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CHAPTER - I

INTRODUCTION

Family, society and ultimately the whole of mankind is treated by Islam on an ethical basis. Differentiation in sex is neither a credit nor a drawback for the sexes. Therefore, when we talk about status of women in Islam it should not lead us to think that Islam has no specific guidelines, limitations, responsibilities and obligations for men. What makes one valuable and respectable in eyes of Allah, the creator of mankind and the universe, is neither one's property, position, intelligence, physical strength nor beauty, but only one's Allah's consciousness and awareness (taqwa). However, since in the Western Culture has also influenced by it, here exists a disparity between men and women there is more need for stating Islam's position on important issues in a clear way.

Marriage is a social institution as old as the human race itself. It may be defined as a relation between a man and a woman which is recognised by custom or law and involves certain rights and obligations, both in case of the parties entering the union, and in the case of children born of it. Marriage has thus two main functions to perform. It is the means adopted by human society for regulating relations between sexes; and it furnishes the mechanism by means of which the relations of a child to the community is determined.

According to Islam, life is not a wretched prison or a dark grave, nor is it a happy hunting ground where one is absolutely free
to hunt whatever ones likes. It is life worth living provided one tries
to live within proper moral limits. Thus in the ideal life of Islam there
is no place for shifting the natural psychic, impulses. Islam's
approach to life is not negative "a systematic letting die of all the
propensities of life" which, in simple words, is called self
mortification. Islam exhorts its followers to live life with full zest
and vigour. In other religions piety lies in denying oneself resolutely
and joyfully in the arms of life, but not be over powered by its carnal
temptations. Islam believes that there is nothing superfluous and
nothing evil in human impulses. These are creative forces given to
man provided they are properly made use of it.

The monastic life which is considered to be an ideal life
according to the wrong concept of religion is not the one required by
Allah because it makes a man emotionally selfish, much to the neglect
of all social responsibilities. It hardens the heart and fosters the sense
of ingratitude towards those who are bound to the so-called saints by
the chords of the earthly ties. Mothers are abandoned, wives are
neglected, and children are left alone as a beggars to the meercies
of the world. The ascetic is concerned with the salvation of his own
soul. The serenity of his devotion is considered to be impaired by the
discharge of the simple duties of his family and to his community and
state.

Marriage is an important institution of human life. So in
practice it must be in conformity with Quranic provisions. Islam
recognises this institution and accepts it as the basis of human society after purging it all those evils which had penetrated in it. Firstly, Islam does not regard it as a union only for the gratification of sexual lust, but a social contract with wide and varied responsibilities and duties. The reason behind is that, according to divine faith, a woman is not a plaything in the hands of man, but a spiritual and moral being who is entrusted to him on the sacred pledge to which Allah is made as a witness. The wife, is therefore, not meant to provide sensuous pleasure only to the male, but to fully cooperate with him in making the life of the family and ultimately of the whole humanity significantly meaningful.

Marriage engenders love at first for wife, then for children, then for kith and kin, then for the society and ultimately for the human race as a whole. The real unit of human civilization is the family and there can be no family if there is no marriage. So we should be aware with terms and conditions during marriage negotiations.

Today there is need to incorporate and codified laws in light of women issues and with their speedy redressal. Muslim Personal laws as interpreted and practiced in India are grossly discriminatory and oppressive to women. In order to establish equality in law, there is need for reforms in Family laws. Personal laws are governing many issues which concerned to Muslim women. They are significant because these issues are discriminatory to women hence need urgent attention in future.
1. STUDY AREA

Aligarh is one of the important district of Uttar Pradesh located in the north western part of the state at a distance of about 130 kms from Delhi. It lies in the Central part of the Ganga-Yamuna Doab. It is bounded by Bulandshahar district in the north, Mathura district in the south and south-west and Etah district in the east and south-east. The extreme north-eastern boundary is formed by the river Ganga which separates Aligarh from Badaun district whereas the extreme north-western boundary is formed by the river Yamuna which separates Aligarh from Gurgaon district of Haryana state.

The district has been divided into six tehsils, namely Koil, Atrauli, Sikanra Rao, Khair, Iglas, Hathras.

Table I : Administrative division of Aligarh District (1996).

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<td>Hathras</td>
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<td>7.</td>
<td>Total Aligrh District</td>
<td>17 Blocks</td>
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Source : District Statistics Office, Aligarh (U.P.) India
2. CONCEPTUALIZATION OF CHANGE

In order to understand the kind, degree and nature of change among Muslim marriage negotiations, it has been found useful to adopt Raymond Firth's concept of organisational change under Muslim marriage and Ogburn's concept of cultural lag. According to Firth any theoretical framework for the analysis of social change must be concerned with what happens to social structure. Further he distinguishes between 'organisational change' and 'structural change' under Marriage laws., the organisational change does not alter the basic relations between individuals and hence cannot be termed as a change in social structure. On the contrary, structural change occurs when there is a modification in the basic relationship between members of society. Firth's 'dynamic social theory' will be used to understand the changing situation found in the present study. A 'dynamic social theory' involves basically the idea of movement from one social condition to another. Such movement may be reversible or irreversible, gradual or rapid, it may occur in one major institution only or in several at the same time. It may be without noticeable disturbance of inter-personal relationships or it may be violent and disruptive.1

The analysis of social system by the 'dynamic social theory' would demonstrate whether the social change is, "repetitive, structural, gradual, radical".2 Further, discussing this dynamic process Firth3 says that, "The essence of dynamic process lies in the
continuous operation of the individual psyche, with its potential of unsatisfied desires for more security, more knowledge, more status, more power, more approval within the universe of its social system. The process of social change can take their indicative from within a society they may be stimulated by external forces”. While discussing change one should be well aware that continuity and changes are well integrated in the social system, and one can study the changed situation only in comparison with the tradition social system and in Muslim society it should be in consonance with Shariah laws.

The present Muslim society will be seen against the backdrop of the traditional structure reconstructed from classical sources, and exemplifying the ideal pattern of Muslim life, under various aspects. This will be treated as the base line material against which the working of the present Muslim society will be understood. The cultural background will be fitted in it by information gathered from old informants about the life style that existed in immediate part the period of time since 1947. This date is adopted because partition was a significant landmark in the social history of India, as also for the reason that this span of time is not too long a period to remember and recall by the surviving older informants. The existing pattern of Muslim society is studied and analysed to understand the continuity and changing aspects, and the forces and factors responsible for altering the social situation.

As mentioned earlier to grasp the dynamic nature of the present culture under study, the use of the concept of 'cultural lag'
will be made. Ogburn theorizes, "that the various parts of modern culture are not changing at the same rate, some parts are changing much more rapidly than others; and that since there is a consideration and interdependence of parts, a rapid change in one part of our culture requires readjustments through other changes in various parts of culture." Ogburn views, culture in three main sectors, technical productive system, adaptive part and non-adaptive part, the interrelation and co-ordination of these three sectors in cultural organisation makes for the dynamic nature of the society. Every culture tries to maintain itself in equilibrium, but, a perfect stage of equilibrium is never reached. In the present study instead of asking two broad distinctions in the non-material part of the culture, all the functional areas of the culture will be distinguished into sectors, like education, marriage, economic status, religious education, consent doctrine, right to choice etc. The interplay between these sectors and their respective influence on each other, in respect of position of women in marriage negotiations in the family social system at a definite period of time would be studied. Here time factor has been emphasized because the various socio-legal events takes place in different periods of time, affect the working of the internal system of the society. Finally, an equation will be derived to show which of these sectors lag behind and are unable to adapt and adjust towards determining the status of women in society in accordance to the requirement of time and in light of Quranic spirit as well.
Generally, in every culture there are two set of trends, one section tries to retain the conservatism into basic value system and the other adopts and changes into value in view of the requirements. The ever existing differences and tussle existing between these two trends make the study of the process of culture change interesting. To assess the impact of these value system, women surveyed are school teacher, lecturers, home based workers, office employees, lawyers of different age groups, have been studied assuming that their respective basic value system should be dependent upon their being born and brought up at a certain period of time. As this study highlight the attitudes of the parents while deciding fate of her daughter by marriage contract. Here in many cases they do not want to change their values of the culture as they are not consented to their daughters. Hence, this study will be hopefully clarify those of the functional sectors produces the cultural way and secondly, which basic values of the culture are hold to change and why and what necessitates its alteration or change.

