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# **NIKAH HALALA AND THE INDIAN LEGAL FRAMEWORK: AN INTERROGATION THROUGH THE LENS OF RAPE LAWS AND WOMEN'S RIGHTS**

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## **ABSTRACT**

*Domestic violence against women has become a current issue in the modern world. Penal regulations have been shaped since time immemorial, shelters and treatment programs have been established, and documentaries and films have been produced on the subject issue in order to raise awareness and assist sufferers in society. But, even now, our society. It is not permissible to discuss sexual interactions in public. The society's hush-hush and abnormal attitude towards sexuality discourse has also resulted in the obscuring of sexual violence acts towards spouses and children because they are considered a private matter and a social concept. It is the foundation of the family value system. Throughout the world, and particularly in Indian society, the strict patriarchal family code, combined with religious belief that the husband is second only to God, has been nurtured in such a way in the conjugal bond that most married women believe it is their primary duty to serve all sexual needs of their husbands and that it is acceptable to be abused by their husband without their fault. This paper attempts to investigate the issue encountered by women in*

*Islamic society as they attempt to raise their voices against rape in the name of religion. It also investigates the legal options accessible to such victims in India.*

**Keywords:** Divorce, Halala, Forced consummation, Marital rape, Consent vs. Submission

## **INTRODUCTION**

*Tolerance has boundaries because it cannot tolerate what is actively intolerant*

**~ Mr. Sidney Hook**

Marriage in Islam is a free will contract between the bride and husband to take on the social responsibilities of a nuptial bond. The phrase "Nikah Halala" does not appear in the Holy Quran and refers to an impermanent Nikah imposed on a wife who has been the victim of her husband's imprudent declaration of talaq. If talaq is pronounced twice, it may be withdrawn but, in the progress, if talaq is pronounced thrice continuously it is irrevocable. The divorce makes the wife haram (impure) for her husband whereas she is halal (pure) to other men after completion of her Iddat. The Nikah halala is designed to make her halal for her husband (the first husband). Nikah Halala is a Muslim community practice that states that a divorced wife can only remarry her first husband if she freely consents to marry a third person, consummates their relationship, and then the man divorces her.<sup>1</sup>

The word 'Halala' is derived from the word 'Halal,' which means 'suitable or permissible within the confines of Islam.' 'Haram', which meaning "what Allah has forbidden," is diametrically opposed to the idea of "Halal." In displaying the work of 'Bahishti Zewar,' jurist Maulana Ashraf Ali Thanvi remarked that if the husband and wife desired to remarry for the second time, it is to be done only on one condition, namely through a laborious procedure of halala. If the husband dies or divorces the woman after sexual intercourse after halala marriage, the woman is free from the marital

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<sup>1</sup> Noor Zaheer, Denied by Allah, Angst Against Archaic Laws of Halala, Triple Talaq, Mut'ah and Khula, 2015, ISBN 9382711589

connection tied-in to purify or make her halal, and at the conclusion of the Iddat time, she can remarry anybody, including her first husband.

However, if the second husband dies or divorces her before they have a sexual contact, the newly bonded marital relationship is not deemed to render her halal, making her still impure (haram) for her first husband and prohibiting her from marrying her first husband in such circumstances."<sup>2</sup>

In several areas of Islamic law, growing fanaticism and traditionalism deprives humans of their rights. As a result, debates about the misuse of nikah-e-halala and its comparison with the act of rape under the Indian penal code have gained prominence in recent years. Halala is considered exceedingly wicked and derogatory to the honor of both the man and his woman. The way this technique has been established in the modern circumstances is nothing more than a peek of the Islamic cleric's deed of rape while misquoting in the name of religion.

This research paper analyzes the origin and concept of 'Nikah Halala' This paper would revolve around the analysis of the practice of Nikah Halala with special reference to rape laws in India. The paper would mainly focus on psychological and physical extortions faced by women in the name of Nikah Halala.

## **RESEARCH METHODOLOGY**

The paper adopted explanatory, analytical, descriptive, and comparative research methodology (which involves studying existing papers journal articles and online websites on this theme); in addition, primary data analysis was surveyed by focused group discussions and news reports.

