANDHRA PRADESH. – Same as that of Tamil Nadu.

KERALA.—Same as that of Tamil Nadu except that in Kerala, between the words "trust properties and wakfs" and "the rule of decision in cases", and the words, brackets etc. "(other than charities and charitable institutions and charitable and religious endowments)".—Ker Act 42 of 1963, Section 3 (12-11-1963).

TAMILNADU.—For Section 2 substitute the following section, namely :

2. Application of Personal Law to Muslims.—Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provisions of personal law, marriage, dissolution of marriage, including Talaq, Ila, Zihar, Lian, Khula and Mubarat, maintenance, dower, guardianship, gifts, trusts, and trust properties and wakfs the rule of decision in case where the parties are Muslims shall be the Muslim Personal Law (Shariat)*—T.N. Act XVIII of 1949, Section 2 (12-7-1949) : T.N. Act XXIII of 1960, Section 3 (1-2-1961).

1. The words "in the Provinces of India" omitted by the A.O. 1950.
2. Subs. by Act 48 of 1959. Section 3 and Sch. 1, for certain words (w.e.f. 1-2-1960).
3. The words "excluding the North-West Frontier Province" omitted by the A.O. 1948.

3. Power to make a declaration—(1) Any person who satisfies the prescribed authority—

- (a) that he is a Muslim, and
- (b) that he is competent to contract within the meaning of Section 11 of the Indian Contract Act, 1872 (9 of 1872), and
- (c) that he is a resident of ¹(the territories to which this Act extends), may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit ²{the provisions of this section}, and thereafter the provisions of Section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.

(2) Where the prescribed authority refuses to accept a declaration under sub-Section (1), the person desiring to make the same may appeal to such officer as the State Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

4. Rule Making power.—(1) The State Government may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely—

- (a) for prescribing the authority before whom and the form in which declarations under this Act shall be made;
- (b) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the time at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this Section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

5. Dissolution of marriage by Court in certain circumstances.— Rep. by the Dissolution of Muslim Marriages Act, 1939 (8 of 1939), Section 6.

6. Repeals³. - (The under mention provisions) of the Acts and Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely—

- (1) Section 26 of the Bombay Regulation IV of 1827;
- (2) Section 16 of the Madras Civil Courts Act, 1873 (3 of 1873);
- (3) (****)⁴
- (4) Section 3 of the Oudh Laws Act, 1876 (18 of 1876)
- (5) Section 5 of the Punjab Laws Act, 1872 (5 of 1872)
- (6) Section 5 of the Central Provinces Laws Act, 1875 (20 of 1875); and
- (7) Section 4 of the Ajmere Laws Regulation, 1877 (Reg.3 of 1877).

1. Subs. by the Adaption of Laws (No. 3) Order, 1956, for "a Part A State or a Part C State."

2. Subs. by Act 16 of 1943, Section 2, for "this Act".

3. Subs. by Section 3. *ibid.* for "Provisions."

4. The words, figures and brackets "(3) Section 37 of the Bengal, Agra and Assam Civil Courts Act, 1887" omitted by Section 3. *ibid.*
This omission has the effect of reviving the operation of Section 37 of that Act.

THE DISSOLUTION OF MUSLIM MARRIAGES ACT, 1939
(Act No. 8 of 1939)

(17th March, 1939)

An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie

Whereas it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie;

It is hereby enacted as follows :

1. Short title and extent. – (1) This Act may be called the Dissolution of Muslim Marriage Act, 1939.

(2) It extends to the whole of India (except the State of Jammu and Kashmir).

STATE AMENDMENT

Pondicherry. – In Section 1, after sub-Section (2), add :

"Provided that nothing contained in this Act shall apply to Renoncants of the Union Territory of Pondicherry" – Act 26 of 1968, Section 3 (1) and Schedule.