3. REVIEW OF LITERATURE

In order to understand the problem in right perspective one must have an idea about existing literature on the subject. This will enable to understand problem and come out with the solution to that problem. During the present study, the researcher came across with a large quantity of literature on the subject. So it was felt necessary to have a bird's eye view of that literature in order to draw certain inferences and conclusion.
The primary sources of this study is Quran, Sunnah, juristic work produced by four renounced Imams and Shariah laws. Academicians, both from India and abroad, have expressed their views in this issues but all these studies were of general nature conducted in the form of articles or books form under the title Islamic law, which are useful for theologians, law students, lawyers etc. however, these studies have not been conducted from a proper research point of view and in some specific areas. As no prior work is done, this topic is exclusive and entirely new and fertile. Though this work has also left ample scope from further intensive and independent work to grow Islamic jurisprudence.

The proposed study as mentioned earlier is based on primary sources i.e., Quran, Sunnah and other secondary sources such as reports, journals, fatwas and commentaries etc. The proceedings of the conferences and symposiums have also been utilized in the doctrinal part of said study. In the empirical part inferences and conclusion has been drawn through by conducting survey through questionnaire and with interview schedule and distributed it among respondents. Care was taken while preparing mixed form of questionnaire. Then data was tabulated separately on the basis of the responses received from the respondents. The respondents were asked to record their responses in "yes" and "no" form and also put her "opinions" at some questions. Results were tabulated finally through the "Statistical Package for Social Science" research.
Theological, sociological, anthropological and legal literature has no dearth of works on the position of women in different societies. For this particular study the Indian Muslim women were chosen and their position has been assessed with in their families. The books consulted were categorized as follows: Firstly, for understanding Muslims and their culture-historical background in the world, books dealing with Islam and Islamic culture were consulted. Next the available literature on women in Islam was read. The second important category of books was various work done on Indian women, special emphasis given to urban women.

The literature on feminist movements in Islam is vast and worth to quote here. The work of these authors as, Najmabadi, Afsaneh (1997, 1998) where he particularly emphasized the position of feminism in an Islamic Republic. Ronald, Anne Sofie. (1998), Tohidi, Nayereh. (1997) and Rupp, Leila J. and Verta Taylor. (1999), Shahidiah, Hammed. (1994) all these authors scholarly work on Islamic feminist movements is important for any feminist research about Muslim women. The work done by L. Ray, Marilyn (Ph.D. work from Lornell University), 1988. Alton, Thomas, Smith, (Ph.D. work from York University, Canada), (1988), have special mention.

To ascertain the contribution, deviation and distortion by judiciary original sources of Islamic jurisprudence have been taken up throughout the study as touch stone. For the important and relevant original sources of Islamic jurisprudence, the libraries of Darul Uloom, Deoband, Saharanpur, U.P., Nadwa-tul-uloom, Nadwa
Lucknow, Islamic Library, Hamdard University Delhi, Seminar Libraries of Faculty of Law, Aligarh Muslim University, Faculty of theology, Aligarh Muslim University, Aligarh, Maulana Azad Library, Aligarh Muslim University, Department of West Asian Studies, Aligarh Muslim University, Department of Islamic Studies, Aligarh Muslim University, Department of Arabic, Aligarh Muslim University, Centre for Women Studies, Aligarh Muslim University, Aligarh, Indian Law Institute, New Delhi, All Indian Women Conference, New Delhi, Iranian Culture House, New Delhi, Libraries are used to complete this work.

For the completion of the objective set to be achieved in the present study researcher had gone through all the original old texts and other authoritative work done by various scholars. Firstly, for understanding of Muslims and their cultural historical background in the world, books dealing with Islam and Islamic culture were consulted. Next the available literature on women in Islam was read. From the vast literature of Islam and Islamic Laws, the following books were extremely helpful in understanding.

For Islamic Law following writers were a great help, Ameer Ali (1922); A.A.A. Fyzee (1974), Abdullah, Yusuf Ali (1940); Abul Ala Maududi (1968), J.N.D. Anderson (1965); Anwar Ahmad Qadri (1961); Arthur J. Arberry, David Pearl (1979); D.F. Mulla (1961), Dr. Galoush work on Marriage under Muslim law, M.U.S. Jung's work, Tahir Mahmood's work on Islamic law, Prof. Saleem Akhtar's work,
Sahih Muslim, Bukhari Sharif, Hedaya by Hamilton, Riaz-ul Hasan Gilani (1982), all the above mentioned authors have great help to grow entire Islamic law.

For the completion of study following websites are important as:

- web on http://www.legacy98.org/index.html
- Web on http://www.n, whp.org/html
- Web on http.amnestyusa.org/women/html

These websites consists lacks of other connected website which highlights important issues such as women in Islam, women and human rights, women and feministic movements etc.

The important work by Adulaziz, Sachedina in "Women Half - the Man : Crisis of Male Epistemology in Islamic Jurisprudence by University of Virginia is worth to mentioned, (2002). Another scholarly work done by Amina Wadud, Aishah's legacy : the Struggle for Women's Right in Islam in New Internationalist, (May 2002), Jamal Badwai's work on Gender Equality in Islam, under Muslim Women's League. (fixed 13, Sept. 1999), Mai Yamani's work on Feminism and Islam : Legal and Literary Perspective (Back on line 4/28/98), Nahid Mustafa's work entitled My Body is My Own Business (fixed Line June, 1999), above authors contributed much to enhance, the Islamic Literature on Women issues.
Mujeeb (1967), which dealt with historical and social development of Islam in India. Other workers were also equally helpful in understanding the Muslims some of them are: Smith, W.C. (1946); Levy, R. (1957); Aziz Ahmad (1969); Shakir, Moin (1973); Mathur, Y.B. (1972). The books like Siddiqui (1952); Djebar, Assia (1961); Bareja, M.R. (1960), Islamic review (1959, April and November) issues have articles on the women of Morocco and the role of women in the life and literature of Pakistan. Jandy, Edward, C. (1959), Atikson, J. (1832). Maududi, Abul Ali (1970) in Urdu all gave a background to the understudy of women as they have been viewed in the religion and in other Islamic countries.

The different social groups amongst the Muslims forms a very debatable and controversial topic. Ansari, G. (1990) had divided the Muslims of India into various caste groups. Ansari's work was further modified by Ahmad, I. (1973), this books contained essays on Khajas of Bombay, Meos of Rajasthan and Haryana, Mappillas of South-West Coast of India, Tamilian Muslims, Muslims of Uttar Pradesh, Muslims of rural west Bengal and Muslims of Laccadives, The special series of contribution to Indian sociology (No. VI, December, 1972) deals with various topics related to Muslims women, Guha, U. (1965) in her paper depicts the caste system among the rural Bengali Muslims.

The literature on position of women is vast and extensive. One of the earliest and systematic accounts of the position of women
had been given by Lowie, H.R. (1920), where he particularly emphasized the difference existing in theory and practice as regards position of women in any society. Evans Pritchard, E.E. (1965) tries to analyse the position of women through the role of women in complex and simpler societies. Some of the other authors who make a significant contributions towards the topic of women are Montagu, A. (1954); Mead, M. (1949); Linton, R. (1952); Myrdal, Alva and Klein, Viola (1956). The status of women in the south Asian countries has been assessed by Appadorai, A. (1994). In this book the legal status and political rights of women have been discussed and a method of approach to the problem of status of women is suggested.

The next important UNESCO publications was edited by Ward, B.E. (1964), in this, the essays of Dube and Thapar give the historical women through the ages. Moreover, Karim's paper on the changing patterns of an East Pakistan family and Rosses study of changes in the position of Malay women and other essays give a good picture of the women's position in Asian countries. Mukherjee (1994) in her paper discusses some aspect of the problem of women.

