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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

BETWEEN FAITH AND LAW: THE DILEMMA OF NIKAH HALALA IN MUSLIM COMMUNITIES

AUTHORED BY - RISHIKA CHANDRA

ABSTRACT

In the field of Islamic law, Nikah Halala is a controversial practice which has been interpreted and applied in various ways, often to the detriment of women. Initially conceived to maintain the sanctity of marriage, it requires a woman, after being divorced through triple talaq, to marry and consummate a marriage with another man before she can remarry her first husband. While the practice was intended as a deterrent against impulsive divorce, it has been widely misused, becoming a tool of exploitation and oppression against women. Misinterpretations of Islamic texts have led to abuses of Nikah Halala, with women coerced into temporary marriages, often under the guise of religious obligation, and subjected to emotional, psychological, and sexual exploitation.

Nikah Halala requires a divorced woman to complete a temporary marriage (known as Nikah Mut'ah) with her former spouse before remarrying him if she had sex with another man after her divorce. This ceremony serves to guarantee that, in accordance with Islamic law, the woman's second marriage to her previous husband is regarded as a fresh partnership.

Nikah Halala has its roots in the Hadith, a compilation of customs and sayings attributed to Prophet Muhammad, and dates back to the early Islamic period. These texts state that the practice was put in place to shield women from having extramarital affairs and to preserve the honor of marriage.

Also, Islamic scholars have disagreed on the matter of Nikah Halala. Some contend that the ritual is essential to upholding the integrity of marriage and preventing infidelity, while others think it should be discontinued since it is an outmoded and cruel custom. These academics support several approaches, such as empowering women, encouraging good communication between partners, and advancing education, to address the root causes of divorce and marital problems.

Within the Islamic community, It is still a divisive topic that frequently sparks arguments and confrontations between academics and practitioners. Despite having its roots in Islamic law, its continuous application raises concerns about compassion, gender equality, and how religious teachings should be interpreted. Therefore, it is crucial to have frank discussions and do critical analysis in order to comprehend the ramifications of this behavior and investigate substitutes that are consistent with Islamic principles.

INTRODUCTION

Nikah Halala is a controversial practice in Islamic traditions. It translates as a type of marriage (Nikah) through which a wife is made eligible or lawful (Halala) to reunite with her husband after the couple has been divorced. In practice, this meant that upon divorce from her husband, a woman could only remarry that same man after marrying another man, consummating her second marriage and then divorcing the second husband, to reconcile with the first. The oral unilateral divorce that a Muslim husband had the exclusive right to pronounce, by simply uttering the word 'talaq' three times. The idea behind Nikah Halala is rooted in the concept of divorce in Islam.

According to Islamic Law, if a couple gets divorced, they have the option to reconcile and remarry within a certain period called the "Iddah" period. However, if the couple goes through the process of divorce three times known as Triple Talaq, they cannot then remarry unless the woman, marries another that marriage, and then gets divorced again.

CONCEPT

Nikah halala is often forced upon a woman who has been thrice divorced by her husband, after which the spouses seek a reunion. It is intimately linked with instant triple talaq, which was invalidated by the top court in 2017.

"The word "Nikah" and the word "Halala" both are Arabic terms. "Nikah" means Marriage and "Halala" means to make something halal or permissible. The process of making the woman permissible for her first husband by giving her marriage to a third person with a pre-condition is known as Nikah Halala also known as Tahleel marriage. The Act of practicing

*Nikah Halala made instant triple talaq a criminal offence but steered clear of halala which takes place as a consequence of triple talaq.*¹

Nikah Halala is an Islamic practice which has been so misconstrued over the period of time from its original notion that now it is often serves as a tool in the hands of Muslim men to legitimize the continuous exploitation of Muslim women; who have to bear the ultimate burden of the irresponsible words spoken out of absurdity by their husbands.

CONFLICTS

The Preamble declares that the nation is a secular state. The idea of following the traditional Nikah Halala rite is under question. Renowned academics claim that starting a tahleel marriage with the goal of terminating it desecrates the idea and sacredness of matrimony. There is a sin being committed by both of the males. The tahleel spouses are viewed as adulterers when there is no sincerity in the marriage.

Since Nikah Halala is a direct consequence of triple talaq, it is therefore unlawful. Regarding the application of Nikah Halala legislation and its customs. The fact that polygamy, Nikah Halala, triple talaq, and many other Islamic customs are blatantly discriminatory against women is the root of the conflict of interest within the Islamic society.

