

WHAT MUSLIM WOMEN WANT

A Study Capturing Views of Muslim Women on

Muslim Family Law in Maharashtra

BHARATIYA MUSLIM MAHILA ANDOLAN

Supported

MAHARASHTRA STATE COMMISSION OF WOMEN

Preface

We are aware that the Ordinance against triple divorce has been passed by the central government which will remain in force till the next government comes to power in May 2019. This has been possible because of the unprecedented courage shown by ordinary Muslim women like Shayrabanu, Ishratjahan, Gulshan Parween, Afreen Rahman and Atiya Sabri who filed the PIL against triple talaak. Their courage was matched by the untiring, unwavering and consistent work done by Bharatiya Muslim Mahila Andolan [BMMA] which has been leading the campaign for codification of Muslim family law since 2007.

Reform in Muslim personal law has always been a highly sensitive and politicized domain in our country. After 70 years of independence Indian Muslim women face discrimination in matters of family law. From Shah Bano till now, the conservative patriarchal forces in the community have stone walled reform legislation ostensibly as this amounts to interference in faith matters. They have received direct and indirect support from different political parties in their tirade. Things began to change somewhat in the last decade or so with several Muslim women speaking out openly against injustice in the form of unilateral instant divorce or triple talaq.

The question of gender justice for Muslim women within family predates 2014. Triple talaq, polygamy, halala have been prevalent amongst Indian Muslims despite the Quranic injunctions of justice and fairness. The demand for a codified Muslim family law was raised way back in 2007 and consistently thereafter. A petition signed by thousands of women was submitted to the President of India in 2010. Over 500 women survivors from different states participated in our national conference calling for abolition of triple talaq in 2012. In a national study conducted by us in 2015, an overwhelming number of women called for abolition of triple talaq.

The legal discrimination of Muslim women in family matters is singular. The parliament passed multiple laws beginning 1955 to protect Hindu women in marriage and family. The parliament also enabled amendments in marriage and divorce laws to benefit Christian women. India's elected representatives have failed Muslim women and indeed all women by non-enactment of a Muslim family law. Indian Muslims are still governed by the Shariat law of 1937 which is silent on important matters such as consent, age of marriage, meher, procedure of divorce, polygamy, custody of children, share in property etc. Muslim women suffer injustice despite affirmative provisions emanating from the Quran in all these matters. The maintenance law of 1986 enables a Muslim woman to get maintenance but only after a legal battle. There is nothing therein to bind the husband or to make him socially accountable. Triple talaq continues to take place today despite the SC judgment setting aside and the woman is left without any means to enforce the judgment in practice.

Our effort has always and will continue to be to give voice to countless Muslim women who are victims of unjust practices. This study is a step towards that end. Through this study 0BMMA has sought the views of Muslim women living in small towns and villages of Maharashtra. It is important that their views get a place. 500 Muslim women have been respondents to this study which looks at their socio-economic conditions as well seeks their views on the indicators of reforms of Muslim family law.

We are hoping that this study will throw light on the issue of law reforms once again. We are also hoping that a day comes when Muslim women will get her constitutional right in the form of a codified Muslim family law.

SUMMARY OF THE STUDY

About The Respondents

Study was done in Ahmednagar, Amravati, Aurangabad, Jalgoan, Nashik, Palghar, Panvel, Pune, Raigad, Satara, Solapur and Thane.

505 Muslim women were interviewed in 24 villages.

402 women are homemakers.

278 had family annual income between 35K-50K

207 of the women surveyed had 1-2 children

10 women have adopted children from their family members or relatives.

Consent and Age of Marriage

Out of 505, 428 said that their consent was sought before marriage.

Out of 505 women, 333 were married on or before 18 years

Nikaahnama

225 of the respondents did not have their nikaahnama.

Out of those who did not have it, i.e. 225, 16 said that it was not made at all.

50 said they did not get it in spite of it being made.

159 said they do not even know where it is.

Out 505, 379 of them said that they did not even read their nikaahnama before signing it.

Meher

194 women - meher amount upto Rs.1000/-

106 women - meher amount was fixed between 1000/- to 5000/-

79 women - meher was fixed between Rs. 5000/- to 10000/-.

60 women - meher was fixed over Rs.10000/-

9 women was fixed over Rs.50000/-

66 women said that they had no idea what is meher or what was the amount.

170 did not get mehr at all.

If above figures are combined than 236 women have not received meher.

241 received their meher at the time of marriage.

Out of all those who received it,

- 193 got it in cash
- 68 women said that they received meher in the form of jewellery
- 3 women received meher in the form of property.

Only 15 women said they got to decide the amount.

90 women don't even know who decided the amount.

Divorce

Out of the 42 women divorced, 10 were divorced before the end of first year of marriage.

7 within the third year of marriage.

Of the 42 divorced women, 18 of the women said that their husband wanted divorce.

10 women said that they wanted divorce

Of the divorced women only 6 of the women received compensation at the time of the talaq

36 of the women said they did not get any compensation.

Of the 42 women divorced 21 of them were divorced verbally

Rest 21 were given talaq either through letter, phone, SMS, email and other way.

5 of the women were victims of halala

Maintenance

Out of currently married 428, 53 women did not get any financial support from their husband.

Out of those divorced women [42], 19 work are support themselves

12 women are supported by their parents

10 women are on their own, struggling to raise resources through charity to survive.

Out of these 42 divorced women, 27 retain the custody of the children.

10 women said the custody is with their parents as they were re-married

Out of 30 women who are widows 17 work and are on their own. Rest are supported either by her parents or by her in-laws.

Domestic Violence

Out of 505 women, 217 women said that they have been subjected to violence.

163 women said if they wanted to report violence, they would first approach the parents and elders in family.

All India Muslim Personal Law Board

449 of the respondents had not even heard about this body.

Property

425 women do not have a property in their name.

430 said that current house in which they are staying is not in their name.

VIEWS OF MUSLIM WOMEN

Age of marriage:

261 women said the girl should be above the age of 18 years

160 women said it should be over 21 years.

Put together 421 women say that age of marriage of girl should definitely not be below 18.

220 women say that the boy should be above the age of 21 years

274 women said it should be over 25 years.

Put together 494 want the boy to be mature enough to get into the relationship of marriage.

Mehr

474 of the women said that meher should be given at the time of Nikaaah.

457 of women felt meher amount should be decided based on the income and property of the groom.

If meher not given at the time of nikaah, then,

- 240 women said that the husband should pay double the amount of meher
- 69 said the husband should be put behind bars
- 103 said he should pay penalty.

435 women affirmed that the amount of meher must be equivalent to the groom's annual income.

438 women said that the meher amount must be decided based on the husband's share in the income/profit

Polygamy

484 women said Muslim man should not be allowed to marry another woman when already married.

438 women said that even if first wife permits the man should not be allowed more than one marriage

311 women said even if wife is suffering from deadly disease, man should not be allowed more than one marriage

324 women said that even if wife is unable to conceive, man should not be allowed more than one marriage

398 women said that the man should not be allowed to re-marry even if she is a widow.

471 women said man should not be given permission for second marriage even if the population of women is more than man.

Triple divorce

Since this study happened after the Ordinance against triple divorce was passed by the central government, we took the opportunity to ask rural Muslim women about the same. Some were not even aware of the Ordinance. But on explaining to them about it, the women welcomed the Ordinance.

481 women said that government has done right by putting a legal ban on the practice of unilateral divorce.

459 women said it's the right decision to give 3 years imprisonment to men who unilateral divorce their wife.

484 felt that arbitration must be made mandatory before the divorce is finalised.

226 women wanted that 3 months should be the process for arbitration

463 women agreed that the Qazi who sends notice of unilateral divorce should be punished.

473 women agreed that the legal method of divorce should be Talaq-e-Ahsan.

490 women agreed to Talaq-e-Mubarah being part of the legal process of divorce.

351 of the respondents say that women should not forgo her meher on khula.

Custody

In the event of divorce 461 of women believe that the custody of the child should go to the mother.

And maintenance of the child must come from the ex-husband.

A child's best interest and child's consent is crucial before deciding custody.

Adoption

435 women had no idea that a Muslim couple cannot legally adopt a child.

469 had no idea why that is so.

435 were not aware that even if they adopt a child, he/she cannot legally be natural heir to your property.

467 felt that adoption should be made legal and the couple must be allowed to make the child a legal heir.

Views on Codification of Muslim Personal Law

Of the 505 women surveyed 447 don't know that they do not have a comprehensive personal law

464 women affirmed that that the codified law will help women get justice.

484 women wanted the government to fulfil its constitutional responsibilities.

441 women said that religious leaders must support women's demand for codified Muslim Personal Law.

464 said that Qazi and the Darul Qazas must obey and implement the law passed.

484 women affirmed that the government must monitor and regulate the work of the Qazis.

492 women affirmed that Muslim women should provide legal aid and support to other Muslim women.

INTRODUCTION

India is a secular democracy where all citizens are equal. The fundamental rights are guaranteed to all citizens irrespective of religion, caste, ethnicity, sex or language. The founding visionaries of India had a special commitment to the rights and safety of the minorities. This concern found a clear and definite reflection in the Constitution of India which enshrines the values of justice, equality and democracy. In the context of this study certain Constitutional provisions need to be recounted here as they are of paramount importance and relevance. There are safeguards for minorities in the form of various articles prohibiting discrimination on religious grounds and enabling development for minority communities. The provision pertaining to equality before law is a very important provision as is the right to religious freedom. The fundamental duties of every citizen include promotion of harmony and renunciation of practices that are derogatory to the dignity of women. The present study has been carried out in the framework of Constitutional provisions and the rights of women in the Holy Quran.

The present-day ground reality pertaining to the socio-economic condition of Indian Muslims is well-known thanks to the Sachar Committee report as well as some other studies. It is important to understand the reasons behind the gap between the Constitutional provisions and the prevalent reality. Indian minorities and particularly the Muslims have been historically disadvantaged and vulnerable in spite of the Constitutional safeguards. The Sachar Committee says that Indian Muslims continue to live in poverty and social and educational backwardness. Successive governments since 1947 including governments led by secular political parties have done little more than pay lip sympathy to the plight of the minorities. Be it persistent socio-economic exclusion as in the case of the Muslims or the menace of communal violence affecting Muslims and now increasingly, the Christians, the minorities have not been given a fair deal. Politics has overtaken priorities such as genuine welfare and safety. Consequently, the Muslims have lived in poverty, fear and insecurity. Muslims are the largest minority in India. As per the provisions under the National Commission of Minorities [NCM] Act, 1992, five religious communities Muslims, Christians, Sikhs, Buddhists and Parsis have been notified as Minorities. According to 2001 Census, 18.4 per cent of Indian population comprises minority communities. Muslims constitute 13.4 per cent, Christians 2.3 per cent, Sikhs 1.9 per cent, Buddhists 0.8 per cent and Parsis 0.07 per cent of the country's total population. Recently, the Jains have been given minority status too. In absolute numbers, Muslims [nearly 140 million] account for 72.8 per cent of the total minority population of 189.5 million.

Socio-Economic-Educational Marginalization of Muslims

Although the Sachar Committee did not make special interrogation into the socio-economic condition of Muslim women, they have been sensitive to the plight of these most marginalized citizens. Justice Sachar has written in detail about the efforts made by the Committee to include the concerns of Muslim women in the foreword to the report. Though limited, there has been an emergence of a debate in the present decade concerning the condition of Muslim women and the need for special attention. Significant questions concerning citizenship of Muslim women and how to enable them to attain full citizenship are being raised. Educational opportunities for Muslim girls from primary schooling to higher education, livelihood support for women, health related facilities for women and children and political representation of Muslim women are being taken up to a small extent by the women themselves with the help of voluntary groups.

The important concern regarding inclusion of women from marginalized communities in entitlements and welfare programs remains largely unaddressed in the government's policy framework. India presents a unique scenario of historical exclusion based on caste, religion, gender and ethnicity of communities. And whereas the overall exclusion of communities based on these factors may find occasional mention in government policies, the multiple exclusion faced by women within these communities goes largely unattended. There is no empirical evidence gathering exercise undertaken by any government agency to

assess actual inclusion of women. In the absence of such evidence the question of addressing the gaps does not arise! Thanks to the scale and complexities of the issues faced by the marginalized communities and of course, owing to compulsions of electoral politics there is never the “right time” or “opportune moment” to bring up the blatant marginalization and inequality that women of these communities live with. This heightens the need to assess the levels of exclusion of women from marginalized communities especially Muslim women.

The census of 2001 puts the Indian Muslim population at 138 million accounting for 13.4% of India’s population. Muslims have a higher sex ratio at 936 compared to the national average of 933. The child sex ratio at 950 is higher than the national 927. The percentage of 0-6 years population to total population at 18.7 years is the highest amongst all religious communities and higher than the national average of 15.9. The literacy rate for Muslim women at 50.1% is lower than the literacy rate for Muslim males at 67.6%. It is lower than the national average literacy rate for women at 53.7% and national literacy rate at 64.8%. Also, only one in 100 Muslim women is a graduate, whereas one out of 37 women in the general population is a graduate. Muslim women at the graduate level are fewer by 63 per cent. The work participation rate for Muslim women at 14.1% is lower than Muslim males at 47.5% and the national average for women at 25.6%.

The Sachar Committee established that Muslims remain poor and marginalized in the present times. Under the circumstances of overall exclusion and poverty it is anybody’s guess as to what could be the living conditions of Muslim women. If Muslims as a whole are unequal citizens what could be the status of Muslim women is a question that needs deeper and scientific probing. What is the extent of Muslim women’s access to food, shelter, health, education, income, safety and security is a question of great relevance to the democratic functioning of the country as is the extent of her social and political participation! The threat and incidence of communal violence faced by a Muslim woman in today’s India is no small indicator of her condition either! This has direct bearing to the safety, mobility and social position of Muslim women.

Also, our interactions with women in the community in the course of this Study and our ongoing work in different states indicate that the time has come to accept issues emanating from the way personal law is understood and practiced in India. Our work also throws up evidence of how it is more often than not detrimental to the well-being and lives of Muslim women. As much as the concerns of citizenship and entitlements there is need to look at measures for justice in family and marriage for Muslim women. And needless to say apart from the community itself, the government has an important role to play in both these areas as it concerns the most marginalized citizens.

The Sachar Committee Report highlights some important features concerning identity, education and livelihoods for Muslim girls and women. They have mentioned about Muslim women being singled out to deny job opportunities because of them wearing the *hijab* and they being singled out for ill treatment and glances because of the *burqa* at public places such as hospitals, schools, market places, public transport and other public facilities. Our findings too suggest similar incidence. The over emphasis on stereotypical portrayal of Muslim women as victims in the media often digresses attention from the real issues faced by them and tends to single out the whole community as backward and for unfair treatment towards women. It doesn’t encourage any discussion regarding the agency of Muslim women and their will and ability to fight injustice. It also provides loopholes for the government machinery to get away without much accountability as the blame is put on the community for its own plight and the backward plight of the women. It is invariably dismissed as an internal matter of the Muslim community where the government has no role to play.

The government agencies generally consider only Muslim men and very often religious leaders amongst them as the overarching leaders of the whole Muslim community. This leads to total blocking out of the special concerns and demands of women. It should be noted that such neglect based on a patriarchal system

of functioning makes the inclusion and participation by Muslim women in the various government schemes that much more difficult even impossible. They continue to be singled out for being Muslim in public places and the men in their own community don't consider it necessary to include them in social interactions either! This leads to Muslim women becoming voiceless faceless persons. This is a complex reality which needs serious attention and resolution with a long-term perspective.

