The present chapter deals with the concepts of marriage, divorce and maintenance and property rights of women as conceived and defined in the Muslim personal law and attempts to explore how it affected the position of the Muslim women, and what are their own views regarding these laws. Though the Quran and Shariat law give women various rights, but in actual social practices many of these rights are not given to them as they are not socially empowered to assert those rights. Customary laws are also followed by Muslims. The Muslim law is a pioneering family law in our country. It recognizes the distinct personality of a woman independent of her father, husband and other male members of her family (Tabasum 2013).

4.1 Muslim personal law in India

The Shariat Application Act, 1937 in India protects the application of Islamic laws in personal legal relationships, the state shall not interfere and a religious authority would pass a declaration based on his interpretations of the Quran and the Hadith. The applicability of the Shariat Act has come under controversy in the past as well. The issue of protection of women’s rights as part of the broader fundamental rights came into conflict with religious rights. Most well known among these is the Shah Bano case (Indian express.com). There are four different schools of Islamic law viz. Hanafiyya, Malikiyya, Shafiyya and Hanabaliyya, each of which interprets the writings in the Quran in different ways and consists of varying rules and regulations for the Muslim community world over.

Singh (1992) argues that Islam provides a complete code of conduct for its adherents. The religion regulates and directs both the sacred and secular aspects of the life of Muslims. In spite of the secular character of independent India, Islam continues to play a dominant role so far as the personal laws are concerned. Due to its minority status, the Muslim community in general and Muslim leaders in particular, turns to traditional rigidity in order to fulfill their desire to preserve the community’s religious and cultural identity. By and large, Muslims react with hostility towards any major innovation in this regard. Under these circumstances, the man-woman relationship and composition of the family structure continues to be rooted in traditional sanctions. In Jammu and Kashmir, Muslim Personal Law bill was passed in the year 2007. Muslim Personal Law Act 1937.
was not applicable to the state of Jammu and Kashmir. In Bhaderwah it was found that Muslim women in Bhaderwah do not suffer as compared to Muslim women in other parts of India. Rate of talaq and polygamy is low among the Muslims of Jammu and Kashmir. The Muslims in Bhaderwah in particular and in Jammu and Kashmir are giving preference to female education and employment so that they will not suffer in future.

Muslim personal law is pre-constitutional. It has been in operation throughout the territory of India. Since the Mughal regime down to the British administration of the justice, the Muslim Personal Law was duly protected and implemented. It is derived from Islam and the Islamic way of life. It manifests the religious faith and cultural ethos of the Muslim community. It is part and parcel of Islamic religion and culture. The Constitution of India guarantees the religious and cultural freedom. The ambit of religious cultural freedom enshrined in part iii of the constitution as the fundamental Rights cover the Muslim Personal Law (Garg 2014).

Singh (1992) writes that Muslims in India, as in other Islamic countries, are guided by Islamic laws with reference to their marriage, divorce, inheritance and property rights. Shariat which contains the governing principles of law for defining and regulating the status of men and women in Islamic society has to be understood in the context of its own historical development and socio political setting in India. The adjustment of Muslim community in a secular state and secular society has to be understood under different historical context; and also as to how far certain basic provisions and needs of the Muslim women who want protection from law against injustice which have been perpetuated against them for a long time.

Marriage, dower, divorce, maintenance, guardianship, paternity, acknowledgement, waqfs, wills, inheritance are the integral part of the Muslim personal law and these are religious in nature and content. These come within the purview of religious freedom guaranteed under article 25 of the Constitution of India (Garg 2014). Singh (1992) argues that undoubtedly, legislature equality, if made use of, can lead to genuine equality but legal rights without the ability to use it represent equality without substance. This is the factor that has been detrimental to the progress of Muslim women in India. Before independence certain reforms were brought to give more rights to
Muslim women. However, after independence, the process stopped. In order to protect their identity, the leaders of the community are turning towards the Islamic revival. As a result, the women are made casualty in this male dominated society. The controversy evoked by the Shah Bano case divided the Muslim community down the middle. The subsequent enactment of the Women’s Act and demand for a uniform civil code brought an unending debate on the issues in which not only the Muslim community but the whole nation got involved. Interestingly, in this whole scenario, the main issue, i.e. the welfare of women was totally left out. Today, the Muslim women, especially the illiterate ones are totally confused and in a dilemma.

Fyzee (1964)\textsuperscript{8} states that Muslim law in India means “that portion of Islamic Civil Law which is applied to Muslims as a personal law”, it consists of the injunctions of Quran, of the traditions introduced by the ‘practice’ of the Prophet (\textit{Sunna}), of the common opinion of the jurists (\textit{Ijma}), of the analogical deduction of these three (\textit{Qiyas}), and of the pre-Islamic customs not abrogated by the Prophet Mohammad. Further, it has been supplemented by the juristic preference interpretation (\textit{Istihsan}), public policy (\textit{Istislah}), precedents (\textit{taqlid}) and independent interpretation (\textit{Ijtihad}).

Fiqh or the science of Islamic Law is the knowledge of one’s rights and obligations derived from the Quran, or the \textit{Sunna} of the Prophet, or the consensus of opinion among the learned (\textit{Ijmas}), or analogical deduction (\textit{Qiyas}). Fyzee (1964)\textsuperscript{9} argues that in India, not the whole of the \textit{fiqih}, but only a certain part of it is applied to the Muslims. By Muhammadan Law, therefore, is meant “that portion of Islamic Civil Law which is applied in India to Muslims as a personal law”. In India, this system was greatly influenced by the doctrines of common law and equity. The Muhammadan Law in India is the joint product of the intellectual activities of Englishmen, Muslims, Hindus and Parsis. The most important and far reaching enactment passed within recent years, dealing with the application of Muhammadan Law in India, is the Shariat Act, 1937. It is a short enactment of six sections which aims at restoring the law of Islam to all Muslim communities residing in India, doing away with customs contrary to the Shariat. It is applicable to every Muslim, regardless of the school to which he belongs. The Shariat Act largely abrogates customs which Muslim communities were following at variance
with Islamic Law. Among Muslims, the Islam not only defines the religious beliefs but also lays down exclusive principles for the code of conduct for its adherents at home and outside. Thus, religion seeks to regulate the society at large.

Baxamusa (1995)\textsuperscript{10} also expresses the views that the Shariat law existing in India are not totally divine. What exists in India as Muslim Personal Law is Anglo-British Law. These uncodified practices were unconsciously justified by the Maulavis (religious preachers) to suit the interests of the British. After independence, several books on Muslim law have misinterpreted this and permitting the practice of extra-judicial divorce in Islam. This has complicated and to a certain extent distorted the Muslim divorce law.

4.2 Origin of Muslim Law

The place of origin of Muslim law is Arabia where Muhammad promulgated Islam. Basically it is of divine origin, that is to say, Muslim Law originates from divinity. It is that law which is established by a communication (khitab) from God with reference to men’s acts. The entire system of Muslim Law, as well as of theology, ritual, and private ethics, have been built upon two foundations – The Quran and the ‘Traditions’ (Sunnah and Hadith). The Quran which is the divine communication and revelation to the Prophet of Islam was the first and the great legislative code of Islam. Traditions - ‘Sunnah’ and ‘Hadith’ deal with the death of Prophet, the living source of inspiration came to an end. The immediate successors of the Prophet were known as Caliphs and they accepted the “Book of God” as a sufficient guide for this world. Thus, after the death of Prophet Mohammad the Sunnah and Hadith were acted upon by his surviving companions in order to decide occasional disputes and to restrain men from certain actions which the Prophet prohibited (Singh 1992)\textsuperscript{11}.

The Arabic meaning of the word ‘Islam’ is “submission to the will of God”. The word ‘Muslim’ is a noun of action meaning “one who adopts Islam as a faith” and from the way in which the verb ‘Islam’ is used in the Arabic language, it signifies the deliberate adoption of new faith. Thus, it has no association with the founder of the new faith (Fyzee 1964)\textsuperscript{12}. Barbara (1964)\textsuperscript{13} writes that in the religious scripture of Islam, there can be no distinction between sacred and secular. As a result, not only the life of the
individual but the whole society is subject to specific prescriptions issued by the lord once and for all through his Prophet. Thus, Islam lays down a unified code of conduct at home and outside for its followers in the religious text, which forms a firm base for the function of the society.

The sacred law of Islam is an all embracing body of religious duties the totality of Allah’s commands that regulates the life of every Muslim in all its aspects. Joseph (1964)\textsuperscript{14} states that the Islamic law is the epitome of Islamic thought and spirit, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself. The Shariat, to use the modern terminology, embraces not only law but religious and ethics as well. The literary period of Islamic law begin about the year 150 of hijra (767 A.D.). Islamic law came into being and developed against a varied political and administrative back ground. The life time of the Prophet was unique in this respect. It was followed by turbulent period of caliphs of Madina (9- 40 of the hijra, 632-661 A.D). The rule of Ummayads, the first dynasty in Islam (41-132 of the hijra 661-700 A.D.), represented in many respects the consummation of tendencies which were inherent in the nature of the community of Muslims under the Prophet. During this rule, the framework of a new Arab Muslim society was created. In the society, a new administration of justice, an Islamic jurisprudence, and through it, Islamic law itself came into being.

