

The Setting

According to the 1991 census, Muslims constituted 12.12 percent of India's total population. Some estimates place them at 13 percent at present; making them approximately 13 crores. So far as sex ratio is concerned, the number of females per 1,000 males among Muslims is 930. This report, therefore, is about the plight of more than 6 crore women of India. Muslims are spread all over the country from a high concentration of 64.19% of the total population of Jammu and Kashmir to a low density of 0.66% in Mizoram. They constitute 28.48 percent of the total population in Assam, 23.61 percent in West Bengal, 23.61 percent in Kerala, 17.83 per cent in U.P., 14.81 percent in Bihar, 16.64 percent in Karnataka, 9.67 percent in Maharashtra, 8.91 percent in Andhra Pradesh, 8 percent in Rajasthan and 5 percent in Madhya Pradesh. In the Union Territory of Lakshadweep, they constitute a high percentage of 94.31 per cent of the total population. (Appendix II)

Poverty

Official and other surveys reveal that poverty level of Muslims is higher than that of non-Muslims. Occupationally, more than 90 percent of Muslims are small and marginal farmers, artisans and workers. Muslim representation in Government jobs is less than 3 percent at higher levels, and not more than 6 percent at lower levels, which is substantially less than their population ratio.

Latest reports reveal that of all communities, Muslim households have the lowest annual income *India Human Development Report (1999)*, Table 3.2 describes the inequality as follows:

Levels of Income and Inequality

Religion	Income per Household	Income per capita	No. Of Households in the sample
Muslims	22,807	3,678	3,239
Hindus	25,713	4,514	27,767
Christians	28,860	5,920	900
Other Minorities	30,330	5,427	1,324
India	25,653	4,485	33,230

Source: Abusaleh Shariff, *India Human Development Report 1999*

The extent of unemployment or lack of wage earning capacity among Muslims vis-à-vis others is much higher. This may also be due to the fact that fewer Muslim women are gainfully employed compared with women of other communities. The following figures will bear out this trend:

Percentage of Adult Wage Earners

Religion	Male	Female
Muslims	33.1	26.4
S.C	57.6	58.7
Hindus	35.6	44.3
Christians	42.2	44.1
Other Minorities	31.6	36.5

Source: Abusaleh Shariff, India Human Development Report 1999 Table 4.11

Compared to women of other religions, Muslim women participate the least (only about 16 percent) in the workforce. This is much lower than 31 percent Hindu women and 37 percent Christian women, as illustrated in the table below. This must be considered keeping in view the fact that the bulk of Muslim female workers are home-based.

Adult Work Participation Rate (WPR)

Religion	WPR% Male (15-59 Years)	WPR% Females (15-59 Years)
Hindus	82.8	30.8
Muslims	82.6	16.3
Christians	83.0	37.1
Other Minorities	83.6	27.5

Source: Abusaleh Shariff, India Human Development Report, 1999. Table A 4.9 p.244

Literacy

According to the Report written in 1997 by the Committee of Governors on the Welfare of Minorities and submitted to the President of India, "Muslims are educationally backward with hardly 15% literacy. Female literacy among minorities is even more dismal". The Report goes on to state, "The progress and well being of the Muslim community is closely linked up with the literacy of the Muslim women and hence this aspect of education needs special attention both from the leaders of the community and the Government". Illiteracy

among the bulk of Muslim women casts a heavy shadow over their plight. Living in an intensely competitive society, the community's attention seldom goes beyond evolving an educated class of males in the community. This approach with its inherent weakness of neglecting the other half of the community has taken its toll. The Muslim girl child's lot is often described as, 'choolha, chaadar and chaardeewari'. According to the statement made by Secretary Wakf at a meeting held by NCW in May, 1999, the illiteracy figures for Muslim women in places like Pipli Majra and Sudhowra in Haryana are worse than the dismal 3 percent figure quoted for the area of Mewat. Overall in Assam and Haryana, illiteracy among women is 73.5 percent and 85 percent respectively.



Hasan Banu and daughter Sara, Chennai II Public Hearing.

The low percentage of educated Muslim females has given rise to numerous ills for which the entire community is blamed. Throughout the world, the girl child has become the focus of developmental programmes. Unfortunately, the same is not true for the Muslim girl child. In the years to come Indian Muslims face the frightening scenario of a large chunk of uneducated girl children. The reasons for the high dropout and low literacy rate of the Muslim girl child are varied, ranging from high orthodoxy, financial constraint, lack of encouragement to study, repeated failures, poor teaching and the inability of national literacy missions to reach the remote Muslim ghettos. This dismal picture of the state of education of Muslim girls has emerged essentially during the last fifty years.

The Memorandum of the Progress of Education in British India 1916-26 stated: "The percentages for the Mohammedan community were more favourable than the percentages for all communities together, and even figures for Mohammedan girls alone did not fall below the figures for all classes for female pupils. Even at the collegiate and secondary stages, the proportion of

Mohammedans has been well maintained". (*Memorandum on Education, 1916-26:59*). By 1937, the all India average for Muslim girls had surpassed the national average and Muslim women could be considered within the mainstream of women's education of the time.

A 1987-88 government study revealed that the percentage of illiterate girls was almost similar both for Hindus (75%) and Muslims (76.1%) in rural India. However, the difference between percentages of Muslim girls completing middle, secondary or graduate school and those of their Hindu or Christian counterparts widened with age. The same study also indicated that enrolment figures for Muslim girls were the lowest as compared to their Hindu or Christian counterparts. Not only did fewer Muslim girls (across all ages) attend school or institutions of higher learning, but also their educational levels registered a steep decline with increase in age.