Very importantly, the Sachar Committee Report has noted the strong desire and enthusiasm for education among Muslim girls. Our interaction with women during the course of our work confirms this positive upsurge. There is a great desire and enthusiasm amongst parents, both mothers and fathers, to send girls to modern schools and even English medium schools.

Legal Marginalization of Muslim Women

On the one hand the Muslim women are excluded educationally, economically and socially owing to government neglect and on the other hand they suffer from near absence of any legal framework in matters of family, marriage, divorce, custody of children etc. Lack of legal recourse and discrimination is a very important aspect that calls for correction while addressing the citizenship rights of Muslim women. Thanks to the way the Muslim personal law is understood and practiced in India the situation concerning the legal rights of Muslim women is mired in ambiguity, obfuscation and gross apathy at the least! The absence of a comprehensive codified personal law often results in the Muslim woman suffering in matters of divorce, alimony, polygamy, custody of children, property etc. The Shariat as practiced currently in different parts of the country is subject to multiple interpretations and misinterpretations which more often than not are unfair to women. Often the injunctions of the Holy Quran are violated in the name of Shariat; widespread incidence of triple talaq is the commonest example. Unfair practices pertaining to *mehr*, divorce, alimony, child custody, property are all passed off in the name of Shariat. It is anybody's guess as to how many ordinary Muslims understand the spirit of the Holy Quran or its underlying principles of gender justice! It is not difficult to guess as to what is the perspective and understanding of some of those men dispensing justice in Shariat courts across the country! Most times the verdicts in family matters end up being unfairly pro men and anti-women. This can hardly be said to be based on Quranic injunctions!

The Indian sub-continent is home to a wide diversity of Muslims. There are two main sects amongst the Muslims; they are the Sunnis and the Shias. The Sunnis are further divided into four schools of jurisprudence: the Hanafi, Shafi, Hambali and Malliki. The Shias are further sub divided into Ismailis, Bohra, Ishnaashari. The Bohras are further sub divided into Dawoodi and Sulaimani. And thus, it goes on into further sub sub-sects. Apart from this there are regional groups like Memons, Malabarlis, Qureshis', Ansaris, Pathans, Halais etc. All of these groups are governed by their group or jamaat's understanding and interpretation of Shariat, especially the Shariat law concerning family matters⁶. Though diverse, all interpretations have one thing in common that they are extremely patriarchal and always understand law to be on the side of the man. This heterogeneous community was never ever united under one Shariat, neither in the times of the Mughals and nor in the 21st century. In fact, women have always been denied their Quranic rights such as right to property and inheritance, right to divorce, right to matrimonial home etc. by invoking the Shariat. By falsely justifying arbitrary interpretations, women have been consistently denied their rights clearly stated in the Holy Quran.

Shariat or Islamic law is man-made; an impression has been wrongly created that Shariat is divine. Protection of such divine Shariat has been made a convenient pretext for centuries to continue unjust practices such as triple talaq and to deny women their rights.

The current predicament of the Muslim women can be traced back to the events of the Mutiny of 1857. The British successfully crushed the joint struggle of the Hindus and Muslims against its rule by initiating the policy of divide and rule. They very consciously initiated policies for the political and economic marginalization of the Muslims from whom they had usurped power. During the British rule the Indian male reformers pressurized the British to introduce legislation in favour of women. The women were not in a position to demand any changes in their situation due to lack of education, mobility and awareness. Once the legislations were in place the women anyway were hardly in a position to make use of the laws. These reforms impacted all women but were mainly legislated keeping in mind the Hindu women as they were disallowed widow remarriage, child marriage was rampant, and women were denied rights in property. When the reforms for Hindu women took off it put the Muslim leadership under pressure to introduce the same for Muslim women and hence the passage of the Shariah Application Act, 1937 and Dissolution of Muslim Marriage Act, 1939.

By independence and as a result of partition the community was reduced to extreme poverty and destitution divest of its previous power and glory. Post-independence too, the leadership of the community, the clergy, who supported the Congress during the independence struggle, committed their support provided it did not interfere in the Muslim personal law and other institutions. With partition of the country the Muslim middle class migrated to Pakistan. Those who remained behind turned out to be self-seeking leaders who did not take any concrete measures to improve the conditions of the community, least of all the personal law. The Muslim community came to be governed by innumerable secular laws but it continues to resist even Quranically approved changes in the Shariat. The State policy is non-interference in matters of Shariat even though the Muslim women have suffered due to its non-implementation. Thus, the most important and most politicized and most neglected has been the legal reforms for women.

Traditionally, the state agencies and the political parties have displayed a mindset about the clergy being the true and sole representatives of the Muslim community. Certain vested interest groups have planted themselves to occupy this thin but extremely significant space. Needless to say, these groups are not only male but also patriarchal to the core. This is highly problematic as any matter pertaining to justice within family is appropriated by agents of this arbitrary arrangement. As a result, the progressive and gender just aspects of the religion are forced out of sight. Any matter pertaining to Muslim personal law becomes the sole and arbitrary privilege of a few to decide. There is no attention on the spirit of justice and fairness that embodies the teachings of the Holy Quran ! This situation must change.

Indian Muslims are a diverse community comprising various sections of society. Only one section cannot continue to speak for all. And this section cannot forever exclude women. Interpretations furthering justice and fairness need to be popularized. These principles need recognition from both the government and the so-called community leaders.

Existing Shariat Laws in India

It is important to briefly dwell upon a few aspects concerning Shariat in Indian context. When it is said in a manner of speaking that Indian Muslims are governed by Shariat in matters of personal laws what does it actually mean. Indian Muslims do not have codified Shariat laws that adequately address all aspects concerning marriage and family matters. Experience shows that the existing legal framework is far from adequate when it comes to upholding rights of women granted by the Holy Quran.

Islam's textual sources (the Qur'an and Sunna, the practice of the Prophet) are the source of Muslim ethical values and norms. They have been articulated, since the beginning, mainly by Muslim scholars. Central to these values, and to the philosophy of law in Islam, is justice, which the classical jurists endeavoured to translate into legal rulings. But the rulings that have come down to us rest on pre-modern conceptions of

justice, gender and rights, which entitled individuals to different rights on the basis of faith, status and gender. These rulings continue to be regarded as the established interpretations of the Shari‘a. In the course of the 20th century they came to be confronted by modern conceptions of justice and rights, and the ideals of universal human rights, equality and personal freedom. In this encounter some Muslims came to see these rulings as unjust and discriminatory and the textual sources on which they were justified as hypocritical, or at best contradictory. This is true in the Indian context where the Muslim women’s quest for justice is viewed with scepticism or even hostility. By recognizing only the conservative religious voice the democratic state has failed in enabling fair representation for all sections of population including women. The conservative sections are unaware and unconcerned about the issues of Muslim women and therefore, they cannot continue speaking for them. Further, Muslim women and girls are facing several challenges of safety, security, survival and dignity in modern times. They are gradually learning to cope with these challenges. The solution cannot be that of confining them to homes for their own safety and well-being. They have aspirations like any other sections of citizenry and it is binding for both the government and the community to recognize and support their concerns. Muslim women cannot forever live with the threat of instant oral unilateral divorce, or meager *mehr* [dower] or polygamy or halala or post-divorce economic uncertainty. These must be resolved by evolving a just and fair legal framework based on the principles of the Holy Quran.

The British government enacted the Shariat Application Act [SAA], 1937 which was an attempt at applying Shariat law and not customary laws to the Muslim community. The Act states that the Muslim community will be governed by the Shariat and not customary laws. The Muslim women at least by law had the right to divorce, right to remarry after divorce or widowhood, had right over property. But her legal rights were eroded by customary practices. Hence a need was felt for legislative changes. This passage of SAA would in some way restore her legal rights. This law was welcomed by Muslim women and other political leadership of the community at the time as it served to unify the community under one law. While it gave rights to Muslim women, it also took away by a mischievous amendment by Mohammed Ali Jinnah. The Act mentioned that the Muslims will be governed by the Shariat ‘notwithstanding custom, usage and law’. Which means whatever may be the customs, usage and law, the Shariat will apply. Jinnah amended the Act by removing the word ‘law’. In other words, Shariat will not apply if there is a prior law existing. This amendment was made to excuse some trading communities who had legislated that women will not inherit from their property. If the SAA would have been passed without the amendment then these communities would also have been forced to let their women inherit. Jinnah pandered to the demand of the trading class and harmed the cause of Muslim women after initially supporting the bill. He later sought amendment which was implemented thus making women’s rights subservient to the men.

This Act simply states that Indian Muslims will be governed by Shariat, full stop. It does not specify anything any further. It does not list the various contents of the Muslim personal law. It merely states that Muslims will be governed by their Muslim personal law. This doesn’t help anyone, leave alone women. In practice followers of different schools of thought continue to apply their own varied understanding and interpretation of the Shariat. There are, therefore many conflicting views on several significant issues especially those concerning divorce. The irony is that each view claims to be based on their respective interpretation of the Shariat. And the practice of unilateral oral divorce continues. One cannot see much advantage of the SAA, 1937 except for the fact that it tried to bring the Muslim community under one law. The fact that different sects and communities are left to interpret and apply their own rules keeps the question of gender justice hanging as the interpretations continue to be patriarchal in a male-dominated set-up. It brings home the fact that Muslims in India have not made a serious attempt to codify diverse practices of the different schools of thought. Several Muslim countries have codified their laws and tried to ensure justice to women. Several socio-religious communities in India including minorities have codified personal

laws as per their religious texts, but the Muslim community continues to lag behind.

The Dissolution of Muslim Marriage Act (DMMA) was passed in 1939 and it gave a Muslim woman the right to seek dissolution of her marriage on nine specified grounds. This is the only legislation enacted by the British, which introduced a substantive codification of the divorce law. The Muslim personal law as practiced in the early 20th century did not offer any ground on which a woman could dissolve her marriage. The right to divorce was absolutely in the hands of men and they exercised it at their own will. There was no legal means by which a woman could free herself from a bad marriage. To remedy this situation, there were instances of women converting to other religion. Since marriage of a Muslim and a non-*Kitabiya* [*Kitabiya* are those on whom a book has been revealed] is not legal according to Muslim personal law, a marriage, where the woman converted, became invalid. The DMMA was thus passed, not because men who made laws were sensitive to the needs of women but because Muslim leaders feared conversion of 'their' women to other religions. This Act was uniformly applicable to all Muslim women of all sects. It shows that despite the diversity of sect and practice, a uniform codification is possible if the political will exists within the community.

However, the Act though benefited women was indeed piecemeal. It only lays down the grounds on which women can seek divorce. It does not lay down any procedure or a time frame within which she can get a divorce. The man can divorce his wife without assigning any reason and even in her absence. He may or may not approach the court or any authority to seek divorce. The Act does not question or restrict the man's unbridled right to oral triple divorce. It deals only with divorce and not with related matters such as maintenance, custody of children, payment of *mehret*. For these matters, the woman has to file separate cases under other laws, sometimes in other courts. This law is a welcome measure but it needs more elaboration and matters under its purview. Our findings clearly indicate that it has not stopped Muslim women from being divorced unilaterally and instantly.

The Shah Bano Case is one of the most significant lawsuits in the history of Indian judicial system. The case pioneered the Muslim women's fight for justice over right to claim alimony.

The Shah Bano case was one such instance that went beyond the rulings of the All India Muslim Personal Law Board that enjoys the authority to judge over disputes concerning marriage, gifts, inheritance, adoption and such. Though the procedure of Muslim divorce differs from one Islamic sect to another, in practice the husband can terminate a marriage by declaring 'Talaq' three times to his wife in the presence of witnesses. The marriages are being dissolved even without the consent of the wife or at times even without the presence of witnesses.

Shah Bano, a sixty-two-year-old woman was given 'talaq' by following the procedures of the conventional Muslim personal law. After she was given divorce, she had no means to support her children and moved to the court to claim the alimony from her husband. It took seven years for the case to reach the Supreme Court, which on several hearings ruled in her favour. Under Section 125 of the Criminal Procedure Code the court announced that Shah Bano be provided maintenance by her ex-husband with an upper limit of Rs 500 a month. This very decision of Supreme Court instigated a political uproar across the country. The minority community threatened to start agitations. The Congress government, being conscious about the imminent elections succumbed to the pressure of orthodoxy. The Muslim Women (Protection of Rights on Divorce) Act 1986 was passed with the 2/3rd majority by the Parliament. According to the Act the husband is liable to pay the alimony during the time of iddat or for the span of three months after the divorce. In case the divorced woman has no close relatives to look after her or she is incapable in paying her own maintenance, the magistrate has the right to order the State of Waqf Board to take up the responsibility of providing support to the woman and her children.

Clause A in Section 3 (1) of the Act, says that a woman can claim “a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband.” Though the Act came under intense criticism, as for instance the BJP opined it to be an act of ‘appeasement’, the inclusion of the phrase ‘a reasonable and fair provision and maintenance to be made’ in the Act does give enough space for the Muslim women to fight for a hefty sum of money after the divorce.

In 1986, following the controversy in the Shahbano case, the Muslim leadership in India held that Criminal Procedure Code 125 amounted to interference in their religious matters. The government of the day under Prime Minister Rajiv Gandhi buckled under pressure from so-called Muslim leaders who demanded disqualification of the High Court order providing Shah Bano, a Muslim woman a meagre maintenance amount under the provision of the Criminal Procedure Code 125. The Parliament instead enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. This Act was passed to neutralize the High Court judgment asking Shah Bano’s husband to provide maintenance to her and to appease the orthodox Muslim religious leadership of the day.

The Act shifts the responsibility of maintenance from the husband to the relatives and the *Wakf* Board. The husband knows that if he does not provide maintenance, he could still control and harass his divorced wife to beg at different places for maintenance. The husband takes responsibility for the children till they are 2 years of age. After that the responsibility falls on the wife to claim maintenance. In order to claim further maintenance from the husband she has to again approach the civil court. This negates the legal right of the child to be maintained by her/his father and absolves the father of responsibility beyond a certain period. The provisions of the Act are patently violative of the fundamental rights to equality, equal protection of laws and nondiscrimination on the ground of religion, as guaranteed by the Indian Constitution to all citizens. Since then there has been no effort either by the State or by the community to revive the process of gender-just reforms in Muslim personal law.

Current Initiatives of Muslim Women

The three laws stated above exist in India in the name of Muslim personal law. But as is evident, these are highly inadequate in enabling justice for women in the matters of marriage and family. There is no codified law that covers all aspects of family and marriage matters. Consequently, Shariat courts by different names are run across different states as per subjective understanding of Shariat and the Holy Quran. In a male dominated world women continue to be barred from approaching these. As a result, most of these courts tend to dispense justice in a one-sided manner and most often in the absence of the wife and her relatives.

Besides, the Muslim law being followed by these bodies is not homogenous and its provisions vary according to the different sects and sub-sects. Further it is an amalgamation of customary law and practices, statutory law and interpretations of the verses of the Holy Quran. So, while a Muslim woman is required to go to the court to seek divorce a Muslim man is not required to do so, he can pronounce divorce thrice and terminate the marriage contract instantly and unilaterally. The presence of wife or witnesses is not required. While gender-just reforms within Parsi and Christian matrimonial laws are affected with the initiative of the community and support from the State, it is a stark reality that there exists no political will to bring about reforms in Muslim personal law that would benefit the women.

