

SPECIFIC ISSUES OF MUSLIM WOMEN

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CHAPTER IV

SPECIFIC ISSUES OF MUSLIM WOMEN

The mid twentieth century has brought to the fore, confusion and turmoils on all fronts. The present global scenes reflect a move towards the break down of family ties, weakening of the foundation of marriage and the ever increasing of illegitimate children. All these characteristics of modern social life have thus led to disjointed family set up.

Inspite of these aberrations in family life, "Family is still considered as the core and bed rock of peace, tranquility and social order.¹" For an orderly set up of life economic security of the spouses is indispensable. In the absence of such a security woman can be exploited and misused which is likely to make her vulnerable to injustice and misfortune.

Generally, there are many problems relating to women particularly, Muslim women which exist even today in the society. They are 'triple talaq,' maintenance rights, dowry, and so on. But Hindu women are also not ✓ immune from such problems. They too have to face many problems, such as child marriage, widow re-marriage, sati and so on.

Although, these problems are common to all women some problems are special to some communities. Many of the women Liberation

¹ Wani, M.A. *Maintenance Rights of Muslim women*, Delhi, 1987, p.3.

organizations argue that all the religions of the world give a secondary position to women in the society. Asghar Ali Engineer, on the other hand says that, the above mentioned view is not completely true but he opines that patriarchal factor is solely responsible for giving an inferior status to women.² So long as women are not free from the clutches of the patriarchal values, women will ever remain subjected to the domination of men.

The best possible way for the liberation of women as a whole from such problems is to organize and to fight against such values of the society. Islam speaks in terms of gender equality in the Quran. In the Quran, there are some passages to indicate that women are not inferior from social, religious and economic points of view. But, the theologians under the influence of these values have formulated the Shariat which provides a secondary status to Muslim women.

Even today, in the Hindu society, the same problem persists. For instance in Rajasthan child marriages are commonly seen even in the contemporary society. In spite of the laws available to prohibit these social evils, there are many instances of early marriages. Social reformers like Raja Ram Mohan Roy and others had raised their voice against these social ills, still they are not completely wiped out. Some of its remnants are seen not only in Rajasthan but also in few other places. Because, the Rajputs are safe

² Asghar Ali, Engineer, 'Muslim, Sthreegalum Prashnangalum,' *Mathrubhumi*, (Weekly), Calicut, January 30th - February 5th, 1996, p.6.

guarding their traditional values in the society but they are not realizing the independent will of a woman.

In the same way, the Muslim Personal law is not amenable to change as the conservative approach of a section of Muslim society is a stumbling block in the way of solving the existing social and economic problems of the society. Muslim identity is a tool in the hands of a section of the society.³ This is what happened when the Shah Bano controversy came to the surface when the maintenance question was raised by her.

It is a fact that not even a single country of the Islamic world has implemented the 'Shariat' as such in the day to day affairs of their countries. In the case of the Indian Muslims, the law of Muhammedans based on 'Shariat' was founded by the English. The Mohammedan Law was made applicable to Pakistan also. It was following the same till 1961. Since then, the personal law was changed and new personal law has been introduced.⁴

In 1963, Kerala legislature modified the section of the Shariat Act 1937 by Muslim personal Law (Kerala) Amendment Act 1963. The Act provided that in cases of succession to agricultural lands, the rule of decision in the cases of Muslims will be the Muslim personal Law.

³ *Ibid.*, p.8.

⁴ N.P. Mohammed, *Secular Democracy Indiyile Muslingalum*, (Malayalam), Kottayam, 1990, p.138.

While there was ^{an} opposition to any change being affected in the Muslim personal Law, that is the Mohammedan Law as practised by Muslims in India, a considerable section of Muslims, holding progressive views and men pleading for social justice have been demanding new enactments in certain aspects of law, especially marriage and divorce. But any move towards change was resisted by the orthodox ulema argue that until a consensus of opinion among the ulema is reached on this point, no change can be introduced.

Despite that, there is a voceferous section in the community which thinks in terms of re-formulating and reforming Mohammedan Law which is based on medieval text books like Fatwai - Alamgiri. The social progress of Muslim community in India is retarded by intransigence of the ulema.

Muslim law conflicted with country's administrative law in the field of marriage. In Islam, polygamy is permitted on certain conditions. Muslim Law confers supreme authority in marital relations on the husband to such an extent that husband can unilaterally dissolve the matrimonial bond by pronouncement of verbal formula of divorce.⁵ The position of women in medieval feudal society further deteriorated when men became dominant and supreme. Gradually, under feudal influences women totally lost out to men

⁵ Lucy Carroll, 'Talaq-I Tafwid and stipulations in Muslims Marriage Contract Important mans of protecting the position of the South Asian Muslim wife; *Modern Asian Studies*, Vol. XVI, Part 2, April 1982, p.277.

and in the new power equation that emerged, men held women in total subjugation relegating the principle of gender justice in Islam to the background.⁶

Theoretically, Muslim women have more legal rights than high caste Hindu women but in practice Muslim women suffer many disabilities. As polygamy is practiced by a few, they can easily divorce their wives. However, Shariat Act, 1937, does not affect the provisions of section of criminal procedure code of 1898. The criminal procedure code was passed in 1898. The magistrate under the code had been empowered to pass an order directing the husband to pay certain monthly allowances for the maintenance of his wife. The provisions of the code were applicable to all Indian wives irrespective of caste and religion.⁷

A Perusal of S. 488 of the code of 1898 reveals that the magistrate was authorised to pass an order for maintenance of a wife only when certain conditions laid down by the section itself were fulfilled. A wife entitled to maintenance on the basis of these conditions could apply to the magistrate and get an order for maintenance. A Muslim wife was thus entitled to claim maintenance under personal law as well as under the provisions of the code.

Hence, the Muslim wife who resides separately from her husband on his contract by a second marriage was not disentitled from claiming her

⁶ Asgar Ali Engineer, *The Rights of Women in Islam*, New Delhi, 2004, p.187.

⁷ Wani, M.A. *op.cit.*, p.45.

statutory right of maintenance under the criminal procedure code.⁸ S.488(3) of the code empowered criminal courts to pass orders for maintenance in favour of wives whose husbands refused to provide the same. The provision was invoked in lower courts in several cases involving Muslim wives.

Both in Hanafi and Shafi Law, a minor wife can claim maintenance. If a husband is a minor, then the maintenance shall be realized from his property if any, or from his father if he has undertaken the liability for the payment of the same. Even if she does a business she retains the right to maintenance from her husband, otherwise she shall become disentitled for maintenance.⁹

In 1973, when a comprehensive bill for the revision of criminal procedure code was moved in the parliament S.488(3) was sought to be reenacted with the modification to the effect that courts could make an order for maintenance in favour of a divorced wife also. The proposed modification was vehemently opposed by various sections of orthodox Muslims on the ground that under Islamic Law a husband is bound to maintain a divorced wife only during the period of 'Iddat' and not there after. When a wife has been divorced in her absence she should be entitled to maintenance until she becomes aware of the divorce and for three months after the information

⁸ Quoted in S.M. Mohamed Koya, 'Muslims of Malabar with special Reference to their Distinctive character, (Unpublished Ph.D. Thesis), Calicut University, 1987, p.389.

⁹ Wani, M.A. *op.cit.*, p.8.

reaches her.¹⁰ If a woman does not get the amount she can sue a case in the court for the purpose.