Unlike the minor difference between Muslim and Hindu or Christian women with reference to figures for primary education, Muslim women in both rural and urban India start with the fundamental liability of lagging behind their counterparts in school enrolment from the very beginning. Muslim women in urban India were much worse off than their rural counterparts, not only in terms of their educational status as members of a religious group, but also in relative terms in comparison to their Hindu or Christian counterparts. Interestingly, this trend is a complete reversal of advances in Muslim female education achieved at the turn of the century.

Among all religious groups, the literacy rates (7 plus age group) of Muslims, including Muslim females, are the lowest among all religious groups.

Literacy Rates (7 plus)

Religion	Male	Female	F/M%
Hindus	65.9	39.2	0.60
Muslims	59.5	38.0	0.64
Christians	85.0	76.5	0.90
Other Minorities	62.9	43.8	0.70

Source: *Abusaleh Shariff, India Human Development Report, 1999. Table 6.2 p.102*

The Government of India in its New Education Policy 1986 declared that at the national level Muslims and neo-Buddhists were the most educationally backward communities. Literacy figures cited above quantify the poor literacy levels of Muslims, particularly of the Muslim women. The class composition and occupational distribution of the bulk of Muslims today (artisans, handicraft persons, casual labourers, peasants and part of the industrial workers) is such that it does not give priority to formal education. The overall female literacy rate has remained at an abysmal 28.1%. This initial disadvantage means that Muslims are unable to enter institutions of higher education. Due to this reason the Aligarh Muslim University and the Jamia Millia Islamia – minority institutions which were established with the objective of furthering education among Muslims in India - do not have a majority of Muslim students in their professional schools.

Muslim women, generally deprived of benefits of modern education, also lose out in the employment opportunities, which are available to women of other communities. Other reasons such as purdah, difficulty in securing suitable matches for highly educated Muslim girls, lack of hostel facilities for girls, encouragement of religious and prohibition of secular education, post puberty early marriage, retaining daughters for household duties and girl child labour, all combine to become powerful reasons why these women are left far behind the others.

Customary practices pertaining to Muslim women are not very different from those assigned to women of other communities. Her primary duty, according to the orthodox, is to look after the males of the family. She is forbidden to venture outside the home unless accompanied by her husband, father or brother. Purdah, whether burqa or hijab, observed in several parts, keeps the women successfully out of sight. These restrictions are strictly enforced in the urban, lower middle, and the poor classes.

Health

The utilisation of government provided health care services remains relatively low among Muslims as shown in the following table pertaining to the use of antenatal care and contraception.

Percentage distribution of currently pregnant women receiving ANC by religious groups

	Hindus	Muslims	Christians	Other Minorities
% ANC care	9.9	8.0	12.3	16.4
% Contraception methods	36.3	24.7	48.1	46.5
% Spacing methods	4.9	8.2	13.0	13.7

Source: Abusaleh Shariff, *India Human Development Report, 1999*

Crude Birth Rate (CBR) among women is a widely used fertility measure. It is defined as the number of live births in a given period for a total population of one thousand. Muslims have a high CBR of 39 as compared with 32 for Hindus and 20 for Christians. The high CBR, according to the *India Human Development Report*, is a direct response to the high degree of insecurity faced by the poor due to lack of a durable source of income, lack of immovable assets and nil savings.

Crude Birth Rate and Total Fertility Rates

Religion	CBR	TFR (Age 15-19)
Hindus	32	4.2%
Muslims	39	5.8%
Christians	20	2.1%
Other Minorities	28	3.9%

Source: Abusaleh Shariff, *India Human Development Report, 1999, Table 8.2 p.156*

From time to time it is claimed by the Government and leaders of the community that changes have taken place in the role and status of women in India, as they have in other parts of the Islamic world. But the National Commission for Women saw no evidence of change in the status of the women who appeared before it during the last two years. Testimony after testimony was an eyewitness proof. Their low status in every sphere of life in India, was attributed to men who have pushed them into stereotype roles of earners, carers, bearers of children and beasts of burden. It is also attributable to the inefficacy of state-sponsored schemes and lack of will on government's part to make them work. Illiteracy, ignorance, male domination and traditional beliefs have proved for a majority of Muslim women the major roadblocks to progress.



Legally Oppressed

In pursuance of the recommendation of the Expert Committee and the resolution passed at the two-day seminar on Muslim Personal Law held in Mumbai on 3-4 July, 1999, the Commission met Maulana Abul Hasan Ali Nadwi, Chairman of the Muslim Personal Law Board on 20.10.98 and discussed with him issues raised by Muslim women in all the Public Hearings held to date. The Darul Uloom, Lucknow, of which Maulana was the President is a centre of excellence of Islamic studies. It has an integrated curriculum with all high school subjects plus Islamic studies, Arabic and Persian. Students come from all over India as well as many Islamic countries and Europe. The highest of standards are maintained through a strict admission process. The board, lodging and education of students are free of charge. There are 2,000 residential students and a few hundred day scholars. A girl's Madarasa has also been started by the Nadwa Trust. The Commission felt the need to place this information here, particularly about education of girls and the modern curriculum at Nadwa to demystify the popular concept of Islamic institutions.

Maulana Ali Mian's contention was that there was a substantial difference between Islam as a religion, and as it was practised by the Muslims. Whereas there is no religion, which accords as much rights to women as Islam, Muslims generally do not practise the tenets of Islam. In fact they extrapolate from it only that which is convenient or useful in maintaining their superiority over women. It is not the teachings of Islam, which are lacking in any way; it is the interpretation or the ignorance of the Muslims. The question is how to change the mindset and how to show the quom that this mindset is harming their own image beyond repair. The Commission was greatly encouraged by the breadth of vision and gender sensitivity of Maulana Ali Mian.