Joseph (1964)\textsuperscript{15} further argues that the gradual dismemberment of the Islamic empire by about 900 A.D. gave remoteness from political power which helped it in preserving its stability and even provided main unifying element in a divided world of Islam. The later period saw the rise of two great Islamic states on the ruins of previous order – Ottoman Empire in the near east and Mughal Empire in India. In both the empires (sixteenth and seventeenth centuries respectively), Islamic law enjoyed the highest degree of actual efficiencies which it never possessed in a society of high material civilization since early Abbasids period. An important, though less lasting, efforts to apply the whole of Islamic law in practice was made in India under Mughal Emperor Aurangzeb. The Hanafi doctrine was followed and implied by force.
Fyzee (1964)\textsuperscript{16} states that the mid-nineteenth century marked the beginning of slow reforms in the Muslim law. The most important and far-reaching enactment dealing with the application of Mohammadan law in India is the Shariat Act, 1937. This Act restored the law of Islam to all Muslim communities in India, doing away with customs contrary to the Shariat. This act brought all the Muslim communities into the fold of Shariat law. The Shariat act largely abrogates customs which Muslim communities were following at variance with Islamic law. The Shariat is the central core of Islam. It embraces all human actions, and contains an infallible guide to ethics. It is fundamentally a ‘doctrine of duties’, a code of obligation.

In the state of Jammu and Kashmir customary laws were followed especially in case of property rights but now these replaced by Muslim personal law. All social and religious spheres of Muslims are ruled by Shariat (Muslim Personal Law).

Muslims in India at present constitute 14 percent of the total population and in matter of marriage, dower, divorce, guardianship, legitimacy custody of children, maintenance, inheritance and succession are largely governed by Muslim personal law and to an extend by customary laws. Singh (1992)\textsuperscript{17} states that Islam provides complete code of conduct to its followers. It is a way of life that has religious, political and cultural aspects, and each of these aspects overlaps and interacts. Undoubtedly, Islam gave an elevated position to women and sanctioned many rights against the customs that prevailed in the pre-Islamic Arabia. The Prophet altered many prevailing customs of the ancient times and sanctioned better life for women. Sanctions were commanded favouring women in the social customs of marriage, divorce and maintenance. The women got better positions but certainly not equal positions in society. However, there was a difference in principle and practice. It is important to ascertain what customary or written laws and philosophical theory have to say on feminine rights and obligations. The Muslims in India, due to their minority status guard their personal laws and in this process the position and rights of Muslim women happen to be at stake. Though the customs and prevalent practices continue to be rooted in the traditional sanctions, forces of social change generated within the social system have not left the Islamic society entirely unaffected. The religion continues to have a strong hold on its followers but
effects of a secular setup are evident in the views of men and women of the present generation.

4.3 Marriage and Dower rights of Muslim women

Muslim marriage is a civil contract as well as a religious obligation for all Muslims. Fyzee (1964)\textsuperscript{18} writes that Marriage (nikah) in Muslim law is purely a civil contract. It is a contract for the legalization of sexual intercourse and the procreation of children. It is an institution ordained for the protection of the society and in order that human beings may guard themselves from foulness and unchasteness. The three aspects of marriage in Islamic law which are necessary to understand the institution of marriage as a whole are – legal, social and religious. An element of sacredness resulting from the religious ideas also finds a place in the conception of marriage (Verma 1971)\textsuperscript{19}. These three aspects are as:

Legally, it is a contract and not a sacrament. The contract has three characteristics (i) there can be no marriage without consent, the consent of the bride is mandatory for the Muslim marriage (ii) as in a contract, provision is made for its breach the various kinds of dissolution by act of parties or by operation of laws and (iii) the terms of a marriage contract are within legal limits capable of being altered to suit individual cases.

Social Aspect: Nikah is a well established social institution which gives to the woman a separate and dignified status in the society. Muslim jurists considered marriage to be a sumnat muvakida, that is, something on compliance with which he/she would be rewarded, after life and failure to comply with which results in sin. Marriage was considered by the Prophet as one of the religious matters to which preference was given over jehad (Tabasum 2013)\textsuperscript{20}. Muslim marriage is not simply a contract but also a social institution, Islamic law gives to the women definitely high social status after marriage. The Prophet, both by example and precept, encouraged the status of marriage. He positively enjoined marriage to all those who could afford it and the well- known saying attributed to the Prophet, ‘There is no monkery in Islam’ expressed his attitude towards celibacy briefly but adequately (Tabasum 2013)\textsuperscript{21}. There is no place for celibacy. The
Prophet has said, “there is no celibacy in Islam. Marriage is a religious duty and is consequently a moral safeguard as well as social necessity” (Rakesh 2011)\(^2\).

Religious Aspect: In its ‘*ibadah*’ (devotional act), marriage is an act pleasing to Allah because it is in accordance with His commandments that husband and wife love each other and help each other, to make efforts to continue the human race and rear and nurse their children to become true servants of Allah. Marriage is recognized in Islam as the basis of society. It is a contract, but it is also a sacred covenant (Tabasum 2013)\(^3\). Mahmood (1982)\(^4\) is also of the view that marriage among the Muslims is a “solemn pact” (*mithaq-e-ghalid*) which in law takes the form of a contract (*aqd*). Fyzee (1964)\(^5\) also observes that while considering the social and legal aspects, the aspect of religion is often neglected or misunderstood. Marriage partakes of the nature both of *ibadat* (worship) and *muamalat* (worldly affairs). Temporary marriages are forbidden by Prophet Mohammad.

In Jammu and Kashmir, most of the Muslim marriages are arranged by the parents. Selection of husband is still done by the parents only and mostly the consent of the bride is merely a formality. The selection of the spouse is restricted within one’s religious sects and the larger kin groups. Shias and Sunnis are two strictly endogamous religious sects even today. The cleavage between them is maintained the same way. During the study, only two respondents were Hindu converts married to Muslim husband and all other married respondents married in their religious sect and in most of the cases, the marriage was settled by their parents.

Singh (1992)\(^6\) writes that the legal incidents of marriage in Islam are remarkable for their simplicity. The marriage can be constituted without any ceremony and there are no irksome formalities or special rites. The essential conditions of a valid marriage are: *Ijab* (offer), *qabul* (acceptance), *baligh* (adult age or puberty), *rashid* (sound mind) Marriage is legally contracted by the declaration made by one contracting party and followed by the corresponding acceptance by the other at the same meeting, i.e. groom and bride. The completion of this contract which commences with proposal or demand in marriage and ends with the consent is called “*aqd*” (Ameer 1976)\(^7\). The offer and acceptance are made before sufficient witnesses (i.e. in Hanafi law two, in Shia law
witnesses are not necessary). In certain circumstances, a minor contracted into marriage by the guardian has the right of repudiating the marriage contract on attaining puberty and this right of minor is known as *khyaar-ul- Bulugh* (option of puberty) (Aqil 1981)\(^\text{28}\).

**Table 4.1: Marital status**

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Married</th>
<th>Unmarried</th>
<th>Divorce</th>
<th>Widow</th>
<th>Total/percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>80 (40%)</td>
<td>16 (8%)</td>
<td>2 (1%)</td>
<td>2 (1%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>75 (37.5%)</td>
<td>20 (10%)</td>
<td>2 (1%)</td>
<td>3 (1.5%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>155 (77.5%)</td>
<td>36 (18%)</td>
<td>4 (2%)</td>
<td>5 (2.5%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

The above table (4.1) shows that 77.5 percent respondents (40% rural 37.5% urban) were married. 18 percent respondents (8% rural 20% urban) were unmarried. 2 percent respondents were divorced and 2.5 percent respondents were widow.

**Registration of marriage:** The Supreme Court held that marriages of all persons who are Indian citizens belonging to various religion should be made compulsorily registerable in their respective states, where the marriage is solemnized. The purpose of registration is to make the ‘proof’ of a marriage or divorce easier and authentic. Under Muslim Personal Law the registration of marriage is not compulsory but it cannot also be said that Muslim Personal Law prohibits registration (Tabassum 2013)\(^\text{29}\).

**Table 4.2: Registered marriage of respondents**

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Registered</th>
<th>Not registered</th>
<th>*Not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>54 (27%)</td>
<td>30 (15%)</td>
<td>16 (8%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>58 (29%)</td>
<td>22 (11%)</td>
<td>20 (10%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>112 (56%)</td>
<td>52 (26%)</td>
<td>36 (18%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

*Those respondents who are unmarried

From the above table it was observed that 56 percent respondents (27% from rural and 29% from urban) having registered marriages and 18 percent respondents (8% rural and 10% urban) do not have registered marriages. Registered marriage gives security to
women in her married life. Tabasum (2013)\textsuperscript{30} in her study writes that marriage should be registered and records should be maintained by Qazi concerned. He can club records of few such marriages and get them registered once in a month or once in three months. He further argues that registration of marriage will have permanent record and will avoid many disputes and there is no need to avoid or oppose registration of marriage as it is not against Shariat. In Bhaderwah, most of the people prefer registered marriage and three nikah copies are provided by the Qazi one given to bride’s family one remain with groom and one is kept by Qazi and submitted to the Wakf Board of the concerned locality.

Dowry

Dowry means any property or valuable security given by bride’s family to the bride and bride groom in consideration of marriage. Roulet (1996)\textsuperscript{31} writes that dowry is not merely an institution confined to valorisation of marriage but more importantly serves as a central institution to define social prestige and status and thus becomes an important dimension of people’s representation of themselves and others. In India dowry system has been legally abolished, but in practice its prominence is more marked than ever and the custom has permeated all religions and social classes (Mandelbaum 1999)\textsuperscript{32}. Srinivas (1983)\textsuperscript{33} writes that “the change over to the system of dowry will be attributed to the increased wealth which enables people to spend more lavishly on wedding in their struggle for social recognition”. Islam has not prescribed the practice of dowry but it has become important part of marriages in Muslim society in India.