There was wide spread opposition to the proposed amendment of section 488(3) especially from the orthodox ulema of the community. The provision which was finally enacted as a reason of the pressure brought to bear on the Government of India by the opponents of the new measure, laid down that the court could grant maintenance to a divorced wife. At the time of so doing, they should give consideration to whether she had already realized from husband in full her post divorce entitlement under the personal law of the parties. (Ref. Criminal procedure code 1993, S. 125-127). This was mainly to protect Muslim personal Law on the point as traditionally interpreted. The way in which the amendment was originally proposed was modified seemingly satisfied the orthodox Muslims.

Not only that under Islamic Law a wife is entitled to maintenance irrespective of her financial position. A Muslim wife who has sufficient means to support herself cannot claim maintenance under the provisions of the new code, but such a wife can argue for her rights under the personal Law in a civil court.¹¹

As the opposition was mounting for social legislation in relation to protection of the rights of divorced women a fairly considerable section of

¹⁰ *Ibid.*, p.22.

¹¹ *Ibid.*, .60.

Muslim public opinion was raising its voice for the cause. In this respect, Muslims of Kerala, though educationally backward and economically weak, also came to the fore demanding that necessary changes be introduced in Muslim personal Law in civil court.

In various parts of Malabar, the principal towns where the district courts and the session courts are situated, it is a usual sight of Muslim women loitering through the verandhas of courts often with their infants over their shoulders, crying for justice, demanding maintenance from their husbands and those who deserted them by unilaterally divorcing them.

On the basis of criminal procedure code S.488 and 125, numerous suits were filed by poor Muslim women especially, Mappila women of erstwhile Mappila pockets of Malabar for decrees of courts for allowing maintenance from their divorced husbands. Judges of Kerala High Court created history by pronouncing momentous decisions in this regard.¹²

In 1970, in the case of Shahulameedu Subaida Beevi, the High Court had a chance to decide if section 488 (3) was unconditionally applicable to all Indian wives including a Muslim wife. It was claimed by some in that case that a remedy for a Muslim whose maintenance remained unsatisfied lay only in Islamic law to exclusion of section 488 (3) criminal procedure code. The High court did not agree to that argument. Justice Krishna Iyyer, the then

¹² S.M. Mohamed Koya, *op.cit.*, p.391.

judge of High Court observed that monogamy would fulfill rather than fail the prophet.

In the case of K.C. Moyin V. Nefisa and others where a woman claimed that her marriage had been dissolved by a Quazi Justice V. Khalid of the Kerala High Court said that no person, however great, or learned, can be allowed to usurp the function of the court. In the case of Pathai, V. Moideen, the Kerala High Court division bench gave the verdict, concerning men's right to divorce even if it be given under compulsion or in jest or in anger.¹³

The Supreme Court judgement granting maintenance to a Muslim woman after divorce beyond the period of 'Iddat' has attracted wide attention among those who advocate reforms in the law as it operates today and those who oppose any change ostensibly on the ground that it is divine and hence cannot admit any change.

The supreme court judgement is pertaining to Shah Bano Begum of Indore who was divorced by her husband, Mohamed Khan, an advocate in 1978. They were married in 1932 and had three sons and two daughters. The husband paid her maintenance at the rate of Rs.200/- per month from the time he drove her out in 1975 until he divorced her and for the period of 'Iddat'.

The aggrieved woman filed a suit against her former husband claiming maintenance beyond the period of 'Iddat' under section 125 of criminal

¹³ *Ibid.*, p.392.

procedure code at the rate of Rs. 50/- per month in the court of judicial magistrate (first class).¹⁴ She alleged that her husband earned Rs.60,000/- a year. The court granted a paltry sum of Rs.25/- per month. In a revision application before Madhya Pradesh High court, the maintenance amount was revised to Rs.179/ month.

Her husband filed an appeal against this judgement in the supreme court claiming that the High court judgement was in violation of the provision of Muslim law. It provides maintenance only for a period of three months called the period of 'Iddat' where as under sec. 125 of the criminal procedure code, maintenance to a divorce is to be paid by the husband for life or until she remarries.¹⁵ The judgement came from a constitution bench of five judges such as the then chief Justice V.V. Chandrachud, sitting with Justice A.N. Sen, D.A. Desai, Venkataramiah, and Chinnappa Reddy.

The Supreme Court, however, upheld the lower court judgement arguing that it was given under a common secular law and that as argued by the advocate of Shah Bano it was in keeping with the verse 2:241 of the Quran according to which the provision for divorced women must be made in kindness. The Supreme Court did not accept the plea of the advocate of the

¹⁴ Asghar Ali, Engineer, *The Quran, Women, and Modern Society*, New Delhi, 1999, p.142.

¹⁵ Asghar Ali, Engineer, *Lifting the Veil*, Hyderabad, 1995, p.38.

Muslim personal Law Board that it was violation of the Muslim personal Law.

The Muslim leaders protested against the Supreme Court Judgement saying that it was the interference with the Muslim Personal Law. They voiced that the Supreme Court had no right to interpret the Quran. The liberal and progressive minded Muslims supported the Judgements, arguing that it was a question of the right of Muslim women that the Judgement delivered under the common criminal law of the country must be respected. Moreover, the liberal section of the community felt it was not violative of the Quranic spirit. However, the liberal Muslims were numerically small and the majority was controlled by the traditional leadership.

The protest movements against the Supreme Court Judgement soon gathered momentum and engulfed in different parts of the country. Huge crowds of the Muslims community came out on the streets to protest and to demand that either the Supreme Court Judgement should be declared invalid or the law should be changed exempting the Muslims from the provisions of Sec. 125 of the Criminal Procedure Code.

The aggressive protest against the common criminal law of the country was strongly resented by Hindus. They made it an issue of women's rights. The leftists made it a question of strengthening secular forces and opposed the muslim's orthodox view that a divorced Muslim woman could not claim

maintenance beyond 'Iddat' period. But the Muslim leadership put tremendous pressure on the Government to change the law. At last the Government accepted the Muslim demand and enacted the Muslim Women (protection of rights on Divorce) Act which exempted Muslims from the application of Sec. 125 of the criminal procedure code.

In Kerala, it led to an acrimonious debate. There were many people who raised their voice for and against the Judgement. Even, before the judgement came there was a wide discussion on the right of Muslim husbands to divorce and re-marry. Even, among political parties, there were criticisms against polygamy which was granted by the Islamic Shariat.

The greatest defect in human legislation is that it fails to take a comprehensive view of all the relevant facts and circumstances. The partial views of the politicians, legislators and biased jurists add to anomaly. Same is the case with the supporters of anti-Shariat and prejudiced sentiments. An assessment of their ideas made one realize that they are of not only Shariat but also the statutory provisions of the Islamic law.¹⁶ They totally fail to realize the consequences of their absurd views and also rather deliberately ignore facts. A wife can claim maintenance only when she is unable to maintain herself. The Supreme Court has based the Shah Bano decision on this ground but no attempt has been made by the court to give an explanation for this

¹⁶ Wani, M.A. *op.cit.*, p.79.

expression. This is likely to lead to uncertainty and even total negation of maintenance right in the same cases.