In Muslim society there are multiple implementing agencies that dispense justice. There exist Shariat courts, *Qazis*, Muftis [religious clerics], jamaats [sect arbitration councils] that also take in cases of family dispute. These bodies are readily accessible and have closer contacts with the community unlike the secular court structures, which are expensive, inaccessible and time consuming. Though accessible they are dominated by men who arbitrate and settle disputes, which more often than not go against the interest of the women. These individuals and institutions have adopted patriarchal, conservative and anti-women interpretations of the religious texts. In some cases there is little recognition of the Indian Constitution and the values of justice

and equality. These courts are mostly approached by men as most of these places may not be women friendly. However, Muslim women do approach Shariat courts regularly with the help of male relatives if not directly. Experiences at the ground show that women also approach family courts and other localized State run legal structures but the time and money required to pursue the case is beyond the reach of most women. Poor economic condition and lack of sustained resources necessary to approach legal mechanism prevents them from going to court.

As is evident in the narrative above that the Muslim family law is piecemeal and disjointed with no effort from the community or the state to make it comprehensive. There is also no monitoring or review of male dominated extra judicial bodies for dispensing justice. As a result, Muslim women are left with no choice but to suffer the injustices done to her.

There is no law and there is no place to seek justice. She forever struggles with issues of gender justice on the one hand and popular interpretations of religious tenets on the other. The time is never right for a Muslim woman to raise her concerns. Her questions are always subsumed under the larger interest of the community. It is hoped that with increasing awareness and mobilisation of Muslim women, she will be able to speak and make her voice heard by the people in power.

The BMMA's efforts in the last twelve years have been to create a mechanism for gender justice in marriage and family that has not existed ever in the country. It has been an effort to reclaim those spaces where a Muslim woman feels and believes that she will get justice. It has been an effort to fill in this legal vacuum within the community which does not think about its women. It has been an effort to lay claim on the Constitutional and Quranic rights which have eluded Muslim women for many decades now. The formulation of the draft Muslim family law and the establishment of the *Aurat onki Shariat Adalat* are attempts which convey that Muslim women want to lead themselves and address their own issues through a constructive plan of action. Instead of crying and cribbing and constantly demanding from an insensitive community and an equally insensitive state, Muslim women have sought to be creative and enterprising, constructive and positive and thus have created spaces and structures to support themselves.

Today as we present this study, the Ordinance against triple talaak is in place. We are hoping that the next government that comes to power is sensitive to the legal needs of Muslim women. It has been a long time after independence and yet the largest minority is without a proper law that will regulate their family life. We reiterate our demand for a comprehensive codified Muslim family law so that women feel safe and secure in their homes. We earnestly in advance demand from the next government that they look at Muslim women as citizens first and give her what rightfully belongs to her; a law which ensures equality and justice within family.

ABOUT THE RESPONDENTS

The said study was undertaken in the districts of Ahmednagar, Amravati, Aurangabad, Jalgoan, Nashik, Palghar, Panvel, Pune, Raigad, Satara, Solapur and Thane. 505 Muslim women were interviewed for the study spread across 24 villages.

The women surveyed fall between the age of 18 years to 56 years. Of the total 505 women surveyed 21% of them fall in the age group of 18-25 years, 35% of the women surveyed belong to age group of 25-35 years and 30% of the women belong to the age group 36-45 years and 14% are over the age of 45 years.

Of the total 505 women surveyed 79% i.e. 402 women are homemakers. 13% i.e. 64 of the women surveyed worked in the service industry and 8% i.e. 39 women worked in the informal sector. This indicates that very few Muslim women are part of the workforce that gives them economic independence. This also reflects in their annual income which is very low. Of the total 505 women surveyed 27% i.e. 135 women annual family income is below Rs.35K, nearly 55% i.e. 278 family annual income is between 35K-50K

Out of the 505 women surveyed 428 were married at the time of the study. 42 have been divorced. 30 have been widowed and 5 have been abandoned.

41% of the women surveyed had 1-2 children, 25% of the women had 3 children, 28% of the women had children between 3-6 children and 2% of the women have more than 6 children. 4% of the women had no children. This study once again proves that the birth rate amongst the Muslims is gradually decreasing. We see many families not having more than 2-3 children. May not be very substantial but 2 % of the women have adopted children from their family members or relatives.

MARRIAGE

Consent

Consent is an important prerequisite for a Muslim marriage. It may be a formal requirement not really a process of real consent and an informed choice. But nonetheless it is a crucial provision for women. 428 i.e. 85% of the women surveyed said that their consent was sought before marriage.

Age of marriage

Underage marriages continue to be a big challenge for the community. As much as 66% of the respondents were married on or before 18 years. Only 6% were married beyond 21 years. This is where as a community there is need for social reforms and definitely a need for law which does not allow a Muslim girl and boy marriage before the age of 18 and 21 years as per the law of the land.

Demand for dowry

Surprisingly only 12% of the respondents said that there was no demand for dowry which is a good sign.

Nikaahnama

Nikaahnama is an important document to be filled up at the time of marriage. It is a legal document which establishes the marriages. Unfortunately, 45% of the respondents did not have their nikaahnama. Out of those who did not have it, i.e. 225, 16 said that it was not made at all. 50 said they did not get it in spite of it being made. Yet a big number 159 said they do not even know where it is. Out of the entire 505 respondents, 75% of them said that they did not even read their nikaahnama before signing it.

Meher

An important economic security for women is meher given to the bride either in form of cash / jewellery / land as a gift on the day of the marriage but sadly it has been reduced to a mere symbolism. It was observed that 38% i.e.194 of the women got a meher amount upto Rs.1000/- while 22% of the women said meher amount was fixed between 1000/- to 5000/- yet another 16% of the women meher was fixed between Rs. 5000/- to 10000/-. 12 % of the women meher was fixed over Rs.10000/- of which only 2% of women was fixed over Rs.50000/- 13% i.e. 66 women said that they had no idea what is meher or what was the amount. Although the meher amounts are very less, women appear to be happy with what they got. It was observed that 53% i.e.269 of the women surveyed were happy with their meher amount fixed where as 34% of the women were unhappy.

Meher is the right of women to be received by the bride at the time of marriage. Although meagre 48% received their meher at the time of marriage. A big number, 33% did not get mehr at all. If that is combined with the number of women who have no idea about meher at all, then it is 46% who have not received meher.

Out of all those who received it, 38% got it in cash, while another 13% i.e. 68 women said that they received meher in the form of jewellery, 1% i.e. 3 women received meher in the form of property.

Meher is the right of women but she does not get to decide the amount. Only 3% of women said they got to decide the amount. It was largely her family that decided the meher amounts received, the parents themselves quoted smaller amounts mainly due to ignorance, pressure from the groom's family / relatives / qazi and the current trend of Meher as per the society/region or other reasons. 18% of the women don't even know who decided the amount. The parents and the in-laws are the major deciding members of the meher amount, other than them the relatives and Kazi also play some role in determining the meher amount

DIVORCE

Out of the 42 women divorced, 10 were divorced before the end of first year of marriage. 7 within the third year of marriage.

It was observed that of the 8% divorced women 4% i.e.18 of the women said that their husband wanted divorce. 2% i.e. 10 of the women said that they wanted divorce and 2% of the women said that their divorce was caused due to disputes between the parent and in-laws.

Of the divorce women only 14% i.e.6 of the women received compensation at the time of the talaq whereas 86% i.e. 36 of the women said they did not get any compensation.

Such a tragedy that of the 42 women divorced 50% i.e. 21 of them were divorced verbally and the rest 50% of the women were give talaq either through letter, phone, SMS, email and other way.

Halala is an Un-Quranic practice where a woman who is divorced by her husband has to marry another man and have sexual relationship with that man and after that man divorces her, she can remarry her first husband. Of the divorced women 1% i.e.5 of the women were victims of halala

MAINTENANCE

Out of those who are currently married [428], 376 said that they are being provided with maintenance by their husband. 53 women reported that they do not get any financial support from their husband. Out of those 376 women who said that they received maintenance, 279 were happy with the amount. The rest who did not

find the maintenance sufficient, many either worked themselves to support children and family or have been financially supported by their own parents. There are some who also survive on charity.

Out of those divorced women [42], 19 work to support themselves as there is very little or no support from the husband and the in-laws. 12 women are supported by their parents and yet another 10 women are on their own, struggling to raise resources through charity to survive. Out of these 42 divorced women, 27 retain the custody of the children. 10 women said the custody is with their parents as they were re-married and their husband was not willing to accept the responsibility of the child. With no maintenance and additional responsibility of children, it is a wonder how women manage to survive! Women are able to sustain due to her inner strength and the physiological support that is received from family and friends.

Even a widow is on her own. Out of the 30 women who are widows 57% i.e. 17 work and are on their own. The rest are supported either by her parents or by her in-laws.

DOMESTIC VIOLENCE

Domestic violence is an epidemic. Out of the 505 women surveyed, 217 women said that they have been subjected to violence. 163 women said if they wanted to report violence, they would first approach the parents and elders in family. The rest preferred police, Qazi, court, NGO to report violence.

ALL INDIA MUSLIM PERSONAL LAW BOARD

89% of the respondents had not even heard about this body.

PROPERTY

Linked to their economic status and a sense of security, it is sad to say that 84% of the women do not have a property in their name. 85% said that the current house in which they are staying does not belong to them, it is not in their name.

VIEWS OF MUSLIM WOMEN

Age of marriage:

52% i.e. 261 women said the girl should be above the age of 18 years and yet another 32% i.e. 160 women said it should be over 21 years. Put together 84% of women resoundingly say that the age of marriage of the girl should definitely not be below the legal age. The maturity of rural Muslim women gets reflected here where she understands the damages caused by an early marriage. 44% i.e. 220 women say that the boy should be above the age of 21 years and yet another 54% i.e. 274 women said it should be over 25 years. Put together 98% want the boy also be mature enough to get into the relationship of marriage.

Mehr

In the study 94% i.e. 474 of the women said that meher should be given at the time of Nikaah. 90% of the women felt that the Meher amount should be decided based on the income and property of the groom. If Meher is not received at the decided time, what should be done? 48% i.e. 240 of the women said that the husband should pay double the amount of meher if not given at the time of Nikaah whereas 14% said the husband should be put behind bars and yet 20% said he should pay penalty. As per the study 86% i.e. 435 of the women affirmed that the amount of meher must be equivalent to the groom's annual income. As per the study 87% i.e. 438 of the women said that the meher amount must be decided based on the husband's share in the income/profit whereas 9% said it should be based on the family income/profit if the husband is not having a regular salary. These figures show that Muslim women is thinking about her financial security.

Polygamy

The study clearly states that 96 % i.e.484 of the women said that the Muslim man should not be allowed to marry another woman during the subsistence of the first marriage. 87 % i.e.438 of the women said that even if the first wife should permit the man should not be allowed more than one marriage. Furthermore 62 % i.e.311 of the women said that even if the first wife is suffering from deadly disease even than a man should not be allowed to marry more than once. 64 % i.e.324 of the women said that even if the first wife is unable to conceive even than a man should not be allowed to marry more than once. The study clearly states that 79% i.e.398 of the women said that the man should not be allowed to re-marry even if she is a widow. Going further 93% i.e.471 of the women said that the man should not be given permission for second marriage even if the population of women is more than man. Muslim women are very clear on this !!!!

Triple divorce

Since this study happened after the Ordinance against triple divorce was passed by the central government, we took the opportunity to ask rural Muslim women about the same. Some were not even aware of the Ordinance. But on explaining to them about it, the women welcomed the Ordinance. The study clearly states that 95% i.e.481 of the women said that government has done the right thing by putting a legal ban on the practice of unilateral divorce. We also wanted to check about the clause regarding 3 years imprisonment to men who pronounce divorce unilaterally. 91% i.e.459 of the women confirmed that they think it's the right decision by the government to implement 3 years imprisonment against men who unilateral divorce their wife. A large number [96%] felt that arbitration must be made mandatory before the divorce is finalised. The study clearly states that 96% i.e.484 of the women confirmed that arbitration should be made they mandatory before divorce is finalised. On inquiring deeply, 45% i.e.226 of the women wanted that 3 months should be the process for arbitration, 28% i.e.143 women said the process of arbitration should be for 6 months. This indicates that women do not want marriage to be terminated instantly. There has to be a process of arbitration aiming at reconciliation. Only when that fails that divorce proceedings must begin, which is also the process given in the Quran. We are aware the role played by Qazis in creating havoc in the lives of women. Many divorces have happened instantly only because the Qazi has allowed it to happen. There is never any attempt by them to hear the women's side of the story. This gets reflected in the way women have responded to our inquiry about the Qazi. 92% i.e.463 of the women agreed that the Qazi who sends notice of unilateral divorce should be punished. He is probably more responsible than the husband in facilitating the termination of the marriage. Women on being explained the process of divorce given in the Quran agreed instantly that this method of divorce, called the Talak-e-Ahsan method must be the legal method of divorce. 94% i.e.473 of the women agreed that the legal method of divorce should be Talaq-e-Ahsan. Another Quranic method, Talak-e-Mubarah, which is divorce by mutual consent, must also be the preferred method of divorce. This a mutual consent divorce where none of the parties dispute the demand of the other to terminate the marriage. The study clearly states that 97% i.e.490 of the women agreed to Talaq-e-Mubarah being part of the legal process of divorce.

It is also an accepted practice that if a woman demands divorce, which is the khula, she has to forgo her meher. Muslim women have challenged this practice. And in this study, 70% of the respondents say that women should not forgo her meher. Our experience also shows that women demand divorce only when she has been troubled beyond her capacity to bear and the husband refuses to keep her happy nor does he want to give divorce.

Custody

In the event of divorce 91% of women believe that the custody of the child should go to the mother. And in that event the maintenance of the child must come from the ex-husband. And in keeping with the norms, a child's best interest and the child's consent is crucial before deciding the custody.

Adoption

Muslim family law does not allow adoption of children and if they are at all then the child cannot become a legal heir to the property of its parents. We wanted to seek the views of Muslim women in Maharashtra on adoption. The study revealed that 86% i.e. 435 of the women had no idea that a Muslim couple cannot legally adopt a child. 93% had no idea why that is so. 84% were also not aware that even if they adopt a child, he/she cannot legally be the natural heir to your property. And yet at the same time 92% strongly felt that adoption should be made legal and the couple must be allowed to make the child a legal heir.

Views on Codification of Muslim Personal Law

Of the 505 women surveyed only 11% i.e 58 women were aware that India did not have a Muslim personal codified law. The rest 89% of the women don't know that Muslims in India do not have a comprehensive personal law to protect their legal rights within the family

If the government codifies the Muslim Personal Law, women will get justice is what a large number of Muslim women believe. The study states that 92% of the women affirmed that that the codified law will help women get justice. Muslim women also strongly feel that the Indian state must step in and help her to codify the Muslim family law. 96% of the respondents wanted the government to fulfil its constitutional responsibilities. Not just state but the Muslim women want the religious leaders also to support her in her struggle for justice. The study clearly states that 87% i.e. 441 of the women affirmed that the religious leaders should support the women's demand for codified Muslim Personal Law.

If there is a law in place every stakeholder in the community and otherwise will be obliged to follow the law. Problems today occur because there is no law and each is free to do what he wants. A law passed by the Parliament gets a statutory status and it becomes the responsibility of everyone to follow the law. On same lines 92% i.e. 464 of the women affirmed that Qazi and the DarulQazas must obey and implement the law passed. The study also reiterates that the government must take the responsibility of making and implementing the Muslim family law.