2- Ground for decree for dissolution of marriage. – A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely ;

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years.
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) that the husband was impotent at the time of the marriage and continues to be so;
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years ;

Provided that the marriage has not been consummated;

(viii) that the husband treats her with cruelty, that is to say, –

- (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or

- (b) associates with women of evil repute or leads an infamous life; or
 - (c) attempts to force her to lead an immoral life; or
 - (d) disposes of her property or prevents her exercising her legal rights over it; or
 - (e) obstructs her in the observance of her religious profession or practice; or
 - (f) If he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;
- (ix) on any other ground which is recognised as valid for the dissolution of marriage under Muslim law :

Provided that –

- (a) no decree shall be passed on ground (iii) until the sentence has become final;
- (b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and
- (c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

3. Notice to be served on heirs of the husband, when the husband's whereabouts are not known. – In a suit to which clause (i) of Section 2 applies –

- (a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plaint shall be stated in the plaint;
- (b) notice of the suit shall be served on such persons; and
- (c) such persons shall have the right to be heard in the suit :

Provided that paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

4. Effect of conversion to another faith. – The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in Section 2 :

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

5. Rights to dower not to be affected. – Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

6. Repeal of Section 5 of Act 26 of 1937. – Repeal by the Repealing and Amending Act, 1942 (25 of 1942), Section 2 and Schedule 1.

MUSLIM MARRIAGE CONTRACT/PLEDGE

This Contract has been prepared by the Islamic Fiqah Academy, and is being used here as an example of the efforts being made by various Muslim groups to introduce a standard format.

1. The husband and the wife pledge allegiance to Islam and Shariat.
2. I daughter of..... pledge that I will obey my husband in all legitimate matters and will treat him and his family with courtesy and decency. I will be loyal to him even in adverse circumstances.
3. I..... son of..... pledge that I will live decently with my wife and grant her those rights which are demanded of me by the Shariat.

Moreover, if any of the following conditions occur and if the Islamic Court or Arbitrators or Muslim community or panchayat-biradri are satisfied/assured of the condition, formally or informally, and state their satisfaction in writing, then the wife will have the right of separation, through *Talaq-e-baain* (final divorce) either at that time or till that condition prevails.

- (a) Husband's absence/disappearance for 2 years
- (b) Refusal to pay her maintenance despite her making claim for it, or
- (c) Abstaining from performing his conjugal duty
- (d) When the husband is lunatic or idiot or suffering from sexually transmitted disease, or
- (e) Indulges in violence (physical) against the wife or
- (f) Has illicit sexual relations with other women or
- (g) Forces the wife to indulge in immoral activities

4. If the husband feels the need for a second marriage despite the presence of the present wife then he will clearly explain his reasons to the Islamic Court or local Ulema, or responsible members of biradri as to why he wants to marry again, whether he can afford to keep two wives, and whether he can do justice to both according to the demands of Shariat.
5. If the husband marries again he will be bound to provide his second wife a separate residence if the first wife so demands.
6. The children born of the first wife cannot be separated from the mother during the lactation period. After that period upbringing of the child must be decided by the judge according to the consideration of whatever is in the best interest of the child.
7. The foregoing of the Mehr by the wife will be considered authentic only if it is assured that she has not done so under any pressure, out of or innocence, or ignorance of the rules governing mehr, or through any kind of fraud.

8. While divorcing, the husband will do so according to rules of Sharia. He will refrain from doing so without a Sharai reason or without consultations with the Islamic Court of local Ulema. Moreover if it becomes necessary to divorce the wife, then he will not pronounce more than one divorce in one sitting.

9. At the time, all those things, which were given to the wife by her family and friends or by the husband's family or friends, will be considered as the property of the wife.

10. We the spouses pledge that if, God forbid, any dispute arises between us, then the Islamic Court, Muslim community or Panchayat-biraadri will be the third party arbitrator. All domestic disputes, including divorce by husband, seeking of divorce by the wife, mehr, lactation period, maintenance etc. will be decided at the discretion and full satisfaction of the arbitrator.

Signature
Husband

Signature
Wife

Signature
First Witness

Signature
Second Witness

Signature
Qazi

Nikahnama

Husband's name with father's name

Age

Address

Present Occupation

First or Second Marriage

Wife's name with father's name

Age

Address

Present Occupation

First or Second Marriage

In case of second marriage; is the marriage taking place after the death of the first husband or after divorce?

Name of the Vakil of Nikah with father's name (representing the wife)

Age

Address
Occupation
Relationship with the wife

Name of Vakil of Nikah with
father's name (representing the husband)

Age
Address
Occupation

Witness no.1 seeking wife's consent for marriage :

Name with father's name

Age
Address
Occupation

Witness no.2 seeking husband's consent for marriage

Name

Age

Address

Occupation

Witness of the Nikah (No.1)

Name with father's name:

Age

Address

Occupation

Witness of Nikah(No.2)

Name with father's name:

Age

Address

Occupation

Mehr (*amount*).