In actual practice we find more cases of divorce amongst the lower sections of Muslims society with whose pressure the parliament passed Women Protection Act in 1986. It is fortunate that the court is trying to make changes in accordance with the changed condition and demanding high amount for the protection of Muslim women. ✓

Muslim Women (protection of right on Divorce Act 1986, S.3)

The mandate of S.3 is that divorced Muslim women should not be left in lurch. A husband has to make provisions for his former wife to enable her to lead a standard life which she is used to and they must be discharged by the direction for payment of fair and reasonable provision under S3.

The totality of circumstances must be alertly considered by the court in its attempt to answer the questions as to what amount must be fixed in a just and reasonable manner. The following circumstances would be relevant in fixing a reasonable amount: what is the age of the wife at the time of marriage and at the time of divorce? What is the total period of the marriage? What is the prospect of her re-marriage when the couple were residing together? What is the income of the husband? What are the commitments? What amount can be, as a reasonable and a sublime person, be expected to spare for his wife? It can also be said that the liabilities which the husband and wife

are forced to endure because of the marriage and divorce can also be taken into account. The fact the wife is responsible to look after an infant child after the marriage would certainly fetter and hamper her chances of re-marriage. The strata of society to which parties belong will also have to be considered to ascertain whether re-marriage within reasonable time can be expected.

Mumthaj aged 23, a petitioner from Palakkad filed a petition under section (3) of Muslim women protection of rights on Divorce Act 1986, in 2004, was married to the counter petitioner Mujib Rahim aged 27, on 17.06.2001 as per Islamic law. At the time of marriage, she was given sixty coverings of gold and Rs.40,000/- by her relatives. Within a week the counter petitioner and his family squandered away all the ornaments and the amount mentioned above. He harassed her and physically assaulted her and demanded an additional amount.

Though, negotiations proceeded, his attitude did not change. Her parents came and took her to her house. In the meanwhile he got remarried. The petitioner filed a case, against him. He brought to the notice of the court that he had divorced on 31.10.02.

The petitioner has claimed value of gold ornaments and the amount which has been misappropriated by the counter petitioner. She also claimed

maintenance during 'Iddat' for Rs.2500/- per month. She has claimed Rs.3,00000/- as reasonable and fair provision.

The counter petitioner has denied all the charges levelled against him. He said that he was only a salesman and his earnings were only Rs.1500/- per month. She has not observed 'Iddat' also. Hence she was not entitled for maintenance.

The following points are noted on cross examination in the court by the judge. Firstly it was ascertained that he has divorced her on the above mentioned date. Secondly, she was enjoying a high standard of living during her stay at his matrimonial house.

Considering the yard sticks adopted by the honourable High Court in the decision reported in 1990 (1) KLT 172, the Judge pronounced that a sum of Rs.60,000/- would be just and reasonable and fair provision. It is therefore held that the petitioner is entitled to a sum of Rs.60,000/- on this account.

In view of the discussion, the petitioner is entitled to receive 60,000/- as Matah ie reasonable and fair provision and Rs.50,000/- towards the value of gold ornaments and Rs.1,000/- the cost of watch given to him by her in

laws. Thus, a total sum of Rs.1,41,000/- was payable by the counter petitioner to the petitioner.¹⁷

K. Rahamathunnisa, the petitioner for maintenance, was married to the counter petitioner. Fuvad Basha Kamaluddin in 1987. Two children were born to them. While living together, he used to behave very cruelly towards her. Now, they are living separately. They had no source of income to maintain themselves. The counter petitioner is a driver and a vehicle broker. He is getting a monthly income of Rs.6,000/-. In the above circumstances she claims a monthly maintenance of Rs.1,000/- each to the petitioners i.e. to his son and a daughter from the counter petitioner as the petitioner could not produce any reliable evidence to prove the exact income of the counter petitioner.

Under the above circumstances, after considering the age and necessities of petitioners and probable income of the counter petitioner the judicial magistrate, at Palakkad thinks that a monthly maintenance of Rs.400/- to the first petitioner and Rs.300 each to 2nd and 3rd petitioners is to be paid from the date of the order.¹⁸ The first petitioner is authorized to receive the maintenance on behalf of the 2nd and 3rd petitioners.

¹⁷ Case No.22/2004, Law Suit in Judicial I class Magistrate Court, Palakkad, date of the order 5.2.2005, issued by the court.

¹⁸ Case No.60/2004, Law suit in Chief Judicial Magistrate Court, Palakkad, date of the order, 1.10.04, issued by the court.

Shakeela, the petitioner was married to the counter petitioner Yusuf on 22.07.01 at Kongad Juma Masjid and they resided in the house of counter petitioner at Kalpathy. At the time of marriage, the petitioners parents had given Rs.40,000/- and ornaments of 20 sovereigns gold as present. The 'Mahr' was fixed as one sovereign, which was given to the petitioner. After the marriage, the in laws of petitioner harassed the petitioner demanding further gold and money. Due to the illtreatment of the family members, she was separated and she was divorced by her husband.

The marriage and divorce between petitioner and counter petitioner was admitted by the counter petitioner. The counter petitioner contented that the petitioner had expressed indifferent attitude after marriage and it is found that she is mentally abnormal that is why he divorced her. But the grounds which necessitated a divorce is not a matter to be considered while dealing with a petition on Muslim women's protection of rights on divorce. It is an admitted fact that petitioner was married by counter petitioner and he divorced her. Therefore, she is entitled for all the benefit to which a divorced Muslim woman is entitled.

The petitioner had produced an evidence to the effect that she is without any income or property of her own and she is depending her family members for her livelihood. She also said that she had observed 'Iddat' after divorce and counter petitioner had not given any amount for the maintenance

during that period. She said that he was a porter and was earning Rs.500/- per day. He denied it by saying that he was earning from his vegetable business. But he had not produced any record to prove his statements.

The counter petitioner alleged that the petitioner was suffering from mental abnormality. Therefore such a contention itself will adversely affect the scope of re-marriage of the petitioner. Therefore considering the financial capacity of the counter petitioner and the scope of remarriage of the petitioner, the counter petitioner had to pay Rs.1,00000/- to the petitioner as the reasonable and fair provisions of her future maintenance. The counter petitioner is also directed to pay Rs.1,500/- per month each for three months being maintenance during the 'Iddat' period.

In the result, the petitioner is allowed to the extent that the counter petitioner will pay a sum of Rs.4,500/- as maintenance towards 'Iddat' period and 1,00000/- by way of fair and reasonable provisions¹⁹ of future maintenance to the petitioner.

In 1971, a group of Muslim leftists with modernist leanings under the banner of Islam met and Modern Age society was formed and functioned for a short time in Calicut. Though, it disappeared from the scene as an abortive movement, within a short span of time, it functioned and promoted a major

¹⁹ Case No.55/03, Law Suit in Chief Judicial I Class Magistrate, Palakkad, Date of the order 30.12.2005, issued by the court.

controversy and revealed a hitherto unarticulated movement. It adopted a liberal position demanding reform of Shariat for Indian Muslims.

It emphasized the need for change in the laws of polygamy, divorce, inheritance and waqf control.²⁰ The Personal Law of Muslims, embodies conditions and clauses, which is formed within the frame of Islamic injunctions accepted by all legal schools. But there are differences of opinion among Hanafi, Shafi, Maliki, and Hambali Schools.