These are prevalent practices which promote the patriarchal mindset of people and propagate the degradation of women's dignity in the society. There are various reports of manipulation and misuse regarding the cases of Nikah Halala. It is impossible to find a man who would assuredly divorce the woman, in various cases, it has been observed that the local clerics tend to offer their services to the helpless man and woman.

Further, there have been many instances where the husband divorces his wife in the heat of the moment with irrevocable form of divorce (Triple Talaq) and instantly regrets it when the anger cools down and in the hope of reconciliation, the helpless and guilty man willingly hands over his divorced wife to another man for marriage and sexual intercourse on the condition that the latter would divorce the woman the very next day.

¹ Shweta Shoumya, 'Nikah Halala: A Closer Look' <<https://primelegal.in/2023/04/09/nikah-halala-a-closer-look/>>

QURANIC JUSTIFICATION

“Does the Quran permits Nikah Halala? Absolutely not. If a husband divorces his wife three times, then it is not lawful for him to remarry her until after she has married another man and then is divorced. Then it is permissible for them to reunite, as long as they feel they are able to maintain the limits of Allah. These are the limits set by Allah, which he makes clear for people of knowledge.”

When you divorce women and they have almost reached the end of their waiting period, either retain them honourably or let them go honourably. But do not retain them only to harm them or to take advantage of them. Whoever does that surely wrongs his own soul. Do not take Allah’s revelations lightly. Remember Allah’s favours upon you as well as the Book and wisdom he has sent down for your guidance. Be mindful of Allah, and know that Allah has ‘perfect’ knowledge of all things.

When you divorce women and they have reached the end of their waiting period, do not let the guardians prevent them from re-marrying their ex-husbands if they come to an honourable agreement. This is enjoined on whoever has faith in Allah and the Last Day. This is purer and more dignifying for you. Allah knows and you do not know.

The way the Quran speaks of it, empowers women to take independent decisions. It saves women from temperamental husbands who divorce in a fit of anger, then cancel it, then divorce again, unleashing an endless cycle of marriage and divorce. And, there is no such sanctions in the Quran for such practices.

PROVISION

That section 2 of The Muslim Personal Law (Shariat) Application Act, 1937 reads:

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

WHY IT SHOULD BE BANNED?

Due to the practice of custom like Nikah Halala the pure, innocent females of the Muslims are subsisting pacified for enormous disturbance and viciousness for this, it will affect the Muslim women and their major fundamental rights assured under the Indian Constitution, these are the information and data comprising the cause of action. The numerous women getting affected by such act of subject matter in the country but are not in a position to approach the Hon'ble court. The practice of Nikah Halala violates the human rights of women with the furtherance of entitling such laws as constitutional. This is for empowering the women to acknowledge their rights and privileges saving them from these illegal customary practices.

The practice of Nikah Halala and the Muslim Personal Law (Shariat) Application Act, 1937 violates Right to Equality as said by article 14 and Fundamental right to dignity.

- *Article 14 reads that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*
- *Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them. However, this Article does not prevent the State from making any special provisions for women or children.*
- *Article 21 states that "No person shall be deprived of his life or personal liberty except according to a procedure established by law."*
 - i. Article 21 comes under the Part III of the Indian constitution and is one of the fundamental rights guaranteed to all citizens of India.*
 - ii. Article 21 cannot be suspended during an emergency.*
 - iii. This right is available to all citizens as well as non-citizens alike.*
 - iv. Supreme Court has described this right as the "heart of fundamental rights."*
 - v. According to Justice Bhagwati, Article 21 "embodies a constitutional value of supreme importance in a democratic society."*
- *Article 25 reads for the Freedom of conscience and free profession, practice and propagation of religion.*
 - i. Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.*
 - ii. Nothing in this article shall affect the operation of any existing law or prevent the State from making any law.*

Dignified life and equality is consistently the most sacrosanct fundamental right guaranteed by the Constitution and it persuades above all other rights available under the Indian Laws.