## **THEORY AND HYPOTHESIS**

After the pronouncement of talaq for the, the woman becomes 'haram' (unlawful and therefore, prohibited) for the husband. In context of divorce, a bar was laid down in order to ensure that the man did not use it as a tool for torturing his wife (by marrying and divorcing her as many times as he desired). It was the rule of irrevocability. This rule was introduced to maintain strict discipline and to ensure that marriage was not reduced to mere mockery. In modern India, nikah halala has

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<sup>2</sup> Muhammad Aziz, Halala Marriage and Its legal/ Sharia Status, (Sep 24 2023 3:30 PM), <https://paklawyer.com/blog/nikah-halala/>.

been manipulated and misused. In patriarchal societies, religious laws have often been lopsided, favoring men. Laws such as triple talaq and nikah halala are not only antiquated, but are also debilitating for Muslim women. The legality of such laws needs to be challenged and consequently, discarded.

## **OBJECTIVE OF RESEARCH**

- The following research seeks to postmortem the essential ingredients or determinants required for the dissolution of marriage in Muslim Personal law, which violates the human rights of women with the furtherance of entitling such laws as unconstitutional.
- The research further goes to provide recommendations to be adopted for empowering the women to acknowledge their rights and privileges saving them from malevolent customary practices.
- The research tried to identify the heinous crimes by name of religion and interpret them in context of current penal laws.
- Further it discusses the remedies for the victims and suggestions to empower them.

## **LITERATURE REVIEW**

The literature review procured from

### **"Our nation and its women" by Saumya Parmarthi and Manu Gupta**

It exhibits that while talking about challenges of women empowerment brings to light the Rights Provided to Women in India face a lot of social inequalities ranging from gender specific abortions, mistreatment by their spouses through domestic violence and personal laws. Most women aren't aware of women rights in India and other times their legal rights are not protected as they should be. Women empowerment plays a significant role in letting them know their rights and also issues infringe on women rights. (SAUMYA PARMARTHI 2014)

### **Nidhi Khare and Radhika Singh in Halala Nikah: Marriage Against The Dignity Of Muslim Women: A Critical Analysis In Light Of The Indian Legal Scenario**

It entrenches that 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. 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. (NIDHI KHARE, 2016)

**Challa Srinivas in Status OF Women Empowerment In India: Problems And Concerns**  
**adduce that the government of India**

It has ratified various international conventions and human rights instruments committing to secure equal rights to women. These are CEDAW (1993), the Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the platform for Action (1995) and other such. Other hand, it has been observed that women are found to be less literate than men. According to 2011 Census, rate of literacy among men in India is found to be 82.14% whereas it is only 65.46% among women. Thus, increasing education among women is of very important in empowering them. For these reasons, they require empowerment of all kinds in order to protect themselves and to secure their purity and dignity. (SRINIVAS, 2015)

It is said that this rule was established by the Prophet himself. Dr. Furqan Ahmad, a Research Associate at the Indian Law Institute wrote in **Understanding the Islamic Law of Divorce** that "the Prophet tried to put an end to this barbarous pre-Islamic practice" which was "to divorce wife and take her back several times in order to ill-treat her". The Prophet, by the rule of irrevocability of the third pronouncement, indicated clearly that such a practice could not be continued indefinitely. Thus, if the husband really wished to take the wife back, he should do so; if not, the third pronouncement after two reconciliations would operate as a final bar."

**Vibha V & Adhish Anil Kumar Kulkarni in their research paper titled 'Critical Analysis on Practice of Nikah Halala in the light of India Rape Laws'**

It forms the basic premise of this section when a woman who is rendered defenceless and whose status as a wife in the society has been scrapped in a short span of time by mere utterance of three words often at the whims and fancies of her husband she can't be held to be in prudent state of mind and it would not be surprising that she agrees to Halala in the view of saving her from societal disgrace and lifetime of insecurity and humiliation.

### **CONCEPT OF NIKAH HALALA**

The term 'Nikah Halala' appears nowhere in the Holy Quran and so alludes to an un-Islamic impermanent marriage imposed on a wife who has been the victim of her husband's imprudent proclamation of irrevocable immediate triple talaq. The talaq could be revoked the first two times it is pronounced. However, after the third pronouncement, the divorce becomes completely irreversible. Applying the impact of irrevocable talaq to her makes her "halal," which means permissible, for another man, although she would be regarded haram for the first spouse. Nikah Halala is a Muslim community practice that states that a divorced wife can only remarry her first husband if she voluntarily marries another man, consummates the marriage with her second husband, and then the second husband divorces her irrevocably.