Muslim Personal Law or Shariat governs all questions of marriage, separation, divorce, inheritance, custody of children, maintenance and dowry among Muslims. *The Shariat Act 1937* (Appendix III) regularises the application of Muslim personal law in India. *The Dissolution of Muslim Marriages Act, 1939* (Appendix IV) gives a Muslim woman the right to divorce if her husband is untraceable for four years or more, is unable to provide maintenance for two years, is imprisoned for seven years or more, fails to perform marital obligations for three years, suffers from impotency, insanity, leprosy or virulent venereal disease and inflicts cruelty. In addition, the *1939 Act* gives a woman the right to repudiate a marriage at puberty, if she is married before she is 15 years old provided the marriage has not been consummated.

The Shariat Act 1937 stipulates Muslim marriage (Nikah) to be a civil contract between a man and a woman. It allows a man to have a maximum of four wives at a time on the condition

that all are treated equally (which in practice means that all are oppressed equally, as found by NCW in all its Public Hearings). An "undivorced" Muslim woman is not allowed to marry. Should she contract a second marriage while her husband is alive, she is liable for bigamy under Section 494 of the *Indian Penal Code*. Muslim marriage contract stipulates the payment of a consideration called Mehr, which is usually decided upon by the parents or elders on both sides at the time of marriage. Mehr is preferably payable immediately at the time of marriage or it may be deferred as per the condition stipulated in the *Nikahama* (Marriage Contract Document). The amount of Mehr is left upto the two contracting parties. Even a token sum of few rupees is enough to meet the legal requirement. Its significance lies in its mandatory nature. If not paid in the lifetime of the husband, the woman is entitled to claim it even after his death as the first charge, payable from his assets before other heirs get their share. In the Public Hearings, NCW found that in most cases women were unaware of the amount of Mehr that had been fixed at the time they were married if at all they were aware of the existence of the *Nikahnama*. In practice, therefore, *Mehr* remained only a paper formulation. The Commission found that most women's *Mehr* was fixed at ridiculously low figures.

Nikahnama is an essential part of any Muslim marriage. It records the details of the marriage contract and is used as proof in case of litigation at a later stage. In the Public Hearings it was found that most *Nikahnamas* are simple and bare documents and hence difficult to enforce later. Very few women were in actual possession of their *Nikahnamas*; even the bare and sketchy document was not to be found which could have been utilised as evidence in their favour in cases of *talaq*. Consequently, the standard *Nikahnama* was felt to be the crying need of the time by all the women who deposed and by all the voluntary organisations, which were working among them. It was stated that some of the disabilities that Muslim women suffer from under the provisions of the Personal Laws (which were enacted during the British period) could be removed by adopting a standard *Nikahnama*. It would provide among other things, the delegated right of divorce (*Talaq-i-Tafwid*) and condition of monogamy; the validity of both is recognised today by all Ulema. It would give women the right to get a divorce enforced for the non-fulfilment of stipulated conditions such as monogamy and good treatment; without having to take recourse to other means.

This idea is not a new one; in India it had been in vogue in the early 20th Century. None other than the renowned and influential Alim of the sub-continent Maulana Ashraf Ali Thanavi in his famous Arabic 'risala' *Hailatun Najiza L'il Aajiza* (Successful Solution for Oppressed Women) in 1936 made a forceful plea for its adoption. Dr. Mohammad Iqbal followed it up in 1939 in his book *Reconstruction of Religious Thought in Islam*. The earlier practice of *talaq-i-tafwid* is practically non-existent today due to patriarchy of Muslim men and total ignorance of their rights by Muslim women. The Islamic Fiqah Academy organised a seminar on this subject in 1995 and proposed the format of a standard *Nikahnama* (Appendix V). Similar drafts have been prepared by women activists from time to time. One such document has been presented for the endorsement of the Muslim Personal Law Board, as explained by some of its women Members to NCW both

at Chennai and Mumbai. The NCW as the apex body for women, was asked by Muslim women throughout the country to support the cause of a standard Nikahnama.

Since marriage in Islam is a contract, it may be dissolved at any time. A Muslim husband of sound mind may divorce his wife whenever he so desires without assigning any reason. The presence of the wife is not even necessary for pronouncing a divorce nor any notice need be given for that purpose. The most popular form of talaq practised in India is *Talaq-al-Bid'at*, literally translated as "the divorce of the wrong innovation". It allows instantaneous talaq; three pronouncements in a single sitting – "I divorce you, I divorce you, I divorce you". In every single of its the Public Hearings NCW found innumerable instances of triple talaq. It was pronounced by men in a single breath, without reason or warning. Women were left stranded with children while the husbands having uttered the three words walked away to start a new life. In cases taken up by the Commission, talaqs were spoken over the telephone or communicated through a postcard. Cases were brought to NCW's attention where the talaq had been sent in a letter from abroad with a rubber stamp of a Qazi from that country, minus the mandatory amount of Mehr. Another aberration of triple talaq is seen in the spate of marriages contracted by visiting Arabs with young girls, mostly in big cities like Mumbai and Hyderabad. Unscrupulous Qazis are twisting the laws of Shariat to serve a clientele of rich Arabs. Nikahs are being performed and talaqs are being sanctioned for clients willing to pay the price, with little regard for the injunctions of the Muslim Personal Laws. The case of 11-year-old Amina of Hyderabad became notorious a few years ago when an airhostess rescued her from her septuagenarian 'husband'. A similar case was reported from Mumbai of sixteen year old Yasmeen, where the Qazi was at a loss to explain how he performed two Nikahs within twenty days, without deference to the mandatory Iddat period of three months and ten days during which Nikah is forbidden. Yasmeen was married to 50 and 70 year old men – over a span of 19 months. Exploitation of girls has thus become rampant using the device of instantaneous, verbal triple talaq, bringing untold suffering on children like Amina and Yasmeen, and other reported cases like Rukhsana of Mumbai and Mussarrat of Hyderabad.