In Islam, two witnesses are essential during the time of 'Nikah'. Though the Sunnis follow the same, they never encourage the principle of requiring witnesses during the time of divorce. If the husband repeatedly says three times that he is divorcing his wife then the divorce is complete.²¹

'Talaq' is sanctioned in Islam under specific ground, Here, one thing to be born in mind is that, the principles in relation to it are formed in favour of the advantages of women. For instance, if the authority wants to give final verdict on the divorce problems, the authority should get the recommendations of the mediators. This condition indicates the fact that Quran shows justice to women. But these conditions are not properly applied.

There are many Muslim women who are suffering cruelties at the hands of their husbands. For example, Shamsabi's life was ruined by her

²⁰ R.E. Miller, *Mappila Muslims of Kerala*, Madras, 1976, p.214.

²¹ S.M. Mohamed Koya, 'Talaqum Sthreekalude Avakashangalum' in *Mathrubhumi* (Weekly), Calicut, 4th -10th September, 1994, p.6.

husband Shamsudden who was basically from Chaliyam in Kozhikkode district. He revealed his true self the very next day after their marriage. And after ten years he has allegedly married about half a dozen women.²² His harassment continued till she was given the triple 'Talaq'.

There are a number of such cases projected by print and visual media. Even religious leaders who are bound to check any misuse of the religion, are turning the other way. No loud voice is heard against 'Triple Talaq' or the way it is used. The 'Talaq' as taught by the Quran is rarely practised the way it should be. It was this assault on Muslim women that forced the NCW (National Commission for Women) to come out with a report on the conditions of Muslim women in India, entitled "the voice of the voiceless." The NCW member Syeda Hameed expressed in the report that here the women suffer double exploitation. Her finding suggests that the denial of educational opportunities has the lowered status of Muslim women from their economic point of view. On the other hand they are denied their rightful due under the Muslim personal Law either through misinterpretation of the law by conservative sections or through the ignorance of their rights.

"We want to hold a mirror to Muslim society and jolt the enlightened into doing something against the injustice done to poor and illiterate women

²² *The New Indian Express*, Cochin 8th June 2000, p.7.

in the Personal law," Syeda had said. An immediate ban on 'Triple Talaq' was one of the suggestions put forth by the report.

This suggestion soon raised a hue and cry over whether it would be possible to ban Shariat law or a not. It was spurred by most religious leaders: perhaps Jamat-e-Islam was the sole exception.²³ There have even been suggestions that all marriages and divorces under different personal laws be brought under the special marriage act. V.P. Zuhra, the president of NISA, a progressive Muslim women's forum is one among the advocates of these ideas. Amidst the melee of intellectuals of splitting ends on 'Talaq' and law makers framing their set of rules, the practice goes unchecked, leaving more and more women to fall back on all their resources including prostitution to raise their children and to hold themselves from cracking up.

Kanthapuram A.P. Aboobaker Musaliar, general Secretary of the All India Jamiyya-thul-ulama says banning 'Triple Talaq' is not solution, such a move will be tantamount to driving a sword into the Shariat. But its practice has to be strictly controlled for which strong education is to be given.²⁴

Siddique Hassan, former Amir of Jamat-e-Islami, Kerala, says that the practice of 'Triple Talaq' in this country is against the concept of Talaq as delineated by Islamic Shariat. It is true that Muslims in India are at the receiving end and because of the misuse of 'Talaq' women should be saved

²³ *Ibid.*

²⁴ *Ibid.*

from this misery. It is the responsibility of the Islamic scholars to find a solution. If they so decide, they may ask for its ban by law and such a move would be most welcome.

The true spirit of change lies in checking the misuse of Islamic Shariat by seeking refuge in its nuances. The demand of the womens commission in right direction. The real spirit of it should be imbibed. The religious leaders should initiate correction through Islamic ways.

Hussain Madavoor (Mujahid leader and former president of Ittihadu Shubbanil Mujahideen) says that the concept of 'Triple Talaq' as interpreted in our country is wrong. There is no such thing as 'Triple Talaq' at a time. Even if one delivers three Talaqs at once only one will be deemed effected. Unlike popular misconception, the real spirit of 'Talaq' is pro-women. Talaq is divided into three sages. Enactment of law against it is no solution rather people should be educated about it.

The misuse of 'triple talaq' exists even to day. Within a short span of time after the marriage, the husbands easily divorce their wives without any specific grounds. Those who do so are distorting the true spirit of 'Triple talaq'. This is mainly to protect their selfish interests. Such long standing issues are yet to be solved.

The Muslim men are allowed to divorce their wives with the help of Qazis very easily whereas women are denied this privilege as has been

enjoyed by men. This results in the suppression of Muslim women. In this context, if they want to get rid of their troublesome and cruel husbands, they cannot. All these problems worsen their conditions. But there is a land mark legislative effort which gave birth to the Dissolution of Muslim Marriage Act, 1939.²⁵ It was introduced to sanction the right of dissolution in favour of the Muslim women on innumerable grounds. This is the first legislative venture which enabled women to save themselves from undesirable matrimonial life. But many of the uneducated do not know about these acts.

In fact, Muslim women are guaranteed of financial assistance from Waqf Board, but they are not securing it at expected times. The poor parents may also perhaps find it difficult to help maintenance their daughters. However, in certain cases, the 'Mahr money ranges from Rs.101/ to Rs.500/- which is quite very low. Some of them have children also. In such cases their life seems to be miserable. In spite of financial constraints, many women sue cases for getting maintenance charges at expected times.

Another point to be noticed is that the dowry problem also increases. It leads to many suicidal cases. What happens in a state like India that s either they may give 'Mahr' or make false documents to show that they have paid it. They demand sizeable dowries from their inlaws. They harass them physically and mentally. The statistical data would give the clear picture of

²⁵ Khan Noor Ephorz, *Women and Law - Muslim Personal Law Perspective*, New Delhi, 2003, p.370.

such deaths. This is a common sight among them. So, for all these corrupt practices the Muslim women like others should come forward voluntarily to put an end to it through women's movements.

Gail Omvedt classifies women movements into two types (1) women's equality movements (2) Women's liberation movements. The former may not directly challenge the existing economic, political or family structure, but rather aim at attaining an equal place for women in it and at abolishing the most open remnants of feudal patriarchy whereas the women's liberation movements directly challenge the sexual division of labour itself.

Again, women's movements are classified on the basis of two different ideologies of feminism. They are corporate feminism claiming for larger role in politics for woman on the ground that they have a special contribution to make her as women and liberal feminism claiming that the rights of men should be extended to women on the ground that women are equal to men and thus should have same rights.²⁶

The women's movements such as AIWC (All India women's conference) came into existence in 1920's. They intended to spread education. They also raised similar issues and carried out welfare programmes during the post-independence period.

²⁶ James Freedman, '*Feminism*', New Delhi, 2002, p.1.

Women's movements also raise issues affecting them as women. They fought against those issues such as atrocities against women in the form of rape, wife-beating, harassment on the streets, dowry issues, murder violence in the family, common civil code, problems of working women, trafficking in women, oppression and exploitation of women of Dalit and minority communities.

Crime is as old as the mankind itself but in the recent years it has increased in its dimension and has attained new heights. Almost the entire society is directly or indirectly affected by such violence. In India, various forms of physical and psychological injuries on women are very common. They are abused, misused and exploited for male pleasure for satisfying male ego and for the advancement of individual aid and even for international or national interests.