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### **ORIGIN OF THE CONCEPT OF NIKAH HALALA**

Holy Quran doesn't mention the word 'Nikah Halala' anywhere and so refers to the practice of an Islamic impermanent marriage subjected to wife who herself is the victim of irrational pronouncement of instant Triple Talaq. The first two times Talaq is pronounced it could be withdrawn but the third time it is irrevocable.

The term 'Halala' is derived from the word 'Halal,' which means "that which is considered appropriate or permitted within the bounds of Islam." Contrary to the concept of 'Halal' is the concept of 'Haram,' which means 'what Allah forbids'. The Quran indicates that once a woman has been divorced by her husband, she becomes 'Haram' to him and can only become permissible if

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<sup>3</sup> Noor Zaheer, Angst Against Archaic Laws of Halala, Triple Talaq, Muta and Khula, HRIRJ, 100 (2015).

someone else agrees to marry her and then decides to divorce her after the marriage is consummated.<sup>4</sup> The goal is to teach males that they cannot divorce their spouses by uttering talaq in a fit of rage or while under the influence of intoxicants, and that if they do, it will be difficult for them to reclaim their divorced wife. However, whether or not this goal has been adopted by society is controversial; one argument against this is the establishment of the Halala practice in order to maintain male dominance in society.

Religion is reinterpreted and reshaped by patriarchy, which benefits its dominance.<sup>6</sup> <sup>5</sup>To adhere to society's patriarchal needs, customs and religion have been distorted in order to exercise control and dominance over women. As a result, the important issue here is that Nikah halala cannot be arranged in advance.

## **QURAN AND ISLAMIC JURISTS ON NIKAH HALALA**

In the second chapter of the Qur'an, Allah says the following

*“Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah – it is those who are the wrongdoers.” Qur'an (2.229)*

Allah then says in the Qur'an *“And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know.” Qur'an (2.230)*

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<sup>4</sup> Debayan Roy, No Polygamy, Nikah Halala in Mahila Andolan's Proposed Muslim Family Law, News 18India, (Sept 24 20123 4:43 PM),

<sup>5</sup> 6 Ameera V. U, Marry Him, Then Marry Me: Nikah Halala and Malayalam Movies, 1 IJRHAL 2321, 2347 (2017).



This rule is thought to have been added by the prophet himself to prevent a Muslim man from hurting his wife by divorcing and remarrying her as many times as he wants. A Muslim man has the legal right to divorce and remarry the same wife twice, according to Islam. If he decides to dissolve the marriage for the third time, he can remarry the same woman only if she first marries another man, consummates the marriage, and if the man dies or asks for a willful divorce, the woman can return to her first husband and remarry him after completing the Quranic divorce procedure.<sup>6</sup>

The practice was to divorce a wife and then remarry her and mistreat her. Prophet Muhammad, the rule of irrevocability of triple talaq made it plain that such a behavior is not permitted be carried on indefinitely. Thus, if the husband desired to reclaim his wife, he should go in conformity with the norms of nikah halala; otherwise, the third talaq pronouncement after two "Successive reconciliations would serve as a final bar."

In his well-known work 'Bahishti Zewar,' jurist Maulana Ashraf Ali Thanvi indicated that if the husband and wife desired to re-marry for the third time, it was to be done only on one condition: the lady had to marry another man and sleep with him. Following that, if her second spouse dies or divorces her after having sexual relations with her, then after the fulfillment of the Iddat era, she is permitted to remarry her first husband. If, however, the second husband died, or divorced her before to the commencement of a sexual connection, it will not be considered. In such conditions, she cannot marry the first husband."<sup>7</sup>

### **NIKAH HALALA AND RAPE**

As more and more human rights are being eroded by rising extremism and traditionalism in many parts of the Muslim world<sup>10</sup>, the practice of halala is regarded as abhorrent and derogatory to the honor of both men and women.<sup>8</sup>

The annihilation of Nikah Halala has placed this Islamic practice in equitability with the offence of rape defined under Section 375 of the Indian Penal Code, 1860. When the companion-less

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<sup>6</sup> Nafees Ahmad, The challenges SC will face while reviewing petitions on banning polygamy and halala, (Sep 24 6:30 pm), <https://www.youthkiawaaz.com/2018/04/the-supreme-court-on-new-petitions-on-banningpolygamy-and-halala/>;

<sup>7</sup> Aziz, supra note 9.