Muslim women too have the right to seek dissolution of marriage under the system of *Khula*, but this right is very rarely invoked. For the simple reason that her seeking divorce would completely deprive her of whatever she may get from her husband, most importantly, a place to live. This in itself is a great disincentive. It is significant that during the Public Hearings not a single woman raised the question of *Khula*, its usefulness or the need to improve upon it and the right of women to seek it. The deponents only expressed their anguish at the tyranny of the triple talaq, which was the single most potent cause of their devastation.

The *Status of Women Report (1973)* recognised that while Muslim women do have the right to divorce under some provisions, Muslim men enjoy greater powers, since they possess the right of unilateral divorce. The authors of the report, recognising the limits of legislation, were constrained to recommend more legislation for gender parity. Legislation was seen as the only instrument, which could bring Muslim divorce laws into line, with not only the needs of contemporary society, but also with the laws prevailing in other Muslim countries.

Prior to the Supreme Court Judgement in the Shahbano case and also the enactment of *The Muslim Women (Protection of Rights of Divorce) Act, 1986* (Appendix VI), the Muslim women were governed by the *Shariat Law* according to which the divorced wife got maintenance only for the period of Iddat. In 1985, the Supreme Court of India in the Shahbano case awarded her life-long maintenance under Section 125 of the Cr P C. As stated above, this judgement created political turmoil for the Government and it was compelled to enact legislation, which placed Muslim women beyond the scope of Section 125 Cr. PC. The new Act, besides providing for payment of Mehr agreed to at the time of marriage, made payment of maintenance to the divorced Muslim woman applicable for the Iddat period only, thereby exonerating the husband from any further financial responsibility. A section of the progressive Muslim opinion declared this enactment to be the most retrograde step for all Muslims.



Wabeeda and infant girl at Chennai II, Public Hearing.

The question of the maintenance of children after the period of Iddat, has been resolved

recently in the Supreme Court's path breaking Judgement in the case of *Noor Saba Khatoon Vs Mohammad Qasim*, which has held that a Muslim father's obligation like that of a Hindu father to maintain his children after divorce is absolute and is not at all affected by the 1986 Act. But the plight of divorced Muslim women continues to raise questions. Deprived of her maintenance under the 1986 enactment, it has again attracted legal attention. A number of women have knocked at the doors of the courts to get some reprieve against deprivation of post-divorce maintenance. In a recent judgement in the case of *Zaitunbi Vs Mubarak Sheikh of Satara, Maharashtra*, the Bombay High Court has held that a man was obliged to provide for the rest of the life of his divorced wife during the Iddat period, meaning, that arrangements for maintenance (long term) had to be made by the husband during the period of Iddat itself. The husband before the apex court has made an appeal against this judgement. Under *Section 10(i) (e) of the NCW Act*, the Commission sought permission of the Court to implead itself in this case. On 7.2.2000, while referring the matter to a Constitutional Bench, the Supreme Court allowed the petition of NCW, and did not stay the Bombay High Court Order. If the apex court upholds the judgement of the Bombay High Court, Muslim women would get reprieve and would be entitled to getting long term maintenance, even under the 1986 Act. It will give relief to the women and act as a disincentive for men in the profligate use of talaq. A large body of women who met NCW during the course of the Public Hearings pleaded with the Commission to help alleviate their sufferings caused by the curse of triple talaq and lack of maintenance. They asked the Commission to get for them what is otherwise available to all women under the ordinary laws of the country. They averred that in the case of this fundamental right, they did not want to be treated differently than their sisters of other communities.

The demand for dowry has never been a part of the Muslim Personal Law but its practice as a social norm has acquired oppressive proportions among Muslims. During the public hearings NCW found itself listening to cases of dowry related atrocities from deponents all over the country. Marriages are held up if dowry demand is not met. Cases of dowry torture, dowry death and bride burning among Muslims are found in each and every State – without exception. Aside from the testimonies of the women, the Commission handles innumerable cases both from rural and urban areas in this regard. In Bulandshahr, U.P., Nasreen was burnt from head to toe by her husband Shaukeen Ahmed for insufficient dowry. Nasreen was eight months pregnant and did not register a FIR against her husband for fear of her parents' lives and her sister Nagina's future, who was married to Shaukeen's younger brother, Rais Ahmed.

In Pataudi, Haryana, there was a young nineteen year old girl Shabbiran, daughter of Bharosey, who had been tortured for bringing insufficient dowry. Eighteen-year-old Afsana of Gurgaon was gang raped by her husband and his friends on the wedding night. They all "rode" on her like she was a Hero Honda, an indispensable part of the dowry which her father could not give. Nineteen year old Huma Farzana from Sitapur, U.P was burnt from head to toe by her husband Shabab Husain and his family for not complying with dowry demands. Hundreds of such cases are languishing for justice within the NCW itself and hundreds of thousands never even reach the

Commission. In dowry related cases however, Muslim women's suffering is no different from that of their non-Muslim sisters. In Ranchi, Bihar, two distraught parents simultaneously approached the Commission, one Muslim, and one Hindu. In the first case, their daughter Farida Firdaus of Kantatoli, Ranchi, married to Shabbir Ahmed of Delhi was gruesomely murdered for dowry and her murder passed off as suicide. In the second case, their daughter Kashyapi Dube of Hatia, Ranchi, married to Chandrashekhar Trivedi of Delhi was murdered for insufficient dowry, and her gruesome death attributed to "a fit of madness". The two sets of parents with identical suffering and circumstances exemplified the universal curse of dowry which knows no caste, religion, class or community.