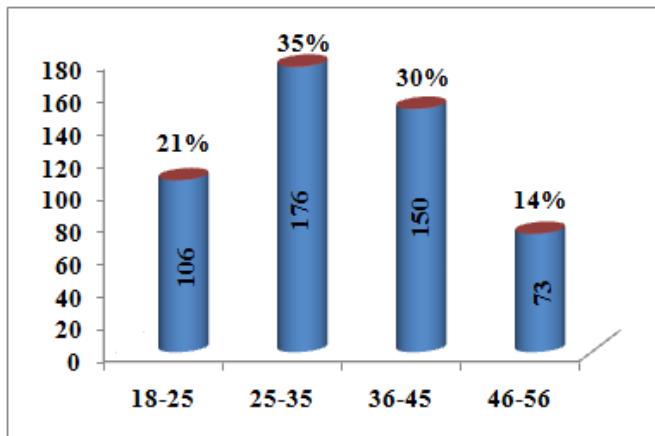
Qazis have all along played a dubious role in harming the cause of women. Their support for practices like triple divorce, polygamy, halala, underage marriages have ruined so many families and turned so many women into destitute. The study states that 96% i.e. 484 of the women affirmed that the government must monitor and regulate the work of the Qazis. More and more aware and sensitive women must become Qazis so that the alternative vision of justice within family prevails. 97% i.e. 492 of the women affirmed that Muslim women should provide legal aid and support to other Muslim women.

Analysis of the Survey Data

Personal Information

Particulars	Count	%
Ahmednagar	12	2%
Amravati	174	34%
Aurangabad	26	5%
Jalgoan	3	1%
Nashik	91	18%
Palgar	18	4%
Panvel	40	8%
Pune	22	4%
Raigad	32	6%
Satara	2	0%
Solapur	16	3%
Thane	69	14%
Grand Total	505	100%

Age:



Age	Count	%
18-25	106	21%
25-35	176	35%
36-45	150	30%
46-56	73	14%
Grand Total	505	100%

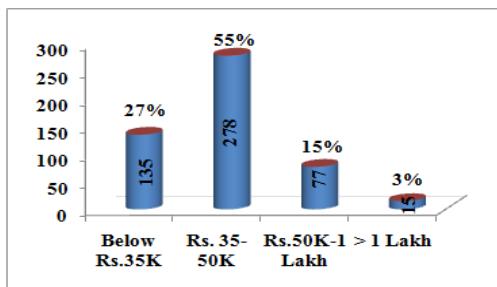
The women surveyed fall between the age of 18 years to 56 years. Of the total 505 women surveyed 21% of them fall in the age group of 18-25 years, 35% of the women surveyed belong to age group of 25-35 years and 30% of the women belong to the age group 36-45 years and 14% are over the age of 45 years.

Profession:

Profession	Count	%
Homemaker	402	79%
Service	64	13%
Informal work	39	8%
Grand Total	505	100%

Of the total 505 women surveyed 79% i.e. 402 women are homemakers. 13% i.e. 64 of the women surveyed worked in the service industry and 8% i.e. 39 women worked in the informal sector.

Annual Family Income:



Annual Income	Count	%
Below Rs.35K	135	27%
Rs. 35-50K	278	55%
Rs.50K-1 Lakh	77	15%
> 1 Lakh	15	3%
Grand Total	505	100%

Of the total 505 women surveyed 27% i.e. 135 women annual family income is below Rs.35K, nearly 55% i.e. 278 family annual income is between 35K-50K

Sect:

Particulars	Count	%
Shia	9	2%
Sunni	496	98%
Grand Total	505	100%

As per the data collected, it was observed that 98% i.e. 496 of the women surveyed belong to the Sunni Sect and the rest belong to the Shia sect.

Caste:

Caste	Count	%
High Caste (Sayed, Khan, Pathan)	194	39%
OBC (Ansari, Mansuri etc)	71	14%
Dalit	87	17%
Don't Know	153	30%
Grand Total	505	100%

It was observed that 39% i.e. 194 of the women surveyed belong to the higher caste i.e. Sayed, Khan, Pathan where as 14% were OBC caste and 17% were Dalits. 30% of the women were not aware of their caste.

Jurisprudence:

Particulars	Count	%
Barelvi	4	1%
Deobandi	47	9%
Wahabi	20	4%
Sunni Jamaat	400	79%
Ahle-Hadees	16	3%
Don't Know	18	4%
Grand Total	505	100%

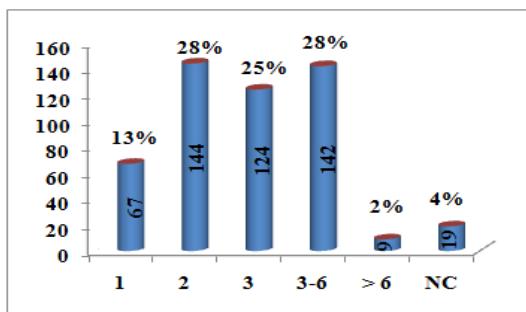
It was observed that 79% i.e. 400 of the women surveyed belong to the Sunni Jamaat followed by 9% of the women belonging to the Deobandi Jamaat. Two women belonged to Barelvi-1%, Wahabi - 4%, Ahle-Hadees - 3%. 4% of the women do not know which jurisprudence they belonged to.

Marital Status:

Mariatal Status	Count	%
Married	428	85%
Divorce	42	8%
Widow	30	6%
Unmarried	0	0%
Single (Abandoned)	5	1%
Grand Total	505	100%

The table shows that of the 505 women surveyed 85% of the women are married. 9% i.e. 42 of the women are divorced, 6% i.e. 30 women are widow and 1% i.e. 5 women have been abandoned by their husband.

No of children:



As per the chart 41% of the women surveyed had 1-2 children, 25% of the women had 3 children, 28% of the women had children between 3-6 and 2% of the women have more than 6 children. 4% i.e. 19 of the women said they have no children.

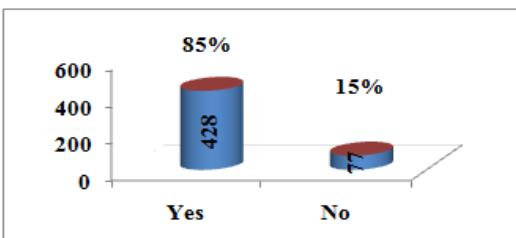
Children adopted:

Children are Adopted	Count	%
Yes	10	2%
No	495	98%
Grand Total	505	100%

The table shows that of the 505 women surveyed only 2 % of the women have adopted children from their family members or relatives. 98% of the women did not adopt children.

Marriage related Questions

11. Was your consent sought before marriage?



As per the chart 428 i.e. 85% of the women surveyed said that their consent was sought before marriage only 15% i.e. 77 of the women said that they did not have a say in the choice of the groom.

12. What was your age at the time of your marriage?

Age	Count	%
< 15 years	58	12%
15-18 years	275	54%
19-21 years	142	28%
> 21 years	30	6%
Grand Total	505	100%

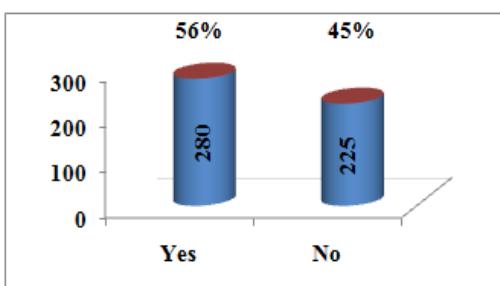
As per the table 12% i.e. 58 of the women surveyed said that they got married before the age of 15, 54% i.e. 275 were married between the age of 15-18 years, 28% i.e. 142 got married between the age of 19-21 years. Only 6% i.e. 30 of the women said they got married after the age of 21 years.

13. Was there demand for dowry?

Particulars	Count	%
Yes	59	12%
No	446	88%
Grand Total	505	100%

As per the table 12% i.e. 59 of the women surveyed said that there was demand for dowry whereas 88% i.e. 446 women said that there was no demand for dowry.

14. Do you have your copy Nikaahnama?



As per the chart 45% i.e. 225 of the women surveyed said that they did not have their nikaahnama, 56% i.e. 280 affirmed that they had their nikaahnama.

15. If not, then reason

Particulars	Count	%
Not Made	16	3%
Made but not given	50	10%
Don't Know where it is	159	31%
NA	280	56%
Grand Total	505	100%

As per the table 3% i.e. 16 of the women surveyed did not make their nikaahnama, 10% i.e. 50 said they were not given the nikaahnama, 31% i.e. 159 said they did not know where nikaahnama is, was only 56% i.e. 280 affirmed that they had their nikaahnama,

16. Did you read the nikaahnama before signing?

Particulars	Count	%
Yes	126	25%
No	379	75%
Grand Total	505	100%

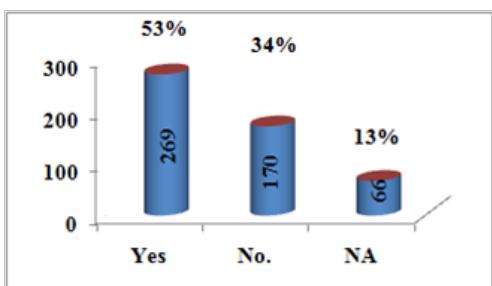
As per the table 75% i.e. 379 of the women surveyed said that had not read the nikaahnama before signing. Only 25% of the women said they had read the nikaahnama before signing.

17. How much Meher did you receive?

Particulars	Count	%
Rs.786/-	92	18%
Rs.100-500/-	55	11%
Rs.501-1000/-	47	9%
Rs.1001-3000/-	58	12%
Rs.3000-5000/-	48	10%
Rs.5001-10000/-	79	16%
Rs.10000-50000/-	51	10%
> Rs.50000/-	9	2%
No Idea	66	13%
Grand Total	505	100%

It was observed that 38% i.e. 194 of the women got a meher amount upto Rs.1000/- while 22% of the women said meher amount was fixed between 1000/- to 5000/- yet another 16% of the women meher was fixed between Rs. 5000/- to 10000/- 12% of the women meher was fixed over Rs.10000/- of which only 2% of women was fixed over Rs.50000/-

18. Are you happy with the amount of Meher?



It was observed that 53% i.e. 269 of the women surveyed amount they were happy with their meher amount fixed where as 34% of the women were unhappy with their meher amount.

19. When did you get Meher?

Particulars	Count	%
Time of Nikha	241	48%
Time of Talaq	20	4%
Time of Widowhood	8	2%
Did not get at all	170	33%
NA	66	13%
Grand Total	505	100%

It was observed that 48% i.e.241 of the women surveyed said that the received meher at the time of nikaah, 4% said they received meher at the time of divorce, yet another 2% i.e. 20 said that they received it at the time of becoming a widow. 33% said they did not get meher at all.

20. How did receive the Meher.?

Particulars	Count	%
Cash /Cheque	193	38%
Jewellery	68	13%
Property	3	1%
Some other way	5	1%
NA	236	47%
Grand Total	505	100%

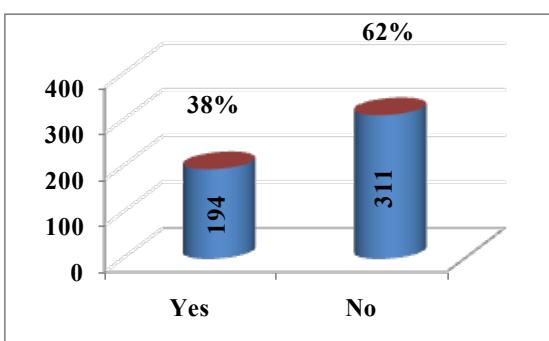
The table clearly states 38% i.e.193 women received the meher amount by cash / cheque, while another 13% i.e. 68 women said that they received meher in the form of jewellery, 1% i.e. 3 women received meher in the form of property. 47% said it was not applicable as they did not get meher at all.

21. Who decided the amount of the Meher?

Particulars	Count	%
Self	15	3%
My Parents	154	30%
Husband's Parents (In-laws)	99	20%
Relatives	76	15%
Kazi	22	4%
Don't Know	90	18%
Parents & In-laws	48	10%
Others	1	0%
Grand Total	505	100%

As per the survey it was realised that only 3% of the women said that they had some say in the fixing of the meher amount. The parents and the in-laws are the major deciding members of the meher amount, other than them the relatives and Qazi also play some role in determining the meher amount.

22. Where you requested to exempt the Meher?



As per the table it is observed that 25% i.e.128 of the women agreed that there was a request to exempt Meher.

23. How many times have you been married?

Particulars	Count	%
Once	480	95%
Twice	24	5%
Three times	1	0%
Grand Total	505	100%

As per the table it is observed that 95% i.e. 480 of the women have been married once and 5% i.e. 24 of the women were married twice and only 1 woman had married three times.

24. After how many years of the marriage did the talaq take place?

Particulars	Count	%
Before the first marriage anniversary	10	2%
Between 1-3 year of the marriage.	7	1%
After 5 year of the marriage	5	1%
After 10 year of the marriage	3	1%
After 15 year of the marriage	5	1%
After 20 year of the marriage	12	2%
NA	463	92%
Grand Total	505	100%

As per the table it is observed that of the 8% of the women were given talaq of which 2% i.e. for 10 women divorce took place in the first year of the marriage and of the remaining 6% divorced women 3% i.e. for 13 women divorce took place after 20 years of the marriage.

25. Who wanted the divorce?

Particulars	Count	%
Self	10	2%
Husband	18	4%
Mother in-laws & Father in-laws	6	1%
My Parents	3	0%
Others	5	1%
NA	463	92%
Grand Total	505	100%

As per the table it is observed that 4% i.e. 18 of the women said that their husband wanted divorce, 2% i.e. 10 of the women said that they wanted divorce and 2% of the women said that their divorce was caused due to disputes between the parent and in-laws

26. At the time of divorce did you receive any compensation?

Particulars	Count	%
Yes	6	1%
No.	36	7%
NA	463	92%
Grand Total	505	100%

As per the table it is observed that only 1% i.e. 6 of the women received compensation at the time of the divorce whereas 7% i.e. 36 of the women said they did not get any compensation.

27. How did the divorce take place?

Particulars	Count	%
Verbal	21	4%
By letter	3	0.5%
On Phone	4	1%
SMS	3	0.5%
By email	4	1%
Any otherway	7	1%
NA	463	92%
Grand Total	505	100%

As per the table it is observed that only 4% i.e. 21 of the women were divorced verbally, 4% of the women were

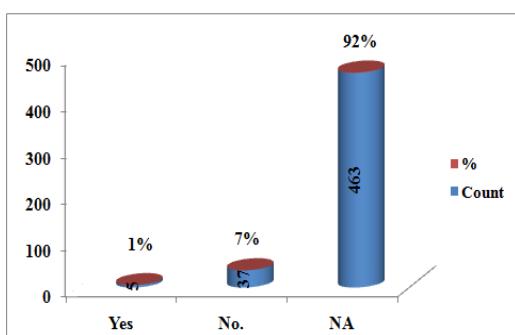
given divorce either through letter, phone, SMS, email and other ways.

28. Where did the divorce take place?

Particulars	Count	%
In Court	7	1%
Darul Kaza	2	0%
Jamayat	6	1%
Panchyat	3	1%
in Family	17	3%
NGO	3	1%
Any other place	4	1%
NA	463	92%
Grand Total	505	100%

As per the table it is observed that only 3% i.e. for 17 women divorce took place in the family. 1% i.e. 7 divorces took place in the court, 2% i.e. 11 divorces took place in the Darul Kaza / Jamayat /Panchyat. 7 other divorces took place either in the NGO or other places.

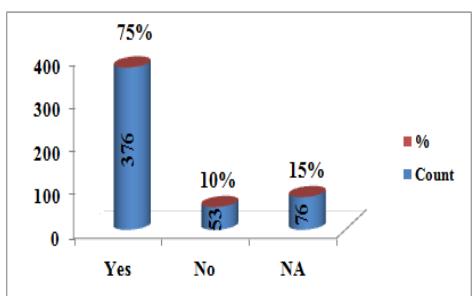
29. Are you a victim of halala?