Studies on crimes and violence against women have indicated a discomfoting increase in the incidence of female victimization along the newly emerging forms of dimension of such victimization. It is amazing that victimological research still does not place women's victimization issues in a proper theoretical perspective where women are illtreated at home by

members of the family such as husbands, inlaws and are made vulnerable and fall prey in streets and at work place.²⁷

Women as a whole, are left entirely in the mercy of male dominated society by whom they are continuously suppressed and exploited in the social milieu. Various reasons have been noted for the ill treatment of women. Firstly, most of the marriages are arranged by the parents without the consideration of the couple's wishes. They are given in marriages when they might have lacked maturity and information regarding sex.

Most of the women offenders had an unhappy married life and so had to content not only with an unsympathetic husband, but also with nagging and possessive inlaws. This situation is further aggravated if the woman failed to conceive within a short period after marriage. Barrenness is such a stigma in our society that it is by itself sufficient to put shame and contempt upon woman to which she adds her own ideas and notions and start cursing herself. The stigma attached to separation or divorce still remains.

The trauma faced by every woman is quite beyond man's imagination. A woman, who enters the world of men, is bound to lose herself in the overwhelming crowd, unless she has an iron will to keep striving and moving forward. She faces trials and tribulations and for her to be accepted, it is not enough if she is as good as a man, she has even to be better. The thought, that

²⁷ Rekha Saxena, *Women and crime in India - A Study in SocioCultural Dynamics*, Delhi 1994, p.45.

she is inferior is sown in her mind by society which is goaded in by the belief that women are soft and practice blind obedience to gratify men.

Today's man seems to be Rousseau's 'acolyte'²⁸ he revels in perverted pleasure. He likes to see the women suffering. He would rather be a good father than be a good husband. Therefore, the problem is basically a psychological one—one that lies deep in the minds and hearts of men. The man who tortures his wife feels quite pained if the same happens to his daughter after her marriage. That is why women's problems cannot be solved by law alone imposed by the state. The attitude and thinking have to change. No law can possibly say that a man has to treat his wife this way or that. It is conscience that has to govern, not law, infact laws have not solved women's problems in India and elsewhere in Malabar.

What about Shah Bano case? That courageous woman was mocked at by religious fundamentalists and the state that should have safeguarded the rights of women succumbed to the out cry of the community and passed the Muslim women's Bill exonerating Muslim husbands from the responsibility of the maintenance of their wives after divorce.²⁹ That which is detrimental to women's interests is allowed to continue in order that the minorities consisting of men are not offended. Thus the law has not helped women. It is always the poor women who have to put up with such injustices and they are cheated

²⁸ Grirajsh, *The Encyclopedia of women's study*, New Delhi, 1995, p.815.

²⁹ *Ibid.*, 817.

because they are uneducated and quite unaware of law. Even if they are aware of laws, the gruesome procedure that leads them to court and equally gruesome are cheated because they are uneducated and quite unaware of trial, make them lose heart. Moreover they have hardly any financial or moral support and without the women's organization, they will hesitate even to register a case.

Women's problems attain their complexity in the society because of various degrees of degradation that we find in Malabar also. The upper class woman may be said to have been be emancipated for in most cases she is educated and financially independent and will not hesitate to walk down upon her husband if he treats her badly. Moreover, marriage for her is not necessity. The middle class woman presents complex dimension, because she is educated, knows laws concerning women, but yet is pinned down by convention. In most middle class families, it is a woman's job he would say and the wife would do it without questioning. This is perhaps because the man has raised an impregnable ego barrier and the wife has to dance to his whims and fancies. Marriage, therefore, enables man to go on a long ego trip where in he can come to believe in his own assumed superiority and the woman becomes his lobby horse.³⁰

³⁰ *Ibid.*

The Position is not any better even in families where women work, for, here too there are certain conditions. She shall not be more influential than he she shall not be more educated, and shall not earn even a paisa more than he. This is no exaggeration but the whole truth. It is also disheartening to note that in many cases women are struck by before-marriage-syndrome and after-marriage-syndrome.

The former makes them speak of their own role in society and condemn male chauvinistic attitudes while the latter makes them feel that they are after all inferior, and male chauvinism assumes an added attraction as they are themselves on the verge of becoming mothers in law. This is pathetic.

The lower class woman on the one hand is exploited because she is uneducated. But in most cases she does not suffer psychological trauma as the middle class woman, for, the latter is educated and is aware of her deprivation while the former is not. Also the lower class woman is very much influenced by third rate films which glorify in depicting women as inferiors and waiting to be trod on by men Cinema being their chief entertainment should instruct at least to some extent which it does not, conversely it works to encourage religious dogmatism and maudlin sentimentality.³¹

Men or women, is basically a human being and this should be the substratum for the ever-growing tree of humanity in which it is bound to give

³¹ *Ibid.*, p.818.

the best fruits. Today, a woman is just allowed to remain, so that she performs her duties as wife, mother and so on. She has been made a 'Goddess' or a 'Devil'. She is the personification of love compassion, greed and evil. She is anything but a human being.

Also a woman wants to marry because of compulsion. An unmarried woman is looked down by society. She is told all the time "you have got to marry some day and bear children". This advice is given by no less than her mother and the yoke of blind obedience is handed on to the next generation.'

Just because the woman is at home it does not mean that she eats and sleeps and does nothing. Both man and woman have to realize that marriage means commitment and it calls for efforts from both of them to keep the marriage going. If neither of them feels disinclined to get entangled in this life long commitment, it is better to stay single rather than applying for divorce on flimsy ground which often wrecks the life of their children if they have any. A balance of attitude is what one should try to achieve, an equilibrium, the absence of which is causing havoc in the western society. Without sacrifices or compromises, there cannot be a happy married life, but it is unfair to expect woman to make these all the time.

The issue has attained its complexity due to various categories of women that we have. At one level, we have women facing ill-treatment and injustice craving to find dawn of justice and independence. At another we

have those having achieved independence, becoming the target of growing market strategies and western customs and practices. Sandwiched in between, there are women dynamic and successful, who are very much aware of their rights and privileges, but even as they are on their way to achieving equilibrium, they find themselves rather unconsciously pinned down by traditional beliefs and convention. At this critical juncture education seems to be the password.

Educating the economically backward women will make them send their daughters to school, which in turn will help women coming from the lower strata to join the main stream. Value based education might also solve the problems of dowry deaths and bride burning. Going into psychology one would come to understand that mothers in law torture their daughters-in-law only because of their sense of insecurity and deprivation. In such cases education will make women think rationally and see things in the right perspective. Though, no society can be without dissenting opinions, an educated society will at least treat tolerance as its sterling value. The key to such a society lies in our hands. Both sexes would realize that each is indispensable to the other. Extreme chauvinistic attitudes will not help anybody.

The following details are gathered when Vanitha commission member (women commission) P. Kulsu, was interviewed on 12.12.06. Firstly, she

points out that there are numerous social issues centring around the lot of women in the society. Being a member of the commission she highlights that the number of victims among the Muslim women is higher than that of their counterparts in the Hindu community. She has got a number of cases with her. This proves that generally women are exploited sexually physically, mentally, economically and politically harassed in the society from the work places to the domestic level.

She further adds that divorce cases among Muslim women are increasing day by day comparing to those of Hindu women. This trend is manifested in the urban literate Muslims and rural illiterate Muslims. But the number of divorce cases are coming in large numbers from the latter. To substantiate the point she says that a husband and wife both doctors, hailing from Calicut, and spouses from Engineering professionals from Malappuram are now legally divorced.³² She has cited only one example. But there are many cases like that. But the talaq or divorce is much higher in the rural areas where it badly affects the illiterates. What she likes to conclude is that education has not influenced the minds of the people.³³ Society has not been changed. It can be changed only by changing the mind set of the people.