Table 4.3: Received dowry

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Received</th>
<th>Not received</th>
<th>*not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>78 (39%)</td>
<td>6 (3%)</td>
<td>16 (8%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>71 (35.5%)</td>
<td>10 (5%)</td>
<td>19 (9.5%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>149 (74.5%)</td>
<td>16 (8%)</td>
<td>35 (17.5%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

*Those respondents who are not married

In Indian culture, most of the parents give dowry to their daughters at the time of marriage in the form of household things, and in some cases cash and jewellery. In the
4.3 table it was found that 74.5 percent respondents (39% from rural and 35.5% from urban) received dowry whereas 8 percent respondents (3% from rural and 5% from urban) did not receive dowry at the time of marriage. It was also observed that education and job status is positively related to the payment of dowry in Bhaderwah. The respondents were of the view that dowry helps to establish a cordial affinal relationship between the two families. Most of the respondents opined that they have given dowry to their daughters so that their daughters can live happily in her husband’s family. It was also found that dowry is not demanded by groom’s family in Bhaderwah and it is given voluntarily by the bride’s family. But there were few cases where dowry was demanded by groom’s family before and after marriage.

Dower

*Mehr* is a gift given to wife by husband at the time of marriage. It is either in the form of cash or jewellery or both and it exclusively belongs to the wife and no one have right over it. It is the sum of money or immovable property which the husband gives to his bride at the time of marriage. This is known as ‘prompt’ dower, there is another practice known as ‘deferred dower’ which is a settlement for the wife as a token of respect for her (Banu 1995)\(^3^4\). Diwan (1986)\(^3^5\) writes that the idea of sale seems to be latent in the concept of *Mehr*. In the pre-Islamic Arabia, two forms of marriages prevailed. In the first form, the *Beena* marriages in which, the women did not accompany her husband to his home, but continue to live in her parental home, which was frequented visited by the husband. On his visit, it was customary to give a gift to the wife known as *sadaq*. In the second form of marriage, the *Baal* marriage, the woman, after her marriage, accompanied her husband to setup her matrimonial life there. In consideration of the wife leaving her parental home, the husband paid some amount of money to her parents. This amount was known as *Mehr* and therefore, it is linked to bride price. The *Mehr* in the *baal* form of marriage was used by the Prophet to ameliorate the position of the wife in Islam, and it was combined with *sadaq* so that it became a settlement or a provision for the wife. In Islamic law, *Mehr* belongs absolutely to the wife. *Mehr* or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties, or by operation of law. It may be either prompt, payable immediately on marriage if demanded by the wife or deferred dower payable on the dissolution of
marriage (*mu'ajjal*). In the present study, information was also collected from the respondents whether *Mehr* has been paid or not. It was found that most of the respondents have deferred dower.

**Table 4.4: Received *Mehr* at the time of marriage**

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Received (Prompt)</th>
<th>Not Received (Deferred)</th>
<th>*Not applicable</th>
<th>Total/Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>30 (15%)</td>
<td>54 (27%)</td>
<td>16 (8%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>33 (16%)</td>
<td>48 (24%)</td>
<td>19 (9.5%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>63 (31.5%)</strong></td>
<td><strong>102 (51%)</strong></td>
<td><strong>35 (17.5%)</strong></td>
<td><strong>100 (100%)</strong></td>
</tr>
</tbody>
</table>

*unmarried respondents

From the above table it was observed that, 31.5 percent respondents (15% from rural and 16 percent from urban) received *Mehr* at the time of *nikah* (prompt) whereas 51 percent respondents (27% from rural and 24% from urban) did not receive at the time of *nikah* and it is deferred means written at the time of *nikah* on nikahnama and not given at the time of *nikah*. It was observed that most of the respondents who have not received *Mehr* in hand at the time of *nikah*. The non-payment of deferred dower by its very nature cannot confer any such right of refusal on the wife’s side. The right to in force payment arises only on death, divorce or the happening of a specified event. Hasan (2006)\(^{36}\) writes that many times Muslim women are not in a position to assert their claims to *Mehr* because they are forced by their in laws to free their husband’s from *Mehr*. In the event of divorce or widowhood, particularly in communities the marriage contract are not in writing, women are also not in a position to claim their *Mehr*. Besides this, poor economic conditions, large family size, illiteracy etc. can become reason for women not to claim their right of *Mehr*.
Table 4.5: Amount received in Mehr

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Cash</th>
<th>Gold</th>
<th>Gold/Cash</th>
<th>*not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>36 (18%)</td>
<td>13 (6.5%)</td>
<td>35 (17.5%)</td>
<td>16 (8%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>22 (11%)</td>
<td>19 (9.5%)</td>
<td>40 (20%)</td>
<td>19 (9.5%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>58 (29%)</td>
<td>32 (16%)</td>
<td>75 (37.5%)</td>
<td>35 (17.5%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

*unmarried respondents.

*Mehr* is the gift in the form of money and jewellery given to bride at the time of *nikah*. From the above table it was observed that 29 percent respondents (18% from rural and 11% from urban) received *Mehr* in the form of cash and 16 percent respondents (6.5% from rural and 9.5% from urban) were given gold. There are 37.5 percent respondents (17.5% rural and 20% urban) who were given both cash and gold.

The amount of the *Mehr* is decided by the parents or elders of either side, taking into consideration the status of the family and the earnings of the boy concerned. In most of the cases, especially the illiterate rural women did not know the nature of the *Mehr* decided in their marriages and few of them even did not know the actual amount of their *Mehr*. It helped the women in practice and also gives a security to the married women. One of the most effective means which Islam adopted to safeguard the interests of woman after her marriage is through *Mehr*. However, in practice, it remained merely a paper transaction.

Ahmed (2005)\(^{37}\) states that during the period of Ignorance there was yet another strategy for getting rid of a women’s dower which has been called ‘*Shighar*’ in Hadith. This was a clever trick played on poor helpless women in as much as a person gave his daughter in marriage to another person on condition that he in turn would give his daughter in marriage to him. In this cross-marriage neither of them paid any dower. Islam put an end to this unjust practice, and declared dower to be the exclusive property of the women and removed all the false and unjust claims on it one by one. The Islam Shariat has prescribed no limits on the amount of dower. It can be increased or brought down according to the financial status of the person entering the marriage contract. The
payment of dower to be made either at the time of the marriage or at some other agreed time period. If the dower money is not paid by the husband during his lifetime it has to be paid out of his bequest. A husband who divorces his wife must pay her the Mehr amount and give her a proper maintenance allowance as long as she does not remarry or does not find an alternate support but in most of the cases, it is not given during once life time except at the time of divorce.

Diwan (2007)\textsuperscript{38} states that if a husband refuses to pay prompt dower, the guardian of a minor wife has the right to refuse to allow her to be sent to the husband’s house and similarly, the wife may refuse the husband from his conjugal rights, provide no consummation has taken place. The wife is under Muhammadan law entitled to refuse herself to her husband until the prompt dower is paid and if in such circumstances she happens to reside apart from him, the husband is bound to maintain her. The non-payment of deferred dower by its very nature cannot confer any such right of refusal on the wife. The right to in force payment arises only on death, divorce or the happening of a specified event. In the state of Jammu and Kashmir the dower is mostly deferred and not prompt which is only mentioned on papers and not given during once life time.

4.4 Divorce and Maintenance

Singh (1992)\textsuperscript{39} states that Islam provides for dissolution of marriage under certain conditions, such as when there is no love, faith, harmony and understanding among the couples. Despite permitted by the Prophet, it was not at all encouraged by him. The Prophet had advocated that of all the things permitted by law, divorce is the most hateful in the sight of God. While the sanctity of marriage is the essential basis of family life, the incompatibility of individuals and the weakness of human nature require certain outlets and safeguards if that sanctity is not be made into a fetish at the expense of human life. Strict rules were therefore, commanded by the Prophet to guard against the misuse of this sanction.

Divorce is regarded as the unhappy aspect of the institution of marriage and with Allah, the most detestable of all permitted things is divorce. In Islam, divorce is considered as an exception to the status of marriage. The Prophet declared that among the
things which have been permitted by law, divorce is the worst (Tyabji 1968). The basis of Islamic law of divorce is the inability of the spouses to live together rather than any specific cause on account of which the parties cannot live together (Tabasum 2013).

Fyzee (1964) states that the greatest defect of the Islamic system are the absolute power given to the husband to divorce his wife without cause. Dower to some extent, restricts the misuse of this authority. Divorce engenders more suffering on women than the irresponsible exercise of this right by the husband. No system of law can produce marital happiness, but human laws may at least alleviate suffering. And when marital life is wrecked, the home utterly broken up by misunderstanding, jealously, cruelty or infidelity, what greater boon can a wife have than the power to secure her liberty. Divorce is corollary to the marriage laws. Perhaps it is a special institution for men. Divorce is necessary to safeguard rights and privileges for women (Dur-ui-Mukhtar). A talaq is dissolution of marriage effected by the husband making a pronouncement to the effect that the marriage is dissolved, or that the marital relation shall not any more subsist between himself and his wife (Kidwai 1978).

Fyzee (1964) further states that the marriage can be dissolved, in the lifetime of the couple, either by husband or wife, or by mutual agreement, or by operation of law. The law of divorce, whatever it’s utility during the past, was so interpreted, at least in the Hanafi School that it had become a one-sided engine of oppression in the hands of the husband.

Siddiqui and Zuberi (1993) mention that Marriage is a contract where both parties ought to have equal rights. The contract cannot be terminated by the husband unilaterally. If he does, he must be made responsible for her maintenance even beyond the period of iddat. If divorce is of her choice, either by way of Khula or by way of muhbarat then there is justification in taking the stand that either she should be on her own or she should revert to her parents. The Dissolution of Muslim Marriage Act 1939 enables Muslim women to seek divorce through the court under specified conditions. A notable advance was section 125 of the code of criminal procedure enacted in 1973. This is, for the first time, gave a statutory right to all women including Muslims to demand maintenance from the husband after divorce.
4.5 The Existing Divorce laws Among Muslims in India.

In India the dimensions of diversities in the realm of personal laws are thus very wide and varied and not based only on religion. Besides diversities in religion the law differs from region to region and territory to territory and often differently applied in differential circumstances.