As per the table it is observed that 1% i.e.5 of the women were victims of Halala

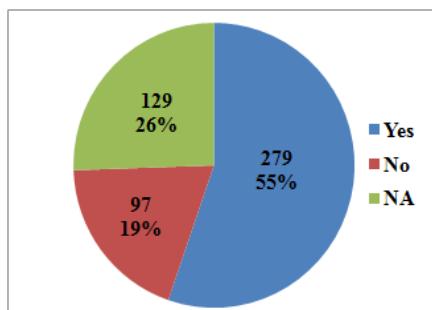
Maintenance

30. Does your husband support you financially during your marriage?



The chart shows that 75% i.e. 376 women agreed that their husband provide for the financial expenses whereas 10% i.e.53 of the women disagreed. 15% women said it was not applicable as they are either a widow, divorced, abandoned, separated or unmarried.

31. Is the maintenance amount sufficient?



The chart shows that 55% i.e. 279 women affirmed that the maintenance provide was sufficient whereas 19% i.e.97 of the women did not feel it was insufficient.

32. If not sufficient, then

Particulars	Count	%
Do you work for money	68	13%
Are you supported by your in-laws.	6	1%
Are you supported by your parents.	18	4%
Do you survive on charity?	5	1%
NA	408	81%
Grand Total	505	100%

The chart shows that 13% i.e. 68 women work for money, 1% are supported by the in-laws and 4% i.e. 18 are supported by the parents and yet another 1% i.e. survive on charity. Of the 81% i.e. 408 women felt the maintenance is sufficient.

33. If divorced, what is the source of maintenance?

Particulars	Count	%
Self	19	4%
First husband	1	0%
In Laws	0	0%
Parents	12	2%
Any Other	10	2%
NA	463	92%
Grand Total	505	100%

Of the 42 women divorced the table shows that 4% i.e. 19 women said they themselves financially support and are the source of maintenance other than that 2% said it's their parents and yet 2% said its others sources i.e. zakaat or donations from organisations /institutions is the source of maintenance.

34. If divorced, who has custody of children?

Particulars	Count	%
Self	27	5%
Husband	0	0%
In-laws	0	0%
Parents	10	2%
NA	463	92%
Others	5	1%
Grand Total	505	100%

The table shows that 5% i.e. 27 women have custody of the children, 2% i.e. 10 women said that their parents have the custody of the children whereas 5% said the custody is with the in-laws / relatives / orphanage etc

35. If divorced, who nurtures and looks after the child?

Particulars	Count	%
Self	10	2%
Husband	2	0%
In-laws	1	0%
Parents	27	5%
Other	2	0%
NA	463	92%
Grand Total	505	100%

The table shows that 2% i.e. 10 women nurtures the child, 5% i.e. 27 women said that their parents have the responsibility. Only 3 said that their in-laws (1) and other (2) helps in nurturing of the child. 92% said not applicable.

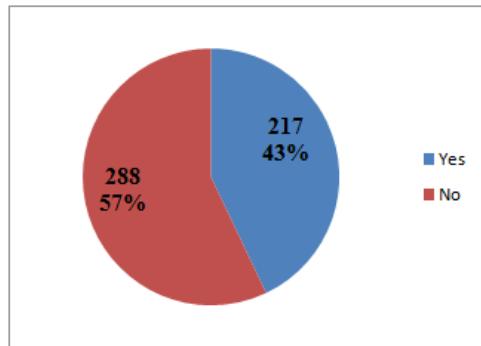
36. If widowed, how you get the income?

Particulars	Count	%
Self	17	3%
In-Laws	2	0.4%
Parents	2	0.4%
Others	9	2%
NA	475	94%
Grand Total	505	100%

The table shows that 3% i.e.17 of the widow earn to support themselves and the rest are supported by their parents or inlaws or other sources like organisations, relatives, charity etc.

Domestic Violence

37. Have you ever faced domestic violence?



As per the chart 43% i.e. 217 of the women said that they had experienced domestic violence.

38. If you want to report domestic violence, where will you go?

Particulars	Count	%
Police	76	15%
Qazi / Darul Kazi	4	1%
Family	163	32%
NGO	8	2%
Court	11	2%
Others	2	0%
NA	226	45%
Don't Know	15	3%
Grand Total	505	100%

In the table it clearly states that 32% i.e. 163 of the women said if they wanted to report violence, they would first approach the parents and elders in the family. A good 27% said they will use alternate resources i.e. police, Qazi, Family, Court, NGO to report violence

39. Have you heard about AIMPLB (All India Muslim Personal Law Board)

Particulars	Count	%
Yes	56	11%
No	449	89%
Grand Total	505	100%

As per the table only 11% i.e.56 women had heard about the AIMPLB whereas the majority 89% i.e.449 women had not heard of AIMPLB.

40. Do you have any property in your own name?

Particulars	Count	%
Yes	80	16%
No	425	84%
Grand Total	505	100%

As per the table only 16% i.e.80 women have property in their name whereas the majority 84% i.e.425 women said that they did not have a property on their name.

41. If yes, who has given this property?

Particulars	Count	%
Self earnings	13	3%
Parents	21	4%
Husband	44	9%
Others	2	0%
NA	425	84%
Grand Total	505	100%

The table shows 9% i.e. 44 received property from their husband. 4% i.e. 21 women said their parents had gifted them the property and 3% got it out of their earnings.

42. How much is the value of this property?

Particulars	Count	%
< 1 Lakh	5	1%
1 to 5 Lakh	33	7%
5 to 10 Lakh	18	4%
10 to 20 Lakh	16	3%
20 to 40 Lakh	6	1%
40 Lakh	2	0%
NA	425	84%
Grand Total	505	100%

Of the 80 women that is nearly 50% i.e. 38 of them had property that was worth less than 5 lakhs. Only 2 women said that they had property worth 40 lakhs.

43. Is the existing house in your name?

Particulars	Count	%
Yes	75	15%
No	430	85%
Grand Total	505	100%

Only 15% i.e.75 women affirmed that the current house that they are staying is in their name. 85% of the women reply in the negative.

Part II : Views of Muslim Women

44. What should be the age of marriage for women in the Muslim community?

Particulars	Count	%
15 years	7	1%
Between 15-18 years	77	15%
> 18 Years	261	52%
> 21 Years	160	32%
Grand Total	505	100%

In the study 16 % of the women said the right age of marriage is below 18 years whereas 52% i.e.261 women said the girl should be above the age of 18 years and yet another 32% i.e. 160 women said it should be over 21 years.

45. What should be the age of marriage for men in the Muslim community?

Particulars	Count	%
On Purberty	2	0%
> 18 years	9	2%
> 21 years	220	44%
> 25 years	274	54%
Grand Total	505	100%

In the study 2 % i.e.11 of the women said the right age of marriage is below 18 years whereas 44% i.e.220 women said the boy should be above the age of 21 years and yet another 54% i.e.274 women said it should be over 25 years.

46. When should a Muslim woman get her Meher?

Particulars	Count	%
At the time of Nikaah	474	94%
Any time during marriage	26	5%
At the time of Divorce	4	1%
At the time of widow	1	0%
Grand Total	505	100%

In the study 94 % i.e.474 of the women said that meher should be given at the time of Nikaah whereas 5% said it should be given any time during marriage and yet another 1% i.e.5 women said it should be given at the time of divorce or widowhood.

47. How should the Meher amount be decided?

Particulars	Count	%
Based on the salary / property / income	457	90%
Based on the girls status	37	7%
Don't Know	11	2%
Grand Total	505	100%

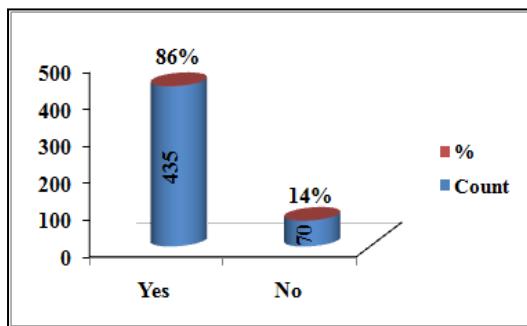
In the study 90% of the women felt that the Meher amount should be decided based on the income and property of the groom.

48. If Meher is not received at the decided time, what should be done?

Particulars	Count	%
Husband to be put behind bars (prison)	69	14%
Husband should pay penalty	103	20%
Husband should pay double amount of Meher	240	48%
Don't Know	93	18%
Grand Total	505	100%

48 % i.e.240 of the women said the husband should pay double the amount of meher if not given at the time of Nikaah whereas 14% said the husband should be put behind bars and yet 20% said he should pay penalty.

49. Should the Meher amount be equivalent to the groom's yearly income?



As per the study 86 % i.e.435 of the women affirmed that the amount of meher must be equivalent to the groom's annual income.

50. If the bridegroom is a businessperson or a farmer then how should the Meher be decided?

Particulars	Count	%
Based on the husband share of income/profit	438	87%
Based on the full family income/profit	46	9%
Don't Know	21	4%
Grand Total	505	100%

As per the study 87 % i.e.438 of the women said that the meher amount must be decided based on the husband's share in the income/profit whereas 9% said it should be based on the family income/profit. 4% of the women said they don't know.

51. During the subsistence of your marriage, would you allow your husband to marry another woman?

Particulars	Count	%
Yes	21	4%
No	484	96%
Grand Total	505	100%

The study clearly states that 96 % i.e.484 of the women said that they would not allow their husband to have another wife.

52. Should the law allow more than one marriage?

Particulars	Count	%
Yes	170	34%
No	335	66%
Grand Total	505	100%

The study clearly states that 66 % i.e.335 of the women said that the law should not allow more than one marriage.

53. With the permission of first wife should more than one marriage be allowed?

Particulars	Count	%
Yes	67	13%
No	438	87%
Grand Total	505	100%

The study clearly states that 87 % i.e.438 of the women said that even if the first wife should permit the man should not be allowed more than one marriage.

54. What if first wife is suffering from deadly disease should more than one marriage be allowed?

Particulars	Count	%
Yes	194	38%
No	311	62%
Grand Total	505	100%

The study clearly states that 62 % i.e.311 of the women said that even if the first wife is suffering from deadly disease even than a man should not be allowed to marry more than once.

55. If first wife is unable to conceive child should more than one marriage be allowed?

Particulars	Count	%
Yes	181	36%
No	324	64%
Grand Total	505	100%

The study clearly states that 64 % i.e.324 of the women said that even if the first wife is unable to conceive even than a man should not be allowed to marry more than once.

56. During the subsistence of her first marriage should the woman be allowed to remarry?

Particulars	Count	%
Yes	22	4%
No	483	96%
Grand Total	505	100%

The study clearly states that 96 % i.e.483 of the women said that even women during the subsistence of her first marriage should not be allowed to re-marry.

57. Should the husband seek the permission of the court before the second marriage?

Particulars	Count	%
Yes	280	55%
No	225	45%
Grand Total	505	100%

The study clearly states that 55% i.e.280 of the women said that the man should seek permission from court before the first marriage.

58. Should the husband's second marriage be allowed only to widows?

Particulars	Count	%
Yes	107	21%
No	398	79%
Grand Total	505	100%

The study clearly states that 79% i.e.398 of the women said that the man should not be allowed to re-marry even if it is with a widow.

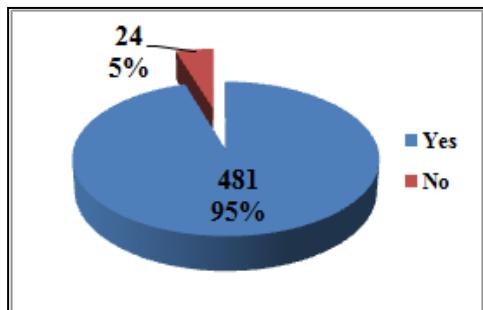
59. Should the permission for second marriage be given if the population of women is more than man.

Particulars	Count	%
Yes	34	7%
No	471	93%
Grand Total	505	100%

The study clearly states that 93% i.e.471 of the women said that the man should not be given

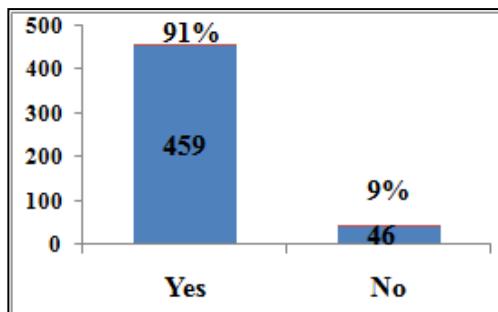
permission for second marriage even if the population of women is more than man.

60. The government has put a legal ban on the practice on unilateral divorce. Do you think it's right?



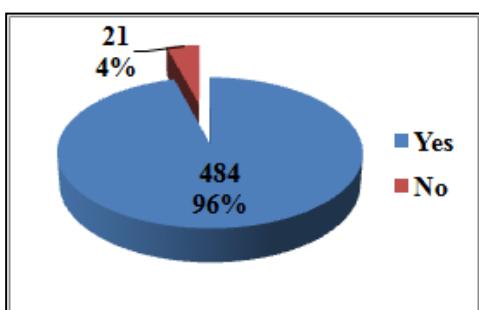
The study clearly states that 95% i.e.481 of the women said that government has done the right thing by putting a legal ban on the practice of unilateral divorce.

61. The government is planning to implement 3 years imprisonment to men who unilaterally divorce their wife. Do you think it's right?



The study clearly states that 91% i.e.459 of the women confirmed that they think it's the right decision by the government to implement 3 years imprisonment against men who unilaterally divorce their wife.

62. Should arbitration be made mandatory before divorce is finalised?



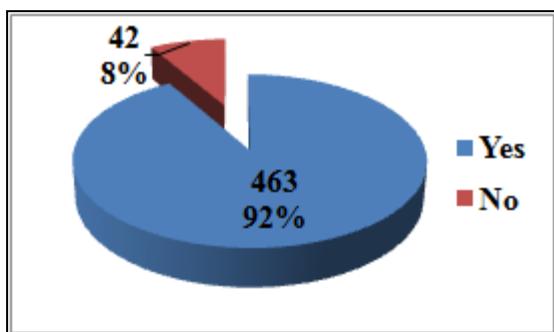
The study clearly states that 96% i.e.484 of the women confirmed that arbitration should be made mandatory before divorce is finalised.

63. How long should be process of arbitration?

Particulars	Count	%
1 Month	108	21%
3 Months	226	45%
6 Months	143	28%
1 Year	28	6%
Grand Total	505	100%

The study states that 45% i.e.226 of the women want that 3 months should be the process for arbitration, 28% i.e.143 women said the process of arbitration should be for 6 months whereas 21% i.e.108 said they the arbitration process should be for 1 month. Only 6% said that the process should be for 1 year.

64. Should the Qazi who sends notice of unilateral divorce be punished?



The study clearly states that 92% i.e.463 of the women agreed that the Qazi who sends notice of unilateral divorce should be punished.

65. Should the woman forego her meher if she is demanding khula?

Particulars	Count	%
Yes	154	30%
No	351	70%
Grand Total	505	100%

The study clearly states that 70% i.e.351 said that the women should not forego her meher if she is demanding khula.

66. Should the legal method of divorce be Talaq-e-Ahsan?

Particulars	Count	%
Yes	473	94%
No	32	6%
Grand Total	505	100%

The study clearly states that 94% i.e.473 of the women agreed that the legal method of divorce should be Talaq-e-Ahsan.

67. Should Talaq-e-Mubarah be the part of the legal method of divorce?

Particulars	Count	%
Yes	490	97%
No	15	3%
Grand Total	505	100%

The study clearly states that 97% i.e.490 of the women agreed to Talaq-e-Mubarah being made part of the legal process of divorce.