North America is the only place where Muslim women can exercise the full range of rights and freedom. They enjoy it as in the original Shariat.

³² Interview with P. Kulsu, Member of Vanitha Commission, on 12.12.06.

³³ *Ibid.*

Of all the Muslim countries, Iran stands as the best example of respecting women's Islamic Rights under Shariat. Under Rafsanjani and even more under Khatami, Iranian women have made strides in reclaiming and exercising their Islamic rights in society and politics and their example should be an inspiration to Muslim women in other countries.

If the law of succession is taken into account, it is realized that in the olden days the agricultural lands in feudalistic set up were not partitioned among the married daughters. It was left to entire responsibility of the eldest grandsons. Though Islam has not sanctioned such a type of set up it was followed by feudal families. Later, it was legalized by the British authorities. No theologian had protested against it because they wanted to ascertain their domination in the society.³⁴

Dr. Zainaba in her lecture, on the rights of inheritance among the Bohrah families of Udaipur, she has made it clear that the daughters of the family are not entitled to get a share of the property of their ancestors. For name sake, they may provide them a small share. But they are not ready to voice against these injustice mainly, on the basis that the harmonious atmosphere of the family should not get hampered and create unhappy situation in the family.

³⁴ Asghar Ali, Engineer, *op.cit.*, p.9.

A woman in Islam is not prevented from seeking employment. But the husbands belonging to orthodox family object to wife taking jobs. Only the enlightened husbands allow them to avail employment opportunities. When most of the poor and illiterate seek the help of the religion to find justification to prevent female education, there are others who support female education with the help of religion. There is a general stereotype that certain principles and norms of Islam are primarily responsible for educational backwardness. But there is no theoretical and empirical basis for such stereo type.³⁵

Men cannot have any number of children unless a woman gives her consent as remarked in Islam. If the birth of the child hampers the health of a woman, then she should not be forced to give birth there after. Islam allows abortive measure till the fourth month of the pregnancy. The educated and enlightened men adopt family planning methods.³⁶ There is a notion among Hindus that Muslims are against family planning methods. But, this is not fully correct because the educated Muslims opt family planning methods.

After having analyzed, the multiplicity of women issues among Muslims it is understood that the crux of the problem lies in the illiteracy of the Muslim families so due emphasis is to be given in the matter of giving value based education to them.

³⁵ Rokaiya Begum, "Education and the Muslim Women", in Noor Mohammed, (ed.) *Indian Muslims - Percepts and Practices*, New Delhi, 1999, p.141.

³⁶ Asghar Ali, engineer, *op.cit*, p.10

Mehdi Hassain in his survey 'on relation to Muslim education' has expressed that the daughters of the impoverished and illiterate Muslim families lack education because their parents never encourage them to seek education. According to his survey, if the father is educated, there are immense possibilities for a female child to be educated.

In the labour class, not only the female education but the male education is also ignored. Most of the families are encumbered with a large family. So they send their children to do some jobs and bring material benefits to the family. They also expect that women are supposed to play a good role as house wives. These are some of the conceptions around which their lives revolve.

Recently, the question of formulating a uniform civil code for all sections of society irrespective of caste, creed and religion has led to many heated arguments and discussions among Muslims. The issue was raised when a Hindu husband without divorcing his first wife converted into Islam and married a Muslim woman. It was in this particular case that judgement dated 10.05.1995 came out. The founding fathers of the constitution have enacted article 44 which states that the state shall endeavour to secure for its citizens a uniform civil code. The judges of Supreme Court, Kuldip Singh and R.A. Sahai opined that there was a need for uniform civil code in India.

As per section number 44 of the Indian constitution, attempts have been made by all the ruling parties for the past many years to formulate a uniform civil code applicable to all sections of Indian society. But, at all times there have been strong reactions to this move by the conservative section of the Muslim society which has vested interests to protect. Those who favour a uniform civil code say that its purpose is to strengthen the national unity and integrity and also to promote secular forces. Since Muslims in India are in minority and under an identity crisis. At least a section would reject common civil code. As India being a plural as well as a secular country, some times it does not want to offend its minority people. So the whole matter is neither legal cultural, or humanitarian but it is political "It is in fact motivated by a curious mixture of male chauvinism and political interests."³⁷

In one of the epoch making judgements (Shah Bano case) the Supreme Court has expressed its regret that constitutional directives in article 44 for a uniform civil code has so far remained a dead letter. There is no discrimination against any woman in the Indian constitution. The degree of discrimination depends on the mere incident of birth in particular law.³⁸ But the rights guaranteed to Indian women are taken away by the personal laws. The Islamic legal system as in the early history of every nation is associated

³⁷ Alka Singh, *Women in Muslim Personal Law*, New Delhi, 1992, pp.163.

³⁸ Indu Prakash Singh, *Women Law and Social Change in India*, 1998, New Delhi, p.146.

with religion in the growth of law. Ever since uniform civil code has become identified with Muslims it has indeed become a veritable battle ground.

The critics against uniform civil code point out that Islam is not only a religion but also a code of life. And Muslim personal Law consequently, is not only law but a religion also. Interference with Personal Law is not possible. But in practice, the Personal Law deviates from the primary edicts of Quran³⁹. It provides innumerable rights and treats them with utmost respect.

The positive aspects of uniform civil code as everyone believes, would put an end to the silent suffering on Muslim women. The uniform civil code as justice Krishna Iyyer had put it will be formed by "picking and choosing from any system as to suit our ethos and culture in accordance with times which would be in tune with dialectical egalitarianism."⁴⁰

During the period from 1954 to 1956, the government passed the Hindu Personal Law, inspite of protests from the conservative sections of Hindu society. It has been pointed out that the Muslim Personal Law stands as an insurmountable obstacle in the introduction of a uniform civil code. The opposition to a uniform civil code by a section of Muslims stems from the fact that their Personal Law will be entirely wiped out. If it is implemented all

³⁹ *Ibid.*, p.147.

⁴⁰ *Ibid.*, .148.

traces of their cultural identity will be destroyed and Hindu Personal Law will predominate the contents of the uniform civil code.

However, as observed by a progressive scholar, the fears voiced by some of the Muslim fundamentalists seem baseless. A uniform civil code implies the unification of various religious treatises but it is only the unification of civil laws which ensure gender justice.⁴¹

So the need of the hour is a comprehensive code of Muslim Law. But unfortunately, no one talks of it, people talk of utopia called a common civil code, without caring to know the rationale and object of the constitutional provision in this respect.

An Indian code of Muslim Law based on the eclectic selection of principles from the various schools of Shariat is an ideal solution to all the contemporary problems of Muslim Law. In the absence of a proper code, Muslim law will be suffering from all sorts of ailments.