Mahmood (1986) argues that the Muslim Personal law is not codified. An act which approved by one school of thought may not be agreed to be another. In India among Sunni Hanafi and the Shafi School and among Shias, the Ithna Ashari and the Ismaili schools are very dominantly used. In India, all the Muslims are not governed by the same personal law. In Goa, even today, the Goan Muslims are governed by the Portuguese law and partly by Hindu usage. Author further writes that though attempts were made for change to introduce Muslim Personal law, there was no success In Pondicherry Muslims are governed by the trench Civil Code and by the Muslim Law. In Jammu and Kashmir, the local customary laws over rule the Islamic Law. The existing Muslim personal law as seen above is not uniform. It differs in relation to marriage, divorce, inheritance, etc. procedure of divorce in reference to Quran and Sunnah.

4.6 Forms of Marriage Dissolution

The different forms of dissolution of marriage have been classified as follows (a) by the death of spouse (b) by the act of parties and (c) by judicial process.

(Fyzee, 1964) states that the procedures to dissolve marriage in Islam are different for the sexes and there are several procedures. The procedure used by the husband is Talaq and that used by the wife is Khula. Dissolution by mutual consent is Mubarat. A marriage can be dissolved at the instance of the court, and is known as Faskh. Mahmood (1988) argues that Talaq is a procedure that can only be initiated by the husband no consent being required of the wife. The power of the husband to divorce is absolute. A Talaq may be produced in a number of forms: (i) The Ahsan form or Hasan form or (ii) Bidal form. The Ahsan form of Talaq is most accepted in Sunnah. It is the most approved from of divorce where repudiation takes place at a single pronouncement
on a wife when she is not menstruating. During the Iddat Period the marriage is not dissolved. All the schools of Sunnis and Shia approve of Talaq-a-Ahsan.

**Triple Talaq**

The Islamic Shariah which was formulated more than hundred years after the death of the Prophet and had evolved under complex influences of various civilizations took away what was given to women by the Prophet and the Quran. This issue of Triple divorce in one sitting illustrates this very well. It was practiced during jahalih period (period of ignorance) before the advent of Islam. The usual practice than was to pronounce the word Talaq two times and withhold the third pronouncement, making the wife live thus in constant fear of third utterance (Engineer 2005). The triple divorce was not allowed during the Prophet’s time. Caliph Umar enforced triple divorce again in order to prevent its misuse by the Arabs as they were cheating on Syrian and Egyptian women to marry them and retain their earlier wives as these women were unaware of the fact that triple talaq is abolished in Islam. He had done so to meet an emergency situation and not to enforce it permanently but later jurists also declared this form of divorce valid and gave sanction to it (ibid).

Engineer (2008) also writes that the Quran does not mention triple divorce in one sitting. It requires the divorce to be effective over three periods of cleanliness, giving the couple a chance to reconcile during three months. Both Quran and Prophet prohibit arbitrary divorce. All precautions were taken to guard women’s interest. However, the later jurists influenced by the male dominated values of the patriarchal society gave men absolute right to divorce his wife and brought back a measure which was pre-Islamic and which was strongly condemned by the Prophet.

There were five divorced women respondents found during field study from both urban and rural areas. Two respondents were divorced after 7 years of their marriage and one respondent after two years of their marriage and two respondents separated after 5 years of their marriage. In most of the cases, the major reason behind divorce was family trouble and frequent fights with husband and in laws. One respondent separated from her husband on the ground of impotency of her husband. It was found that only one
respondent approached court for the divorce and in other cases it was according to Shariat rule through the *Talaq a-Ahsan* also known as the *Talaq-e-Sunna*. Mostly Muslims settles divorce dispute through Islamic Shariat and very few goes for judiciary.

Carrol (1987)\textsuperscript{52} observes that despite many restrictions imposed by the Muslim law on the misuse of husband’s power to divorce his wife, a Muslim male could twist the sanctions given in such that always came out as the winner and the wife always became the victim of sufferings resulting from a divorce. Muslim women did not have any chance to justify her stand nor could she initiate a divorce without being a loser. The Muslim law had bestowed upon the husband the unfettered complete and the exclusive right to divorce his wife whenever he so wished whiles the wife had to suffer in silence and worry for her future. The dissolution of Muslim Marriages Act of 1939, started the process of redressing the balance by enabling the wife to initiate the proceedings on the basis of certain specified grounds and restored to Muslim wives an important right accorded to them by the Shariat and it treated all Muslims alike.

Fyzee (1964)\textsuperscript{53} argues that for Muslim women in India there is no other way possible to dissolve the marriage but to get legal permission of the court. According to the Dissolution of Muslim Marriage Act, 1939, a woman can sue her husband on the following grounds.

1. The whereabouts of the husband are not known for a period of four years.

2. Husband’s failure or neglect to provide maintenance to the wife.

3. Husband’s failure without reasonable cause to perform marital obligations for a period of three years upward.

4. Sentence of imprisonment on the husband for a period of three years.

5. Any other grounds recognized as valid for the dissolution of marriage under Muslim law

*Talaq - Bid’a* or triple declaration, sinful yet lawful in Hanafi law, has become the fashion of the day. The presence of the wife is not necessary nor does the need to give
her notice, the incidence of talaq come as a total shock to the victim. It is interesting to note that for marriage contract the consent of both man and women is obtained but it becomes contrary when we come to the terms of a Muslim woman’s right to divorce. A Muslim wife requires obtaining the consent of her husband to divorce while the husband can divorce her any time without giving any justified reason.

During the study, on being asked about their views on divorce, all the respondents believed that divorce is the most unfortunate thing for a woman and specially if she is from a poor family and illiterate, her life becomes miserable. Most of the respondents especially the educated and employed want changes in Muslim personal law and ban on triple talaq, but they believe that divorce is final and irrevocable by pronouncing the word talaq thrice in one breath. This indicates that women even the educated ones did not have a clear knowledge of the Shariat. This form of talaq, most hated by the Prophet and which is sinful in the Hanafi law too, is most practiced form of talaq today. Even the male respondents are not in favour of triple talaq as it affects women and they think that divorce should be given for rational reason only.

4.7 Need for change in triple divorce (talaq)

Tabasum (2013)\textsuperscript{54} observes that in India Muslim women have become more conscious about their Islamic rights and realize that women cannot be treated in the old ways anymore and are demanding changes in the Personal Law in keeping with the Quranic teachings. She further writes that Islamic laws in relation to women are most modern in their approach but Muslim societies have preferred traditional interpretations by Imams in pre-modern feudal society to the clearly worded Quranic injunctions. Holy Quran is very cautious in matters of divorce. Firstly, it has adopted most modern approach to this sensitive issue; it requires arbitration before any breach of relations. Through arbitration the breach should be prevented and attempt should be made to bring them together again as Allah desires harmony. Despite such clear Quranic injunction we approve of triple divorce in one sitting and destroy marital life in one breath. It is the greatest injustice with women. There are four key words in Quran- \textit{adl} (justice), \textit{ihsan} (benevolence), \textit{rahmah} (compassion) and \textit{hikmah} (wisdom) and triple talaq is against all these key words (Engineer 2005)\textsuperscript{55}. 

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4.8 Maintenance

Maintenance is the financial support given to wife after divorce generally it given during *iddat* period which is of three months after that it is not obligatory on husband to provide his ex wife any kind of financial support according to Shariat but today debate is going that maintenance should be given after the *iddat* period as we saw in Shah Bano case.

Fyzee (1964)\(^6\) states that the maintenance is called *nafaqa*, and it comprehends food, raiment and lodging, thought in common parlance, it is limited to the first. There are three causes for which it is incumbent on one person to maintain another: marriage, relationship and property. The maintenance of the wife and children is a primary obligation of the husband according to the Muslim law. The wife’s right to maintenance ceases on the death of her husband, for her right of inheritance supervenes.

(a) A father is bound to maintain his sons until they attain puberty and his daughters until they are married. He is also responsible for the upkeep of his divorced or widowed daughter.

(b) A father-in-law is under no obligation to maintain his widowed daughter-in-law.

Singh (2011)\(^7\) writes that Islam provides some concept of maintenance. First Islam permits only those people except wife to be maintained by others who are bound to depend upon others because of immaturity or old age and secondly, the obligation to maintain, and to bear the burden of fooding and lodging, etc. is reasonably restricted in Islam. The Islamic principle is that a person should not be allowed to suffer any monetary loss in maintaining others. The maintenance of a person, except that of wife, is to be provided out of the property of the person who is being maintained. Under Islam the property is basically an individual property, there is no concept of any joint family property. However, the wife is an exception. He further writes that basic principles of maintenance may appear to be contradictory to each other, because the texts and authorities of Muslim law have not separated the moral obligation from legal one clearly. The *kazi* was the final authority on maintenance and the Indian courts cannot exercise such wide powers as were exercised by the *kazi*. 
Maintenance of divorced Muslim women

Fyzee (1964)\textsuperscript{58} writes that a wife’s right to be maintained by the husband has been recognized by all personal law in varying degrees. But as far as the matter regarding divorce wife is concerned, the law is different on this under Muslim Personal Law. A Muslim husband’s duty to maintain his divorced extends only up to the period of ‘Iddat’ and thereafter his liability is over. A divorced Muslim woman may claim her maintenance under Muslim Personal Law, Criminal Procedure Code, 1973 and The Muslim (Protection of Rights on Divorce) Act, 1986.

When a marriage is dissolved by death, the wife is not entitled to maintenance even during the period of Iddat. The wife’s right to claim maintenance from husband ceases as soon as her husband dies. When a marriage is dissolved by divorce, the wife is entitled to maintenance during the period of Iddat. The period of Iddat upon divorce is three menstrual courses and incase the wife is pregnant, the period extending up to the time of delivery. The Quran provides for the maintenance of a divorce wife in the following words: “For the divorced woman let there be a provision in kindness; this is an obligation for those who are mindful of God” (Fyzee 1968)\textsuperscript{59}.