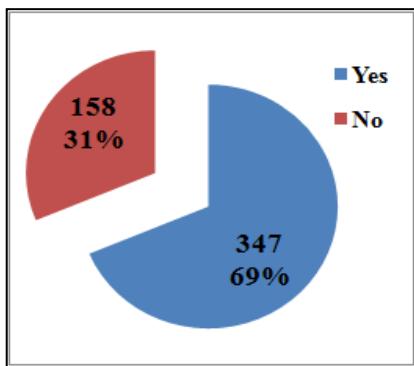
Custody

68. In the event of divorce who should retain the custody of the child/children?

Particulars	Count	%
Wife	461	91%
Husband	44	9%
Grand Total	505	100%

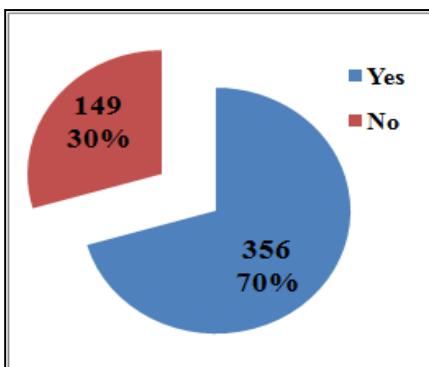
The study clearly states that 91% i.e. 461 of the women felt that in the event of divorce the custody of the child should be with the wife.

69. Should the custody of the son continue to remain with the mother even after the son turns 7 years?



The study clearly states that 69% i.e. 347 of the women agreed that in the event of divorce the custody of the son should remain with the mother even if the son is beyond the age of 7 years.

70. Should the custody of the daughter continue to be with the mother even after puberty?



The study clearly states that 70% i.e. 356 of the women agreed that the custody of the daughter should remain with the mother even past the puberty of the daughter.

71. If the custody of the child/children is with the mother, should she claim maintenance from the ex-husband?

Particulars	Count	%
Yes	451	89%
No	54	11%
Grand Total	505	100%

The study clearly states that 89% i.e. 451 of the women agreed that the mother should claim maintenance for the child/children from the ex-husband.

72. In the decision of the custody of the child/children, should the child's permission be taken?

Particulars	Count	%
Yes	478	95%
No	27	5%
Grand Total	505	100%

The study clearly states that 95% i.e. 478 of the women agreed that the child's consent is important before taking any decision about its custody.

Adoption

73. Are you aware that a Muslim couple cannot legally adopt a child?

Particulars	Count	%
Yes	70	14%
No	435	86%
Grand Total	505	100%

The study states that 86% i.e. 435 of the women had no idea that a Muslim couple cannot legally adopt a child.

74. Are you aware of the reason why Muslim couple cannot adopt a child?

Particulars	Count	%
Yes	36	7%
No	469	93%
Grand Total	505	100%

The study clearly states that 93% i.e. 469 of the women said they were not aware of the reason why the Muslim couple cannot legally adopt a child.

75. Are you aware that if you adopt a child, it cannot be a legal heir to your property?

Particulars	Count	%
Yes	80	16%
No	425	84%
Grand Total	505	100%

The study clearly states that 84% i.e. 425 of the women said they are not aware that even if a Muslim couple adopt a child, he/she cannot legally be the natural heir to your property

76. Do you think that adoption of a child should be made legal?

Particulars	Count	%
Yes	467	92%
No	38	8%
Grand Total	505	100%

The study clearly states that 92% i.e. 467 of the women said adoption of a child should be made legal.

77. Do you think that the adopted child should be the legal heir to your property?

Particulars	Count	%
Yes	456	90%
No	49	10%
Grand Total	505	100%

The study clearly states that 90% i.e. 456 of the women think that the adopted child should be the legal heir to the property.

Views on Codification of Muslim Personal Law

78. Are you aware that in India Muslim Personal Law is not codified?

Particulars	Count	%
Yes	58	11%
No	251	50%
Don't Know	196	39%
Grand Total	505	100%

The study clearly states that 89% i.e. 447 of the women said they are were not aware/did not know that there is no Codified Muslim Personal Law in India. Only 11% women were aware that India does not have a codified Muslim Personal Law.

79. Are you aware that in other Muslim countries the Muslim Personal Law is codified?

Particulars	Count	%
Yes	69	14%
No	262	52%
Don't Know	174	34%
Grand Total	505	100%

The study clearly states that 14% i.e. 69 of the women said they were aware that other Muslim countries have a codified Muslim Personal Law. A large section 52% said no and the remaining 34% said they had no idea.

80. If the government codifies the Muslim Personal Law do you think women will get justice?

Particulars	Count	%
Yes	464	92%
No	13	3%
Don't Know	28	5%
Grand Total	505	100%

The study states that 92% i.e.464 of the women affirmed that the codified law will help women get justice. 3% of the women said No and the rest 5% said that they don't know if it will help.

81. Should the Indian government help the Muslim community to codify the Muslim Personal Law?

Particulars	Count	%
Yes	484	96%
No	8	2%
Don't Know	13	2%
Grand Total	505	100%

The study states that 96% i.e.484 of the women said the Indian government should help the Muslim community to codify the Muslim Personal Law.

82. Should the religious leaders support the women's demand for a codified the Muslim Personal Law?

Particulars	Count	%
Yes	441	87%
No	50	10%
Don't Know	14	3%
Grand Total	505	100%

The study clearly states that 87% i.e. 441 of the women affirmed that the religious leaders should support the women's demand for codified Muslim Personal Law. 10% women were not in favour and another 3% were not sure.

83. Should the law experts and religious scholars support the Muslim women's demand for a codified Muslim Personal Law?

Particulars	Count	%
Yes	472	93%
No	15	3%
Don't Know	18	4%
Grand Total	505	100%

The study states that 93% i.e.472 of the women affirmed that the law experts and religious scholars must support the women's demand for a codified Muslim Personal Law.

84. Should the Qazi and the DarulQazas obey and implement the codified Muslim family law?

Particulars	Count	%
Yes	464	92%
No	13	3%
Don't Know	28	5%
Grand Total	505	100%

The study states that 92% i.e.464 of the women affirmed that Qazi and the Darul Qazas must obey and implement the law passed. 3% of the women said No and the rest 5% said that they were not sure.

85. Should the Muslim family law be implemented by the government?

Particulars	Count	%
Yes	490	97%
No	7	1%
Don't Know	8	2%
Grand Total	505	100%

The study clearly states that 97% i.e.490 of the women said the implementation of Muslim personal law should be done by the Indian government.

86. Should the Qazi's work on legal aid be regulated by the government?

Particulars	Count	%
Yes	484	96%
No	10	2%
Don't Know	11	2%
Grand Total	505	100%

The study states that 96% i.e.484 of the women affirmed that the government must monitor and regulate the work of the Qazis.

87. Should there be cooperation between the Qazi and the Courts?

Particulars	Count	%
Yes	470	93%
No	20	4%
Don't Know	15	3%
Grand Total	505	100%

The study states that 93% i.e.470 of the women said there should be cooperation between the Qazi and the courts.

88. Should Muslim women provide legal aid and support to another Muslim woman?

Particulars	Count	%
Yes	492	97%
No	7	1%
Don't Know	3	1%
May be	3	1%
Grand Total	505	100%

The study clearly states that 97% i.e.492 of the women affirmed that Muslim women should provide legal aid and support to other Muslim women.

MUSLIM FAMILY LAW, 2020

Draft of the Bill

Third Amendment

A Bill to consolidate, clarify and codify the provisions of Muslim family law and related procedure regarding marriage, divorce, maintenance during marriage, maintenance after divorce and widowhood, custody and maintenance of children, adoption and inheritance.

A. STATEMENT OF OBJECTS AND REASONS

- a) The Muslim Personal Law (Shariat) Application Act, 1937 was passed to ensure that customary law does not take the place of Sharia. The attempt at codifying the provisions of the Sharia or the Muslim Personal Law began with the passing of the Dissolution of the Muslim Marriage Act in 1939. However, the process stopped till the passing of the Protection of Women on Divorce Act, 1986. Barring these two legislations the other aspects of Muslim Personal Law has remained uncodified. In the absence of a codified law, customary practices which are divergent from the values and principles of the Quran have emerged. Globally, new codes have been introduced in Muslim countries with the hope that they will introduce the rule of law in family matters and end arbitrariness and variances in judicial decisions. In India there is a need to have a comprehensive codified family law for Muslims to ensure justice within the family. This Bill is a step towards that end.
- b) Based on the Constitutional provision, just as personal laws of other religious communities have been codified, the Muslim personal law must also be codified in a way that it is in consonance with the Fundamental Rights enshrined in the Constitution.
- c) Based on the values, principles and injunctions of the Quran, this Bill is based on the spirit of equality and justice which are the basic premise of an Islamic law.
- d) Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by United Nations in 1979 and ratified by India in 1993 requires that all forms of discrimination against women be condemned and states must take appropriate legislative measures to prohibit all forms of discrimination against women and establish legal protection of their rights on an equal basis with men.
- e) It is imminent that India joins the league of other nations which have codified their family law in order to bring uniformity and certainty in the application of personal laws without infringing on the right of communities to be governed by their own personal laws.

B. PRELIMINARY a. Short title and extent

- i. This Act may be called The Muslim Family Law.
- ii. It extends to the whole of India except the States of Jammu and Kashmir and applies to all Muslim citizens of India.
- iii. It shall come in to force on such date as the Central Government may appoint by notification in the Official Gazette.

b. Application of the Act

- i. This act applies to all Muslims as per the definition given in this Act.
- ii. For matters concerning Muslim marriage, divorce, maintenance during marriage, maintenance after divorce and widowhood, custody and maintenance

of children, adoption and inheritance between parties married according to Muslim Law, the provisions of this Act shall apply notwithstanding anything contained in any other law for the time being in force.

- iii. A marriage solemnized between Muslims before the commencement of this Act, which was otherwise valid, shall not be deemed to be invalid by reasons rendering the marriage invalid under this Act. This Act shall have a prospective effect only.
- iv. Nothing contained in this Act shall be deemed to effect the provisions contained in The Special Marriage Act, 1954 with respect to marriages between Muslims solemnized under that Act, whether before or after the commencement of this Act.

c. Overriding effect of Act

- i. Any other law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect in so far as it is inconsistent with any provision contained in this Act.
- ii. Any other provision of uncodified shariah law which is in contravention to the provisions of this law hereby stands cancelled.

Note

- a) Amended Dissolution of Muslim Marriage Act, 1939 has been incorporated in this Act.
- b) The Muslim Women's Protection Act, 1986 will continue to apply to the Muslim community except those provisions which are in contravention of the provisions of this Act.
- c) The Muslim women will continue to take advantage of the other laws of the land like The Dowry Prohibition Act, 1961, Protection of Women from Domestic Violence Act, 2005, Juvenile Justice [Care and Protection of Children] Act, 2000, Prohibition of Child Marriage Act, 2006 and other laws as deemed fit.

C. DEFINITIONS

a. Arbitrators:

Individuals in welfare agencies registered under the relevant government Act as well as registered under this Act according to the Rules.

A qazi can also act as an Arbitrator provided she/he is registered as an Arbitrator under this Act.

b. Court:

In any area where there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.

c. Halala:

It is a practice where a woman is made to do a consummated nikaah with another man in order to go back to her former husband.

d. Iddat:

It is a period of waiting for a woman who has been divorced or whose husband has died, upon the expiry of which a remarriage is permissible. In this period no other restrictions are enforceable except marriage and the woman is free to continue with all her activities.

- i. This period is three menstrual courses after the date of divorce, if she is subject to menstruation
- ii. It is three lunar months after her divorce, if she is not subject to menstruation
- iii. This period of waiting is 4 months and ten days after the date of death of the husband
- iv. If she is pregnant at the time of the death of her husband, the period extends between the death of the husband and the delivery of her child.

e. Marriage:

Marriage or Nikah is a solemn pact or mithaq-e-ghaliz' between a man and a woman, soliciting each other's life companionship, which in law takes the form of a contract or aqd. [Ref: Section 2 of Muslim Women (Protection of Rights on Divorce) Act, 1986]

f. Maintenance:

Maintenance includes an entitlement to food, clothing, residence, educational and medical expenses and all other personal expenses of woman according to the lifestyle the parties have enjoyed during their marriage and the economic status of the husband.

g. Mehr [Dower]:

It is the Quranic right of women constituting a consideration for marriage and meant for the financial security of the bride in terms of a sum of money or other property or both to be paid to the bride by the bridegroom at the time of the nikaah as a condition precedent for solemnization of their marriage as specified in the Nikaahnama.

h. Muslim:

Any person by birth or by conversion who professes the religion of Islam, in other words accepts the unity of God and the prophetic character of Mohammed. [Ref: Amir Ali]

i. Nikaahnama:

The enforceable written marriage contract wherein the consent of the parties and other terms and conditions of marriage are stipulated and signed by both parties, qazi as well as four witnesses, two from each party of either sex. [Annex 1]

j. Prohibited Degrees:

Degrees of prohibited relationship as specified within which marriage is not permissible. [Annex 2]

k. Registered Qazi:

Qazi of either sex undergone training in Islamic law by a registered organization and registered under this Act as per the Rules.

l. Registered Welfare Organizations

After coming into force of this Act any organization, registered under any law for the time being in force in India, and working for the welfare of men, women, children, youth, aged, disabled and the likes, and providing counselling services and other psycho-social support in their day to day activities, and is also registered under this Act.

m. Unsound Mind:

A person of unsound mind is an adult who from infirmity of mind is incapable of managing himself or his affairs. [Ref: Black's Law Dictionary]

n. Witness:

Adults of either sex with address and identity proof.