The works on Indian women are many and varied. Altekar (1956) and Pinkhan, M.W. try to evaluate the status of women in historical times through the numerous religious scriptures on Hinduism. Mishra, R. (1967), depicts the social and cultural environment, and their effects upon the status of Muslim women within the period of (1526-1748). Cousins, M.E. (1991), Thomas, P. (1964) are the two authors who have efficiently succeeded in
compiling the status of Indian women chronologically. A Government of India Publications, edited by Baig (1958) has a collection of essays ranging from those on tribal women to modern Indian women. Moreover there are plenty of literature on the changing status of the Indian women after independence. Notably the works of Hate, C.A. (1969, 70); Mehta, R. (1990); M. Cormack (1991); Bhasin, K. (1973; Desai, N. (1957), Shridevi, S. (1965) and Kapur, P. (1070), on marital adjustment under working wives (1971); Roy Shibani work on status of Muslim women in North India (1979); Harpar (1969) has tried to depict the status of Brahmin women while, Sen Gupta, S. (1970) has tried to assess the position of Bengali Women through the analysis of their socio-economic background and matrimonial advertisements. A periodical named Woman on the March issued by (Women's Department of All India Congress Committee, New Delhi) gives articles of interest such as problems faced and changes occurring amongst Indian women and women of the other countries of the world. A report entitled "Relative Freedom of Women", produced by the Council of Social Development (Nov., 5 Dec. 22, 1993), attempts a comparative analysis of married women of Sunder Nagar colony and Mandir Harijan colony of New Delhi. The results of the study reveals that the low income group sweepers have a highly traditional image of wife while the Sunder Nagar husbands have modern image of the wife. Decision making in various family matter is directly dependent upon the economic independence of the wife. Kaberry, P. (1939) through extensive field work analyses the status of
women amongst the Australian aborigines. Dingwall, E.J. (1956) historically traces the status of American women and Time Magazine (No. 21, 1989) discusses very interestingly the revolt against feminism in the West. Some particular studies done on the Muslim women are by Khojas, B.A. (1965), who in her survey of the Kanpur Muslim Women Comments on their attitude towards Pardah.

K.M. 91959) deals with the institution of marriage amongst the Hindus and Muslims using the religious texts of both the communities. Prabhu, P.N. (1954) analyses the family and position of women in the light of psychology, sociology, vedas, epics and literary Sanskritic texts. Ross, A.D. (1961) analytically treats the data of Hindu families in an urban setting and the effects of industrial and technological change. She also discusses the effect of education on occupational opportunities and aspirations of the men and women. Bott, E. (1957). has almost became a classic study of the urban family emphasizing specifically on the ideas of men and women. The book edited by Goode (1963) is an excellent compilation of family studies in West, Arabia, Sub-Saharan Africa, India, China and Japan and in each case the traditional family pattern is contrasted to the changing family pattern.


4. ORIGIN OF ISLAM

Islam is a monotheistic religion which arose in the deserts of Arabia in 600 A.D. The founder of this religion was the Prophet
Mohammad (SAW), who is neither a mythological figure nor a demigod, but a man whose entire life, words and deeds are recorded by his followers and complied in a book named Hadith. The messages of God revealed to Mohammad is contained in the Holy Book, Quran. The primary assumption of Islam is submission to the only God Allah and equality and brotherhood of the believers of Islam.\(^5\)

5. ISLAM IN INDIA

The earliest Muslim invasion of India dates back to 650 A.D. the repeated conquest by Mahmood-bin-Qasim (712 A.D.) in the Sindha valley, the plundering expeditions of Mahmud of Ghazni (1000 A.D.) till the Ravi and the invasions of Shihabuddin of Ghori (1192 A.D.) brought to India the first Muslims. The conquests of Prithviraj's kingdom in 1191 A.D. and the establishment of the Delhi sultanate was the beginning of the continuous Muslim rule in India until the coming of British. The other avenues by which Muslim found their way to India was trade. The first settlement of the Eastern and western works of South India was a result of this immigration.\(^6\)

6. ISLAM AND ITS FOLLOWERS

The Muslims are the followers of Islam. Islam means peace and the quest for a right way of life. The Muslims believe in one and the only God Allah. Secondly, jehad for the sake of religion is sanctioned. All over the world the Muslims pay at the same time with a stylized movement of body and arms, the prayers being conducted in a common language, Arabic. Before the prayers, ritual purification
of hands, face and ankles with water or sand is compulsory. Every Muslim is enjoined to give alms or zakat at least once in his life time, if he can afford it. Last of all, a Muslim after finishing all the duties towards his family goes for pilgrimage to Mecca and Medina. These five essential features of the Islamic faith are shared by the entire Muslim population of the world.⁷

7. MUSLIMS COMMUNITY IN INDIA: A PROFILE

According to the 1991 census⁸, the Muslim community in India comprises about 12% of the total population. The principle of understanding minorities lies not merely in their number but also in their social positions including the psychological perception of their own status based on some shared belief.⁹ The origin of the Muslim community in India as a minority is not the result of a shared belief system among its members, though seemingly it has been constructing as one. As Hasan points out that when the enumerators did the first all India census in 1881, they found that the Muslims, who formed 19.7% of the population were geographically dispersed forming neither a collective entity nor a distinct society for any political, economic and social purpose.¹⁰

According to Chakrabarty, it so happened that the category British chose to fit people in it was religious and hence people in India were categorised in religious groups for official purposes regardless of whether people identified themselves as such.¹¹ Such categories reflected in all their policies concerning the Indians. While
civil and criminal codes were established on the basis of British laws, they left untouched the laws followed by different communities on personal matters. They further reinforced the use of religion to resolve family disputes by using the services of scholars of each religion as 'experts' to settle their disputes. Thus, while any matter may have been settled under customary laws, the British policy now consolidated the nation of religion as the basis for their Personal laws.

Indian thus had the Hindu Personal laws governing the Hindus, the Muslim Personal Laws governing the Muslims and a separate Act for Christians on families matters. The Muslim community was thus constructed, as separate and distinct from the 'others' in complete disregard of, and with no reference to its local, regional, class, caste or linguistic specificities.¹²

The Muslim community in India is generally referred to as socio-economically backward. Many authors have stated this, with or without substantiating it with evidence "The backslide though not quantified by empirical studies, is very obvious. Their (under Muslim community) backwardness, rather persistent downward mobility in the field of economy and education, has of late assumed a magnitude which, if ignored, may cause incalculable harm to our young developing nation."¹³

The Government of India's document on the New Education Policy and Programme (1986) in the Section of Minority Education
declared that Muslims along with Neo-Buddhists are educationally backward on a national scale. Sometimes local and regional figures are quoted to show how education levels among Muslims are low how employment is restricted to occupations giving marginal returns and how therefore the community is materially and intellectual bankrupt. This state of affairs of the community compels one to ponder, whether the community was traditionally a 'backward' one or is the 'backwardness' is a result of the changing contours of the social, economical and political landscape in the Indian subcontinent.

The political background of the Muslim community, since early 20th century, has shaped their present marginal socio-economic, legal and political existence. Muslims have been the victims of discriminations in education and employment. Their political representation has been negligible which over a period of time, has resulted in them being deprived of the benefits of development processes.

The depressing phases of the Muslim community would be better understood if one look at history from 1857 to 1947. Herein lie the origins of the most of the problems of Muslims. The political developments during this period, the factors which influenced there developments and the socio-economic impact on the Muslim community continue to haunt section of Muslim communities even today. Two important historical events viz., the failure of the army revolt against the British in 1857 and the partition preceding independence of India from the British rule in 1947, irrevocably
damaged the cause of the Muslims in India.\textsuperscript{14}

From the time the British embarked on their empirical and colonial mission in the Indian sub-continent, by identified the Muslims as their adversaries. Major parts of the Indian sub-continent were then under the Mughal empire. At the same time, Muslims all over India had been steadily losing political power and control to the British and other Indian rulers. The loss were particularly pronounced in Bengal, Maharashtra, Madras and Mysore, all coastal regions from where the British began to subjugate the continent.\textsuperscript{15} The Indian Army revolted against the British in 1857 and was defeated.