Maintenance During the waiting period and compensation to Divorced women.

Mariam (2000)\textsuperscript{60} argues that the Shariat law of maintenance is adapted to the structure of patriarchal family, in which a women is completely exempted from the care for her even maintenance after a divorce, she returns to her father’s house or remarries as soon as possible, so that the responsibility for her livelihood passes to other men. Maintenance during the waiting period (iddat) is without functional significance unreliable for instance, deferred dower; it is not designed to afford economic security to the divorced wife or to act as a deterrent to divorce. As the wife remains in the husband’s house during the waiting period, he meanwhile continues in any case to be responsible for her maintenances. But in view of the changes in the structure of the family and the social status of women in recent times, when a divorced wife does not necessarily return to her father’s house or remarry and her upkeep becomes more and more her own affair maintenance begins to be appreciated in economic terms. It now has functional
significance as a means to secure her economic position. It follows that maintenance for
three months, which is generally the waiting period of a non-pregnant women, does not
ensure a descend living to a divorced wife who wishes to be independent or who has no
relatives required or able to provide for her.

**Maintenance after the Iddat**

Diwan (2007) mention that divorced woman who remains unmarried after the
*iddat*, and is unable to maintain herself, is entitled to get maintenance from her relatives
who would inherit her properties upon her death. In the absence of any such relatives or,
where they have no sufficient means, then, ultimately the liability to maintain her is cast
upon the waqf board of the state in which she resides.

Section 125, of the Criminal Procedure Act of 1973, recommended that the
benefits of provisions relating to maintenance should be extended to a divorced woman,
who is unable to maintain herself, as long as she has not remarried (Singh 1992). There
is of difference of opinion among different scholars of Muslim Law, some scholars and
theologians maintain that the maintenance right of the divorced wife ceases with
expiration of *Iddat* period while others believe that she should be given the maintenance
beyond *iddat* period if she is unable to maintain herself (Hidayatullah 1972). Where an
order is made for the maintenance of a wife under section 488 of the Criminal Procedure
Code and the wife is afterwards divorced, the order ceases to operate on the expiration of
the *Iddat* period.

Tyabji (1968) expresses the views that, on the expiration of the *Iddat* after Talaq,
the wife’s right of to maintenance ceases, whether based on the Muslim Law or an order
under Criminal Procedure Code”. Muslims do not recognize any obligation on the part of
a man to maintain a wife he had divorced (Diwan 1982). Mahmood (2002) writes that
holding the husband liable to maintain his divorced wife for the rest of her life conflicts
with the Islamic concept of marriage. In case a divorced woman is unable to obtain
maintain from those who are liable to maintain her in Islamic law than her former
husband may be compelled to provide her maintenance and this would be in conformity
with the spirit of Islamic law and in order to enact a law to this effect, the Islamic legal doctrine of Mata-i- Talaq may conveniently be made use of (Singh 1992)\textsuperscript{67}.

The most controversial topic of the debate in the recent times has been that of the maintenance to the divorced wife. Before the judgment of the Supreme Court in the Shah Bano case, divorced, indigent Muslim women were routinely getting maintenance under Section 125 of the Criminal Procedure Code of 1973. This judgment evoked a sharp controversy within the Muslim community and Muslim society remained divided into the progressive and the fundamentalist. The progressives agree with the views of the former Chief Justice of India, Y.V. Chandrachud that in verses ii; 241 and 242, the Quran clearly sanctions fair and reasonable provision for the divorced women, and makes it an obligation, binding on the righteous. The fundamentalists considered the Supreme Court judgment as a sacrilege of Muslim Personal Law. Rajiv Gandhi government enacted the Muslim Women’s (Protection of Rights on Divorce) Act 1986. The Act mainly deals with the maintenance rights of the divorced Muslim Women. It fixes the maintenance only upto the Iddat period. The progressives opposed it and called it government’s submission to fundamentalists (ibid)\textsuperscript{68}.

4.9 Maintenance of the Widow

Ganai (1986)\textsuperscript{69} States that a widow under Muslim law is the only heir by affinity who is made a primary heir by the Quran. The widow inherits 1/8\textsuperscript{th} if there are children and 1/4\textsuperscript{th} if there are none. In case of plurality of widows, they share 1/8\textsuperscript{th} or 1/4\textsuperscript{th} equally with them. Where the widow is the sole surviving heir, she takes the whole estate. The property in the hands of the widow will be absolute property with no restrictions whatsoever on its disposition. The unchastity of the widow is no bar to inheritance. On the other hand, the customary law as applicable to the Muslims in the State of Jammu and Kashmir provides for the rights of a widow in two situations, namely a widow with sons and a sonless widow.

Diwan (2007)\textsuperscript{70} writes that a widow with male lineal descendants of the deceased is ordinarily entitled to suitable maintenance. Even a childless widow in the presence of children of another widow of her deceased husband ordinarily gets maintenance. The
maintenance of a widow with sons is a charge on the whole or part of the husband’s estate and is enforceable against the heir in possession or those claiming under him. Sometimes a portion of the property is set aside for widow’s maintenance. Where maintenance is allowed, it is fixed after considering the position of the family and in some cases it is thought to give a portion of the land itself for the maintenance of the widow. If a widow with a daughter survives the deceased husband, the whole of the property will devolve upon the daughter if she is kept at home with her husband.

During present study it was found that all the divorced respondents (2 from rural and 3 from urban areas) received maintenance only during the *iddat* period. Under Muslim Personal Law the wife is entitled for maintenance only during the *iddat* period (three months waiting period) beyond which it is not the responsibility of husband to give maintenance after divorce. Due to this many poor women suffer who have no one to support them. The respondents were living with their parents and brother along with their children. The divorced respondents were not remarried as they prefer to live with their parents and look after their children as single mother. One such divorced respondent was young and childless who was living with her unmarried brothers and her brother was willing to get her remarried as she was very young. Only one respondent from the urban area got maintenance for her children as she had been divorced by the procedure of civil law.

In Shariat it is mentioned that after *iddat* period the maintenance would not be provided by the husband but by either family or the waqf board. Out of 5 divorced respondents, three respondents were doing job, one respondent was given maintenance by her brother and one respondent of the village Shreki was dependent on the charity given by the Muslim Waqf board.

4.10 Inheritance

As regards inheritance, Muslim women enjoy rights to property as full and absolute as those of men. As a general rule, the share of inheritance of a female is half the share of a male of the same degree. This difference is, however, offset by a claim which every Muslim husband gave in the form of *Mehr* to his wife (Diwan 2007)\(^7\). Islam fully
acknowledges the woman’s right of an independent ownership in her money, real estate or on any other property this right does not undergo any changes whether she is single or married, it is hers. Neither her father, husband, mother or anyone else could make any claim on her share of an inheritance (Bano 2003)\textsuperscript{72}. But in reality many Muslim communities follow their customary laws in which women are seen inheritor. While in theory a women is supposed to enjoy the rights entailed by the Shariat, in reality it can be different.

Sayed (1999)\textsuperscript{73} writes that under the Muslim personal law in India, mother, wife and daughter qualify for a share under all circumstances. The mother’s normal share is one sixth but when there is no child or agnatic grandchild her share is increased to one-third. The wife’s share varies from a quarter to an eighth depending upon the absence or presence of children or lineal descendants. The daughter is also a primary heir and the share of the daughter is one-third and if there are two daughters, that share is increased to two thirds. However, the presence of the son agnalises the daughter and daughter is in proportion 2:1 with the son as an agnate without regard to her Quranic status. A true grandmother inherits only in certain cases. A trace grandmother means a female ancestor between whom and the deceased no false grandfather intervenes; e.g. the father’s mother, the mother’s mother, the father’s mother’s mother etc. The maternal true grandmother is excluded by the mother or by a nearer true grandmother, paternal or maternal. The paternal true grandmother is excluded by the father or the mother, or a nearer true grandmother, paternal, or maternal or a nearer true grandmother paternal or maternal or a nearer true grandfather. Ganai (1986)\textsuperscript{74} mention that the consanguine and interine sisters are not primary heirs the full sister is excluded by son, son’s son, father or true grandfather. The consanguine sister is excluded by a full brother or two full sisters. The interine sister is excluded by child, child of son, father or true grandfather. The full sister, however, does not exclude the interine sister.

Hassan (2004)\textsuperscript{75} writes that one of the major planks on which the Shariat Application Act of 1937 was introduced was that it would bring the rights of Muslim women in line with the rights given to them by Islam, specifically the right of inheritance. The bill aims at securing uniformity of law among Muslims in all their social and
personal relations. By doing so it also recognizes and does justice to the claims of women for inheriting family property who, under customary law, are debarred from succeeding to the same. Muslim women had the right to inherit property according to the Shariat as embodied in the Muslim personal Law. Notwithstanding this, there is a general impression that this right is not actually implemented.

Hasan (2005)\textsuperscript{76} argues for Muslim women the right to property has been established for much longer, both in terms of the religious law and the Shariat application act. In most Muslim communities of India, dowry is not a major issue, so that the argument that a daughter has been given her share at the time of her marriage in the form of dowry question of inheritance is that marriage is permitted between children of brothers or sisters. There can be various ways that this can affect the distribution of property in the family. Thus, at the ideological level, there is a possibility of a greater cannot actually be made another factor that has some significance for the acceptance of the idea that daughters have a right to receive a share of property as inheritance.