<sup>8</sup> Gupta, supra note.1.

destitute divorced wife, in contemplation of returning to her former husband and saving her marriage, scruples at nothing including her dignity and endures the coercive tryst supported by religion, it can dexterously be termed as 'without her consent'. The definition of the offence of Rape under Section 375 of the Indian Penal Code, 1860 provides 'without her consent' as one of the circumstances under which the act of penetration by the male is made punishable<sup>9</sup>. Section 375 defines the term 'consent' as an unequivocal voluntary agreement wherein the willingness of the female to participate in the specific sexual act is clearly expressed and discards the proof of the absence of physical opposition by the female to the act of penetration as a test to determine consent or voluntariness of the female to engage into the sexual act.

Incontrovertibly, the hideous Islamic tradition of Nikah Halala does not provide enough possibility to the divorced wife who has been divorced and abandoned by her husband. When the husband, after the pronouncement of irrevocable talaq, strives to overcome the canonical scruples of divorcing his devoted wife via his true penitence and elects to advocate the easy recourse to Nikah Halala to bring his wife back in, Marriage is one of the few options left to a divorced wife. When a wife is abandoned by her husband, she yearns to return to him and agrees to a pre-planned Halala, which says that she will only be Halal, i.e. lawful, for her first husband after she engages into a connubial relationship<sup>10</sup>.

The "absence of consent" of the woman, as defined by Section 375 of the Indian Penal Code, 1860, is the essence of the crime of rape, and the Halala custom, particularly the requirement to consummate the second marriage before returning to the first spouse, also occurs without the woman's knowledge or permission, creating comparisons between the crime of Halala and rape are both prohibited. The distinction between consent and submission can be shown here.

Therefore, the woman's passive compliance when she is unable to rationally accept the prescribed practice of Nikah Halala but nonetheless engages in it in an attempt to desperately return to her

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<sup>9</sup> Indian Penal Code, 1860, § 375.

<sup>10</sup> Debayan Roy, Supreme court to begin Nikah halala and polygamy hearing from July 20, News 18 India, (Sep 24 2023), <https://www.news18.com/news/india/supreme-court-to-begin-nikah-halala-and-polygamyhearing-from-july-20-1808713.html>;

first husband IP, can only be considered "submission" and not "consent," which must be proven as a defense to the allegation of rape.

## **CASE LAWS**

### **1. Mohd. Ahmed Khan vs Shah Bano Begum And Ors; 1885 SCR (3)844<sup>11</sup>**

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 come.

**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, favoring 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 <sup>12</sup>**

**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,

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<sup>11</sup> Mohd . Ahmed Khan vs Shah Bano Begum And Ors 1985 AIR 945, 1985 SCR (3) 844

<sup>12</sup>Ahmadabad Women Action Group (AWAG) v. Union of India; (AIR 1997, 3 SCC 573)

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 <sup>13</sup>**

**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.

### **4. Shamim Ara. v. State of U.P; Case No.: Appeal (crl.) 465 of 1996 <sup>14</sup>**

**Facts-** The petitioner married the respondent in 1948, in accordance with the Muslim personal law, and had four sons. The wife filed an application in the court, under Sec. 125 of the Cr.P.C, claiming that her husband had abandoned her and there was cruelty by him. The family court rejected her appeal, on the grounds that she had already been divorced. However, a sum of Rs. 150/- was granted as maintenance for one son, till he attained majority.

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<sup>13</sup>Danial Latifi and another v. Union of India (2001) 7 SCC 740

<sup>14</sup> Shamim Ara. v. State of U.P; Case No.: Appeal (crl .) 465 of 1996

**Held-** The petitioner denied her divorce. The SC was of the view that the mere plea of a Talaq would not validate the same. The Quranic process of obtaining a Talaq needs to be fulfilled.

### **5. Shayara Bano v. Union of India and Ors; Writ petition(C) No. 118; 2016 <sup>15</sup>**

**Facts-** This case has brought enthusiasm in everyone's mind as it has challenged the concept of 'instantaneous triple Talaq' and not the concept of 'triple Talaq'. The PIL was filed by Ms Shayara Bano. This petition has been greatly been supported and believed to have given a chance to those who have suffered.