Popular beliefs in the country regard the Muslim legal system as an archaic law, facilitating degradation of women through their confinement to homes, coupled with the freedom of bigamy and whimsical divorce on the part of men. This is indeed not the truth. The multiplicity of juristic opinions within Islam, the insistence of various Muslim groups of our age to strictly

⁴¹ Hameed, Chennamangalur, 'Pothe Civil code, Mithyayum, Yatharthayavum, *Mathrubhumi* (Weekly) Calicut, July 18-22, 1995, p.21.

adhere to particular juristic opinions of ancient times, freedom of every Tom, Dick and Harry today to interpret the religious law and above all, the self assumed obligation of people in general to enforce its dictates as understood by them have together turned the Muslim Law into a babel.⁴²

True principles of Muslim law are lying buried under the heaps of age long misinterpretations and widely prevailing misconceptions. These have to be dug out and must replace the distorted view of the law. Muslim women's unfettered freedom of choosing a life partner by their free will, negotiating the terms of a proposed alliance maintaining their independent identity and rights during marriage, walking out of an irretrievably broken marriage without any hesitation , and enjoying unrestricted ownership of all property that comes to their hands by inheritance or otherwise, are some of the salient features of Muslim Law.

The true principles of Muslim Law remain eclipsed by its extensive misreading over the years. If this system of law has to survive in a pluralistic society like India, its glory has to be restored by reviving those principles in letter and spirit.

The census of India 2001, for the first time gives detailed educational data across religious groups. The findings are disheartening. The facts irrefutably demonstrate that an average Muslim woman and man are far less

⁴² *The Hindu*, Coimbatore, July 30, 2006, p.18.

educationally accomplished than their non Muslim counter parts and this is so across almost every state in India. Average level of education in any case is poor. Even so, the percentage of 'literate' Muslims - those who at the very least have rudimentary reading and writing ability is considerably lower compared to non Muslims.

Clearly, our schools, colleges, governments and Social systems have failed to foster effective environment that could have induced most Muslim families to educationally empower their children in the same way as others. This is ominous because, if these inequalities were to persist in the future a large portion of Muslims could drop off the map of India's work force.

In 2001, only 55% of India 's 71 million Muslim males were literate, compared to 64.5 of the country's 67 million Muslim females were literate versus 46% of India's 430 million non Muslim men.⁴³ The percentage difference in literacy was greater for Muslim men versus their non-Muslim brethren than for Muslim women.

However, Muslim non-Muslim literacy disparities were far less in the economically advanced states of west and south India compared to U.P. Bihar, Assam, West Bengal, Jammu and Kashmir. Unfortunately these five states with high disparities accounted for over 61% of the country's Muslim population.

⁴³ *India Today*, New Delhi, August 14, 2006, p.35.

The saving grace seemed to be Gujarat and Andhra Pradesh where the literacy ratios of Muslim males and females were marginally better than those of non Muslims. And in Karnataka and Maharashtra, a slightly greater share of Muslim women were literate compared to others.⁴⁴

The sad truth is that while cities and towns offer more in terms of school and college opportunities than villages, a relatively lower proportion of urban Muslim households are investing in literacy compared to non Muslim counterparts.

According to census Report of 2001, while 6.3% of Indian males were illiterate. Only 9.6 % claimed to be educated upto class X just 4.6% upto class XII and 4.8% were college graduates or above. This was bad enough. But things are far worse for Muslims. Not only there were a lesser percentage of literate Muslims compared to the rest, also dropped off the educational ladder more rapidly than others. This was true for the country as a whole as for all the major states.

At the basic level of Muslim women were proportionately 11% worse of than non-Muslims. The difference widened to 19% for those educated upto middle school, 35% for those who studied upto class X, 45% for those who learnt upto class XII and 63% for those who were graduates and above.

⁴⁴ *Ibid.*, p.36.

Kerala may have the highest literacy rates and west Bengal's Government favours modern education. Yet, the study shows that Muslims are worse off than even the even these forward states. Literacy rates for Muslims as well as non-Muslim men and women in the state are higher than in any other part of India. In urban Kerala a sizeable part of the state, the drop, off rate of Muslims at the level of higher education is staggering. This is worse for women than men. The tragedy is that the state which takes pride in its greater awareness of educational issues has not succeeded in significantly reducing the drop out rate of its Muslims compared to others. According to the Census Report of 2001, the National Muslim population (NMP) is 138.2 million.⁴⁵ The low rate of employment in Kerala as a whole has been attributed to the highest number of unemployed women in Malappuram and Kozhikkode districts where 12,47,419 (in Malappuram District) and 5,41,646 (in Kozhikkode district) Muslim women have been placed in the category of non-workers.⁴⁶

Marriage is a blissful institution but not to the students. Interestingly, an increasing number of students are getting married during their studies. The number of married students swells as we move from the south to the northern parts of Kerala.

⁴⁵ Quoted in U. Mohammed, *Educational Empowerment of Kerala Muslims - A Socio-Historical Perspective* (A Project approved by the Indian Council of Historical Research, New Delhi, 2003, p.4.

⁴⁶ *Ibid.*, p.11.

An evaluation by The Hindu (Education plus) reveals that incidence of marriage among women during their studies has not dwindled despite an increase in awareness, and the fact of their parents being better educated. This is particularly evident among Muslims.

It has furnished the different views on mixing marriage and studies and tells how it affects a student's academic performance. Some campuses have scores of married women. Their views about a wedded life may differ. But in one voice they say marriage affects their studies. The most enterprising among them rise to overcome the hurdles, the rest buckle under pressures, some accept the stoppage of studies as their inevitable destiny.

According to N.P. Hafiz Mohammad, sociology professor of Farook College who studies the issue, educated and employed parents are more worried about their daughters than their uneducated counter parts. This worry, he says, deprives the women of their chance for a marriage by chance or preference. It is this worry that prompts parents to get their daughters married during studies. Most parents also harbour a fear that higher education will obviate the chances of a proper alliance for their daughters. The higher the education the fewer the chances of suitable alliance that is the general feeling found among parents.

Nothing but the will of the student stands before the parental pressure. The number of women effectively parrying parental pressure to marry is far

too small compared to those who tacitly succumb. The role of the teachers too is limited here. "We discourage marriage during studies. But we cannot interfere in parental decision. After all, we are not the ones who find alliances for the students"⁴⁷ says P. Mohammed, principal of Unity Women's college at Manjeri. His colleague Ashraf K.K. who heads the department of History, adds that there will be no change so long as the parental concern does not subside.

As a counsellor, says Mr. Hafiz Mohammed, "I cannot say, don't get married. But we try to influence and convince them." Most colleges show some leniency towards married students. The fact is that they are under tremendous pressure. They have to get up at early morning for doing their work at home but also for college. Ancila, the principal of Providence Women's College, Kozhikode says that, marriage of students should be discouraged at any cost. "Because it affects their studies badly,"she says. "Marriage takes half of her attention from studies. But still some of the students are coping up with their studies".

When the married students are interviewed they list various problems. Parents get their daughters married promising them permission to continue the studies. But after marriage, it is a different ball game altogether. The student becomes a woman with added responsibilities. Her rates are diversifying, She

⁴⁷ *The Hindu, (Education plus)* Coimbatore, August 22, 2006, Kerala, p.1.

is no longer the student child of her parents. She is a wife, a daughter-in-law, a home maker and much more. And then to continue her studies depends a great deal on the husband and his family. "I am fortunate to have two great broad minded in laws." Says Fathima Nilofer Assain, second year M.A. English student of Providence Women's College. Herself and her husband have agreed upon that she should continue her studies without any pressures. "I give equal importance to my career and life" she says.