The British held the Muslims responsible for the revolt, believing that the aim of the revolt was re-establishment of Mughal (read Muslim) rule rather than that of the Maratha or the Sikhs. An attitude of suspicion therefore, developed among the British towards the Muslims and it showed in the series of administrative and political measures they introduced. The measures directly affected the three main sources of Muslim economic and political power, namely, military command, collection of revenue, judicial and government employment. With the conquest of the different territories by the British, the edifice of Muslim aristocracy was shaken. Earlier, the East India Company had introduced a system of land management which culminated in the Permanent Settlement Act of 1793. The new settlement deprived many Muslims of their land holdings and estates, as a result of which collection of revenue was seriously curtailed. After the revolt, the East India Company shut Muslim aristocracy out
of the army as they felt inclusion of Muslims would be threat to their security.\textsuperscript{16} In the course of few decades, the British also limited the numbers of Muslims in government. For instance, Urdu was replaced by Hindi in Bihar and Bengali replaced Persian as the official language in Bengal. As a result Muslims who held high government offices because of their proficiency in Persian and Urdu lost their employment. Similarly, in the late part of the 18th century, the Muslim criminal code was replaced by British legislation reducing the need for Muslims to interpret and apply Muslim laws. Thus, the Britishers successfully introduced changes which principally affected the economic and political position of the Muslim elite.\textsuperscript{17}

The charges also affected the Muslim masses, who are mainly converts from low caste Hindus. At the time of their conversion they were at the lowest clung of the socio-economic ladder and had converted to Islam to escape hardship that came along with such a caste placing.\textsuperscript{18} The professional groups of the community like Julahas, Dhunias, Khatiks, Dhobis etc. and big mass of manual labourers thus began with a social disadvantage and the economic decline of the Muslim elite class also affected them adversely. Some of them were dependent on the upper class Muslims for their livelihood. The small peasants who toiled in the farms of the land-owners were now out of jobs. The artisans and craftsmen, who were largely Muslims were also fast declining under the impact of the Industrial Revolution in British.\textsuperscript{19}
Moreover, there was very little interaction between the two social and economic groups of the Muslim community. The elite with all their material comfort and social position did not do much towards the welfare of the masses. Instead, they used the masses and their situation for their own selfish ends without identifying with them. The masses on their part considered this group as the mouthpiece of those in power.\textsuperscript{20}

By 1883, the idea had grown that Indians should have representation in the Legislative Council. A section of Muslim under the leadership of Sir Syed Ahmad Khan were opposed to the introduction of the system of representation, which according to them meant the representation of views and interests of the majority of the population. Two years later, in 1885 the Indian National Congress was formed which supported, rather demanded 'reform and expansion of the supreme and existing Legislative Council, by the admission of a considerable proportion of elected members.\textsuperscript{21} Though the National Congress attracted many Muslims members, the main opposition to their policies and demand came from Aligarh, the political heartland of the Muslims.

As the Indian National Congress grew in strength attracting members from all communities, the Britishers realised the dangers this cloud pose to their rule. The political unity of Muslims and Hindus threatened British rule and had to be prevented at all cost. The Britishers who were so far suspicious of the Muslims, to their
policy of 'divide and rule'. Despite the hostility of Aligarh, the attendance of Muslims, particularly the younger generation, was increasing at the congress session. Alarmed by the situation, the secretary of the state for India, Morley stated "...You cannot go on governing in the same spirit, you have got to deal with the Congress party and Congress principles whatever you may think of them. The sure that before by the Mohammedans will throw in their lot with the Congressmen against you". He was cautioning the British government to do something to prevent the growing influence of congress while their still remained some dissent among some sections of the Muslims. The partition of Bengal in 1905 into Muslim East Bengal and Hindus West Bengal was a attempt to foster animosity between the two communities and use the strife-torn situation to legitimise and continue British rule in India.

In 1906, the Britishers manoeuvred a more to get prominent Muslim leaders to come together and make a representation to the British government demanding - government employment for Muslims in good proportion, seats on the Bench of High and Chief Courts, nomination of important personalities like landowners, lawyers, merchants, university graduates and representative of other interests for election to Legislative Councils. The Viceroy reassured the Muslims that the rights and interests of the community will be safeguarded in any future administrative reorganisaiton.

The British policy of "divided and rule" paid off the fostering of an opposition to the Congress led to the formation of the
All India Muslim League (henceforth called the league) in 1906. The Muslim elite, who formed the members of the League, developed as their objectives a 'three fold project' to trace the historical evolution of an imaginary community, as an antithesis to the congress theory of 'Unity in diversity'; to emphasize the distinct identity and separateness of this community in order to bargain and exact concessions from the government, and to invoke Islamic symbols of unity to mount a movement that would, in its essential thrust delink specific "Muslim aspirations" from the broader concerns of the countrywide nationalist struggle.\textsuperscript{24}

In the Indian Council Act 1909 electoral scheme gave Muslims separate electorate and also a right to vote in the general electorate. In this scheme this was proposed that the Muslims would first have an opportunity to secure representation for their community through the general electorate, if they failed, they could make up the deficiency by special Muslims electorates to be provided for in election regulations. This created an apprehension in the minds of other community leaders that after securing their proportionate number, the Muslims would prey upon the general seats which were regarded to their own community.\textsuperscript{25} In 1909 congress expressed its strong sense of disapproval of the creation of separate electorates on the basis of religion and resolved that the regulations framed under the Act had caused widespread dissatisfaction throughout the country.

In Indian Council Act, 1909 for the first time, provided institutional legitimation to the nation of a separate, distinct Muslim
political identity. The Act enlarged the scope of communal politics. The Muslim groups, in particular, discovered new terms to articulate their aspirations and insisted on being heard as representatives of their community.\footnote{26} The political developments of the period that followed only added fuel to the fire and the animosity between two communities viz., Hindus and Muslims increased leading to a series of communal riots in the Muslim dominated Uttar Pradesh district in the North and Bengal in the East. Having achieved its demand for separate electorates, the league with the backing, support and encouragement of the British and under the leadership of Mohammad Ali Jinnah (Late founder of the Pakistan) extended similar arguments and justification to support the two nation theory i.e. the Pakistan project.

Though politically the League achieved its objective, it is not as if the League represented the opinions of all Muslims in the country. Diverse regional and local concerns conflicting class interests and sectarian animus prevented the growth of an all India Muslim political consciousness. For example, the Mappila Muslims of Kerala were cut off from the Indian Muslims by the barriers of language, culture and geography.\footnote{27} The bulk of Indian Muslim, except those from Bengal, were Urdu speaking and their affinities lay towards the north. These Muslims according to Miller, had no visible interest in the Mappilas and hardly know of their existence.\footnote{28} Moreover, the Muslim community in the South and origins markedly different from the other parts of the country. In fact there is a strong
assertion by Nadvi. That long before the Muslim settled in northern India, there were Muslim colonies in southern India. The Kerala coast was an important part in the trading world of the 13th century and Arabs played a leading role in the loading activity of this time. They made it their chief port of halt and also traded with the locals for pepper, black gold and other valuable products. The local inhabitants warmly accepted the Arabs as traders and of another nationality. The Muslim community thus originated as a result of peaceful economic and cultural exchange between Arabia and Kerala. This process was facilitated by the religious tolerance of the natives. Because of this direct relation of Muslims of the South with Arabian Muslim, the political hegemony, the theological developments and cultural heritage of the Muslims of the north bypassed those in South. The identity and communal politics played out in the other parts of the country during the period from 1857-1947 therefore did not affect the Muslim community in the South in the same way.

In the early 20th century, Jamia Millia Islamia was established in Delhi as an alternative to Aligarh as a seat of Muslim political activity. It represented the 'merging of two dominant trends - the religious reformist who were also anti-British and the political radicalists of Aligarh who rejected the institution's pro-British stance and gravitated towards Gandhi and Nehru for political leadership. The League's two nation theory was anathema to Jamia whose sole objective was 'to promote cultural integration, foster composite and syncretic values, and cement bonds, of intercommunity friendship and
understanding. However, because of the institutional support of the British, the so called recognised political leadership of the Muslim remained with the member of the League, who were mainly the western-educated upper class elite of the community. Thus when the country was partitioned in 1947, there Muslim leaders opted for Pakistan leaving a political vacuum in the Muslim community in India.

(i) Education under Muslim Community During 1857 & 1947:

Here researcher try to examine the education level under Muslim community during 1857 to 1947 and during post independence era. The next portion has dedicated to the study of women during this period and also during post independence era to assess the impact of educated women in dealing with their family issues.