Giving recognition to Nikah-Halala as a valid form of divorce interference with the Muslim women's right to practice her religion, seeing that it unleashes the spiritual offence on her to say the least and is, thus, violative of Articles 14, 15, 21 and 25 of the Indian Constitution. The Muslim Personal Law (Shariat) Application Act, 1937, by providing for the application of Muslim Personal Law in matters related to marriage where it conveys a wrong impression that the law sanctions the sinful form of Nikah-Halala which is unspeakably injurious to the fundamental rights of married Muslim women and offends Article 14, 15, 21 and 25 of the Constitution of India. The Indian Constitution only protects the belief and faith of the religious practices for the public order, morality, and health and must therefore yield to the basic human and fundamental right of Muslim women to live with dignity without any discrimination on the basis of gender or religion, under equal protection of laws.

Exploitation: Critics argue that Nikah Halala can be exploitative, particularly towards women. They believe that it can be used as a tool of coercion or manipulation, forcing women to marry someone they may not desire to remarry.

Emotional and Psychological Impact: The practice of Nikah Halala can have a significant emotional and psychological impact on individuals involved. It can cause distress, anxiety, and a sense of injustice, especially if the remarriage is not desired.

Lack of Consent: Opponents argue that it may not always involve full and informed consent from all parties involved, particularly if there is societal or family pressure to comply with the practice.

Gender Inequality: Critics argue that it perpetuates gender inequality by placing the burden of remarriage solely on women. They believe it reinforces patriarchal norms and restricts a woman's autonomy and freedom to make choices about her own life.

Misinterpretation of Religious Texts: Some argue that this practice is based on a misinterpretation of religious texts and that it goes against the spirit of Islam, which emphasizes justice, compassion, and the well-being of individuals.

Lack of Choice and Autonomy: Nikah Halala takes away a woman's freedom to choose her own path after divorce. It forces her to rely on the decisions of others and denies her the right to make choices based on her own desires and well-being.

Stigmatization and Social Pressure: Women who go through Nikah Halala often face societal stigmatization and judgment. This can create a hostile environment for them and further perpetuate harmful norms and stereotypes.

Legal and Human Rights Concerns: Many argue that Nikah Halala contradicts the principles of equality and non-discrimination enshrined in international human rights laws. It raises questions about the compatibility of such practices with modern legal frameworks.

Need for Reforms: Advocates against Nikah Halala call for reforms within Muslim personal laws to ensure the protection of women's rights and promote gender equality. They argue for a more inclusive and progressive interpretation of religious texts.

CASE REFERENCE

A woman namely Sameena Begum², a Delhi-based victim of instant triple talaq and a fraud marriage approached the Supreme Court in 2018 seeking the annulment of Halala marriage and polygamy. She requested the court that Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, be declared arbitrary as it violates –

- Article 14 (right to equality)
- Article 15 (discrimination on ground of religion)
- Article 21 (right to life and dignity)

She has also requested the court to ensure that provisions of the Indian Penal Code, 1860, apply to all Indian citizens. *She contended that Nikah Halala is rape under IPC Section 375. The petitions have challenged practices including Nikah halala, Polygamy, Mutah, Misyar marriage that are prevalent under Muslim marriages and divorce law practices.*

She also wanted nikah halala and polygamy to be treated as crimes, and sought for the implementation of a uniform civil code.

² Sameena Begum v. Union Of India, 16 SCC 458.

Away from the court, she conducted a door-to-door campaign to educate Muslim women about their rights. In 2019, she ran as an independent candidate for the Lok Sabha election from Rampur. She said her message resonated with many Muslim women.

RAPE ON THE NAME OF THE PRACTISE, IPC AND OTHER ISSUES

‘Nikah Halala is a practice which is nothing but rape of a woman.’

This is a vicious cycle of torture and trauma for the woman entailing nothing but physical and mental abuse.

The postulation of the practice of Nikah Halala has placed it into the category of one of the most heinous crimes under the Indian Penal Code i.e. Rape wherein the distraught female submits her body to be used as a plaything merely to pay for the thoughtless pronouncement of talaq by her husband.

Offence of rape under the Indian penal code, 1860 The definition of the offence of rape in Section 375 of the Indian Penal Code, 1860 includes the act of penetration under certain circumstances which have been expatiated under the seven specified descriptions.

Among others, one of such circumstances is without her (the female's) consent. Thus, a man is said to have committed the offence of rape if the act of penetration has been done without the consent of the female. Some shrewdness to the term Consent is provided by the Explanation 2 attached to Section 375 of the Indian Penal Code, 1860.