If the husband marries again during the lifetime of his first wife, without consultation with the Islamic Court or if he divorces her, in that case the amount of mehr will be (*amount plus.....*)



**THE MUSLIM WOMEN
(PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986**

(Act No. 25 of 1986)

An Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from their husbands and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty seventh year of the Republic of India as follows:-

1. Short title and extent,- (1) This Act may be called the Muslim women (Protection of Rights on Divorce) Act, 1986

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.- In this Act, unless the context otherwise requires.-

(a) "divorced women" means a Muslim women who was married according to Muslim law and has been divorced by, or has obtained divorce from her husband in accordance with Muslim law:

(b) "iddat period" means in the case of a divorced woman,-

- (i) three menstrual courses after the date of divorce, If she is subject to menstruation; and
- (ii) three lunar months after her divorce, if she is not subject to menstruation; and
- (iii) If she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(c) "Magistrate" means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure 1973 in the area where the divorced woman resides.

(d) "prescribed" means prescribed by rules made under this Act.

3. Mehr or other properties of Muslim woman to be given to her at the time of divorce.-

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to –

- (a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;
- (b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;
- (c) an amount equal to the sum of mehr of dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

- (d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) where a reasonable and fair provision and maintenance or the amount of mehr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mehr or dower or the delivery of properties as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that-

- (a) her husband having sufficient means has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or
- (b) the amount equal to the sum of mehr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her.
- make an order, within one month of the date of the filing of the application directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mehr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mehr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973, and may sentence such persons, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provision of the said Code.

4. Order for payment of maintenance.- (1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not remarried and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportion in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance

ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order direct the State Wakf Board established under Section 9 of the Wakf Act, 1954, or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provisions of Sections 125 to 128 of Act 2 of 1974.

- If on the date of the first hearing of the application under sub-section (2) of Section 3 a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed either jointly or separately, that they would prefer to be governed by the provisions of Section 125 to 128 of the Code of Criminal Procedure, 1973; and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation. - For the purpose of this section, "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application.

6. Power to make rules. - (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of his act.

(2) In particular and without prejudice to the foregoing power, such rules may provide for—

- (a) the form of the affidavit or other declaration in writing to be filed under Section 5;
- (b) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such application, dates of hearing of such applications and other matters;
- (c) any other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session of the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Transitional provisions. - Every application by a divorced woman under Section 125 or under Section 127 of the Code of Criminal Procedure, 1973 pending before a Magistrate or the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of Section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act. ■

PRIME MINISTER'S 15- POINT PROGRAMME

The increase of communalism and the large number of attacks on the lives and properties of minorities is cause for deep sorrow. These incidents are a blot on the good name of our country. They have been deliberately created by militant communal elements who do not hesitate to sacrifice the strength and security of the country for their own narrow, nefarious ends.

PM of India remained committed to the secular ideal, The India of our dreams can survive and prosper only if Muslims and other minorities can live in absolute safety and confidence. Since the meeting of the Integration Council, in Srinagar, several measures have been suggested time to time. But perhaps because the situation had improved, some slackness crept and there is need to take new initiatives to combat this growth of communalism and to prevent and deal promptly and firmly with communal tension. We must devise mechanisms by which the conscience and political power of the entire nation are enlisted to deal with such situations.

The PM met several delegations of Members of Parliament and other representatives of Muslim and other minority groups and have discussed measures to prevent the recurrence of communal violence and to improve the economic conditions of minorities. After careful consideration of the suggestions which emerged PM decided that immediate action should be taken as indicated below:

Communal Riots

1. The State Government are being advised that in the areas which have been identified as communally sensitive and riot prone, District and Police officials of the highest known efficiency, impartiality and secular record must be posted. In such areas and even elsewhere, the prevention of communal tension should be one of the primary duties of DM and SP. Their performances in this regard should be an important factor in determining their promotion prospects.
2. Good work done in this regard by District and Police officials should be rewarded.
3. Severe action should be taken against all those who incite communal tensions or take part in violence.
4. Special courts or courts specifically earmarked to try communal offences should be set up so that offenders are brought to book speedily.
5. Victims of communal riots should be give immediate relief and provided prompt and adequate financial assistance for their rehabilitation.
6. Radio and TV must also help in restoring confidence, communal harmony and peace in such affected areas.
7. It is unfortunate that certain sections of the press sometimes indulge in tendentious reporting and publication of objectionable and inflammatory material which may incite communal tension. I hope that editors, printers, publishers and others concerned will co-operate in finding a way to avoid publication of such material.