For the Muslim, education has always been important, but mainly for the purposes of propagating Islamic values. These values have been transmitted through traditional schools called Maktabs, Madrassas and Khanqahs. Other form of education, if at all pursued, has been by the Muslim elite and for the purpose of acquiring knowledge scholarship. A report published by W.W. Hunter in 1871 focussed on the educational and economic decline of the Bengal Muslims. In this report, "inability and unwillingness" of the community to take advantage of education was singled out as the chief cause of their backwardness. The conservative and religious
leadership of the community viewed western education, with its excessive individualism and materialism, as constituting the very antithesis of the basic values of life as formulated by the Quran. They therefore argued for a programme of religious purification, together with religious education as an alternative to the 'degenerating' western ideologies which had placed the community in grave crisis. This message was sent through Deoband's Darul-uloom (religious learning centre) for and wide, yet not many as per the high priests there, lived their lives in accordance with their 'fatwa'.

Reports like one by Hunter, fed into the widely misconception that Muslims elsewhere too regarded education in the same way. In fact there is striking difference between Muslims of North India and South India. As Muslims of South had lost their ruling dates much before those in the North and as the former took to modern education much earlier, one finds that their share in business, industry and the professions is quite considerable. This was also pointed out by Sir E Gart when he said "In UP, Madras, the Central Provinces and Berar, the Muslims, stand above or on equality with Hindus and the same is the case with Bombay, including Sind." In Tamil Nadu, Muslims were a community of traders and they found it profitable to send their children to schools. As also the Deccani Muslims, who avoid office goers took to education like ducks to water.

Though there was a problem of backwardness of education among Muslims as compared to other communities, it was neither
uniform nor static throughout the different levels of education. At lower levels of education, as noted by Ahmad, Muslims held their own in proportion to Hindus. It was only at higher levels of education that Muslims were fewer. Muslims were also unrepresented among doctors of law, law honours and graduates, civil engineers and doctors. Out of 1,373 bachelors of arts, there were only thirty Muslims, the proportion of masters in art was 326 to five.

This paradox is explained with reference to that phase of history that professionally distinguished the upper and middle classes of Muslims from their Hindu counterparts. Most Muslims of these classes were landlord; most Hindus were businessmen, traders, contractors etc. while the former imbibed the aristocracy of the Muslim rulers, the latter had no prejudices, social or religious, and freely sent their boys for higher education.

In the 19th century, the rise of Sir Syed Ahmed Khan, himself as an Islamic scholar, encouraged and justified the adoption of western education in Islamic terms. He is credited with being the driving force behind the Aligarh movement for reforms and he founded the Mohammadan Education Conference (MEC), in 1886. A year later he established the Mohammedan Anglo-Oriental College of Aligarh which later gained university status. The Mohammadan Educational Conference held conferences every year which increased the interest and the desire of the Muslim community for higher education. He was able to convince the new generations of Muslims that the pursuit of modern education and the raising of intellectual
standard centres modeled on the Aligarh college. Thus Madrasatul Islam, in Sindh and Dhakah college were set up which later gained University status. Other who made similar attempts to demonstrate Islam's compatibility with western thought and status. Other who made similar attempts to demonstrate Islam's compatibility with western thought and values were Abdul Lateef and Ameer Ali in Calcutta and Taiyabji family in Bombay.

During this period, Urdu was the medium of instruction in traditional institutions. This served as a link to Muslim community in other regions. The language was identified with the Muslim community, even in regions where they in fact used and spoke the local language.

Such identifications made things more difficult for Muslim communities in other region. When the British replaced it with Hindi in Bihar and gave Hindi equal status to Urdu in the United Province and Oudh. In fact all Muslims in other regions adopted a dual approach. They used Urdu as a means of political differentiation from other communities and for practical day-to-day activities preferred to use the local language. Providing instruction in Urdu was thought to be one of the ways to keep the interests of Muslims in education going. The introduction of secular education and the agitation among people in the north for the replacement of Urdu was making it difficult for the language to survive and therefore provide an incentive for Muslim to seek education.
In due course however, the educational status of the community marginally as a result of the special efforts by the government and of some enlightened individuals within the community. The government, between 1870-1900 introduced measures to make secular education attractive to Muslims. Some of their measures taken by the government to improve the educational status of Muslims were at the insistence of Muslim leadership, who were more concerned about gaining advantage at higher levels of education to be able to compete with Hindus rather than with the basic problem of education of Muslim masses. The backwardness of the masses was used by the upper class to strengthen their claims for special treatment.\(^{42}\)

The movements for educational reform however, left the masses of Muslims untouched by virtue of into appeal to only a limited group of upper class Muslims. A shift from education for the simple pursuit of knowledge and religious purposes to education solely for employment or social mobility required some adjustment. Even the motivation of employment in some places did not exists because of the perceived policy of discrimination the British adopted as far as the employment of Muslims were concerned. This is said to have caused frustration among Muslims and is often cited as a contributory factors to their relatively poor socio-economic of status.
8. HISTORICAL SKETCH ABOUT MUSLIM WOMEN EDUCATION IN INDIA

The woman of today needs more space to expand her ideas. She should be given full freedom in order to nurture and materialize her imagination. She should be given a chance to prove her abilities. History shows if education is lacking in women she cannot even help herself either socially, or financially, and can she be of any help to the liberated men's world of today. In this chapter researcher broadly classified education of Muslim women during 1857 to 1947 and after independence till the present scenario. To see the impact of educated women during Marriage Negotiations.

(i) Women's Education : 1857 to 1947

While the problems and constraints of education and employment of the youth in the Muslim community received great attention, the education of women was not an issue at all, rather education of male in the community considered as a pre-requisite for female education. Sir Syed in his evidence before the Education Commission of 1882 stated that, "In India, women are almost entirely excluded from education...I am of the opinion that government cannot adopt any practical measure by which respectable Mohammedans may be induced to send their daughters to government school for education....in fact, no satisfactory education can be provided for Mohammedan females until a large number of Mohammedan males receive a sound education". This was the males of the community
who enforced these practices and it was though that unless they were educated there was no hope that women will have any access to educational opportunities.

(ii) Women Education During Medieval India:

Education of girls encountered a whole new and different set of problems, which had to do with conservatism, religious beliefs, social taboos and economic status. In Medieval India, Muslim girls never received education in Khanqhas and Madrassas, and there is no evidence to show that many private houses served as important agencies of higher education to give instructions to the girl privately. Resistance education of women was not restricted to the Muslim community alone. The Fourth Review of Education Committee (1897-1902) cites resistance to women's education by all communities, strict seclusion was practiced both by Hindus and Muslims and formed an obstacle to the inclusion of girls at school beyond a very elementary level.44

(iii) Mughal Age:

During the Mughal age, higher education of Muslim women was mostly confined to the upper classes of society45. Among the poor, if some got time for education, their education was confined only to the reciting of the Holy Quran. By education a girl was expected to prove a devoted wife, an excellent future mother with expertise in house hold work and, above all punctuality in the religious duties.46
The gist is educated women while negotiating anything related to her rights should be aware and take good decisions regarding her welfare. Religious education was encouraged because of the teachings of the Ulema (learned Islamic Scholars). Their teachings were meant to secure a better moral and material life for women and their families. They insisted that women should be able to read and write so that they would know the religious texts, which according to them was important for both worldly and religious welfare. Maulana Ashraf Ali Thanawi, in his work, Bihishiti-Zewar describe and lists the characteristics of a proper Muslim woman, all of which can be acquired only through proper education. Among these characteristics was that she should be literate in Urdu, because, a good woman revealed herself when she opened her mouth for her language war clear and correct. A good woman should also be able to write letters so that she could handle intimate matters without divulging them to intermediaries. These were seen as marks of respectable status. Thanawi, thus conveyed to his readers that education of girls was not only worth while but religiously correct.

Religious education had several constraints. The lessons had to be at home and not outside. The tutor had to be a women else, the lessons took place with the young girls switting behind a screen. Sometimes blind tutors were employed to impart religious education to girls so that the strict norms of seclusion were not transcended. Some families however, would send their daughters out to the neighbourhood Arabic schools. Muslims girls, as claimed by Haji
Ghulam Mohammed Munshi, Honourable Secretary Anjuman-i-Islam in Mumbai, went to indigenous Quran schools, which were on every street corner, and Muslim teachers could be found to teach Urdu and the Quran\textsuperscript{51}. As an incidental effect girls were allowed to continue in schools, in order to follow up their learning of Arabic. Again the condition under which some girls were sent to schools were rather strict. They were transported in supervision from the four walls of their homes to the four walls of the school. The concerns of the families was that if the girls were seen or exposed to the gaze of outsiders, particularly merit would spell disaster in the sense that it would make their marriage prospects more difficult.