Explanation 2 of Section 375, INDIAN PENAL CODE says—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.³

A rape is said to be committed under the circumstances falling under any of the following seven descriptions:—

- i. First— Against her will.

³ gunjan, ‘Abominable Rapes in the Name of Nikah Halala: An Analytical Study of Halala with Special Reference to Rape Laws in India’ (*Legal Service India - Law, Lawyers and Legal Resources*) <<https://www.legalserviceindia.com/legal/article-2688-abominable-rapes-in-the-name-of-nikah-halala-an-analytical-study-of-halala-with-special-reference-to-rape-laws-in-india.html>> accessed 30 March 2024

- ii. Secondly— Without her consent.
- iii. Thirdly— With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
- iv. Fourthly— With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- v. Fifthly— With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
- vi. Sixthly— With or without her consent, when she is under eighteen years of age.
- vii. Seventhly— When she is unable to communicate consent.

The word Nikah Halala nowhere appears in the Holy Quran and thus, refers to an un-Islamic impermanent Nikah obligated upon the wife who has been a victim of reckless pronouncement of irrevocable three divorces by her husband. The first two times the talaq is pronounced, it may be withdrawn.

Nikah Halala, a practice followed by the Muslim community, stipulates that such divorced wife can only be allowed to remarry her first husband if she voluntarily marries another man, consummates the marriage with her second husband and then the man divorces her irrevocably. Misuse of this practice with the offence of rape under Indian penal code As more and more human rights disappear under the pressure of mounting fanaticism and traditionalism in many areas of the Muslim world, the practice of Halala is construed as extremely heinous and offensive to the honor of both the man and woman.

Apart from these, In the midst of this, several websites and social media pages have emerged offering Halala marriage services to women who've been divorced by their first husbands. For example, there was a twitter page name Halala Nikah which consisted of men offering services of marrying and sleeping with a divorced woman in exchange for a fee. Women who take up these services offered by these websites are exploited and blackmailed.

In a sting operation done by a newspaper agency, it was found out that Maulvis (religious scholars) are offering themselves for one night stands to divorced women for them to restore

their marriage with their husbands. They offer an entire package in which they promise to marry, sleep and then divorce the women the next day. Women fall prey easily to these services as they think it is their only option in order to save their marriage.

Many women who approach these services are either blackmailed or taken advantage of and many are asked to pay large sums of money.⁴

CONCLUSION

To ensure equal rights to every sister and daughter in the country, it is necessary to eliminate bad practices like instant triple talaq and nikah halala. I appeal to all members to contribute towards making the lives of our sisters and daughters honourable and better.

The Muslim Personal Law (Shariat) Application Act, 1937 violates Right to Equality as said by article 14 and Fundamental right to dignity. The practice of Nikah Halala grossly injures the fundamental rights of married muslim women and offends Article 14 (Right To Equality), Article 15(Prohibition Of Discrimination On Grounds Of Religion, Race, Caste, Sex Or Place Of Birth) and Article 21 (Right To Life) of the Constitution of India for being against public orders, morality and health.

In a civilized society where women and men are given equal status in every aspect, there is no place for these evil practices. In any case, when countries like Pakistan, Bangladesh, Turkey and several others have already banned instant triple talaq, then why not India? Not just Triple Talaq but Nikah Halala and polygamy are also extremely cruel practices that affect a large section of our society.

Child marriage, sati, female infanticide, dowry, abandonment by husband these are those social evils which were made illegal in law and have resulted in upliftment of women to a very large extent.

Nikah Halala refers solely to the practice of rape. After her spouse files for divorce, a woman cannot get back together with him until she marries someone else and starts seeing them

⁴ admin1, 'Nikah Halala - Current Affairs' (*Current Affairs - NEXT IAS*, 23 September 2022) <<https://www.nextias.com/ca/current-affairs/23-09-2022/nikah-halala>>

sexually. She cannot make amends with her spouse until the other man files for divorce. It is physical abuse that occurs without the woman's permission. It is frequently seen that the woman feels compelled to live with another man when the second man declines to grant her a divorce. According to people with knowledge of the situation, the government would probably contend that India can have laws against polygamy if nations like Bangladesh and Pakistan can. Afghanistan has outright outlawed the Nikah Halala ritual. The government had used the same justification to explain its position against triple talaq at the Supreme Court's hearing on the matter.