The suffering and deprivations of Muslim women is largely similar to those of the poor and oppressed women of other communities. The Public Hearings, however, brought out some important differences. All women suffer when they are divorced or deserted. The Muslim woman, suffers not only when she is divorced or abandoned but lives her entire married life under the dread that her husband has the arbitrary power to divorce her and throw her out of the house along with the children at his slightest fancy. At any moment he may bring in to the house another woman as his second, third or fourth wife; the woman has no say in this regard. This burden of insecurity colours the entire life of a married Muslim woman. Sometimes she is threatened by her in-laws that a second marriage will be arranged (for more dowry or male heir) and she will either have to accept dividing her meagre resources with the second wife or be slapped with a triple talaq. All doors are firmly shut in her face; the law, which is applicable to women of all other communities, is not for her. She must accept being on the streets after instantaneous triple talaq and token mehr (if any) because her personal law permits it and she must accept her husband's multiple wives because that too is part of her personal law. As for mehr and maintenance, whereas it is equally a part of her personal law, it is hardly ever recognised as an injunction by the men, who flaunt it, first by getting the Qazi to insert the most nominal amount in the Nikahnama and second by refusing to pay maintenance, regardless of its compulsory status. Although "zero maintenance" is the norm for Muslim women across the length and breadth of the country, very few voices are raised in protest against this gross violation of Personal Law. And if there is an enlightened judgement of the apex Court which attempts to give some relief to the hapless Muslim woman in the matter of maintenance, the very men who refuse to fulfil their part of the marriage contract, rise in arms against such a judgement and claim that it is a violation of their personal law and an interference in their religion.

In conclusion, one may observe also that there is nothing in Muslim Personal Law to prevent a woman from stipulating all manners of conditions regarding dissolution of marriage, maintenance, and upkeep during the course of marriage, custody of children and other matters. However, only a few women of the upper class take full advantage of the latitude allowed by law in defining the terms of the contract.

State Sponsored Schemes

“So far as Muslim women are concerned, their disadvantages multiply; it is not simple addition that takes place – five and five make twenty five” said Dr. Satish Agnihotri during the Consultation with Government Departments dealing with Programmes for Minority women, arranged by NCW in May, 1999. It was generally felt that the benefits of various government schemes, aimed at improving the lot of the minorities, have generally not accrued to the Muslims. In many parts of the country, Muslims live in conditions that are not just backward but insecure and vulnerable. Realising the need for giving a sense of security and ensuring the flow of development benefits to the minorities, the Prime Minister’s 15-point programme was proclaimed in 1983 (Appendix VII). The 5th point of the programme stated that victims of communal violence should get assistance for rehabilitation. The 13th point declared that “In various development programmes, including the 20 point programme, care should be taken to see that minorities secure in fair and adequate measure the benefits flowing therefrom”. A meeting was held by the Commission with government departments and other agencies in May, 1999 to understand the efficacy of the programmes targeted at Minorities. The Chairman of the Minorities Commission of Rajasthan referring to the 15 point programme said that most of the problems of the community would have been solved if this programme had been properly, vigorously and honestly implemented.

The Committee of Governors on the Welfare of Minorities in its report stated the following:

The Committee regrets to note that the implementation of the 15-Point Programme in most of the States appears to be very dismal and disappointing. It is therefore the opinion of the Committee that, unless regularly monitored, for which a provision exists in the rules, the programme will remain only on paper. The very purpose of the 15-Point Programme seems to have been defeated as a result of negligence on the part of authorities concerned who have failed to implement the programme and particularly to review the performance of the 15-Point Programme on a periodical basis. It is hoped that the Ministry concerned and the implementing authorities namely State Governments will take special note of it and resume their review of the performance of the 15-Point Programme periodically as laid down. The Committee recommends that the Programme should be reviewed by a Special Committee to find out whether the aims and objects of the 15-Point Programme have been achieved and if they have not been achieved, drastic measures have to be taken to ensure that these are achieved.

Under that programme forty-one districts had been identified, according to the area-wise concentration of minorities, for a close monitoring of their economic development (Appendix VIII). The Industries Ministry had asked the district authorities to choose deserving persons under the Special Employment for Educated Unemployed Youth Scheme and give them the necessary benefits. Some select schemes were also to be especially devised for the minorities to develop their skills. It was found that Muslims, despite their expertise in handicrafts, have hardly derived any benefits from co-operative or financial institutions. The benefit received from beneficiary-oriented schemes was a pittance as compared to their overall requirements. Today, seventeen years after the Gopal Singh Report was tabled, it is found that the plight of Muslims in general and of women of this community in particular has not changed for the better.

The following are some of the schemes/programmes which have been drawn by the Government exclusively for the development of minorities – both men and women – to ensure safety and protection of life and property and to promote communal harmony.

- i) Prime Minister's 15 Point Programme for Welfare of Minorities.
- ii) National Commission for Minorities.
- iii) Rapid Action Force to quell Riots.
- iv) Area Intensive Programme for Educationally Backward Minorities.
- v) Scheme of Community Polytechnics.
- vi) Inclusion of a Minority Community Member in Selection Boards.
- vii) Extension of the Scheme for Pre-Examination Coaching for Weaker Sections to Minorities.
- viii) The Scheme of Multi-Sectoral Development Plans.
- ix) Special Officer for Linguistic Minorities.
- x) The Maulana Azad Education Foundation.
- xi) The Scheme for strengthening of Boarding and Hostel facilities for girl students of secondary and higher Secondary Schools.
- xii) Setting up of Maulana Azad National Urdu University.
- xiii) Modernisation of Madarasas/Maktabs.

The Intensive Programme for Educationally Backward Minorities is being implemented at the block level of identified districts to provide basic educational infrastructure and facilities to educationally backward minorities which do not have adequate provision for elementary and secondary education. Under the scheme, hundred percent financial assistance is provided to establish new primary/upper primary schools and residential higher secondary schools for girls, to strengthen educational infrastructure and physical facilities in existing schools and open multi-stream residential higher secondary schools. The scheme covers 332 blocks with concentration of educationally backward minorities in 93 districts spread over 13 States and 3 Union Territories.

