

## HALALA NIKAH: MARRIAGE AGAINST THE DIGNITY OF MUSLIM WOMEN? A CRITICAL ANALYSIS IN LIGHT OF THE INDIAN LEGAL SCENARIO

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**Abstract:** Halala Nikah is a practice in the Muslim community which allows a man to marry his wife after he irrevocably pronounces Triple-Talaq. As per the Holy Qur'an, 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. 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 cover up the reckless pronouncements of divorce by the Husbands and as an arrangement for the remarriage 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.

**Keywords:** Halala-Fixing, Halala Nikah, Rights of Muslim Women, Triple-Talaq

**Introduction:** The Muslim Personal Law is an area which remains untouched 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 Andolan, [1] 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 Board [2] 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 husband.[3] 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.

**Halala Nikah:** The concept of Halala was introduced by Prophet Mohammad to improve the marital relationships from those corrupt forms which existed

during the pre-Islamic era.[5] 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 Book.[6] 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 case, there is no blame on either of them if they re-unite, provided they can keep the limits ordained by Allah. Such are the limits ordained by Allah which He makes plain to those who know.'* [7] 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 husband, 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. [9] 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 valid. [10] 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 Halala. [11]

**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. The divorce given at the instance of husband without the consent of the wife is called *Talaq*. There are two forms in which *Talaq* can be given: *Talaq-ul-sunnat* and *Talaq-ul-biddat*. *Talaq-ul-sunnat* is the divorce given in accordance with the traditions of the Prophet and is further divided into types: *Talaq Ahsan* and *Talaq Hasan*. *Talaq Ahsan* is considered to be the most proper form of divorce. In this form of divorce, the husband has to pronounce divorce in a single sentence when his wife is in the state of *Tuhr* (purity) and has to then abstain from intercourse for a period of 3 months. The *talaq* is revocable before the end of the period of 3 months. In *Talaq Hasan* the husband pronounces the word ‘*talaq*’ three times, each after a period of one month and in the presence of witnesses, and after the third pronouncement the divorce is final. If no intercourse takes place between these three pronouncements, the *Talaq* is final once the third pronouncement is made. [12] *Talaq-ul-biddat* means innovated (or sinful) form of Divorce. It is the divorce which is pronounced thrice in one sitting when the wife is in the state of purity. It is recognized only by Sunnis whereas Shias do not recognize it. [13]

The rule of Halala is required to be complied with only where the husband has repudiated his wife by three pronouncements as is necessary in triple *Talaq*, such as in *Talaq Hasan* and *Talaq-ul-biddat* consisting of three pronouncements. [14]

**Issues arising out of Halala Nikah:** The number of Halala marriages has suddenly increased to alarming numbers. The women in Halala have also reported abuse at the hands of their husbands. [15] These women are forced to undergo Halala with their near relatives also at times and according to the report by Kamal Khan, NDTV journalist from Lucknow, the business of Halala service is on the rise. He writes in his report that ‘The cleric in Akbarpur has inherited a lucrative business from his father. He conducts the marriage and divorce ceremonies. The business is growing.’ [16] He further puts across one of the major risks that is posed to a woman in fixed Halala that a number of times the second husband has violated the terms of a fixed Halala and has refused to part with the woman, often because she was prettier than his own wife. Women who deny undergoing Halala often

face humiliation in the society and are forced to give up their custody rights over their children. The fear of losing their children had led many women to undergo Halala even unwillingly. [17]

**Possible Solutions:** A basic reading of this concept makes clear the two apparent problems arising out of this scenario to which the Muslim law does not offer an answer. The first is identification as to whether the Halala is ‘a natural course of event’ or ‘a pre-planned’. The second problem is that there should be a limit as to the number of times a woman can be subjected to Halala. All attempts to ban triple-talaq in India have met with failure and thus the researcher does not intend to delve into this matter. Thus, the only solution to these problems seems to be a complete ban on the practice of Halala. But the point is that whether such a practice can be banned or not. Muslim Personal Law was majorly uncoded till the enactment of laws such as The Shariat Application Act, 1937 and The Dissolution of Muslim Marriage Act, 1939. The reason behind enactment of these laws was to ensure that that customary law does not take the place of Muslim Personal Law. It was also necessary since in the absence of a codified law, customary practices which were divergent from the values and principles of the Quran had emerged. [18] Similar rules can be applied in case of Halala Nikah since ‘Halala fixing’, which is clearly against the rules laid down in the Holy Quran, has now emerged and is being practiced rapidly. A codified law banning this practice can be a solution to the violence and miseries that women in Halala face.

**Conclusion:** The concept of Halala Nikah is degrading to the status of women. Though the practice was introduced with an intention to safeguard the rights of women in a marriage and to save her from unthoughtful divorce, the practice has not been able to serve the intent. 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. A ban on this practice can put an end to this humiliation. The Muslim Personal Law Board can introduce another way out for divorced couples to get married again without forcing the wife into any unwanted marriage or relationship of such nature. Thus, the solution in order to fight the evil practice of Halala in order to protect the dignity of Muslim women is a codified law banning it.

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