



The Practice of Halala and Human Rights of Muslim Women

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Abstract

The primary source of Muhammadan Law is the Holy Quran that represents the God's will which is communicated through the Prophet in the light of Angel Gabriel. Section 34, Chapter IV in Mulla's Principles of Muhammadan Law by Hidayatullah, Nineteenth Edition deals with Interpretation of the Quran, which states that the courts in administering Muhammadan Law, should not as a rule attempt to put their own construction on the Quran in opposition to the express ruling of Muhammadan commentators of great antiquity and high authority. In Islam marriage is a 'matrimony contract'. Despite its prominence on marriage and its preservation, Islam, does not rule out the dissolution of marriage as a last resort for estranged couples. The existence of nuptial relations in case of Muslims has to be resolved with reference to provisions of Muhammadan law and not by provisions of equity or good conscience as understood by any other system of law. Halala Nikah is a practice in the Muslim community which allows a man to marry his wife after he irrevocably pronounces Triple-Talaq. Holy Qur'an, per se incorporates that if a husband divorces his wife for the third time, the patronage outlaws him to remarry her, until succeeding she has married another husband and he has divorced her. This second marriage of the wife is called Halala. But lately it has been witnessed that Halala Nikah is being used as a tool to veil the impetuous pronouncements of divorce by the Husbands and as an arrangement for their marriage of the wife with her former husband. This is done in the form of what is generally termed as 'Halala-fixing', whereby another man agrees to marry the woman, consummate the marriage and then divorce her. 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. The research attempts to expose the prejudice and fallacies of the criminal justice system in India viz-a-viz Nikah Halala. It goes on to provide arguments and reasons necessitating to the Unconstitutionality of the said marriage.

Key words: Halala-Fixing, Halala Nikah, Rights of Muslim Women, Triple-Talaq.

Introduction

"Halala" is a concept which is derived from the Arabic word 'halal' (lawful). Basically, halala marriage means a woman can go back to her husband after getting divorced. Halala is the Islamic divorce where a victim of talaq, the instant divorce, undergoes a temporary marriage with another man to remarry the husband. It is actually a blatant distortion of a Quranic injunction in

which, to emphasise the sanctity of marriage and the enormity of ending it for frivolous reasons, introduced a prohibited degree by warning the parties who opt for separation through the third and final talaq that they cannot entertain hopes of remarrying each other unless the divorced wife voluntarily decides to marry another man and that marriage too ends in a divorce. Halala is unacceptable since many marriages are illegitimate due to fraudulent halala. It was suggested that another BBC reporter had to pay almost two thousand pounds for a fake halala marriage last year.

The Muslim Personal Law being a domain which remains unscathed by the Legislature to a great extent. The reason for such non-interference by the Government has been the reluctance of the Muslim community to accept the secular Indian laws to govern their private realms. But in 2011, the Bharatiya Muslim Mahila Andolan¹, hereinafter referred to as the BMMA, created a stir in the Muslim community when the organization sent a letter to the president of the All India Muslim Personal Law Board² regarding the sufferings of the Muslim women resulting due to 'Halala. Halala Nikah is a concept under the Muslim personal law wherein a wife upon whom 'triple-talaq' has been pronounced cannot re-marry her husband unless she marries someone else, consummates the marriage and then her second husband divorces her. The practice was introduced to safeguard the basic unit of the family whereby the husband was to be prevented from dissolving the marital relation and breaking up the family because of a passing passion or insignificant disputes. But the cases that were highlighted by BMMA revealed the darker side of the practice. The cases involved women who were subjected to Halala not once but seven to eight times simply because their husband pronounced talaq when annoyed or drunk or when they lost their job. The women said they felt more like prostitutes who were forced to bear husbands for one-night so as to get back to their first husband³. Organisations such as BMMA have demanded a ban on Halala, but only in vain since no action has been taken in pursuance of it. It is disturbing to note that 'Halala service'⁴ is flourishing as a business these days and there is no check to avoid the brutalities faced by women in Halala.

The concept of Halala was introduced by Prophet Mohammad to improve the marital relationships from those corrupt forms which existed during the pre-Islamic era⁵. Under the pre-

Islamic era, the husband had an undisputed right to divorce his wife whereas the wife had no right to divorce her husband. There was no limit to the number of times a divorce could be given by the husband and he could also revoke the divorce. The word Halala does not appear in the Holy Quran. It comes from the term 'Halal' which means what Allah has made lawful in His Book⁶. On the other hand 'haram' means that 'which He has forbidden.' The Quran expounds that once a woman has been divorced by her husband, she becomes 'haram' to him and can only become 'Halal' if someone else marries her and after consummation of marriage decides to divorce her. The Holy Quran, while elaborating the concept of Halala, reads as 'if a husband divorces his wife (for a third time), he cannot, after that remarry her until after she has married another husband and he has divorced her. In that scenario, there is no blame on either of them if they re-unite, provided they can keep the limits consecrate by Allah. Such are the limits ordained by Allah which He makes plain to those who know⁷.' The Holy Quran has laid down certain caveat regarding the observance of Halala. The Quran clearly says that 'Allah curses the one who marries to make a woman Halal for her husband, and the one for whom this is done (i.e. the first husband and the woman).⁸' But if a man without any precondition marries the divorced woman purely for the sake of making her free to re-marry her first husband⁹, the Halala is considered to be valid. After consummating marriage with him and getting a divorce, the wife is free to marry her first husband again. Thus, what is prohibited strictly under Islam is the concept of 'Halala-fixing.' A Halala cannot be planned in advance, as a Nikah between a woman and her second husband with an understanding of a divorce afterwards will not be valid¹⁰. If she does so, it will be an illegitimate relationship with the second husband and with the first husband also with whom she comes to live after a pre-planned Halala¹¹. Talaq-ul-biddat and Talaq Hasan (Triple – Talaq) as a mode of divorce in Muslims: Under Muslim law, a husband has a greater right to divorce than his wife.