Department of Education has introduced a scheme to provide financial assistance for

the modernisation of Madrasa education and for teaching of Science, Mathematics, Social Studies, Hindi and English in traditional educational institutions (Madarsas/Maktabas) on a voluntary basis. Under this scheme, 100 percent grant is given by the Central Government. The scheme intends to provide opportunities to students of these institutions to acquire education comparable to that in the national education system.

At the NCW meeting of Government officials, the representative of the Ministry of Social Justice and Empowerment informed the Commission that minority women were not able to take advantage of the pre-examination coaching scheme which is basically a kind of training given to them to enable them to compete in various competition examinations, such as banking services, IAS, and allied services examinations. There are a few schemes especially for women as well, but it is not known now how much they are really reaching their target.

Maulana Azad Education Foundation has a corpus of Rs. 70 crores, thereby making resources available for schemes for the education of Muslim women. Two types of schemes are covered under this programme. One is for the expansion and establishment of schools, including residential schools and colleges for girls. The second scheme relates to the upgradation of vocational and technical education, under which assistance is given for vocational training, equipment for the engineering colleges, polytechnics, etc. Though male students may be admitted in these institutions, but they qualify for assistance from the Foundation only when they are either exclusively for the girls, or at least 50 per cent of the students are girls. The Secretary, Maulana Azad Education Foundation informed the NCW that the corpus, which the Government of India has given them to work with, was very inadequate. Quite a few of the funds given to State Government under this programme have been diverted for other purposes.

While some of the above programmes are addressed to all minorities and weaker sections of the society in general, there are certain programmes which are specific to Muslims, particularly in the field of education, like the scheme for financial assistance for the modernisation of education in Madrasas and the Maulana Azad Educational Foundation described above. Despite these efforts, NCW's experiences in the field indicate that most schemes have not made any significant dent in the problems faced by Muslim women.

Besides these specific programmes, there are Government initiated programmes targeted at women in general like IRDP (Integrated Rural Development Programme), Development of Women and Children in Rural Areas, Vocational Training Programmes for Women, Mahila Samakhya Programme. There are certain other development programmes of the Government which have a specific component for women. To ensure that the benefits of those programmes accrue to women, Department of Women & Child Development has asked various Ministries and Departments to set up Advisory Committees for women to help in preparing, implementing and monitoring the women component of those programmes and to include a separate chapter in their annual reports relating to women activities.

At the NCW meeting with Government Departments and agencies, the Secretary, Maulana Azad Education Foundation spoke of the failure of these schemes to reach their targets. He said that there are a number of schemes of the Government of India, but due to the federal structure of our country, all these schemes need the State Government's approval and recommendation. Proposals have been pending with State Governments for years. Many people have written to the foundation from West Bengal, Assam and U.P that the State Governments are not even processing their applications and have not bothered to tell them what are the weaknesses in their applications, if any. If this is the attitude of the State Governments towards the schemes for minority education, then no help may be expected. This evaluation made by Maulana Azad Education Foundation was identical to what NCW heard at several public meetings from the deponents and the NGO's. The 'trickle down' effort of government schemes has not reached the Muslim women. They have not benefited from governmental schemes specially directed at Minority welfare.

The Secretary, National Minorities Development and Finance Corporation also spoke of her organisation. Explaining its raison d'être she said that so many schemes had not been reaching the Minorities; therefore an apex body was created at the national level which would give credit at cheap rates and finance self-employment in trades like beauty parlour, bangle shop, embroidery work and fancy store etc. One excellent outcome was the empowerment of girl children in Chaturbhujsthan, an area in Muzaffarpur, Bihar where daughters of prostitutes have become adept at fashion designing. While there are exceptional cases of positive results recorded from time to time, in general the Government schemes have by and large left the Minority women in the backwaters of time.



Causes and Comparisons

The explanation generally given for Muslim women's backwardness is the Muslim Law which makes them more vulnerable and helpless. This is certainly a factor in their backwardness, but to ascribe it entirely to 'Islamic' features is to give a simple explanation for a complex and multifaceted phenomenon. It may be relevant to look at the various facets of the problem.

When we refer to 'Muslim women' the image that rises before our eyes is black burqa or hijab, the cultural stereotype popularised by Hindi films. It pegs these women as if they were different from women of other communities. One must be wary of such oversimplification and steer clear of cultural stereotyping because it tends to overshadow the Muslim women's contemporary realities and struggles, as expressed before NCW in the Public Hearings held over a period of eighteen months. One must also eschew the perception that Muslim women's status in India is solely attributable to certain 'Islamic' features, or that their legal status is *entirely* the consequence of the Muslim Law. The compelling reasons for their backwardness in here is their poverty and destitution and the absence of economic rights. In this regard Muslim women are neither homogeneous, nor separate, nor different from women of other



Phoolbanu Begum, Tezpur Public Hearing.

segments of Indian society. It is a historical fact that most of Indian Muslims are converts from other religions and social classes. The women, therefore, carry the social burden of their class into their new identity, although socially they remain part of the old social order. The old order provides the underpinning to their social behaviour in daily life. Their daily lives continue to be governed by the old behaviour which defined their lives for generations and which still persists in their neighbourhood among those who subscribe to other religions.

The Commission in village Sudaka, Tehsil Nuh, District Gurgaon in Haryana encountered the most striking example of this. This Muslim village of Mewat strictly practised caste and gotra

system, due to which a near tragedy occurred in the life of nineteen year old Maimun. But for the fact that the Commission was able to avert it, both Maimun and her husband Idris would have been killed by the villagers for daring to marry within the gotra. Double disadvantage is thereby the lot of Muslim women who suffer not only because of their own community's practices or customs but also because of certain social practices of the larger surrounding community of which they are an integral part, as exemplified in the case of Maimun. (Appendix IX Sudaka: The Heart of Darkness).