Researchers highlight all these problems here because when woman is not free to take religious and modern education, how can she be able to negotiate freely her marriage contract. So there is need of the hours in future as provided by Quran and by practices of the Prophet (SAW) woman should be free to laid down terms and conditions in her marriage contract. This is possible only when she is having religious and secular education.

In 19\textsuperscript{th} century, there was a group of social reformers who challenged the behaviour of the "uneducated woman", given to customary practices and rituals which were unfamiliar to Islamic teachings. They accepted the educational agenda of the Ulema, but made if at once more European. Syed Murtaza Ali was one such reformer who, with his wife, founded a newspaper for women, and in 1906 again collaborated with his wife in founding a separate school
for girls in Aligarh. Like the Ulema, he has keen to see girls to be educated, but he favoured a more a cosmopolitan approach to education. Some of his associates like novelist Nazir Ahmed tried to persuade his readers that educated women could best perform their domestic and religious duties to the benefit of all.\textsuperscript{52}

There were some families who took the lead in sending their women for higher education. Justice Shah Din in Punjab and Mohammed Shafi were the first Muslims to send their daughters to study at Quran's Mary's college in Lahore\textsuperscript{53}. Among the poorer class, girls were not sent to school as the meagre resources at their disposal were allocated to boy's education since the strong incentive of material gain that had furthered the education of boys did not exist for girls. As the intensity of the educational reforms increased more and more girls were sent to schools for education. According to Roy, this came about after independence and mainly as a result of changes in the attitude of the male members of the family.

Independence did not bring about any changes for the betterment of the Muslim community with political vacuum in the community the party in power immediately after independence, the congress, regarded their traditional allies i.e. Ulema and Orthodox Muslims from Deoband, who had all along supported the congress against the Britisher and later against the League, as the leaders of the Muslim community in India. They struct a political bargain in which the Ulema gave their support to the Congress, on the assumption that Muslim Personal law would be maintained as would
endowments, mosques and other institutions and aspects of Muslim culture. The apparent liberal and secular approach of the congress under the leadership of Nehru drew in Marxist Muslim politicians as well. However, these were politician who had rejected the separatist politics of the pre-independence years and did not therefore work to protect the interests of the Muslim Community per se. These leaders were born to a system where close association between Muslim leaders and other national leaders was a pre-requisite as well as a result of the National liberation movement. They were nationalist in the true sense of the word for they did not strive to create a special communal constituency.

The new leadership that emerged after the independence was scarcely interested in improving the social and economic conditions of the Muslim community. They readily took up non-issues to demonstrate their strengthened bargain for some gains that improved their electoral and political prospects a rather than the conditions of the Muslim masses. Successive governments too have failed the Muslims. As Singh observed "In tender with self seeking Muslim leadership, they (the state) conceded some shops to Muslims now and then to lull them into complacency but never bothered to take upon themselves to initiate and pursue concrete measures to improve their social and economical conditions."

Before independence the majority of Muslim belonged to the poorest sections of the population, but after 1947 the situation worsened as many of the better educated and more affluent Muslims,
who might have provided community leadership, opted for Pakistan.\textsuperscript{58} The Muslim community in independent India thus started off with a disadvantage of being a religious minority, without any commendable political leadership from within the community and economically weak, they formed the masses who were already on the fringes of Indian society.

Improvements of their socio-economic status in the most urgent need of Muslims today. In a national survey on socio-economic conditions of Muslims in India during 1970-71, it was found that in all categories of formal and technical education, Muslims lagged much behind Non-muslims. The drop-out rate among Muslim students is significantly high and the number of students decline as the levels of education goes on. In 1981, of as had only 3\% and IPS only 3.9\%, Muslims officers. In the period 1971-81, 3.1\% income Tax Officers found only 3.2\% of the work force. In Central and State government officers, the percentage of Muslim employees is 3.4 and 6.0 respectively. The public sector is the only sector where percentage wise, employment of Muslims is comparable to their population i.e. 10.8\%. The Muslims have also not benefitted from the various governments schemes aimed at improving the lot of the weaker sections of the houses allotted by state government schemes aimed at improving the lot of the weaker sections only 3.9\% were allotted to Muslims. Of the licences issued for fair rice shops, only 6.9\% were awarded to them and they received only 0.2\% of the benefits extended to artisans. Not more than 5\% Muslims received loans advanced by
different financial institutions, and here to, higher the amount of loan, the lower the percent of Muslims who get it.59

This position of both the traditional organisation and the state has put tremendous constraints in the way of organising Muslims women on the issue of legal rights and practices such as oral talaq, maintenance provisions and importance of nikah-nama etc. The identity crisis about by the communal politics of the country has put a women in a looses situation. The fact that Shah Bano60 withdrew her case in court because it may have caused riots is an indication that Muslim women's demands for legal rights comes packaged with the threat of riots. True to their socialisation, women relevant and sacrifice their interests at the alter of the so called larger interests of the community and nation.

Muslim women, it appears have no course to legal remedy for their grievances in society. The community leadership is only too immersed in maintaining and strengthening their patriarchal strangle hold over women. At the same time by making women the primary makers of their communal identity, they are using their shoulders to place the gun to fire at the 'enemy'. The state, by recognising only the conservative elements of the community as leaders, is deliberately glossing over the injustice faced by women in the name of 'respecting minority culture' and identify. The voices from the progressive, secular and intellectual sections of the community are too weak and fragmented to have any impact. The women's movements for a long time has worked on the premise that women have a separate existence
apart from their community identity. Having realised that this is not so, they now have a big way to go in mobilising Muslim women around their rights.

In present scenerio Muslim women need to mobilise themselves and organise around the issue of their rights. The constraint that women faces is their lack of education and awareness in their matters. There is sheer need to shape laws in accordance with women's welfare.

Conclusion :

It was Islam that for the first time, vindicated the right of women and gave them in different Surah's. So better understanding about her rights, there is need to understand these theological sources of Islam. Women as well as men are urged to acquire learning. They were granted all the fundamental rights. They were given the right of inheritance of the property of her father and husband. As regards marriage and divorce, they have got fair liberty but this will only possible when woman has knowledge about her rights. She will be educated not only in the professional education but also in religious education. Islam has removed various domestic and conjugal hardships of the women by prohibiting the unlimited polygamy prevalent in pre-Islamic days. Now it has restricted upto four in these days. In short, Islam has given adequate provisions for preparing the women as equal partners of men. There is no other religion in the world which provide freedom and equality to women so much as in
Islam. It raised her from the lowest status to equality with men. But important thing is that women must have been given education and aware with their rights and also our ulema given correct interpretation to women issues in pace with changing time.

9. SELECTION OF THE AREA

Negotiations during marriage contract trigger off a controversy like whether Islam provide right to choice? (to choose her husband) Whether consent of women is important? Whether she is having equal rights as men have? Whether she is aware of their legal rights to seek divorce or not? Whether she is having knowledge about Muslim Personal laws and content of the Nikahnama? Such type of thought provoking questions prompted the researcher to conduct a survey through questionnaire in a Aligarh district.

Islamic law in the Indian context generally refers to that part of law which is administered by the courts in respect to personal matters of Muslims. The reception of Islamic law dates back to more than one British Raj in Indian peninsula Islamic law was applicable in public and private affairs in large parts of the country. The British Government took away almost whole of the public and private affairs in large parts of the country leaving only certain parts of Personal law relating to marriage, dower, divorce, maintenance etc. The British courts did not faithfully adheres to the true Islamic precepts even in these areas. Several legislations were introduced by the Britishers to regulate the matters even in the above mentioned areas. However, the
Muslim Personal Law (Shariat) Application Act, XXVI of 1937 provides a protection to the Muslims to be governed by the Shariah law since British period.

A study of judicial decisions of the British time would disclose that through the doctrine of 'equity, justice and good conscience' the judges have implanted their notion of justice and deviated from the true Islamic law. This happened despite the promulgation of the Muffassil Regulations 1772 and in the Regulations of 1780 which under section 27 states:

"That in all suits regarding, the inheritance marriage case and other religious usages and institutions, the laws of Quran with respect to Mohammedans and where only one of the parties shall be Mohammedan the law and the usages of the defendant shall invariably be adhered too...."