4.11 Inheritance rights of women.

Islam has given property rights to women so that she can maintain herself. There is a verse in Quran which talk about the share of women in property. Hasan (2005)\textsuperscript{77} writes that the inheritance laws derive from three verses in the Quran (4:11, 4:12, 4:17), which lay down the categories of person who can inherit, and also the proportion that each person may get. The heirs mentioned in the Quran are mother, father, husband, widow, daughter, uterine brother, full sister, uterine sister consanguine sisters. Legal scholars have added to this the paternal grandfather, maternal grandmother and agnatic granddaughter, these heirs have been allotted fixed shares. The remaining estate is inherited by the residuary (\textit{asaba}). Thus, a distinction is made between the primary shares and the residuary in that the primary shares are always entitled to a share of the inheritance and can never be excluded. The residuary receive their share only after the primary heirs have been given their share and there is something still left over. Thus in any individual case the actual amount that any one inherits will depend on the composition of the family at the time of the death-under certain circumstances some of the Quran heirs can also inherit as residuary.
The Muslim woman has the right to inherit after the death of her father. The Quran says: “Allah chargeth you concerning (provision for) your children: to the male equivalent of the portion of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half”(4:11). The Quran thus entitles a woman to inherit half the share given to a man. A woman has full right over her property, and she can dispose of it according to her will and pleasure, without referring to anybody. Islam recognized every individual’s right to property-men, women or children. Muslim personal law extensively lists the share of inheritors in property, in an endeavor to distribute all property among family members (Khan 1993)\(^78\).

In the pre-Islamic days, Arabian society rights and privileges were totally denied to women, being exclusively a man’s domain. An Arabian society was not alone in keeping the women deprived of her share in inheritance. The other social orders of the world on the basis of these and either pretext kept her out of it, only the male offspring and the first born getting away with it in its entirety (Bano 2003)\(^79\). Khan (1993)\(^80\) states that Islam raised its voice against this gross injustice to the weaker sex, proclaiming aloud that women had as much right to her share in the inheritance. The Quran declared from what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large-a determinate share. And along with this instruction on principle it also appointed the share of men and women. But this is a baseless objection leveled against the Islamic law because of the ignorance of its underlying wisdom and intrinsic value.

Islam has restricted the inheritance strictly to the family, and has specified the rights of the members of the family with gradation depending on closeness to the deceased. The first and the foremost among the shareholders is the progeny of the person leaving behind property. Progeny includes both boys and girls. The inheritance is not the exclusive share of the boys. The girls also have their right to it. One boy’s share shall be equal to those of two girls. Suppose the deceased has a boy and a girl. The property left by him shall be divided into three equal proportions, one third going to the daughter, and two third to the boy. In the absence of the progeny of the deceased, the mother shall get one third and the father two thirds (Bano 2003)\(^81\).
The chapter of the Quran called “The women (al-Nisa)" details in a just manner the share of inheritance that is due to each individual male and female. According to this chapter, women were no longer allowed to be inherited like chattels but, as individuals, they have legal rights inheritance. (Men shall have a share in what their parents and kinsmen leave, and women shall share in what their parents and Kinsmen leave, whether it be little or much, it is legally theirs (Ahmed 2003).)

Fyzee (1964) writes that Muslim jurists gave a great deal of importance to the laws of inheritance (faraid), and they were never tired of repeating the sayings of the Prophet: “learn laws of inheritance, and teach them to the people, for they are one half of useful knowledge”. He further writes that the Hanifi jurist divide heirs into seven classes – the three principle, Koranic heirs (dhawul-furud) called sharers, Agnatic heirs (asabat) called residuaries and Uterine heirs (dhawul-arham) called distant kindered. The four classes comes under subsidiary classes include successor by contract, the acknowledged kinsman, the sole legate and the state, by Escheat.

According to Hanafi law the property of the deceased goes, in first instance to the Koranic heirs then to the agnatic heirs and in the absence of both these heirs the property is distributed among the uterine heirs. The subsidiary heirs succeed only by way of exception. The five primary heirs according to all schools of Islamic Law regarding Koranic and agnatic heirs are husband or wife (husband and the wife are the only heirs by affinity), son, daughter, father and mother. They are never excluded by any heir although they may exclude others (ibid). Muslim Law governs the estate of a person who dies as a Muslim and there is nothing like birth right in Muslim Law and the person is entitled to a certain share only on the death of the deceased (Tyabji 1968).

Inheritance rights of Muslim women are secure and guaranteed by the Quran. But in real practice the situation is different instructions concerning women’s rights to inheritance in Shariat are violated and over looked by male members of Muslim society. Social, political, economic and cultural factors are playing a major role in determining the share in property. In this type of situation the weak (woman) have always been kept at bay when it comes to their fight to inheritance as they are always denied their rights of property inheritance. This takes place in both the rural as well as in urban areas.
present study reveals that women are generally not given any share in the property and many respondents did not bother about their inheritance rights and how much they can inherit to avoid any type of rift with their natal family. It was also found that many male respondents do not want to give share to their daughters to avoid conflict in the family. Many respondents consider that daughters should be given share in property to give them economic security.

Very often, social pressure is exerted on women to renounce their shares for the benefit of their brothers or father. This is particularly when woman is married to a wealthy man. Their share is transferred to their brothers whether they like it or not and sometime they are forced to give up their shares. If they refuse they are accused of being selfish, greedy and irresponsible and to avoid all these women do not demand their share.

4.12 Customary Succession

In the agrarian society of Kashmir, the system of customary inheritance is designed to keep property within the individual family and maintain its strength as a cultivating force. A woman who marries into another family belongs henceforth, along with her children, to the family of the husband. The maternal or uterine relationship, therefore, lay outside the structure of family ties and responsibilities. In these circumstances, the proper exploitation and preservation of the family patrimony means, inter alia, the exclusion of females and non-agnate relatives from the inheritance and the enjoyment of a monopoly of rights of succession and the enjoyment of a monopoly of rights of succession by the male agnate relatives, or ‘asaba’ of the deceased (Ahangar 1986). In Bhaderwah no customary rights are followed in division of property.

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Aware</th>
<th>Not aware</th>
<th>Total/percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>78 (39%)</td>
<td>22 (11%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>90 (45%)</td>
<td>10 (5%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>168 (84%)</td>
<td>32 (16%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

Table 4.6: Awareness about property rights
It was seen in the above table that, the 84 percent of the respondents (39% from rural areas and 45% from the urban) were aware of the property rights of women. 32 percent of the respondents (11% rural and 5% from urban) were not aware of their property right. It was observed that most of the women were only about property rights and had no idea about the detail. In reality many women especially illiterate rural women don’t know how much property they can inherit from their father as mentioned in Quran.

Table 4.7: Inherited property

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Inherited</th>
<th>Not inherited</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>10 (5%)</td>
<td>90 (45%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>14 (7%)</td>
<td>86 (43%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>24 (12%)</td>
<td>176 (88%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

The above table regarding the property inherited by women shows that in rural areas, 12 percent respondents (5% rural and 7% urban) inherited land from their father and 88 percent respondents (45% rural and 43% urban) did not inherit land from their family. Most of the women never claim their right over father’s property as they think, if they would claim property their relation with their natal family get spoiled. Mostly women with no brother inherited land from their father. An unmarried respondent also does not inherit and does not claim before marriage.

Table 4.8: Received movable/ immovable property

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Received</th>
<th>Not received</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>78 (39%)</td>
<td>22 (11%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>70 (35%)</td>
<td>30 (15%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>148 (74%)</td>
<td>52 (26%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

From the above given table it was seen that 74 percent respondents (39% from rural and 35% from urban) received movable and immovable property whereas 26
percent respondents (11% rural and 15% urban) did not receive. But most of the respondents are given household things beside cash and vehicles like car and motor cycles and very few are given land. This movable and immovable property is other than the gifts and jewellery which are not considered part of family property share and is given as a part of tradition and cultural practices during marriage, at the time of birth of child or on the occasion of any other family function and festival. Muslim Law makes no distinction between moveable and immoveable property, and the rights of a female heir unlike widow or daughter has always been recognized, and they have inherited absolutely (Gangoli 2001)\textsuperscript{87}.

### Table 4.9: Kind of property given

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Land</th>
<th>Cash</th>
<th>Household things (dowry)</th>
<th>Both dowry and land</th>
<th>*not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>7 (3.5%)</td>
<td>5 (2.5%)</td>
<td>63 (31.5%)</td>
<td>3 (1.5%)</td>
<td>22 (11%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>9 (4.5%)</td>
<td>12 (6%)</td>
<td>44 (22%)</td>
<td>5 (2.5%)</td>
<td>30 (15%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>16 (8%)</td>
<td>17 (8.5%)</td>
<td>107 (53.5%)</td>
<td>8 (4%)</td>
<td>52 (26%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

*those respondents who did not inherit any property

From the above given table it was seen that in rural areas, 8 percent respondents (3.5% rural and 4.5% urban) got land from family and 8.5 percent respondents (2.5% rural and 6% urban) were given only cash. Whereas 53.5 percent respondents (31.5% rural and 22% urban) were given only household things and 4 percent respondents (1.5% rural and 2.5% urban) were given both land and cash. Most of the Muslim families give household things or in some cases vehicles to their daughters at the time of marriage. This also depends on the economic status of the family. Unmarried respondents are not given any kind of property before marriage and few respondents did not take property from their parents except some jewellery and cash.

Division of property often has led to tension, friction and conflict of interests among the members of the family shattering the whole concept of caring and sharing which lies at the heart of the Islamic faith. Rafiq (1993)\textsuperscript{88} argues that the Islamic concept
of broad and equitable shares which take into consideration the interests of all persons concerned has been transferred into a prerogative for males, outrageously disregarding the Divine. There is no doubt about the fact that in most parts of the Muslim world the Islamic Law concerning women’s rights to inheritance is not in operation; instead it is social and cultural rules which dominate. It is crucial that something has to be done to rectify this situation and women themselves have an essential role to play in the process of any such change.