Recruitment to State and Central Services.

1. In the recruitment of police personnel, State Governments should be advised to give

special consideration to minorities. For this purpose, the composition of Selection Committees should be representative.

2. The Central Government should take similar action in the recruitment of personnel to the central police Forces.
3. Large scale employment opportunities are provided by the Railways, Nationalised Banks and Public Sector Enterprises. In these cases also the concerned departments should ensure that special considerations is given to recruitment from minority communities.
4. In many areas recruitment is done through competitive examinations. Often minority groups have been handicapped in taking advantage of the educational system to compete on equal terms in such examinations. To help them to overcome these handicaps, steps should be taken to encourage the starting of coaching classes in minority educational institutions to train the persons to compete successfully in these examinations.
5. The acquisition of technical skills by those minorities who are today lagging behind would also help in national development. Arrangements should be made to set up ITI's and Polytechnics by Government or private agencies in predominantly minority areas to encourage admissions in such institutions of adequate number of persons belonging to these communities.

Other Measures

1. In various development programmes, including the 20-Point programme, care should be taken to see that minorities secure in a fair and adequate measure the benefits flowing therefrom. In the various committees which are set up to oversee the implementation of such programmes, members of those communities should be actively involved.
2. Apart from the general issues which I have referred there are various local problems which develop into needless irritants to minorities. For instance encroachment of Wakf properties and on graveyards have led to protest and grievances in some places. Suitable steps should be taken to deal with such problems on an expeditious and satisfactory basis.
3. Problems relating to minorities need to be attended to on a continuing basis so that apprehensions are allayed and genuine grievances redressed. To facilitate this, a special cell will be created in the Ministry of Home Affairs to deal with matters relating to minorities.

Some other measures are also under consideration. Decisions on them will be announced as early as possible. PM was confident that the measures that have been indicated above and others which will be announced shortly, will facilitate the full participation of Muslims and other minority groups in all aspects of national life and thus promote the cause of national integration.

PM had expressed desire for a special report every quarter on the results of action taken to implement the above decisions.

**LIST OF EDUCATIONALLY BACKWARD
MINORITY CONCENTRATION DISTRICTS**

<u>STATES</u>	<u>DISTRICTS</u>
UTTAR PRADESH	1. Rampur
	2. Bijnor
	3. Moradabad
	4. Saharanpur
	5. Muzaffarnagar
	6. Meerut
	7. Bahraich
	8. Gonda
	9. Ghazaibad
	10. Deoria
	11. Pilibhit
	12. Barabanki
	13. Basti
WEST BENGAL	14. Murshidabad
	15. Malda
	16. West Dinapur
	17. Birbhgom
	18. Nadi
	19. 24 Parganas - North
	20. 24 Parganas - South
	21. Cooch Bihar
	22. Howrah
KERALA	23. Malappuram
	24. Kozhikode
	25. Cannanore
	26. Palghat
	27. Wyanad
	BIHAR
29. Katihar	
30. Darbhanga	
KARNATAKA	31. Bidar
	32. Gulbarga
	33. Bijapur
MAHARASTRA	34. Greater Bombay
	35. Aurangabad
ANDHRA PRADESH	36. Hyderabad
	37. Kurnool
HARYANA	38. Gurgaon
MADHYA PRADESH	39. Bhopal
RAJASTHAN	40. Jaisalmer
GUJARAT	41. Kachch

(NB : This list is under review to cover more areas having minorities concentration)

SUDAKA: THE HEART OF DARKNESS

Syeda Saiyidain Hameed

The name of the village was Sudaka, a hamlet buried in the Nuh district of Haryana. We reached there after an arduous journey over broken roads and bad terrain. With us was the young couple who we were hoping to reconcile with their families, 19 year old Maimun and her 26 year old husband Idris.