In fact, the Prophet cursed "those who marry a divorced woman with the intention of making her lawful for her former husband" and "the one whose ex-husband has been remarried"¹². Although Quran verses and their translation given by various jurists depict different story, the Quranic verses related to remarriage are given below with reason of revelation:

232. **“When you divorce women, you are not allowed to prevent them from marrying the persons whom they’ve chosen themselves. This is urging to the people that whoever believes in Allah and the Last Day, that is better for you; for Allah knows and you do not know”.**

Halala is a set of laws that allow a man to re-marry with his first wife only if he divorced her and re-married her more than once.

It is impermissible, prohibited and forbidden to mock the laws of Allah, for the Messenger or Allah (PBUH) cursed the people who practiced halala, making Allah’s words manifest as mere deception.

Halala is not part of Islam. This is a view derived from Islam that is espoused by some and considered part of Shari’ah law. In accordance with the law of the Quran, if a husband divorces his wife for the third time in a marriage contract, he cannot get her back unless he marries another person, and then divorces the newlywed. This rule should not be the basis of pre-planned marriage and divorce proceedings.

It is best not to give unmarried women titles, as these results in gendered generalizations. These unfair situations are usually unconscionable. According to Sharia law, the three talaqs are considered one divorce, rendering no effect on a marriage. Sunnis and Shias together disagree with the positions¹³.

In such a way, a couple will remain unmarried until their first partner marries another man. According to Islamic law, a woman’s marriage cannot be reformed if she has been divorced three times. To prevent a very large number of divorces and to protect the woman’s honour, this law is enacted. Nikah halala cannot be done as a condition or intention to make her lawful to her ex-husband. After divorce, an original spouse may re-marry again. Nikah halala is mostly used in countries that accepted the triple talaq.

The husband is allowed to make 3 talaqs during his marriage. Once this takes place, there is no reversing it. She is now free to remarry and move on with her life. It is irrelevant to the new marriage of the wife, and it’s valid regardless of whether it can be revoked. In this case, “halala”

cannot be an agreed divorce. It has to be an arranged divorce. If she doesn't follow the plan, she will get married to the second husband without a legal contract. According to the Prophet Muhammad (pbuh), those who perform halala are severely cursed. This kind of punishment was enforced in Caliphate of Hazrat Umar. Islam relates that in the case of a married woman, her husband may not have sex with her.

In cases where a husband divorces his wife and wants to keep her as a wife, he must obtain a second marriage (nikah) (Trimizi). There is a wide misunderstanding of Hanafi fiqh, which greatly differs from the Quranic interpretation. Due to religious bias and poor research, Muslim clerics opposed to the Quranic concept of halala. Certainly, in the legal and religious framework there is no a prerequisite or programmes of divorce at the occasion of marriage. If a new marriage occurs with the intention of living together eternally and then it turns into disastrous due to hardship of circumstances, such marriage becomes permissible. There should be no secret methods in the creation of a new marriage and, if not, it will be invalid. Sexual immorality is really possible in women just like men. After a person has been exposed to halala, it is likely that she would soon be involved in extra marital relations.

Al Nisa is because of that men and women are equal in laws. This means that women should come under the statue of marriage. We believe that halala confers a chance to indulge in desires.

We understood that this statement has mentioned marriage as a sin that is devoid of Islam's authenticity and rife with hypocrisy.

Remember that often Prophet Muhammad (PBUH) had warned his followers.

“Do I not warn you about the hired thug?”

The Companions asked, “Who are they?”

He replied that they are the ones who always cause problems.

A number of understandings are given by author Pir Kabir Shah Alazhari regarding this topic. “From here onwards it is the discussion about 3rd divorce (4) i.e. if he has given the 3rd divorce as well, then until she marries someone in the same way as she married the first husband and then the second husband after consummating the marriage does not divorce per his free will, she can marry

the first husband again. This is a clear order from Quran which is not subject to any interpretation.

Now-a-days a solution has been sought in terms of halala for which Prophet Muhammed (PBUH) has ordered” Allah’s curse on the person doing halala and the one for whom it is being done.

The quotations by Prophet Muhammad (PBUH), Hazrat Umar (RA) and Hazrat Uthman (RA) are very clear now. When such highly regarded verdicts are made, Halala is no longer understood.