The high level of poverty and unemployment among Muslims, in general, is ascribed to their backwardness in education. During the colonial period they had to contend with the hostility of the British together with the blindness of conservative elements of the community to the demands of the changing times. After Independence the Muslims failed to utilise the opportunities provided by the dynamics of the Indian Constitution. In every respect they suffered a downward slide. In education there was little attempt by successive governments to bring them at par with other segments of the population. Had India's census reports in the post-Independence period given community-wise data, this fact would have become evident; but this practice was given up after the 1950 census with the result that these sensitive data are unavailable.

Some research and academic institutions have tried to compile information to show the gloomy picture of Muslim backwardness. The High Powered panel on Minorities appointed in 1984 under Dr. Gopal Singh brought to light the extent of Muslim backwardness in education. Other studies have also presented no better picture. A study commissioned by the Ministry of Home Affairs by Prof. Gopal Krishna, which remained unpublished, revealed that the educational level of the Muslims in India was the lowest in the country. A survey made by Dr. G. Thimmaiah of the Institute of Economic and Social Change, Bangalore underlined the poor condition of the Muslims at various levels of education when compared with other religious minorities. In his study "*Equality and Poverty: A case study of Karnataka*", published in 1983, Dr. Thimmaiah concluded that the economic and educational level of the Muslims was worse than that of the poorest of the poor in India. Prof. Qamar Hasan and Prof. M.N. Khan of the Aligarh Muslim University made a comprehensive study of the educational and vocational intentions of the Hindu and Muslim students on the eve of completing school education in Aligarh. They found that while not one Hindu student intended to drop out, 4.5 percent of the Muslim boys and 5.7 percent of the Muslim girls did so due to the economic problems of their parents. The problem of Muslim girls is further compounded by the gender bias practised in the male dominated society in India, to which Muslims are no exception. It has been observed that Muslim parents are hesitant to send their girls to schools unless the schools are exclusively for girls. Given the number of the educated unemployed, there is the perception among the Muslims that formal education is of little use. Hence, while other communities progressed educationally and, consequently, economically, a majority of Muslims continued to live in poverty.

That education was the key to economic and political advancement was underlined by Sir Syed Ahmed Khan, the pioneer of modern education among the Muslims, in his Inaugural Address to the Mohammedan Educational Congress in December 1886:

Gentlemen, I don't agree with those people who think that without political dispensation there can be no national progress. On the contrary, I hold that education and education alone can be the means of national regeneration. Therefore at this time we should not strive for anything except the spread of education among our community.

One hundred years later, the need for special provision and encouragement for education for the minorities, particularly for the Muslims, was recognised in the National Policy on Education introduced in 1986. It inter-alia stated:

Some minorities groups are educationally deprived or backward. Greater attention will be paid to the education of these groups in the interest of equality and social justice. This will naturally include the constitutional guarantees given to them to establish and administer their own educational institutions and protection to their language and culture. Simultaneously, objectivity will be reflected in the preparation of textbooks and in all school activities, and all possible measures will be taken to promote integration based on appreciation of common national goals and ideals, in conformity with the core curriculum.

A large number of measures to promote education among the Muslims were promised and areas where they were concentrated were identified. There was to be proper representation of Muslims in various educational boards and advisory committees, both at the central and state levels, to monitor an effective implementation of the proposed measures. It is a matter of record that most of these proposals were shelved and those implemented were ineffective; this is evident from the abject illiteracy among the Muslim women who appeared before the Commission. Educational backwardness thus ensured economic backwardness during the last five decades, and the conditions of the Muslims, particularly of the women, by and large deteriorated. According to the Minorities Commission, the share of Muslims throughout India in government jobs, even at the lower level, has never gone beyond 6 percent which is almost half of their population ratio. In other areas, the statistics are no better. In the allotment of quotas, grants and licences too, the figures are abysmal. Their share in government constructed houses is as low as 2.86 percent. In the co-operative sector it is almost negligible.

In the surveys conducted by the Minorities Commission over the last several years, it was revealed that the conditions of the Muslims were worse than those of the scheduled castes. It was found that as of 1980, the percentage of the Muslims in the IAS had come down to 3.27 as compared to that of the SC which was 9.9. In the IPS it was 2.7% as compared to the SC of 9.8%, in the IFS it was 3.37% as compared to 16.48% of the SC. A study of data collected from 150 Central Government organisations from 14 States indicated that out of 75,953 employees, only 3346 or 4% were Muslims. Similarly the Minorities Commission's studies and surveys concluded that Muslims hardly benefited from various programmes of the Government such as the IRDP, Rural Artisan Programme, NREP etc. The only areas where the Muslims had somewhat satisfactory representation were the small scale and handicraft sectors of the industry.

Columnist Praful Bidwai focussing on Muslim backwardness wrote in *Midday* 24.10.1994:

52% of them live below poverty line and 51% are illiterate. Only 4% of the Indians who finish high school are Muslims. The percentage is even poorer, 1.6% for college graduates. Only 4.4% Indians in government jobs are Muslim. Less than 5% of those who get industrial loans from Government are Muslims. The percentage of Muslims in the armed forces and most state Police services is only 2%.

If the above statistics about the conditions of the Muslim community as a whole are bleak, the disaggregated data for the women will present a far bleaker picture. In addition to these general

disadvantages, the women stagger with additional burden of other handicaps. In a male dominated samaj, which remains caught in the grip of self-consciousness of being a vulnerable minority, they are deprived of what little benefits are available to their sisters, women of other communities. Their society discourages them to go in for secular modern education and co-educational schools are taboo for them. Customary Purdah is imposed upon them and they are married off hurriedly because of the same fear psychosis and minority complex. Without a properly executed Nikahnama and settlement of Mehr, they are prevented from the exercise of their right to seek divorce while remaining victims of their husbands' whims to be divorced by the simple stratagem of triple talaq.