On June 6, 1997, the two had got married against the wishes of the girl's parents. The reason? Maimun told us that her parents wanted to sell her to a rich "Customer". When they learnt that she had married a boy of her choice, all hell broke loose. Maimun was thrown to the mercy of the villagers. 'Mercy' which took the shape of a gang rape. She was raped by four men including a village pradhan. Not satisfied with teaching her a lesson by tearing her private parts, they took her in a jeep, and her first cousin cut open her abdomen and neck with a butcher's knife leaving her to bleed to death. How she was rescued by a village woman, how she reached the hospital courtesy Umardin of Shikarpur, and how Idris found her is another story.

Our part begins when the terrorised couple managed to escape from the village and reach the doorstep of the National Commission for Women.

It was exactly two months since they had been married. Meanwhile Maimun had been raped and almost killed. Idris's face had been blackened, he had been tied and beaten and Rs.25,000 had been extorted from him. At times like this all one wants to do is to give solace and protection. We could not bring ourselves to adhere to our role as the apex body and not get involved in individual cases. But what followed was almost too bizarre for words.

News came from the village that Idris's old parents were being tied and tortured by the villagers. "Save my mother". Maimun appealed to the Chairperson. "How long can Idris stand by me if this continues? Save my father-in-law and mother-in-law". This happened on the eve of the golden jubilee of India's Independence. That evening while the country was preparing for the ceremony at Vijay Chowk, Members of the Commission were hurtling towards the sleepy hole called Sudaka. Maimun, still doubled over with the abdominal wounds, was huddled in a corner of the car.

We drove straight to the boy's house. An old man and woman identified themselves as Ismail and MaujBi, Idris's parents. Suddenly there were hundreds of villagers surrounding us. There was just one refrain; "Give us the girl". Why? we asked. "She is an adult and she has married a boy of her choice. She has a nikahnama as well as certificate of registration. Above all she is happy. They love each other".

Our words fell on deaf ears. "But we don't want the marriage". "Why" we asked. "And why are you holding the boy's parents to ransom?" "It is a matter of Gotra", we were told. "What

Gotra? There is no Gotra in Islam". "We are Qureshis, they are Meos. It is not permitted". "Permitted by whom?" we asked. "Allah through His Prophet has decreed that Islam is a religion of equality among all its believers? Are you not Muslims?"

"For the time being, yes," said the lamberdaar.

The sun was going down. Suddenly the women of the village descended on us like locusts. They grabbed us and cried, wailed and screamed, "Give us the girl. She was abducted, kid-napped". Young women who claimed to be her cousins and bhabhis screamed at us. "Our girls' engagements have been broken off. Our families have been defiled".

We could not breathe. Too many hands were clutching at our legs, arms and necks. "Listen to me," Padma Seth shouted in her powerful voice. For a moment they fell silent. "We are here for you. We understand your agony. She is equally our daughter. But what religion teaches violence? Islam has given the message of peace. The couple will leave this village forever. You will never see their faces again. But what fault is it of old Ismail and MaujBi? Why terrorise them? Why break the engagements of young girls? Please try to understand". She turned to the young people. "You need to wake up. Your religion enjoins it upon you to open the windows of your mind".

But the windows were shuttered up. There were just hands poised to clutch our throats. The few policemen were standing around helplessly. "These people are a law into themselves", they had told us. As we struggled back to the vehicles, the wailing women started a cacophony. Suddenly we saw throngs of people physically lifting the car in which the girl had been sitting all along. Someone shouted, "Give us the girl otherwise this will become another Kashmir".

The car was being shaken like a bag of beans. A bunch of robust village hulks tore off the handle. Our drivers and Sadiq, our lawyer, threw themselves between the girl and the mob. But the frenzy swept us all aside. Maimun was whisked out of the vehicle like a piece of meat. Hundreds of hands dragged her away. Then there was dead silence. The storm died and the hundreds of bodies which had been falling all over us had disappeared into the thin air. We were left with Idris hiding in the trunk of the car and a few nervous looking policemen.

That night as we drove back to the glitter of a Capital which was celebrating the golden jubilee of Independence, we let the tears flow shamelessly down our cheeks. What have fifty years done for Sudaka? One village caught in the barbarism of middle ages, den of Jahiliyat. It reminded us of the Arabian peninsula before the Prophet brought the message of Islam. Dark, dismal and dreary, beset with the most barbaric traditions. Where is the empowerment of the girl child? Maimun may have been torn apart by the vultures. But they know nothing better. No one has told them that there is a better way of life. No Messiah has ever visited that heart of darkness.