4.13 Muslim women and constitutional provisions

Sinha (1999)\(^8\) mentioned that wife is entitled to be maintained by her husband even if she has enough property to maintain herself. The result is that Muslim law of maintenance which is enforceable in India is the Muslim Personal law laid down by the Courts and the law incorporated in the enactments such as the Indian Majority Act, 1875, the Criminal Procedure Code, 1973 and the recently enacted Muslim Women (Protection of Rights on Divorce) Act, 1986.

Gani (1985)\(^9\) Stated that there is no conflict between the provisions of 125 and those of the Muslim Personal Law on the question of the Muslim husband’s obligation to provide maintenance for a divorced wife who is unable to maintain herself. If divorced wife was able to maintain her only then husband’s liability to provide maintenance to her ceased with the expiration of the period of *iddat.*

During the Shah Bano case the judges rejected the contention of the husband that *Mehr* was the amount payable by the husband to the wife. Since *Mehr* is an amount which wife was entitled to receive from the husband in consideration of the marriage, it could not possibly be described as an amount payable in consideration of divorce. The *Mehr* is an obligation imposed upon the husband as a mark of respect for the wife is wholly detrimental to the stance that it is an amount payable to the wife on divorce. A man may marry a woman for love, looks, learning or nothing at all. And, he may settle sum upon her as a mark of respect for her. But he does not divorce her as a mark of respect. Therefore, a sum payable to the wife out of respect cannot be a sum payable on divorce, the maintenance provisions of new Criminal Procedure Code applicable to
Muslim over traditional Islamic law on the basis of general principles of a secular welfare state and other principles enshrined in the Indian constitution. It, therefore, again reiterated that a divorced Muslim wife was entitled to maintenance from her husband under section 125 of the Criminal Procedure Code (Mehmood 2002)\(^9\).

**The Muslim Women (Protection of rights on divorce) Act, 1986**

The Muslim Women (protection of rights on divorce) Bill was passed by the Lok Sabha on May 9. According to Sinha (1999)\(^9\) the Act is applicable to every such divorced woman who was married according to Muslim law and has been divorced by, or has obtained divorce from her husband under the provision of Muslim law. Thus, the act is applicable to a woman who had contracted marriage according to the provisions of Muslim personal law and her marriage dissolves through any of the kinds of judicial or extra-judicial divorce recognized under Muslim law such as, *Talaq, Illa, Zihar, Khula or Mubarat* and also under the dissolution of Muslim Marriages Act, 1939. The act provides that where ‘reasonable and fair provision’ and maintenance or the amount of *Mehar* due has not been made or paid or properties have not been delivered to a divorced woman on her divorce, she can make an application to a magistrate for an order for payment of such provision and maintenance, *mehar* or delivery of properties.

According to this Act where a woman has not remarried and is not able to maintain herself after divorce, the liability to maintain her falls on her children, parents or other relatives entitled to inherit her property. In case woman fails to secure maintenance from any one of the mentioned categories then the responsibility to pay maintenance to such a helpless women will pass to the *Waqf* Boards.

Tabassum (2013)\(^9\) writes that most of the provisions in Muslim personal law are uncodified and they are scattered in religious and legal texts of jurisprudence which are beyond common scholars reach. The Muslim personal law has not only been codified in other countries but it has been codified in our country as some of the provisions of Shariat have been totally replaced during the British rule. The laws relating to Muslim Wakfs have been codified and amended several times since 1993. The present Muslim
Wakfs Act, 1995 is the reformed law. The dissolution of Muslim marriage act is the reformed and codified law but the law of talaq and other provisions are not codified.

4.14 Muslim women’s views on personal law in Bhaderwah

Legal rights of Muslim women are well defined in Muslim Law. Even they have been interpreted by various High Courts as well as by the Apex Court. Women’s right of inheritance, polygamy, maintenance, triple talaq and ban on entry into Mosques has enraged women activists in India as well as in Muslim countries (Saxena 2001)\(^94\). Nainar (2000)\(^95\) in her study analysed the belief that Muslim personal Law as interpreted and practiced toady is discriminatory or not discriminatory to Muslim women. Women who vote for changes in Muslim Personal Law within the framework of Muslim laws are considered as having greater awareness than those who want Muslim Personal Law retained. Similarly women, who want Muslim Personal Law replaced with secular laws, are presumably more aware of the limitations of the framework of Muslim Laws from the perspective of women’s rights.

Table 4.10: Awareness of Muslim Personal Law and Rights.

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Aware</th>
<th>Not aware</th>
<th>Total/percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>78 (39%)</td>
<td>22 (11%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>89 (44.5%)</td>
<td>11 (5.5%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>167 (83.5%)</td>
<td>33 (16.5%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

Out of total respondents 83.5 percent respondents (39% rural and 44.5% urban) are aware of Shariat and 16.5 percent respondents (11% rural and 5.5% urban) are not aware of Shariat. But during interview and through observation it was found that most of the respondents only know the word Shariat and don’t know their rights under Islamic law. Mostly young educated women know about the rights and status of women in Shariat. On ground level position of women is not that good as mentioned in Quran.
Table 4. 11: Taken benefit of rights

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Taken benefit</th>
<th>Not taken</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>10 (5%)</td>
<td>90 (45%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>14 (7%)</td>
<td>86 (43%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>24 (12%)</td>
<td>176 (88%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

From the above given table it was analysed that, 12 percent of the respondents (5% rural and 7% urban) took the benefit of their rights under Muslim Personal Law whereas 88 percent respondents (45% from rural and 43% from urban) did not take any type of benefits.

Table 4. 12: Not taken any benefit/Right

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Family does not allow</th>
<th>Do not require</th>
<th>Given dowry not property</th>
<th>*not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>12 (6%)</td>
<td>12 (6%)</td>
<td>66 (33%)</td>
<td>10 (5%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>8 (4%)</td>
<td>14 (7%)</td>
<td>64 (32%)</td>
<td>14 (7%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>20 (10%)</td>
<td>26 (13%)</td>
<td>130 (65%)</td>
<td>24 (12%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

*those respondents who have taken benefit of rights

Most of the respondents are not benefited by the rights under Muslim personal law. It was found that, 10 percent of the respondents (6% rural and 4% urban) do not get any kind of benefit and 13 percent respondents (6% rural and 7% urban) do not require any kind of benefit and in case of 65 percent respondents (33% rural women and 32% urban) they were given dowry. In Muslim society in Bhaderwah women were given only dowry in the form of household things and cash and they enjoy no property rights as mentioned in Quran and Muslim personal law.
In many cases women are in a disadvantaged position under Muslim personal Law unlike in other Islamic countries like turkey Tunisia and our neighboring countries which modified their law for the benefit of women. No such step has been taken in India. Many women organizations have raised their voices for the modifications in personal law. From the above given table it was analysed that in rural areas, 49 percent respondents (21% rural and 28% urban) were of the view that Muslim Personal Law is discriminatory whereas 51 percent respondents (29% from rural and 22% from urban) consider that Muslim Personal Law is not discriminatory. During the field investigation and through group discussion it was found that women generally do not speak critically of the Muslim Personal Law and follow whatever they learn from family members and from religious teacher without understanding real position of women under Muslim Personal Law.

### Table 4.13: Muslim Personal Law/Shariat is discriminatory or not

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Discriminatory</th>
<th>Not discriminatory</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>42 (21%)</td>
<td>58 (29%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>56 (28%)</td>
<td>44 (22%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>98 (49%)</td>
<td>102 (51%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

Respondents gave various reasons for the discriminatory nature of Shariat which not benefiting women folk. From the above table it was seen, 14 percent respondents

### Table 4.14: Discriminatory nature of Muslim Personal Law

<table>
<thead>
<tr>
<th>Respondents</th>
<th>No equal property rights</th>
<th>Triple talaq favouring men</th>
<th>No maintenance beyond iddat</th>
<th>*not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>12 (6%)</td>
<td>17 (8.5%)</td>
<td>13 (6.5%)</td>
<td>58 (29%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>16 (8%)</td>
<td>20 (10%)</td>
<td>20 (10%)</td>
<td>44 (22%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>28 (14%)</td>
<td>37 (18.5%)</td>
<td>33 (16.5%)</td>
<td>102 (51%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

*those respondents favouring Muslim Personal Law not discriminatory
(6% from rural and 8% from urban) were of the view that no equal rights under Muslim Personal Law and 18.5 percent respondents (8.5% rural and 10% urban) were of the view that triple talaq law favour men. Whereas 16.5 percent respondents (6.5% rural and 10% urban) were of the view that no maintenance given to wife after completion of iddat period and this affect the life of poor woman who are not able to maintain themselves. Shah Bano case is a good example in this case demanding maintenance beyond iddat period was not accepted by Muslim community in India. The national level debate is going for change in Muslim personal law especially demanding ban on triple talaq and maintenance to divorced wife should be given even after the expiry of iddat period if she does not go for remarriage.

Table 4.15: Want changes in Muslim Personal Law

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Want changes</th>
<th>No changes</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>42 (21%)</td>
<td>58 (29%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>56 (28%)</td>
<td>44 (22%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>98 (49%)</td>
<td>102 (51%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

As Muslim women organizations all over India demanding changes in Muslim personal mostly young educated women are favouring the changes same is the case ins in Bhaderwah. 49 percent of the respondents (21% rural and 28% urban) want change in personal law and 51 percent respondents (29% rural and 22% urban) did not favour any kind of change in personal law. During group interaction it was found that women don’t speak critically of the Muslim Personal law. They accept as it is, mostly illiterate women from two villages Dhareeja and Shreki were those women who know very little or have negligible knowledge about the Shariat as they accept what is told by their father and husband.
Table 4.16: Changes according to which framework/context

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Change within the framework of MPL</th>
<th>Replacement with uniform civil code</th>
<th>*not applicable</th>
<th>Total/ percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>37 (18.5%)</td>
<td>5 (2.5%)</td>
<td>58 (29%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>44 (22%)</td>
<td>12 (6%)</td>
<td>44 (22%)</td>
<td>100 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>81 (40.5%)</td>
<td>17 (8.5%)</td>
<td>102 (51%)</td>
<td>200 (100%)</td>
</tr>
</tbody>
</table>

*those respondents not favouring any change

The debate is going for uniform civil code which would benefit women from all sections. Most of the respondents were not in favor of uniform civil code as majority of the respondents i.e., 40.5 percent respondents (18.5% from rural and 22% from urban) favour changes within the frame work of Islamic Shariat whereas 8.5 percent respondents (29% from rural and 22% from urban) favour uniform civil code.

