

NIKAH HALALA: EXPLOITATION OF MUSLIM WOMEN IN THE NAME OF PERSONAL LAW

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ABSTRACT

Some incidents are so unconscionable and disgusting that they tremble the conscience of the society and compel it to take remedial measures. Injustice perpetuated by personal laws in the name of Nikah Halala is a glaring example of this. Nikah Halala is a medieval practice, wherein if a man has divorced his wife, the couple is prohibited to remarry until the woman marries some other man and consummates the marriage with the other man. This woman has to be divorced by that other man and it is only after this that the couple can remarry under the Muslim Personal law, which is currently in practice in India. Due to the unwritten laws in Muslims, the practice has been misused by Muslim men who forced their wife to marry another man and complete the requirements so that he can have her back. It is difficult to imagine the humiliation that such women have to face while getting married to another person and getting divorce the next day. Halala has been severely criticized as it harms the dignity of a woman by forcing her into a compromised sexual relationship, which is nothing else than Rape. A huge percentage of women citizens of this nation suffers in silence just because they practice Islam.

Keywords: Nikah Halala, Marriage, Rape, Fundamental Rights.

INTRODUCTION

Nikah means marriage and *Halala* means to make something legal which is currently illegal. Certain sects of Sunni Muslims practice *Nikah Halala*.

In the practice of '*nikah halala*', if a Muslim woman, after divorce by her husband three times on different instances, wants to go back to him, she has to marry another person and then divorce the second husband to get

re-married to her first husband¹. In Arabic *Nikah halala* is referred as *Tahlil*.

According to sharia, when a men divorces his wife for the third consecutive time (if he divorces her for the first time but they reconcile within a period of 3 months and unfortunately he divorces her the second time and again they reconciliation takes place within the waiting period of three months and then if the husband divorces her for the third and final time) then he cannot remarry his wife at any cost and it is not permissible / *haraam* for him to get back to his first wife.

Here, it is permissible for the husband to remarry his wife after first or second divorce but not after the third divorce until she has married another man, because *Allaah* says: “And if he has divorced his wife for the third time, then she is not legitimate unto him afterwards until she has married another husband” [al-Baqarah 2:230]².

Many misunderstandings and fallacies have encroached into Islam over the centuries and Muslims have moved away from the original teachings of the Holy Prophet Muhammad Saw and the Holy Quran.

This specific question relates to divorce and marriage in many respects as we know the divorce is permitted in Islam also it is said to be the most disliked of all things by the holy prophet saw. So that brings to mind the sacredness of marriage as such for mankind but if condition becomes so that husband and wife have to separate then Islam gives both parties the opportunity to initiate this for instance if the man wishes to finish this it is called the Talaq & if woman then *Khula* and they are given period of 3 months which is called *iddatin* which they can reunite and reconcile their marriage.

They can either Reconcile their marriage after 3 months or go in their own separate ways. They can Reconcile by having a new *Nikkah* pronouncement and the marriage can be restarted but if they have crossed to the three months and husband gives third Talaq then after that wife becomes unlawful for him and that divorce is permanent. These 3 months is a long period and is a long process for both the parties that they can go through and there is a chance of reconciliation if possible only in the earliest stages but not after the three months.

Not as a pre planned thing, the wife then goes and marries another husband and that marriage is consummated and following that as a matter of course not of Pre planning that marriage also ends either in divorce or the husband dies and she becomes a widow then the first husband is permitted to remarry that wife. This is the subject of remarriage.

Coming back to the *Halala* finally the mis-practice is that where they would arrange a marriage of convenience

for the women knowing that she was unlawful for the man at that time after the third divorce so marriage of convenience just for the purpose of her going through a divorce so that she could marry her first husband again. This is what *Halala* is and it has been called an accused practice by the holy prophet, therefore it is something that is totally not permitted in Islam. This is a wicked practice that Islam does not permit in any form or shape.

THIS ABHORRENT PRACTICE IS A MORAL AND LEGAL WRONG

In many instances, the *Halala* is planned and staged either the local cleric or some male family member offers to have a 'one night stand' with the divorced women in lieu of some money. There are even online portals offering a man for performing of *nikah halala*. The worst happens in some cases where the predetermined offer is broken and the man refuses to leave the women after one night. The trauma of sleeping with a stranger continues for days or months when the man forces himself upon woman every night till he gets more money from her ex-husband or relatives. The women have to silently face this vilest form of rape in the garb of personal laws, only to return to a husband who will in future accuse her of being 'impure' and 'used'. Most Indian men are not able to digest the fact that their wife slept with someone else, even if it was to fulfil legal requirement to remarry him. This dents the so-called male ego of the man and results in additional domestic violence for the women, who have gone through '*Halala*'. Often she is called a woman of loose character who enjoyed sleeping with some man other than her husband³.

This practice has led the emergence of professional Maulvis, who perform *nikah halala* on a regular basis and, also charge a fee for the same. These Maulvis are basically being paid to have one night stands, with these helpless women⁴.

This practice of '*Halala*' violates the fundamental rights of Muslim women, guaranteed under the Constitution of India. It infringes the fundamental right to equality and right to life and liberty guaranteed under Article 14, 15 and 21 of the Constitution⁵.

While the Indian Constitution envisages gender equality, such practices are a hurdle to the achievement of this goal. It also goes against international treaties and obligations⁶.

The woman must consummate the marriage with another man to remarry. It very clear that such consummation is solely for the purposes of obtaining a subsequent divorce, which will enable the woman to remarry her original husband. Hence, such consummation is obviously against her will. Therefore, it can be said with emphasis that *nikah halala* results in rape, as defined under Section 375 (First), because she performs intercourse against her

will⁷.

THE LEGAL BATTLE AGAINST THE PRACTICE

A muslim woman named Sameena Begum moved the Supreme Court to abolish the practices of *nikah halala* and polygamy. She requested the court that Section 2 of Muslim Personal Law (Shariat) Application Act, 1937, be declared arbitrary and violation of Articles 14, 15, 21 and 25 of the Constitution as they seek to recognize and validate polygamy and *nikah halala*. A number of petitions have been filed in the supreme court challenging the constitutional validity of polygamy and '*Nikah Halala*' among Muslims. These petitions seek to declare section 2 of Muslim personal law (Shariat) Application Act, 1937, arbitrary and volatile of constitutional norms. The said provision deals with the application of personal laws to Muslims. According to it in all issues/questions relating to succession, marriage, divorce (including talaq, ila, Zihar, lian, khula and mubaraat), guardianship, maintenance, personal property of women or any other personal matter, where the parties are Muslims, the rule of decision shall be Muslim Personal law or Sharia⁷.

The Apex court has referred the challenge to the practice of '*nikah halala*' to a constitution bench which can possibly result in the declaration of this abhorrent practice as unconstitutional.

The Central Government on considering the report suggesting that this practice has been grossly misused to the disadvantage of muslim , has been pushing for passing a law against instant triple talaq and *nikah halala* calling these as oppressive practices against muslim women.

Recently on June 20, 2019, the president of India while addressing the joint parliamentary session asserted that there is need to do away with practices like instant triple talaq and *nikah halala*.

CONCLUSION

This practice militates against all concepts of human liberty, wherein two individuals are being prohibited to remarry and are only allowed to do it on senseless terms. The Supreme Court is the last ray of hope it will be an uphill task for the Bench to navigate between Constitutional rights of Muslim women and sentiments of the conservative Muslim clergy. The apex court will do better in striking down the *Halala* which have no basis in Islam and is out rightly biased in nature.

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