The trend set by British judges continued even after independence. With the imagination of the Indian constitution in 1950, some new areas of controversy have cropped up. The foremost is the very existence and the survival of 'Muslim Personal law' which in view of Article 44 is at stake. There has been some recent cases in which the legitimacy of several aspects of Muslim law have been under attack.

The study analyses the impact of education, employment and status of women and their rights under Muslim Personal law governing in India and role of judiciary and their deviation from
Shariah laws. As mentation Shariat Act, 1937 have been made applicable to Muslims in India. In catena of cases of the Indian judiciary has deviated form the shariah laws and applied their own rights and wrongs.

**Muslim Personal Law (Shariat) to Muslims**

**Sec. 2 : Application of Personal Law to Muslims**

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

**The Dissolution of Muslim Marriages Act, 1939**

An act to consolidate and clarify the provisions of Muslims law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to effect of the renunciation of Islam by a married Muslim women on her marriage etc.
The Muslim women (Protection of Rights on Divorce) Act, 1986

Aim of this 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.

Section 2. Definition in this Act, unless the context otherwise requires:

(a) "divorced woman" means Muslim woman 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.

(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, (Section 2 of 1974), in the area where the divorced woman resides.
(d) "Prescribed" means prescribed by rules made under this Act.

The Indian Judiciary has been interpreting and applying Muslim Personal law to all disputes governing family matters of Muslims. Moreover, the Muslim community in different parts of the country has also been following traditional and customary laws. These laws yield considerable influence of the Muslim community in India even though perceptions what they stand for and the ways in which they are assimilated by the community are not uniform.

Muslims have their own bodies like the local jamat i.e. panchayat, ulema bodies, non-government Organisations etc., interprets laws and dispense justice in family disputes independent of the authority of the state in future for the better administration of justice.

10. OBJECTIVES OF THE STUDY

- To spread awareness, knowledge and information regarding the women's rights and obligation in marriage contract under the Islamic laws and the existing body of codified and customary laws applied to women.

- To know the attitude of women about Muslim Personal law and awareness about its enforcement.

- To highlight the importance of nikah-nama made by Muslim Personal Law Board.

- To highlight the need of compulsory registration of marriage.
To find out the law in Shariah and in its application in actual practice. This gap fill by the non governmental organization's, ulema, Muslim personal law board and other organisations from time to time.

- To find out in cases vast differences in the interpretation of customary laws across the country by Indian judiciary.

- To disclose existing laws which are beneficial to women.

- To identify strategies used in the part to establish egalitarian, gender just laws for Muslim women in future.

- To provide information to lawyers, activists, theologians, social workers etc. to understand and counter legal or social arguments that are masqueraded as religious but are in fact anti-women.

- To emphasize the importance of consent doctrine when women negotiating the marriage contract.

- To examine the importance of her right to choice and post marriage hazards when parents forfeit her right

- To show the awareness among Muslim women for the enforcement of Muslim Personal Matrimonial Code in future.

11. HYPOTHESES

In order to achieve aforementioned objectives of the study, the following hypotheses were formulated.
- Women is not aware with their legal rights while negotiating in marriage contract due to lack of religious and formal education.

- To overcome post marriage hazards there should be compulsory registration of marriage with stipulated conditions.

- Avoid frequency of divorce in future there should be written conditions in nikha-nama.

- There should be reform in Muslim Personal law and must have taken into consideration women issues such as, maintenances, mahr, divorce etc.

- There is wide gap between theory and practice because there is no proper legal interpretation of the Islamic text by other faith jurists.

- There is need to establish Muslim Personal Matrimonial Code and justice must be administered by Mujtahid or Ulema.

- Remove conservative attitude of the parents during Muslim marriages.

- To increase representation of Muslim women in Muslim personal law board.

To achieve the objectives of such an ambitious study, multiple research methods and techniques were employed including a broad survey of women such as teachers, social workers, lawyers, home based workers, office employees, house-wives, teachers, in-depth interview relating to concept of marriage, through opinionaire
opinions were taken by some intellectuals for the scrutiny of important issues. The present study however mainly depend on field research/feministic research that focussed on social, economical, educational and legal status of Muslim women particularly. However, while designing the research methodology, it has realised that little factual information was available on the socio-economic, educational status of women across the Aligarh district is important. Since the study provided space and scope for expansion in future. The survey aimed to providing quantitative data on education of women and their families their engagements in economic activities, their role in religious practices, their marital status and related issues, terms and conditions of the marriage contract and their view on the application of Muslim Personal law exclusively and some general questions to sum up this study. Through interview, views regarding the marriage and reform under laws has been taken from intellectual women, district qazi, ulema, jamat personnels and maulvies etc.

12. RESEARCH METHODOLOGY

Since the geographical scope of the study was vast, certain methodological and logical issues from such and such areas to be covered, the basis of the choice of content and form of research, the methodological and procedural design of the study and treatment of the data. In this chapter, a description of the sample, tools and techniques adopted for the study has been presented.

(i) The Sample :

The primary purpose of conducting the research is to discover principles that have universal application. To survey and
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<tr>
<th>Marital Status</th>
<th>Composition Of Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married</td>
<td>Teacher</td>
</tr>
<tr>
<td>Single</td>
<td>Lawyer</td>
</tr>
<tr>
<td>Divorced</td>
<td>House wives</td>
</tr>
<tr>
<td>Separated</td>
<td>Office Employees</td>
</tr>
<tr>
<td>Widowed</td>
<td>Home Based Workers</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Level Of Income</th>
<th>Locations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>Urban</td>
</tr>
<tr>
<td>500 - 5000</td>
<td>Semi - Urban</td>
</tr>
<tr>
<td>5000 - 10000</td>
<td>Rural</td>
</tr>
<tr>
<td>10000 - 15000</td>
<td></td>
</tr>
<tr>
<td>15000 &amp; above</td>
<td></td>
</tr>
</tbody>
</table>

**TABLE 1: MODEL OF SAMPLE SIZE**
study the whole population in order to arrive at generalization would be impracticable, if not impossible. Fortunately, the process of sampling makes it possible to draw valid inferences and generalization on the basis of careful observation of variables within a relatively small proportion of population. "A sample is a small proportion and analysis".

By observing the characteristics of the sample, one can make certain inferences about the characteristics of the population form which it is drawn. A sample, thus, is a miniature population to be true, sample must be representative and adequate. The ideal sample should be large enough to serve as an adequate representative of the population about which the researcher wishes to generalize, and small enough to be selected economically, in terms of subject availability, expense in both time and money, and complexity of the data analysis.

The sample investigated consisted of 500 women from the entire Aligarh district. Prior to detailed investigation of lists of schools teachers, colleges lecturer, residential people office employees, factories workers etc. was taken into consideration through randomly from which every 3rd, 5th, 7th person from particular sample taken for this investigation.

1. Teachers
2. Lawyers
3. Office employees
4. House-wives
5. Home-based workers
All the above mentioned categories of sample through random sampling has been taken from different parts of the Aligarh district. Indepth interviews has been taken by ulema for the further changes regarding in marriage law and its implementation to finally wind up this study.

(ii) Research Method:

Research method is defined by Good, is: "An instructional procedure, the designed outcomes of which are achieved by setting up situations in such a form that the student gather and organize information draws his own conclusion are the basis of data.

There are several methods which are used in research, they are as follows:

1. Historical method of research
2. Experimentation method of research
3. Descriptive method of research
4. Sample survey method of research which is researcher taken into consideration in this study.\(^{68}\)

The survey may be defined as follows:

"It involves a clearly defined problem and definite objectives. It requires expert and imaginative planning, careful analysis and interpretation of the data gathered, and logical and skilful reporting of the findings.\(^{69}\)

This methods is concerned with the study of existing conditions, facts, attitudes and opinions. In this method several kinds
of information may be collected within a limited time. The
description and interpretation of data gives the desired results.