Case Laws:

1. Mohd. Ahmed Khan vs Shah Bano Begum And Ors; 1885 SCR(3)844

This was one of the landmark judgments in the legal history, in 1985. This case explained that what should be included under the decree of the Supreme Court.

Facts- The issue was that Ms. Bano claimed the maintenance under the Cr.P.C rather than through the personal laws, after getting divorced from her husband Mohd. Ahmed Khan. According to the personal laws, she could only claim maintenance only during the period of iddat, but as in the Indian laws, she had to be given maintenance all through her life, with some exceptions too, under which she didn’t came Held- As the plaintiff and the defendant were Muslims, were to be governed by the Muslim Personal Law. Since the petition was filed under the Cr.P.C, the district court, the High Court and the Supreme Court passed their judgments, favouring Ms Shah Bano. This judgment was criticized by the AIMPLB, as they claimed that decree of Personal laws was beyond the jurisdiction of the courts. The Shah Bano Case received various public stances. Government then had passed a legislation, termed as ‘The Muslim Women (Protection of Rights on Divorce), 1986’, and aimed to overturn the judgment of the SC. According to this legislation, Muslim women were entitled to a ‘fair and just’ amount of money within the ‘iddat’ period, beyond which, the husband was to have no liability.

2. Ahmadabad Women Action Group (AWAG) v. Union of India; AIR 1997; 3SCC 573

Facts- According to Muslim laws it allows Muslim men to have four marriages, along with the right to divorce, under the concept of Talaq, whereby, the husband possess the right to divorce by pronouncing the term ‘Talaq’, without judicial methods, and this may happen without her consent,

along with the practice of Halala in case the wife intends to go back to her former Husband. The PIL was filed in this case addressing both these issues. Held- In the light of these arguments, the court was of the opinion that India and Indians have been governed by personal laws, regardless of the time period. It was of the view that interference by the court would lead to several undesirable results, as the verdict of personal laws was beyond the jurisdiction of the courts. The petition was dismissed.

3. **Danial Latifi and another v. Union of India; 2001 7SCC 740; CriLJ 4660**

Facts- After the judgment of Shah Bano's case, there was a disorder in the Muslim personal law. The parliament passed and enforced The Muslim Women Act, 1986, which provided that under section 3(1) (a), a divorced woman is entitled to reasonable and fair provisions and maintenance within the 'iddat' period. One of the council, Danial Latifi confronted the above act, claiming that it was unconstitutional, and in violation of Article 14 and 21.

Held- The petitioner, in his argument said that that the Act is unconstitutional and has the potential of overpowering the Muslim women, and weakens the secular character. It is reasonless to deprive the Muslim women of the applicability of section 125 of Cr.P.C and present act is in violation of article 14 and 21. To this, the respondent said that personal laws are a legitimate basis for discrimination and therefore does not violate article 14 of the Constitution. The Court thereby favoured the respondents.

Indian Position and Relevant Laws:

This issue is of critical importance because there is a serious type of discrimination against Muslim women in Singapore. To correct the injustice faced by women, the legislature should first repeal unfair discriminatory laws.

The Supreme Court has declared that Nikah Halala is a violation of human rights as it violates the human rights of women. Chief Justice Dipak Misra and the rest of the justices continued to hear the petition of one of the petitioner.

As a citizen of India, Muslim women are protected by special governmental guarantees because they possess special rights and special privileges. Although "Halala" is still considered

controversial, the Hanafi School of law supports the legality of it. If Triple Talaq is allowed, women's rights will be violated along with their equality.

Women subjected to this type of practice suffer deeply, but can still escape if they embrace it. This has been determined as a means to discourage divorce as a step toward reconciliation with one's spouse. The objection is invalid due to lack of supporting reasoning.

Conclusion

In March 2013, a collection of petitions to the Supreme Court requested that "nikah halala" be made unconstitutional, and polygamy be restrained. One of the petitioners maintained that Nikah Halala is considered as rape and polygamy under section 375 of the Indian Penal Code and section 494 of Indian Penal Code (triple talaq). On April 11, the Supreme Court warned the government concerning its legislative process concerning the Triple Talaq Bill. After the Supreme Court banned Triple Talaq, the government implemented a bill to put forth a law against the practice. The bill is still being considered by the Indian government. This proposed bill prohibits triple talaq while also providing penalties for the husband.

Discussing the issue of personal law wouldn't resolve controversy between different groups of Indians. In the case that the husband and the wife disagree, it is not proper for the divorce to occur. Therefore, it is imperative that irrevocably divorced women cannot remarry. Because Islamic divorce procedures are so clear-cut, people would hesitate to remarry a divorced couple simply because they simply read the Quran. Another argument in favour of the author's position is the fact that the unjustified legitimization of instant talaq has caused the abominable circumvention of the Quran. This is because a pliable person is set up to marry a divorced woman, consummate the marriage overnight, and the next day divorce her to legitimize her new married status with the original man. Misunderstood religious practices which cause harm to innocent woman or girl are called halala or nikah al-tahleel. In spite of the barbaric manner in which nikah halala is administered the inhumane manner of triple talaq is redundant.

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