The PIL was initiated by Ms Shayara Bano, a resident of Uttarakhand, who was constantly abused by her husband and eventually divorced by way of Triple Talaq at one go. Her difficulty was heard by the SC of India. India is a secular country and its citizens deserve to be happy, content and should always have the right to equality and justice.

**Held-**The Hon'ble Supreme Court has chosen to allow the rights of those who truly deserve it, is commendable and a positive step towards the injustice that women are subjected to. The bench of the Supreme Court has declared the judgment that the triple talaq has been held unconstitutional and violative of various articles in the Indian Constitution.

### **6. In Rao Harnam Singh, Sheoji Singh v. State , <sup>16</sup>**

Punjab & Haryana High Court laid down the below points while distinguishing between the concept of consent and submissionA mere act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance, passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be consent' as understood in law. Submission of her body under the influence of fear or terror is no consent.

There is a difference between consent and submission. Every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent.

Consent of the girl in order to relieve an act, of a criminal character, like rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and

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<sup>15</sup> Shayara Bano v. Union of India and Ors; Writ petition(C) No. 118; 2016

<sup>16</sup>In Rao Harnam Singh, Sheoji Singh v. State AIR 1958 P H 123, 1958 CriLJ 563

evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure.

Thus, the passive acquiescence by the female when she is not in a position to rationally accept the foreordained practice of Nikah Halala, but still becomes a part of it barely to desperately return to her first husband, can only be designated as submission' and not consent, which must be proved as a defence to the allegation of Rape.

### **7. Bishnudayal vs Union of India <sup>17</sup>**

The victim girl was sent to her elder sister's home to aid her sister and her in laws for some time. During her stay there she was forcefully married to a person in exchange of liquid cash and was forced to consummate such marriage. The court held the marriage to be void ab initio and even though she was married held the heinous act to be rape under Section 375 of IPC pointing at the definition of consent which includes free will as a pivotal compass to determine the decree. The court for the first time classified the difference between will full submission and in capability to resistance or passive acceptance in the Mathura rape case.

### **8. RTI Foundation Vs. Union of India <sup>18</sup>**

The court was of view that merely repelling the Exception 2 from the definition of Section 375 will hardly solve any purpose because if it is done so, all sexual acts by the husbands towards their wife would qualify to be marital rape and the test to if it was forced upon her and whether it can be criminalized would singly rest upon the wife, which leaves immense scope of ambiguity and misuse of the law.

## **ISSUES ARISING OUT OF HALALA NIKAH: NEWS REPORT**

**THE ECONOMIC TIMES: The question whether Supreme Court consider nikah halala, polygamy challenges as well?**

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<sup>17</sup> Bishnudayal vs Union of India AIR 1981 SC 39, 1980 CriLJ 1297, 1980 Supp (1) SCC 358, 1980 (12) UJ 887 SC

<sup>18</sup> RTI Foundation Vs. Union of India 2022 SCC Online Del 1404)

**NEW DELHI:** The Supreme Court, while striking down instant triple talaq, indicated that two other contentious issues — nikah halala and polygamy — were still under challenge in court. Both practices have been blamed as contributors to the poor socioeconomic status of Muslim women. The top court had said during the triple talaq hearing that it would not deal with these issues that were challenged by activists as anti-women. But in the triple talaq judgement, outgoing Chief Justice JS Khehar, speaking for himself and Justice Abdul Nazeer, seems to have suggested otherwise. “The practices of ‘polygamy’ and ‘halala’ among Muslims are already under challenge before us,” the CJI recorded. Justice Khehar is the administrative head of the top court and takes a call on whether the court hear these issues as well. Justice Khehar is demitting office on Sunday and the next CJI, Dipak Misra, will have to take a call on whether the court should hear these issues.