Some of the married students say we are a praise for our men." Despite agreeing that wedlock affected their studies, the firmly believe that their determination backed by the support of their husbands help them continue their studies, "we can over ride the academic interruption caused by marriage only by our will and spouses 'support.'⁴⁸ Says Shahina Mustufa, a fourth semester M.A. English student with two children. She got married after her plus two and joined B.Sc Mathematics, shifted to TTC without completing B.Sc. gave birth to her first child, missed a year, then resumed her B.Sc., and later abandoned it, joined for B.A. English, gave birth to her second child, and is now doing her post-graduation. Twenty five year old Shahina is a model for many Muslim women.

A survey conducted among the married students of Unity Women's College Manjeri, by the editors of the college magazine in 2005 has

⁴⁸ *Ibid.*

unquestionably proved that studies are affected by their nuptials. Yet the continuation of their studies depended solely on the support of the spouse's family, the survey has found.

The study was conducted among the married students of first year B.A. English, second year B.A. History, B.com computer Application and B.Com Co-operation and final year B.A. English and B.Com co-operation. The survey found that 11.11 percent of the students on this post graduate campus were married and nearly 6% of the students discontinued their students following marriage.

More than 55% of the teachers whom the students interviewed said that studies suffered badly after marriage. When 22% of the teachers said there was no problem because of marriage, as many number of teachers said they did not know.⁴⁹

Nearly 78% of the teachers believed that marriage had brought about tremendous change in the student standard. And most of them pointed out that there was a general lack of interest in studies among students after marriage.

The census of India, 2001, clearly reveals how urban Muslim males were relatively worse off at each educational level compared to the non Muslims what is worrisome is how the gap widened at the level of college

⁴⁹ *Ibid.*

graduates and above. The inference is obvious, relatively speaking urban Muslim families seem to invest less on the education of their children than do non-Muslim house holds. Thus for instance the percentage difference between proportion of Muslim and non-Muslim male graduates was 64% at all India (rural + urban) level. The story was similar for Muslim versus non Muslim women graduates. The former were 72% worse off in urban India, compared to the latter being 63% worse at the All India level.⁵⁰

Pervasive and severe gender discrimination is an ugly fact of India and it shows in education. Indian women are more discriminated against by their own families compared to non-Muslims. Across educational level in urban India, both Muslim and non-Muslim women suffered discrimination vis-a-vis their males, but the extent was greater for the Muslims. At the lowest end of the spectrum the proportional difference in literacy rates between urban non-Muslim women and their men was 15%. At graduate level and above such gender equality rose to 33%. This discrimination was worse for urban Muslim women. For instance, at the most basic level of literacy. Muslim women in cities and towns were 18% worse off compared to their men. This gender inequity increased to 48% at the level of urban graduates and above.

Clearly, there have been failures at all levels. For a country that professes school education for all, parents can pull their children out of

⁵⁰ *India Today, op.cit.*, p.39.

schools with impunity with no fear what so ever of any official restriction or penalty. There is a dearth of social workers among Muslims. NGO's and activists among Muslim communities of India are trying to convince their audience the need to be educated in the true sense of the term. Too many Muslim households still believe that religious education at 'madrasas' is a substitute for high school and college learning-something that has not been actively dissuaded by the state and central Governments. In free India, sometimes for lack of opportunities in the country and sometimes by lure of better life chances, trained Muslims have migrated to the west and gulf countries resulting in a further depletion of talents among them within the country.⁵¹

There are economic reasons as well. Educational attainments are known to be co-related with household income. The average income of Muslim families in India is much lower than that of non-Muslims.⁵²

The census also shows that the Muslim families were educationally worse off among all religious groups in India in 2001. Such educational disempowerment could lead to proportionately lower share of Muslim men, women finding a place into tomorrow's labour force. And with over 60 percent Muslims living in relatively poorer state, this difference could get

⁵¹ Iqbal, A. Ansari, 'Muslim Educational Backwardness' in Iqbal, A. Ansari (ed.) *The Muslim Situation in India*, New Delhi, 1989, p.90.

⁵² *India Today*, *op.cit*, p.40.

starker over times. Recently, Rajindar Sachar, a former Chief Justice of the Delhi High Court, who was appointed by central government (2006) to probe into the social, economic and educational status of Muslims all over India. Submitted his report the committee in its report said that the position of the community was relatively poor. They are comparatively illiterate, have lower access to education and to in public and private sector. Jobs and in their case there is lower availability of bank credit for self employment. So their position is below that of Dalits.⁵³

The solution for these existing problems are not religious based reservation. Instead, it involves spending greater social and political capital to convince Muslim house holds and their leaders that salvation lies in educating their children, instead of denying it because of the force of custom. That is no easy task. But it is the only real way out of this morass.⁵⁴

As far as Muslim women or women of any other community are concerned, what they need is social, political economic, cultural, intellectual, educational and psychological empowerment. Various laws have been formed for the protection of women. But they are not being effectively implemented without any discrimination and bias. Crimes against women would not subside unless stringent laws are implemented as is done in the Middle East. It would be helpful if some restrictions be put on polygamy

⁵³ *The Hindu Daily*, Coimbatore, Nov. 18, 2006, p.12.

⁵⁴ *India Today*, *op.cit*, p.40

making permission of law court necessary for any one wanting to take a second wife. Such a flexible attitude would not only relieve Muslim women of many problems but would also go a long way in easing communal tensions in India.⁵⁵ First of all, Muslim women should establish their own identity and respect their own individuality by believing in their capabilities and also by acknowledging the presence of her own species in relation to the society by being bold and determined. Secondly, the democratic notion of gender equality should be translated into reality. A massive effort has to be planned and mobilised within the community to enlist their active involvement and participation in the literacy drive and enlightening the adult groups regarding the value and importance of education. Simultaneously suitable schemes have to be devised by experts to ensure the imparting of education of the right type and quality at primary, secondary and collegiate levels to the members of the backward Muslim community. The voluntary organizations of the community should set up cells at Taluk and District levels to guidance to the students regarding the courses of studies available at various centers, Job schemes, coaching institutions and the special schemes offered by the state and central Government for the uplift of the backward sections from time to time. These cells can collect and co-ordinate relevant statistics relating to the

⁵⁵ Asgar Ali Engineer, *The Rights of Women in Islam*, New Delhi, 1992, p.161.

community and act as a liason between the people and the authorities.⁵⁶

The destruction of one to the profit of the other would have adverse effect in the natural balance. A nations progress and prosperity can be judged by the way it treats its women. As Mr. Justice, A.S. Anand, the former justice of India has said that, the cry for gender equality should not be treated as if it is a fight against men. It is a fight against traditions that have chained women, a fight against attitudes that are ingrained in society. It is the fight against, the proverbial "Lakshmana Rekha." Therefore men must recognize and accept the fact that women are equal partners in life.

In the foregoing pages specific issues concerning Muslims of India, and particularly Muslim women are mentioned as part of the Malabar. When the issue of Sharit and reform of Shariat law was much discussed at all India level and when it became one of controversy during 1985-86 (Shah Bano controversy) Muslim women of Malabar too joined issue and during this period many a Muslim (Mappila) thinker and writer of Malabar took part in the discussion pointing towards the active involvement of Muslim women of Malabar the general public of Malabar in the debate on the issue. It is within context that the general issues of Indian Muslims are touched upon in this chapter.

⁵⁶ U. Mohammed, "Educational Problems of the Muslim Minority in Kerala," in Asgar Ali Engineer (ed.) *Kerala Muslims - A Historical Perspective*, New Delhi, 1995, p.155.