13. TOOLS OF THE STUDY

For the purpose of this study the following tools were
considered:

1. Questionnaire
2. Opinionnaire
3. Interviews

The Questionnaire: The part of the survey questionnaire of which
findings are presented in this volume is attached as Annexure to this
study. An explanation of the rationale of the questions and the various
close-ended options provided are however in order. As questionnaire
is the most appropriate and useful device for gathering data related to
the specific aspects of the problem. Information which is not readily
available at an office or in urgency and has to be collected from
individuals or groups of individual is collected through a
questionnaire. Questionnaire is a set of questions prepared to include
all those areas or aspects which have their influence or relation with
the problem under consideration. A questionnaire is somewhat similar
to an object test. A questionnaire may contain questions from
different areas. It may have several sets or sections designed for
different groups and or individuals. It may contain question from
different areas. Thus, it has unique advantages. Properly constructed,
administrated and tabulated, questionnaire may prove to be most
appropriate and useful data gathering device for a research project. The efficacy and usefulness of a questionnaire is brought out by the following quotations:

"The questionnaire are used to get the factual information, interest, attitudes, opinions and judgement. Opinions may be treated as facts, in the sense that their existence may be factually established".

Qualities of good questionnaire:

1. Questionnaire should be of general and public interest.
2. The language used should be simple and easy so that respondents of an average ability can read and understand.
3. Questionnaire should be easily worded.
4. It should be short and brief so that it may be easily filled out by the respondents.
5. Unnecessary questions should be avoided to save time and money and to maintain the interest of the respondents.
6. The questions should not be ambiguous, their meaning should be absolutely clear to the respondents as well as to the researcher.
7. Sufficient choices should be provided in the responses of the questionnaire. Good variety of responses reduces the need of opinionnaires.
8. The respondents should be asked only to tick-mark the answers.
The questions should not be "fill in the blanks" type. Tick mark type questions reduces the labour and save the time of respondents.  

In order to get the desired information the researcher developed his own tools for the present research. The questionnaires were used as the main tools of data collection. Inspite of the demerits of questionnaires the researcher prepared the questionnaire because of the following reasons:

1. Standardized questionnaire for the purpose of the proposed study were not available.

2. Present study is concerned to find out the problems faces by Muslim women while negotiating the marriage contract. Therefore, specific informations regarding a particular place as well as about a particular groups of individuals can only be collected if separate questionnaire are used, considering the aims and objectives of this problem. Mode of living, socio-economic, and educational background of the people are different from place to place. Thus, keeping in view all these factors in mind, the researcher has developed his own questionnaire which is best possible attempt to collect data, list the findings, interpret them and draw conclusions to wind up this study.
14. DESCRIPTION ABOUT CONTENTS OF QUESTIONNAIRE SCHEDULE:

The questions in the present questionnaire are prepared according to the aims and objectives of the problem. The proposed questionnaire contains closed form of question and open form of questions. Closed form means the several replies of a question are given and the respondent is bound to select only one reply i.e. multiple choice questions. This method is economical in terms of time, money and efforts. In open form of questions, respondent is free to express his views and ideas so we can say in this study researcher used mixed form of questionnaire which consists of both closed and open type questions. For social and legal research this method is important and effective.

The part of the survey questionnaire of which findings are present in this volume is attached as Annexure. An explanation of the rationale of the questions and the various close and open ended options provided are however in order. This questionnaire divided into nine parts. The objective of the question on type of education was to assess the kind of education women have access to. Formal meant enrolment in formal educational institutions. Informal included other forms of education like adult literacy programmes, tuition at home, informal attempts in neighbourhood to educate members of community and so on. Religious study implied teaching of religious text in religious institutions. These not only included formal institutions of learning for Islamic scholars but even the
neighbourhood madrassas and maktabs teaching primarily religious matters among other things or lessons at home to read the Quran and other religious books. Self study meant, where women took the initiative to educate themselves whenever they had access to the educational material. The question on level of education provided information on the present educational status of Muslim women. Some of the options were included in order to cross examine responses in the earlier or following questions to get a near accurate estimate of women with formal education, literacy or illiteracy. For example, the category of illiterate was one such option. One can argue that illiteracy is not an educational level. However, it was useful to cross check the response to the earlier questions on access to education. The other options are self-explanatory. However since the perceptions of what is primary or secondary education differs in different parts of the country, special criteria for what is primary and secondary were created to avoid confusion. By recognising and including other forms of education like informal, religious etc. One cannot gauge whether these forms of education enabled women's literacy. These questions of this section resolve this problem. They gave an accurate estimate of literacy and illiteracy among Muslim women. Another important objective of seeking this information was to build a mailing list of Muslim women across the entire district with information on which language they read. The objective was to translate the findings into as many languages as necessary and disseminate the information and future reports and publications concerning Muslim women.
The questions of education of the family in part II allowed for the contextualisation of women's education within her family when compared to her response in the earlier section. Secondly, it helped in assessing the general trend in education were increasing.

In the options on employment status is part III, housewife meant a woman not engaged in any income generating activity. Home based worker meant woman who were contracted to do jobs at home on piece rate wages. Self employed meant women engaged in activities like teaching children informally (tuition), vending, tailoring, bidi making in home etc. Service meant all forms of formal employment outside the home. For example, work in factory, office, domestic labour etc. in the primary level i.e. agriculture sector, secondary level, i.e. industry or tertiary level i.e. service sector. Business including activities like independently running grocery shops or beauty parlours or working in a family business with a fixed share in the profits.

The questions on religious practice in part IV were based on the common understanding of what it takes to be a Muslim i.e. praying, fasting, reading Quran etc. while these are not indicator of how religious a person is, it does suggest the extent to which women hold these practices. The questions are the language in which the Quran is read if it was understood was specifically aimed at knowing the language in which yields the best result.

The questions in part V looked at the impact of negotiations before marriage. These questions responses show how much freedom
parents provide to their daughters during negotiations, as Islam provide full freedom to choose their partners. Here these questions touches the right to choice concept as provided in Islam and practices in the Muslim community.

Part VI is very important and it highlight the importance of Nikah Nama, its contents and how much people are aware with this? This part contains various questions relating to registration of marriage, reforms under standard nikah-nama etc., and the present practices also.

The questions in part VII firstly contains choice, meaning and its implementation while negotiating in marriage contract. The consent of girl is very important for marriage contract and so this part also highlights the importance of consent and its affect.

Part VIII of this questionnaire devoted to role of Muslim Personal Law Board and altitude of Indian Judiciary while propounding any principle relating to marriage contract.

Last part of this questionnaire i.e. IX, contains general question through which we assess the overall freedom of Muslim women in all the issues pertaining to her status. Besides this questionnaire, two interview schedule questionnaire is also prepared by researcher. The aim of first questionnaire to get full information regarding some sensitive issues form women intellectuals and social workers. The aim of second questionnaire is to take indepth interviews from ulema, qazi jamat personnals and moulvies etc. These
interviews schedule is important as to get relevant information for the conflicting issue like talaq, mahr, compulsory registration of marriage, maintenance, consent of girl etc. in details.

The survey sheets were sent to all respondents and when they completed and sent back, data entry was done simultaneously. Data was entered into a computer package specially designed for data entry of survey parts. Internal checks and validations were built in so, as to avoid data entry errors to the extent possible. The data was further processed using statistical package for social studies.

The entire district data analysis has been presented through percentage method. The figures as shown in Miscellaneous form, in the tables are the sum total of responses like not applicable, not sure, not filled, don't know, no comment where these percentage are negligible. However, wherever above mentioned responses are important, these figures have been retained for the accuracy of the survey data.

15. INTERVIEW SCHEDULE:

In this part of the study specific set of questions to some intellectual women, social workers, Islamic scholars, qazi etc. are given. And their views sum up in this part of the study.

16. LIMITATION OF THE SCOPE OF THE SURVEY AND STUDY

The scope of the survey and study was limited to providing a bird's eye view of the status of views of Muslim women on the
issues outlined above. The study did not dealt into indepth explanations as to the reasons for the same. Despite, these limitations, the survey of this study remains a pioneer work because as no work is done on this topic before this and it adds new information to the existing position of women.
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12. Supra note 3.


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31. Supra note 10.
32. Supra note, 15
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36. Supra note, 32
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64. The Act received the assent of President of India on May 19, 1986 and was published in the Gazetter of India Extra-Ord., Part II, Sec. I.


68. Supra note 1.