The Times of India dated 18.1.1997

REFORM WITHIN THE SPIRIT OF ISLAM

Anees Ahmed

It is a well known fact that what passes off as the so called "Islamic" or "Mohammedan" law in India is what has been laid down and interpreted by colonial and Indian judges. It is beset with so many infirmities and inconsistencies that at times it is totally at variance with the letter and spirit of the true Islamic law as contained in the Quran and the Sunnah (traditions of the Prophet).

The inaccuracies have crept in on account of two principal reasons. Firstly, the courts hardly have any access to original and primary sources of Islamic law which are almost always in Arabic and Persian and as a consequence they have to rely heavily upon unauthentic and, at times, biased translations, interpretations and commentaries essentially by English orientalists. Secondly and more importantly, the legislators have been slow, even loath, to correct this position for obvious fears of agitation and reprisals by conservative Muslims fearing interference in their religious and personal laws. As a result, certain customs and practices that have no foundation in primary religious texts have come to acquire legitimacy as "Islamic" and are being enforced by courts of law.

Attempts to remedy this situation have been few and far between. Any enterprise in this direction is always impeded by fears of controversies such as those that surrounded the Shah Bano decision and the subsequent enactment of the *Muslim Women (Protection of Rights on Divorce) Act, 1986*. Before Shah Bano, the last time legislation was passed to codify and systematise Muslim law was the adoption by the central legislature of the *Dissolution of Muslim Marriages Act* way back in 1939.

Immutable Tenets

It is instructive to narrate how the 1939 Act was passed on the basis of a near-total consensus among the ulema (religious scholars) and without any murmur of dissent from any quarter. Not that "reform" is anathema to Islamic jurisprudence and theology. On the contrary, there are established principles and techniques by which reforms can be effected in Islamic law, without in any manner disturbing the immutable fundamental tenets and doctrines as enunciated in the Quran and the Sunnah. One such technique is *takhayyur* which envisages the exercise of eclectic choice from amongst similar legal principles of the various schools of Muslim law. It was this technique that was employed to create a consensus amongst the ulema for the introduction of the *Dissolution of Muslim Marriages Act, 1939*.

Muslims in India principally owe allegiance to the Hanafi school of Islamic jurisprudence. The Hanafi law, as strictly construed, considerably restrains a Muslim woman's right to seek dissolution of her marriage. This led to a tendency among Muslim women to convert to other faiths to enforce their rights. Maulana Ashraf Ali Thanvi, a leading theologian and scholar, took it upon himself to create a consensus among the ulema to agree to borrow from the Maliki law to provide

various enumerated grounds of divorce to a Muslim woman. Ultimately, the ulema themselves recommended that the federal government enact the Act of 1939 providing for nine grounds of divorce to a Muslim woman. This process clearly establishes that if principles of one school caused hardship and duress to its practitioners it was open to the ulema to arrive at a consensus on a parallel but less onerous provision of another school.

Family Law

Takhayyur has become the basis for reforms in family laws in many Muslim countries of the world. For example, most of them have brought in laws to embody restrictions on polygamy and on the husband's unilateral right to repudiate his marriage, abolition of triple talaq and such other socially pernicious practices. Illustratively, in Pakistan the Marriage Commission Report had recommended, as early as in 1955, that the triple formula of *talaq-al-bidah* should be made equivalent in law to one single pronouncement and that the *talaq-al-sunnah* should become obligatory. Acting on the Report and despite strong conservative opposition President Ayub Khan promulgated the *Family Law Ordinance of 1961* which provided for the formation of an Arbitration council to effect reconciliation between the parties before the divorce became irrevocable after a ninety day period.

Such issues can be tackled in India too with the ulema coming to the fore to create a consensus, and if need be, to incorporate benevolent principles from other schools of Islamic jurisprudence into the Hanafi regime as practised in India.

The Times of India, dated 26.2.1999



حيلة الناجزة للعاجزة

Hailatun Najiza Lil Ajiza

(Successful Solutions for Oppressed Women)

— Title of a booklet devoted on Women empowerment
by Maulana Ashraf Ali Thanavi, 1936

MARCH-2000