D. SOLEMNIZATION AND REGISTRATION OF MUSLIM MARRIAGES

a. Conditions relating to Solemnization of Muslim Marriage

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two Muslims may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:

- i. Every marriage solemnized under this Act shall include payment of Mehr as specified in this Act.
- ii. Express and unambiguous consent of both parties is necessary before a marriage contract becomes valid. This consent must have been obtained without undue influence, coercion and fraud.
- iii. The bridegroom has completed the age of twentyone years and the bride has completed the age of eighteen years authenticated from reliable proofs or records of the date of birth.
- iv. The parties are not within the degrees of prohibited relationship as mentioned in the Annex no. 2 of this Act
- v. In the subsistence of one marriage a man cannot marry another woman.

b. Procedure for Solemnization of Muslim Marriage

- i. For the solemnization of the marriage, the parties have to approach a qazi
- ii. The parties have to send a letter of application to a qazi 30 days before the date of solemnization where either bride or groom is residing for the last 30 days.
- iii. The procedure of solemnization would include ijaab [proposal of the marriage] and qubool [acceptance of the proposal]. Both the proceedings of ijaab and qubool must happen in the same sitting in the presence of witnesses and the qazi.
- iv. Nikaahnama must be filled up and original, truecopies of the same is to be provided to both the parties.

c. Responsibilities of the Qazi

- i. The qazi must take separate application from both the parties asking the said qazi to solemnize the said marriage.
- ii. The said qazi shall ensure that both parties have fulfilled the conditions related to the solemnization of marriage as specified in this Act.
- iii. The said qazi shall demand from both parties' authentic proofs pertaining to dates of birth and their place of residence and retain copies of the same after having them personally authenticated.
- iv. The qazi must ensure that the bride knows andconsents to marry the bridegroom if his previous wife has been divorced or deceased and has children from the said marriage.
- v. The qazi solemnizes the said marriage by filling up the nikaahnama as annexed to this Act. The nikaahnama shall be signed by the said qazi, the contracting parties and two witnesses from each party present at the time of marriage.
- vi. A copy of the certified nikaahnama shall be aconclusive proof of the solemnization of that marriage.
- vii. The qazi shall maintain a proper record of the marriage and give duly certified true copies of the nikahnama to both the parties.
- viii. Aqazi can act as an Arbitrator if it is also registered under this Act as an Arbitrator

- ix. The qazi must ensure that the parties submit the divorce papers of previous marriage if divorced and death certificate in case of the death of the previous spouse. In case where the party is marrying for the first time, it must submit to the qazi affidavit stating that it is his/her first marriage.
- x. The qazi must meet the parties to the marriage separately as well as together to ensure that the parties know about each other's background and also to ensure their willful and free consent to the said marriage.

d. Mehr

- i. The minimum amount of mehr shall not be less than his one full annual income which could be his income from property, business, agricultural or commercial land and salary. It can be given either in cash/gold/kind.
- ii. If income/salary cannot be determined then the mehr can be fixed based on the minimum wages of his occupation where he is residing.
- iii. The mehr must be prompt and must be paid to the bride at the time of the marriage.
- iv. The mehr is the wife's exclusive property to be used by her at her absolute discretion without any manner of interference from parents and relatives of both parties.
- v. The wife cannot be forced or compelled or emotionally pressurized to forego/return the mehr anytime during the subsistence of marriage or after divorce or widowhood.
- vi. The groom/husband and his family cannot demand dowry nor can they casually and innocently express their desire for dowry before or during the subsistence of marriage.

e. Registration of Muslim Marriages

- i. Immediately on solemnization of the marriage the signed nikaahnama should be registered by the parties at the local state bodies like the Panchayat, Block Office, District office, Ward Office or Marriage Registrar Office under the relevant marriage registration Act.
- ii. The parties must ensure that they each have true, original copies of the registration certificate.
- iii. The qazi may take additional responsibility of registration of the said marriage if the parties wish so.

f. Responsibility of the Witness:

The witnesses must sign the relevant documents and ensure that the party to which they are supporting as witness must have the relevant documents, which is;

- i. Death certificate if the spouse of the party has died
- ii. Divorce papers if the party has been divorced
- iii. Whether the party they are supporting is previously married.

E. TEMPORARY PROHIBITIONS IN MARRIAGE a. Irregular Marriage (FasidNikaah)

Any marriage solemnized shall be considered irregular:

- i. If two adult witnesses are not present at the time of nikaah.
- ii. If the marriage has been solemnized during the period of iddat
- iii. If the marriage has been solemnized without the qazi
- iv. If the marriage is not registered as mentioned in this Act
- v. If the amount of mehr is not paid

b. Regularization of Irregular Marriage

All marriages termed irregular in this Act can be regularized. The rights of women and children accruing from the said marriage are not affected if the marriage is not regularized. The regularization process would include:

- i. Approaching a qazi along with witnesses and attaching affidavits from all witnesses affirming the said marriage.
- ii. Approaching a qazi after which the parties will give an affidavit stating that the period of iddat is over deeming their marital status legal under this Act.
- iii. Approaching a qazi and resolemnise the marriage with a fresh nikhanama
- iv. The parties themselves should take their filled upnikhanama along with an affidavit and register it with the authority as specified in this Act.
- v. Payment of mehr as promised.

F. INVALID MARRIAGE

Any marriage solemnized under this Act shall be an invalid marriage:

- a. If the consent of either party to the marriage contract has been obtained by force, coercion, undue influence or fraud.
- b. If the bride and groom are within the prohibited degrees as specified in Annex 2 of the Act.
- c. If the bride and groom have not completed 18 and 21 years of age respectively
- d. If the husband has entered into another marital contract in the subsistence of a marriage contract, the second marriage will be an invalid marriage.

F.1 In case of underage marriage the provisions of The Prohibition of Child Marriage Act, 2006 will apply.

F.2 In any of the above four incidents of invalid marriage the qazi who has solemnized the said marriage will be penalized.

F.3. The rights of women in any of the above four incidents of invalid marriage must be protected.

G. DIVORCE

- a. This Act recognizes 3 forms of separation between husband and wife:
 - i. Demand for divorce by wife [Khula/faskh] ii. Demand for divorce by husband [Talaak] iii. Divorce by mutual consent [Mubarah]
- b. In the event of Talaak, Khula/Faskh and Mubarah, the parties will follow the Talaak-e-Ahsan method of divorce.
- c. No rights of the wife are forfeited in the event of Khula.
- d. The wife has the right to refuse to stay under the same roof during iddat if she fears physical and emotional harm.
- e. The demand of khula by wife is not dependent on the consent of the husband. The Arbitrators can terminate the marriage in the absence of consent of the husband in case of khula [faskh-e-nikaah].
- f. The procedure of Talaak-e-Ahsan also signify restitution of conjugal rights.
- g. In the event of divorce by mutual consent i.e. mubarah;
 - i. Both the parties to the marriage present a joint application to for the dissolution of their marriage on the ground that they have mutually agreed to dissolve the marriage.
 - ii. After the joint application is submitted, the period

of iddat follows. After 3 months or 3 monthly courses the divorce is finalized. Since this iddat period is required to ensure absence of pregnancy, medical test may be considered for verification or absence of pregnancy.

- iii. The rights of women are to be ensured in the event of mubarah

H. PROCEDURE OF DIVORCE

A Muslim marriage can be dissolved either in the court or outside the court.

H. 1.Dissolution of Marriage Through Court:

H.1.1. Grounds for decree for dissolution of marriage by wife:

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage from the court on any one or more of the following grounds, namely that the:

- a) Whereabouts of the husband have not been known for a period of two years;
- b) Husband has neglected or has failed to provide for her maintenance for a period of two years;
- c) Husband has failed to perform, without reasonable cause, his marital obligations for a period of two years
- d) Husband has been sentenced to imprisonment for a period of two years or upwards;
- e) Husband was impotent at the time of the marriage and continues to be so;
- f) Husband has been of unsound mind for a period of two years or has been suffering from leprosy or a virulent venereal disease;
- g) Husband has, after the solemnization of marriage, treated her with cruelty; that is to say:

- I. Habitually assaults her or makes life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
- II. Associates with persons of evil repute or leads an infamous life, or
- III. Attempts to force her to lead an immoral life, or
- IV. Disposes of her property or prevents exercising of legal rights over it, or
- V. Obstructs in the observance of religious profession or practice, or

- h) Husband has maintained, after solemnization of marriage, sexual relations with persons other than his own wife;
- i) That due to irretrievable breakdown of marriage, life together has become impossible or intolerable;

I. Provided that,

- i. the woman may be permitted to file a petition for divorce, within such reasonable time period which is shorter than the time periods provided in clause (H.1.1), (a), (b), (c), (d) and (f) of this section, if the court is satisfied that the same is expedient in the interest of justice and equity;
- ii. no decree shall be passed on ground H.1.i(d) until the sentence has become final;
- iii. a decree passed on ground H.1.1(a) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorized agent within that period and satisfies the court that he is prepared to resume conjugal relations, the court shall set aside the said decree; and
- iv. before passing a decree on ground H.1.1(e) the court shall, on application by the husband, make an order requiring the husband to satisfy the court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the court within such period, no decree shall be passed on the said ground.

H.1.2. Grounds for decree of dissolution of marriage by husband:

A man married under Muslim law shall be entitled to obtain a decree for the dissolution of his marriage from the court on any one or more of the following grounds, namely that the:

- a) whereabouts of the wife have not been known for a period of two years;
- b) wife has been sentenced to imprisonment for a period of two years or upwards;
- c) wife has been incurably of unsound mind for a period of two years or has been suffering from leprosy or a virulent venereal disease;
- d) wife has, after the solemnization of marriage, treated him with cruelty;
- e) wife has maintained, after solemnization of marriage, sexual relations with persons other than her own husband;
- f) That due to irretrievable breakdown of marriage, life together has become impossible or intolerable;

I. Provided that,

- i. a man may be permitted to file a petition for divorce, within such reasonable time period which is shorter than the time periods provided in clause H.1.2(a), (b) and (c) of this section, if the court is satisfied that the same is expedient in the interest of justice and equity;
- ii. no decree shall be passed on ground H.1.2.(b) until the sentence has become final;
- iii. a decree passed on ground H.1.2.(a) shall not take effect for a period of six months from the date of such decree, and if the wife appears either in person or through an authorized agent within that period and satisfies the court that she is prepared to resume her conjugal relations, the court may set aside the said decree.

II. Notice to be served on heirs of the spouse, when the spouse's whereabouts are not known.

- i. the names and addresses of the persons who would have been the heirs of the spouse under Muslim law if they had died on the date of the filing of the complaint shall be stated in the complaint,
- ii. notice of the suit shall be served on such persons, and
- iii. such persons shall have the right to be heard in the suit.

III. Procedure to be followed before granting decree of divorce

Upon receiving the application for decree of dissolution of marriage from either of the party to marriage on any of the grounds mentioned above, the court shall:

- i. appoint three Arbitrators - one Arbitrator each from the family of both parties as nominated by the parties themselves and one member from a welfare organization registered as per the provisions of this Act for the purpose of attempting reconciliation between the parties within 30 days of the date of application, provided that at least one Arbitrator should be a woman;
- ii. direct the parties to attend and fully participate in the reconciliation proceedings to be commenced by Arbitrators within two weeks of their appointment; iii. direct the Arbitrators to conduct their duties in a fair, just and impartial manner;
- iv. direct the Arbitrators to submit their report to the court within a period of 3 months from the commencement of reconciliation proceedings indicating the conclusion of the reconciliation process and the reasons for reaching that conclusion;
- v. after receiving the report of the Arbitrators, send a copy each to both the parties;
- vi. direct both parties to submit objections, if any, to the report within a period of 30 days from the date of receiving the report;

vii. if the parties have reached an agreement and differences are resolved, dismiss the suit or if the parties fail to reach an agreement, continue the procedure for the suit for decree of dissolution of marriage.

IV Provided that the court may make such interim orders, notwithstanding anything contained in any other law for the time being in force, for maintenance of the wife and children, if any, as appropriate for the whole or part of the duration of the procedure laid down in this section.

V. Settlement of rights of the parties before final decree

i. Notwithstanding any proceeding initiated under this Act, every woman shall have the right to institute any proceeding, simultaneous or on conclusion of proceedings under this Act, under any or all of the following legislations:

- (a) Muslim Women (Protection of Rights on Divorce) Act, 1986.
- (b) Protection of Women from Domestic Violence Act, 2005.
- (c) S.125 of the Code of Criminal Procedure, 1973.
- (d) Any other law for the time being in force, applicable to her.

Provided that it shall be the duty of the court to ensure that the woman is aware of this right.

ii. The court may pass such interim orders or make such provisions in the decree as may deem just and proper, when so petitioned, related to maintenance, inheritance, custody and education of children, consistent with their wishes wherever possible. The court may, even after the decree, upon application by petition for this purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as may deem just and proper to the court. The court may also from time to time vary any such orders and provisions previously made. Provided that the application with respect to the interim maintenance and education of the children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent

H.2. Dissolution Of Marriage Outside Court

The grounds on which either party is seeking divorce are the same as mentioned in H.1.1 and H.1.1

Procedure

Dissolution of marriage proceedings, by whatever name called, initiated by either or both the parties to a marriage without the intervention of a court, to be concluded through the following procedure only:-

i. STEP 1

As a first step, when there is a marital discord, the husband/ wife will reason out with each other through discussions.

ii. STEP 2

If differences persist, then as a next step, the parties sexually distance themselves from each other in the hope that this temporary physical separation may encourage them to unite.

iii. STEP 3

And if even this fails, they will once again discuss the seriousness of the situation and try to bring about reconciliation.

iv. STEP 4

If the dispute still remains unresolved, as a fourth step, the parties to the dispute must place their matter before two Arbitrators nominated by the family, one from the family of each spouse, for resolution.

The family Arbitrators must approach Arbitrators of a registered organization, as mentioned in this act, for the resolution of their marital discord.

- a) It is only after the failure of the aforementioned four attempts at reconciliation that the first talaq is to be declared by the Arbitrators in the presence of two witnesses and both the parties. This declaration of divorce is to be followed by a waiting period called the iddat. Not more than two divorces can be pronounced within this period, the duration of which is three monthly courses.
- b) For women who have attained menopause or suffer from amenorrhea the period of iddat is three months, and in the case of pregnant women it is till the termination of pregnancy.
- c) And if the parties are unable to unite during iddat, the second and the final irrevocable talaq can be pronounced by the Arbitrators but only after the expiry of the iddat. Once the second and the final talaq has been invoked the marital bond is severed and the parties cease to be of any relation to each other.
- d) However, even after iddat has lapsed and before the pronouncement of the second and final talaak by the Arbitrators, the contending parties have a chance to reunite by recontracting the marriage, provided the final talaq has not been declared.
- e) In other words, after the expiry of iddat, the parties are given the options of remarriage or permanent separation.
- f) All decisions taken before the witnesses and Arbitrators must be recorded. The final divorce at the end of iddat must also be recorded in a talaaknama by the Arbitrators.
- g) The rights of the women on divorce must be safeguarded by the Arbitrators and must be mentioned in the talaaknama.
- h) Original copies of the same must be provided to both the parties.

NOTE:

- I. The pronouncement of final talaak should be during the period of tuhr
- II. The four steps mentioned above signify restitution of conjugal rights
- III. The parties can also approach the Indian courts directly for the dissolution of their marriage
- IV. Before making the second and final pronouncement of divorce, the Arbitrators must ensure that all matters related to dower, jewelry, household items, maintenance of the women and children, inheritance, custody, education of children, residence of divorced women has been amicably and fairly settled.
- V. Once the second and final pronouncement of dissolution of marriage has been made, the parties are no longer married to each other.

H.3. Rights of women not to be affected

- i. Notwithstanding that the dissolution of marriage proceedings have been initiated at the behest of the wife (khula), it will not affect any of the rights to dower and maintenance and all rights as mentioned in Note (iv) that the wife is otherwise entitled to.
- ii. Notwithstanding the dissolution procedure, the wife shall be entitled to institute any proceeding in the appropriate court under any or all of the following legislations -
 - (a) Muslim Women (Protection of Rights on Divorce) Act, 1986.
 - (b) Protection of Women from Domestic Violence Act, 2005.
 - (c) S.125 of the Code of Criminal Procedure, 1973.
 - (d) Any other law for the time being in force, applicable to her.

H.4.Dissolution of marriage outside court through any other procedure to be invalid

After coming into force of this Act, dissolution of marriage, by whatever name called, initiated outside court shall be concluded only through the procedure mentioned in this Act. Dissolution of marriage concluded through any other procedure, in contravention of the procedure mentioned shall be invalid and without any legal effect.

H.5.Refusal of spouse to cooperate

If in a proceeding initiated by one spouse, the other spouse refuses to cooperate or refuses to participate in the reconciliation or dissolution of marriage proceedings initiated at the behest of one spouse, it may amount to cruelty of conduct and may be a ground for approaching the court for dissolution of marriage.

H.6.Decree of dissolution of marriage concluded outside court

- a) If the parties married under Muslim Law have concluded a dissolution of marriage by following the procedure provided, then they shall approach the court for a decree of dissolution of marriage.
- b) Each of the party will submit to the court an application asking for a decree of dissolution of marriage. Along with the application the parties will submit the Arbitrators' report which states the procedure followed for divorce and the confirmation that the parties have settled all issues fairly and amicably;
- c) After satisfying itself of the veracity of the affidavits and that the procedure outlined in this Act has been followed, the court shall either pass a decree of dissolution of marriage, in accordance with the other provisions of this Act, or dismiss the petition directing the parties to first comply with the requirements of this Act.
- d) Provided that if any party objects to any settlement related to dower and maintenance of wife and/or maintenance, custody, inheritance, education of children, the court may deem such an objection as non-fulfillment of procedure outlined and may dismiss the petition, requiring the parties to reach a settlement first and then file a fresh application for decree of divorce.