4.23 Muslim men’s views on Muslim personal law

To understand the position of Muslim women and the problems Muslim women facing it is also important to understand the views and perception of Muslim men towards Muslim personal law and about the changes required in MPL

Table 4.17: Polygamy affects the women

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Affects women</th>
<th>Do not affects women</th>
<th>Total/ percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural Men</td>
<td>18 (36%)</td>
<td>7 (14%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Urban Men</td>
<td>20 (40%)</td>
<td>5 (10%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>38 (76%)</td>
<td>12 (24%)</td>
<td>50 (100%)</td>
</tr>
</tbody>
</table>

Most of the Muslim men in Bhaderwah do not favor polygamy as they think second marriage leads to quarrel in the home and property dispute between two sets of childrens (step children of two mothers) and financial burden increases. Out of total male respondents 76 percent of the respondents (36% from rural and 40% from urban) were of
the view that polygamy affects the women in Muslim society and 24 percent respondents (14% from rural and 10% from urban) were of the perception that polygamy does not affect the women.

Table 4.18: How polygamy affects women

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Not given equal treatment</th>
<th>Denied her rights</th>
<th>Disturb married life</th>
<th>*not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural women</td>
<td>7 (14%)</td>
<td>3 (6%)</td>
<td>8 (16%)</td>
<td>7 (14%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Urban women</td>
<td>8 (16%)</td>
<td>3 (6%)</td>
<td>9 (18%)</td>
<td>5 (10%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>15 (30%)</td>
<td>6 (12%)</td>
<td>17 (34%)</td>
<td>12 (24%)</td>
<td>50 (100%)</td>
</tr>
</tbody>
</table>

*Those respondents viewed polygamy does not affect women

From the above given table it was analysed that 30 percent of the respondents (14% from rural and 16% from urban) were of the view that women are not given equal treatment and 12 percent respondents (6 percent rural and 6 percent urban) consider that women were denied of their rights whereas 34 percent respondents (16% rural and 18% urban) were of the view that married life of women gets disturbed. It was observed through group discussion that present young generation is not in favour of polygamy. As second marriage leads to more economic burden and disturbed married life. Some people were of the view that some time men go for second marriage under the pressure of their family, in case there is no child from the first wife.

Table 4.19: Favouring or not favouring maintenance beyond iddat

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Favouring</th>
<th>Not favouring</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural Men</td>
<td>9 (18%)</td>
<td>16 (32%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Urban Men</td>
<td>12 (24%)</td>
<td>13 (26%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>21 (42%)</td>
<td>29 (58%)</td>
<td>50 (100%)</td>
</tr>
</tbody>
</table>

In Quran it is mentioned that after divorce if a woman is unable to bear her expenses or she is financially poor the former husband can provide her financial help on
humanitarian ground if he has sufficient wealth and it is considered a noble work. But in Muslim society man does not support his wife beyond *iddat* period even if he had sufficient wealth. From the above table it was analysed that in rural areas 42 percent respondents (18% from rural and 24% from urban) favour maintenance beyond *iddat* period where as 58 percent respondents (32 from rural and 26% from urban) do not favour. Through group discussion it was observed that most of the people do not favor maintenance given to wife after *iddat* period. They were of the view that in most cases women can go for second marriage and parents and Aquaf board should provide maintenance if woman does not go for marriage and maintenance should be given for children only.

**Table 4.20: Muslim personal Law discriminatory for the women**

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Yes</th>
<th>No</th>
<th>Total/ percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural Men</td>
<td>10 (20%)</td>
<td>15 (30%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Urban Men</td>
<td>12 (24%)</td>
<td>13 (26%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>22 (44%)</td>
<td>28 (56%)</td>
<td>50 (100%)</td>
</tr>
</tbody>
</table>

Out of total respondents 44 percent respondents (20% from rural and 24% from urban) were of the view that personal law is discriminatory for the women and 56 percent respondents (30% rural and 26% urban) were of the view that it is not discriminatory.

**Table 4.21: Discriminatory nature of Muslim Personal Law**

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Triple talaq favouring men</th>
<th>Polygamy</th>
<th>*not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural Men</td>
<td>4 (8%)</td>
<td>6 (12%)</td>
<td>15 (30%)</td>
<td>25 (100%)</td>
</tr>
<tr>
<td>Urban Men</td>
<td>7 (14%)</td>
<td>5 (10%)</td>
<td>13 (26%)</td>
<td>25 (100%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>11 (22%)</td>
<td>11 (22%)</td>
<td>28 (56%)</td>
<td>25(100%)</td>
</tr>
</tbody>
</table>

*those respondents who did not consider Muslim Personal Law discriminatory

From the given above table it was analysed that in rural areas, 22 percent respondents (8% from rural and 14% from urban) were of the view that triple talaq
affects women whereas 22 percent respondents (12% from rural and 10% from urban were of the view that polygamy results in discrimination with women. There were 56 percent respondents who were of the view that Muslim Personal Law is not discriminatory.

Table 4.22: Type of changes wanted in personal law

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Ban/or restriction on polygamy</th>
<th>Changes in triple talaq</th>
<th>*not applicable</th>
<th>Total/percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural Men</td>
<td>4 (8%)</td>
<td>6 (12%)</td>
<td>15 (30%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Urban Men</td>
<td>8 (16%)</td>
<td>4 (8%)</td>
<td>13 (26%)</td>
<td>25 (50%)</td>
</tr>
<tr>
<td>Total</td>
<td>12 (24%)</td>
<td>10 (20%)</td>
<td>28 (56%)</td>
<td>50 (100%)</td>
</tr>
</tbody>
</table>

*those respondents don’t want change in Muslim Personal Law.

From the above given table it was analysed that in rural areas, 24 percent respondents (8% from rural and 16% from urban) favour ban or restriction on polygamy whereas 20 percent respondents (12% from rural and 8% from urban) favour changes in triple talaq rules.

Nainar (2000) 96 in her study on “Muslim women’s views on personal laws: The Influence of socio-economic factors”, in different zones found that education increases women’s awareness and thereby enhances their aspiration towards change and leads to increasing Muslim women’s awareness of their legal status and rights in Muslim Personal Law. She found that the instances of women who feel Muslim Personal Law to be discriminatory are higher than those who feel it is not irrespective of the type of education they have received. She further writes that majority of women who wanted changes within the framework of Muslim laws as well as outside it, were women with no education and women who did not want any changes were those with religious education. Those who want Muslim Personal Law replaced with a gender just uniform civil code; maximum are those with formal education. The trend of women with religious education generally not wanting changes in laws was common throughout the country. Formally educated and illiterate Muslim women judged Muslim personal law discriminatory and preferred changes in the laws within or outside the framework of Muslim Laws. She also
writes that high formal employment does not induce awareness among women and a desire for changes in laws. Religious practice and age too does not have much influence on women’s views on Muslim Personal Law. Women’s views are also influenced by other cultural and political factors than social and economic factors, factors such as communalism and controversy on the issue of Muslim Personal Law seem to have caused some women to appear dogmatic.

Similar situation was also found in the present study it is not necessary that education leads to employment or education and employment influences women’s awareness and enhance their aspirations for changes and reforms. It was found that many educated and working women respondents did not favour any changes in personal Law and consider speaking on personal law as against their family and their husband don’t like if they say anything on Shariat. Many women were of the view that husband should give maintenance to divorced wife till she dies if she does not remarry. Some were of the view that waqf boards should maintain divorced women or government should make welfare schemes for the divorced women who are poor and not able to maintain themselves. Most of the women want ban on polygamy and change in triple talaq.

Muslim women have been facing many difficult problems due to rigid attitude of Ulamas (Religious preachers) towards Shariah law as they do not want women to enjoy the rights given to them by Quran. Ulamas think that women are intellectually weak and emotionally unstable and hence they should not become independent of men’s control. This is a faulty logic and actual issue is to keep women under check by men in any case. This Medieval attitude has been divinised and is reflected in the laws that were compiled hundreds of years ago when women were confined to domestic sphere and were neither educated nor active in any public sphere. But now women are not only educated but also becoming active in public sphere and discourses and some changes have become very necessary in Shariah law (Tabasum 2013)\textsuperscript{97}.

4.18 Conclusion

From the above data it was analyzed that most of the women are aware of Muslim Personal Law/ Shariat. Muslim women are suffering because of existing law of divorce
and maintenance as Muslim women are placed outside the purview of section 125 of the Cr.PC. Education plays major role in understanding of Muslim Personal Law and rights of Muslim women. Majority of the women who consider Muslim personal law as discriminatory were women with higher education and who were working. Muslim women are now raising their voice against the discriminatory laws and there is a need to bring changes in Muslim Personal Law so that Muslim women do not suffer.
End Notes


2. Indian Express.com


15. Ibid


30. Ibid.


50. Ibid.


59. Ibid


68. Ibid


70. Paras Diwan (2007). Muslim Law in Modern India. Allahabad law agency

71. Ibid


77. Ibid.


84. Ibid


96. Ibid.