At this juncture it is useful to take a look at the Muslim Personal Law as practised in India in comparison to its practice in other Islamic countries. In his book *Family Law Reforms in the Muslim World*, Prof. Tahir Mahmood reveals the following facts:

- In Turkey traditional Muslim law has been replaced by a modern civil code.
- In Egypt, Sudan, Lebanon, Jordan, Syria, Tunisia, Morocco, Algeria, Iran, Pakistan and Bangladesh there has been substantive reform of Muslim personal law.
- In all of the above mentioned countries there has been termination of rigid observance of traditional law, resulting from an express or implied recognition of the concept of *Takhayyur* i.e. equality of the principles of the different schools of Islamic jurisprudence and their interchangeability. (Appendix X "Reforms within the Spirit of Islam")
- In Turkey and Tunisia regulatory legislation for Muslim marriages and divorce has been enacted.
- In Indonesia, Malaysia and the Brunei Sultanate polygamy have been prohibited.
- In Iran, Iraq, Syria, Pakistan and Bangladesh there is strict control on polygamy by courts or by administrative bodies.
- In Turkey, Tunisia, Algeria, Iraq, Iran, Indonesia, Pakistan and Bangladesh restriction has been imposed on extra-judicial and unilateral divorces and compulsory reconciliatory proceedings.
- In many Muslim countries women's rights to dower, divorce, maintenance and custody of children have been enlarged.
- In Egypt, Sudan, Jordan, Syria, Tunisia, Morocco, Pakistan and Bangladesh there is express or implied abolition of the so-called triple Talaq.
- In Egypt, Syria, Tunisia, Morocco, Pakistan and Bangladesh new succession laws in favour of orphaned grandchildren have been introduced.
- In Egypt, Sudan, Syria and Tunisia the surviving spouse's right to inheritance has been enlarged.
- In Egypt, Sudan and Iraq there is unqualified recognition of the validity of bequest in favour of an heir apparent.

In Pakistan with the passage of the *Family Law Ordinance 1961*, polygamy is no longer the unhindered or unchallenged right of men. The written permission of the first wife must be obtained before the second marriage can be contracted. All marriages are registered and therefore cannot be dissolved by triple talaq. Divorce has to be obtained by written notification and that too after reconciliation proceedings fail to keep the couple together. Maintenance is the right of the divorced woman and is not limited to the Iddat period. These changes were made in the theocratic Islamic State of Pakistan by the pressure and persistence of a strong women's movement during the 1950's. The chart below shows the comparative position of Muslim Law in India and other Islamic countries and the Common Law in India relating to marriage, divorce and maintenance.

Subject	Muslim Law (India)	Muslim Law (Other Islamic Countries)	Common Law (India)
1. Marriage	<p>Man's position: A Muslim man can keep at a time four wives and even marrying a fifth woman is not punishable. The marriage is irregular but <u>not</u> void.</p> <p>Wife's position: If wife marries during the lifetime of her husband without obtaining divorce she is liable for bigamy under section 494 of the IPC.</p> <p>Further a Muslim man under the law can marry a kitabia (woman believing in the revealed religion i.e. Jew or Christian etc.) but woman cannot enter into marriage with a kitabia.</p>	<p>In Turkey, Egypt, Lebanon, Sudan, Indonesia, Malaysia, Iran, Pakistan, Iraq etc there is a strict control on polygamy by the courts or by administrative bodies. For example, in Pakistan the Muslim Family Law Ordinance 1961 which provided for setting up of an Arbitration Council had placed restrictions on polygamy without changing the basic tenets of personal law. Under this law, "No man, during the subsistence of an existing marriage shall, except with the previous permission in writing of the Arbitration Council, can contract another marriage nor shall any such marriage contracted without such permission be registered under the Ordinance".</p>	<p>Marry one only man/woman and if he/she enters into marriage during the lifetime of the other spouse he/she shall be punished under Section 494 of Indian Penal Code (Bigamy).</p>
2. Divorce	<p>A Muslim husband of sound mind may divorce his wife whenever he so desires without assigning any cause and even the presence of wife is not necessary.</p> <p>Whereas if the Muslim wife wants to free herself from her husband she has to move the Court under the <i>Dissolution of Muslim Marriages Act, 1939</i>. In rarest of the rare cases the wife (only if her parents were wise enough to have inserted into her marriage contract a Clause of "delegated divorce" (<i>Talaq-e-Tafwid</i>)) can obtain divorce without moving the Court.</p>	<p>In countries like Turkey, Iran, etc. men and women enjoy similar rights of divorce. In Indonesia, Pakistan and Bangladesh it is necessary on the part of civil or administrative officials to initiate conciliatory efforts. Further, divorce will be granted only through the Arbitration Council. Under this law, " Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq, in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife".... "Within thirty days the Chairman shall constitute an Arbitration Council for bringing about a reconciliation between the parties, and the AC shall take all steps necessary to bring about such reconciliation". Furthermore, the divorce between the parties will not be effected until the expiry of ninety days from the date of notification during which time the AC will do its work.</p>	<p>Divorce may be obtained only through courts.</p>

Subject	Muslim Law (India)	Muslim Law (Other Islamic Countries)	Common Law (India)
Maintenance	<p>Under the <u>Muslim Women Protection of Rights (on divorce) Act 1986</u> a divorced Muslim woman can claim Maintenance. But if a husband cannot pay, the responsibility devolves to the Wakf Board. No specific provision is included with regard to the children's' right to maintenance.</p> <p>Recent Supreme Court Judgement states that under Section 125 of Cr.P.C maintenance of children is obligatory on the father irrespective of his religion.</p>	<p>Enlargement of women's rights relating to dower and maintenance in many Muslim countries.</p>	<p>Section 125 of the Cr.P.C provides maintenance to wife and children etc. during separation and also after divorce.</p>