H.7 Effect of conversion to another faith

- a) The renunciation of Islam by a married Muslim woman or man or her/his conversion to a faith other than Islam shall not by itself operate to dissolve her/ his marriage;
- b) Provided that after such renunciation, or conversion, the woman or man shall be entitled to obtain a decree for the dissolution of their marriage on any of the grounds mentioned in Section H.1.1 and H.1.2;
- c) Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

H.8.Remarriage between parties who have concluded dissolution of marriage

- a) Parties who have concluded dissolution of marriage either before or after the coming into force of this Act and who intend to remarry each other without any compulsion, force or threat can do so by contracting a fresh marriage after the waiting period as prescribed under this Act is over.
- b) No woman can be compelled through coercion, force, threat or by any other means to undergo a consummated marriage and subsequent dissolution of that marriage before she can remarry a man with whom she was married earlier but that marriage was dissolved.
- c) Any person who compels a woman through coercion, threat, fraud or by any other means to undergo a consummated marriage and subsequent dissolution of that marriage in order to remarry a man with whom she was married earlier but that marriage was dissolved shall be punishable with an imprisonment of six months or fine or both.

- d) Any person who solemnizes or acts as a witness to a marriage knowing that the marriage is being contracted for the sole purpose of consummation and subsequent dissolution in order to compel a woman to remarry a man she was earlier married to shall be punishable with an imprisonment of three months or fine or both.
- e) Any offence punishable under this Act shall be deemed to be bailable and non-cognizable, within the meaning of the Code of Criminal Procedure, 1973 and will be triable by a Magistrate, as provided in the Code.

H.9. Automatic dissolution of marriage after lapse of a certain period of time

- a) Notwithstanding anything contained in any contract to this effect, any dissolution of marriage which takes place automatically after lapse of a certain period of time prescribed in the nikahnama or otherwise will be invalid and without any legal effect unless such dissolution follows the procedure laid down in this Act.
- b) Notwithstanding that a marriage is invalid or irregular any child of such marriage shall be deemed to be legitimate under this Act.

I. MAINTENANCE

I.1. Maintenance during Marriage and Widowhood:

Maintenance as per this Act, includes an entitlement to food, clothing, residence, educational and medical expenses and all other personal expenses of wife.

- a. The responsibility of maintaining the wife and children, even if she has an independent source of income is with the husband.
- b. During the process of arbitration, the maintenance of the wife and children will be the responsibility of the husband.
- c. During the subsistence of the marriage, if the custody of the child is with the mother then the responsibility of maintenance of the child is with the husband.
- d. Procedure for obtaining maintenance from the husband during the subsistence of marriage is the same as enlisted in Section 126 of the Code of Criminal Procedure, 1908.
- e. The widow has a right to maintenance and right to stay in matrimonial home.
- f. Maintenance during iddat period is the same as that provided during the subsistence of the marriage

I.2. Maintenance after Divorce:

- i. The provisions of maintenance after divorce are to be governed by the Muslim Women (Protection of Rights on Divorce) Act, 1986.

J. CUSTODY OF CHILDREN

J.1. Natural Guardians:

Both mother and father are considered natural guardians of the child.

J.2. Custody of children after divorce:

- a. In the event of a divorce, regardless of who amongst the spouse initiates the divorce, the decision regarding the custody of all children (male and female) will reside with the mother until they reach the age of 10 when the child can decide for himself/herself. In any case it is the responsibility of the father to provide maintenance for the child.

- b. After reaching the age of 10 the parent not having the custody can apply for custody of the child to an Arbitrator. The consent of the child will be sought by the Arbitrators.
- c. The parent who has lost the custody of the child will get fair visiting rights.
- d. Only if the child is not able to take a decision the Arbitrators shall take the decision based on the principle of the best interest of the child which includes the child's physical, emotional and economic security.
- e. In the event when the custody of the child is with the mother, it is the responsibility of the father to financially maintain the child.

J.3. Custody of the children of widows:

The mother continues to be the natural guardian of the children after she becomes a widow.

J.4. In the event that the child is not able to take a decision the Arbitrators while making a decision should keep the following guidelines in mind:

- a. Consider the quality of the upbringing of the child till date
- b. The health, education, physical and emotional safety of the child.

J.5. Custody of the child is not necessarily lost if:

- a. Either parent change their respective religion
- b. Either of the parent remarries

K. INHERITANCE

The issue of inheritance should not be linked to women's rights to mehr, dowry, gifts which a woman might receive in due course of her life.

- a. The distribution of property can be made as per the Quranic verses 4:11 and 4:12
- b. The portions mentioned in the Quran are to be allotted after making a will and clearing debts.
- c. To equalize the daughters share with the son, the parents can make a gift-deed or HIBA for their daughters so that all offsprings get equal share of the parent's property.
- d. The grandson or granddaughter can inherit from the grandfather/grandmother in case of the death of the intervening son
- e. The wife has right to receive part of husband's property and an additional specified share in lieu of her housework contributing to the conjugal home and property creation.

L. Adoption

The Supreme Court judgment in 2014 has decreed that prospective parents irrespective of their religious background are free to adopt children after the prescribed procedure. Child can be adopted by Muslim parents under the Juvenile Justice [Care and Protection of Children] Act, 2000 [as amended in 2006]

M. ARBITRATION

The parties can choose to go for Arbitration in the event of a dispute.

M.1. Nature of Arbitrators

- a. Arbitrators could be registered welfare agency which is

- b. Also registered under this Act as per the Rules.
- c. Having at least 50% women members, preferable Muslim women
- d. Has an impeccable record of social justice

M.2. Duties and Responsibilities of the Arbitrators:

- a. The Arbitrators can arbitrate on all matters mentioned in this Act.
- b. The Arbitrators must follow the rule of giving both the sides a chance to be heard.
- c. The Arbitrators are mandated to keep a record of all proceedings during this process as well as a record of all decisions taken.
- d. In case of a divorce, the Arbitrators should safeguard the rights of the women by listing them out on the divorce document and give true, original copy of the same to both the parties.
- e. After following the principles of natural justice, a just and fair decision should be made by the Arbitrators on all matters mentioned in the Act.

Annexures:

Annex 1: Nikaahnama and Iqrarnama

Annex 2: Degrees of prohibited relationships

Annex 1
Bharatiya Muslim Mahila Andolan
Nikaahnama and Iqrarnama

1. This Nikaahnama is in consonance with the Holy Quran.

This nikaahnama is entered into at _____ [City] and

_____ [State] on _____ [date, month, year] between
_____ [bride] a n d
_____ [bridegroom] 2. This Nikaahnama is subject to the exclusive jurisdiction of court where bride resides at any future date.

3. Personal details of the Bride:

a. Full name of the bride:

b. Date of Birth:

c. Educational Qualification

d. Temporary address:

e. Permanent address:

4. Marital Status: Single, Widow, Divorcee:

5. Personal details of the groom:

a. Full name of the groom:

8. Date of the Nikaah [Islamic]:

9. Full address of the place of Nikaah:

10. Time of Nikaah:

11. Brides Witness No. 1

a. Name:

b. Date of Birth:

c. Address:

d. Relation to the bride:

12. Brides Witness No. 2

a. Name:

b. Date of Birth:

c. Address:

d. Relation to the bride:

13. Bridegrooms Witness No. 1

a. Name:

b. Date of Birth:

c. Address:

d. Relation to the groom:

14. Bridegrooms Witness No. 2

a. Name:

b. Date of Birth:

c. Address:

d. Relation to the groom:

15. Mehr of Rs. _____ [in Figure _____] has been paid by the groom. 16. Mehr in kind which includes _____ has been paid to the bride.

[For eg. Gold, silver, fixed deposits, land, demand draft, any other. Please mention the exact quantity of mehr given in kind] 17. Other Details of the Groom:

a. Present Occupation:

_____ b. Address of Place of Employment:

c. Income per month:

Property [self-acquired and inherited both]: _____ d. Particulars of

18. Documents Enclosed of Both Parties: [Please Tick]

a. Passport size photos [mandatory]: _____ b. Wedding card [optional]: _____

c. Copy of passport/PAN card/voter ID/Adhar card/Light Bill/MTNL Bill:
[Any one residence proof and age proof mandatory]

d. Proof of employment [mandatory if available]:

e. Divorce papers if divorced [mandatory]:

f. Death certificate in case of death of previous spouse [mandatory]:

19. Annexures:

- a. Gifts received by bride from bride's parents and her relatives
- b. Gifts received by bride from groom's parents and relatives
- c. Gifts given by bride to the groom's parents and his relatives

20. Declaration:

The bride and groom confirm that each of them have read this nikaahnama, understood its content and have given their consent to this marriage. Nothing has been hidden or concealed by either of them.

21. Signatures:

a. Signature of bride:

b. Signature of Witness 1 of bride:

c. Signature of Witness 2 of bride:

d. Signature of the groom:

e. Signature of Witness 1 of groom:

f. Signature of Witness 2 of bride:

22. Documents for witnesses from both sides

Copy of Passport/PAN card/Adhar Card/Light Bill/

MTNL Bill

(Any one proof of residence and age mandatory)

23. Details of the Qazi:

a. Name of the Qazi:

b. Signature of the Qazi:

c. Address of the Qazi:

d. Seal of the office of the Qazi:

IQRARNAMA

1. The bride and the groom shall give their express and unambiguous consent for the marriage contract to become valid. This consent must have been obtained without undue influence, coercion and fraud.
2. The age of the bride shall be 18 years and that of the groom 21 years.
3. Mehr
 - Since mehr is the right of the bride at the time of nikaah, the amount has to be paid at the time of the solemnization of the nikaah. The groom has agreed to pay the mentioned amount at the time of nikaah.
 - Minimum mehr of the bride is one annual income of the groom
 - The bridegroom undertakes through this Nikaahnama that he or his relatives or any one on his behalf, shall not in any manner apply any physical, social, emotional, psychological, or economic pressure on the bride to forego the Mehr or to decrease the Mehr amount.

- Mehr is non-refundable and non-negotiable and shall be the absolute property of the bride and under her exclusive control and power.
- 4. The husband shall not be entitled to and shall not enter into a second marriage during the subsistence of this first marriage as monogamy is the stated ideal in the Quran.
- 5. The bride and the groom are not within the degrees of prohibited relationship
- 6. The said solemnised marriage must be registered under the relevant state Act.
- 7. Divorce
 - The bride and bridegroom agree that in case of marital discord neither party has the right to terminate the marriage unilaterally.
 - The husband shall not resort to, under any circumstances, unilateral oral triple divorce in one sitting. The right to divorce is shared equally by both the bride and the groom in keeping with the spirit of justice in Islam.
 - If matrimonial discord occurs, then the parties shall follow the method given below. No dissolution shall take place while the arbitration process is ongoing and until it is finally concluded.

8. Procedure of Dissolution Of Marriage

Dissolution of marriage proceedings, by whatever name called, initiated by either or both the parties to a marriage without the intervention of a court, to be concluded through the following procedure only:-

STEP 1

As a first step, when there is a marital discord, the husband/ wife will reason out with each other through discussions.

STEP 2

If differences persist, then as a next step, the parties sexually distance themselves from each other in the hope that this temporary physical separation may encourage them to unite.

STEP 3

And if even this fails, they will once again discuss the seriousness of the situation and try to bring about reconciliation.

STEP 4

If the dispute still remains unresolved, as a fourth step, the parties to the dispute must place their matter before two arbiters nominated by the family, one from the family of each spouse, for resolution. The family Arbitrators can also approach Arbitrators of a registered organization for the resolution of their marital discord.

- a) It is only after the failure of the aforementioned four attempts at reconciliation that the first talaq is to be declared by the Arbitrators in the presence of two witnesses and both the parties. This declaration of divorce is to be followed by a waiting period called the iddah. Not more than two divorces can be pronounced within this period, the duration of which is three monthly courses
- b) For women who have attained menopause or suffer from amenorrhea the period of iddah is three months, and in the case of pregnant women it is till the termination of pregnancy
- c) And if the parties are unable to unite during iddah, the second and the final irrevocable talaq can be pronounced by the Arbitrators but only after the expiry of the iddah. Once the second and the final

talaq has been invoked the marital bond is severed and the parties cease to be of any relation to each other.

- d) However, even after iddah has lapsed and before the pronouncement of the second and final talaak by the Arbitrators, the contending parties have a chance to reunite by recontracting the marriage, provided the final talaq has not been declared.
- e) In other words, after the expiry of iddah, the parties are given the options of remarriage or permanent separation.
- f) All decisions taken before the witnesses and Arbitrators must be recorded. The final divorce at the end of iddah must also be recorded in a Talaaknama by the Arbitrators.
- g) The rights of the women on divorce must be safeguarded by the Arbitrators and must be mentioned in the talaaknama.
- h) Original copies of the same must be provided to both the parties.

NOTE:

- I. The pronouncement of final talaak should be during the period of tuhr
- II. The four steps mentioned above signify restitution of conjugal rights
- III. The parties can also approach the Indian courts directly for the dissolution of their marriage
- IV. Before making the second and final pronouncement of marriage, the Arbitrators must ensure that all matters related to dower and maintenance of the woman as well as inheritance, custody, education of children, have been amicably and fairly settled.
- V. Once the second and final pronouncement of dissolution of marriage has been made, the parties are no longer married to each other.

9. In the event of divorce initiated by either party the husband shall be bound to comply with the following financial rights of the wife.

- Mehr (if not paid)
- Gifts received by her at the time of and during the subsistence of the marriage.
- Right to reside in the matrimonial home.
- Equal share of all property acquired during subsistence of the marriage.
- A reasonable and fair provision (mattaa) for the future sustenance

10. Either party can go to the court directly to settle their dispute. The bride and bridegroom undertake to follow these terms and conditions and respect each other from this day on.

11. The bride and the bridegroom may insert any other provision provided it does not violate the provisions of this Nikaahnama.

The bride and the groom agree to the above conditions of the marriage.

Signature of the bride:

Signature of the bride: _____ of the groom: _____

Annex 2:**DEGREE OF PROHIBITED RELATIONSHIP****Part I****On grounds of Consanguinity**

1. Mother and all female ascendants
2. Daughter and all female descendants, how low so ever
3. Sister and all female descendants, how low so ever
4. Brothers' daughter, how low so ever
5. father's sister (but not her daughter or any other descendants)
6. mother's sister (but not her daughter or any to other descendants)

(Sisters full, consanguine or uterine by valid or invalid marriage or adulterous connections are forbidden)

On grounds of Affinity

1. Mother-in law how high so ever
2. Wives' daughter, how low so ever
3. Son's wife how low so ever
4. Step mother or any other woman with whom the father or any other ancestor has had a physical relationship

PART II**On grounds of Consanguinity**

1. Father and all male descendants
2. Son and all male descendants how low so ever
3. Brother and all male descendants, how low so ever
4. Brothers' son, how low so ever
5. Father's brother (but not his son or any other descendants);
6. Mother's brother (but not his son or any other descendants);

(Brothers full, consanguine or uterine by valid or invalid marriage or adulterous connections are forbidden)

On grounds of Affinity

1. Father-in law how high so ever
2. Husbands' son, how low so ever
3. Daughter's husband how low so ever

Step father or any other man with whom the mother or any other ancestor has had a physical relationship