**THE TIMES OF INDIA (Mumbai Edition)** Triple talaq, Halala practices, polygamy are 'patriarchal values', such practices impact dignity of Muslim women: Centre to Supreme Court. New Delhi: The Centre has told the Supreme Court that practices like triple talaq, 'nikah halala' and polygamy impact the social status and dignity of Muslim women and are not protected by The right to profess, practice and propagate religion under Article 25(1) of the Constitution. While putting forward its arguments before the SC bench, the government reiterated its earlier stand saying these practices render Muslim women "unequal and vulnerable" as compared to men of their community as well as women belonging to other communities. The Centre described triple talaq, 'nikah halala' and polygamy as "patriarchal values and traditional notions about the role of women in society". Referring to reforms by several Islamic countries, including those have overwhelming Muslim population.<sup>19</sup>

**THE PRESSREADEER** The human rights of women and of girls are an inalienable, integral and indivisible part of universal human rights, the court said. Hence, talaq by a Muslim husband to his wife cannot be made in a manner which may infringe her fundamental rights guaranteed under Article 14 (right to equality) and Article 21(right to life) of the Constitution. Kesarwani further said that all citizens including Muslim women have fundamental rights guaranteed by the

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<sup>19</sup> Available at: <https://www.pressreader.com/india/the-times-of-india-mumbai-edition/20170510/282063391882448>

Constitution. "Under the garb of personal law, rights of the citizens protected by the Constitution cannot be infringed."

**INDIA TODAY REPORT Nikah Halala:** Muslim women pay lakhs to Islamic scholars for one-night stands to 'save their marriages. A blatant misuse of the Muslim personal law is currently taking place under the radar of public attention. According to an India Today Report, Islamic scholars are reportedly charging a hefty amount for one night stands with divorced Muslim women looking to resuscitate their marriage by a controversial practice called nikah halala. For this, Islamic scholars are in high demand, and charge anything between Rs 20,000 - Rs 1,50,000 to participate in nikah halala. When the undercover team of the channel met Islamic scholars, they reportedly bragged about carrying out the practice. One scholar, who is married reportedly, said that he doesn't need to tell his wife to participate in Nikah Halala.

### **LEGALITY OF NIKAH HALALA IN INDIA**

Personal laws have dominated Indian law for a very long time and still do. While the center is committed to ending such practices, which deprive people of their fundamental rights, these behaviors are still being carried out by individuals under the guise of religion.

A small Muslim community adheres to nikah halala because they consider the laws governing marriage and divorce to be deeply rooted in their religious texts and insuperable by national law. One of these personal rules, known as triple talaq, allows a man to divorce his wife by saying the word "talaq" three times. This is the ideal illustration of a serious and divisive subject in our nation. However, muta (conditional marriage) is regarded as sin in Islam, and those who engage in it are punished according to sharia law as sinners.

The All India Muslim Personal Law Board (AIMPLB), defending their contemptible religious beliefs, has stated that any deviation from the Quranic edict is regarded as acting against the Almighty himself. The triple talaq was ruled to be unlawful last year, and the Lok Sabha passed a bill to enforce a criminal clause. The top court instructed lower courts to investigate the concerns of imposing a legislation outlawing polygamy and Nikah halala separately and stated it was need to hear petitions against it.



The All India Muslim Personal Law Board (AIMPLB) has taken a firm stance against the ban on polygamy and Nikah halala because they think that any deviation from the Quran disrespects the prophet Muhammad. They also think that everything going on is really a government ruse.<sup>18</sup> It is anticipated that they will consent to the codification of personal laws, which will open the door for the country's adoption of a uniform civil code. The practice of Nikah Halala cannot be judged to be unconstitutional because it is in conformity with the Quran and hence cannot be changed, according to Zafaryab Jilani, the AIMPLB's secretary and legal counsel.

These laws are more frequently misapplied and abused in contemporary India. These arbitrary personal laws deprive the populace of their fundamental, fundamental rights, which are protected by our constitution. The AIMPLB continues to encourage the practices despite their exploitative and inhumane nature. These rules should be repealed because they are out of date and prevent India from becoming a nation where everyone is treated equally in both theory and practice.

### **SUGGESTIONS FOR IMPROVEMENT**

- Muslim women are left with no remedy as practices like triple talaq; polygamy and Nikah Halala have a legal cover under the Muslim personal law. In order to fight such social evils, these practices should be considered criminal offences under the purview of Sections 354 (outraging modesty of women), 375 (rape), and 494 (bigamy) of the Indian penal code.
- Muslim women should be made more aware of their fundamental rights. The society and the government should create for them an atmosphere where they can fight against injustice, ignorance, and violence caused to them in the name of religion.
- There should be a provision made where brave Muslim women can themselves address and counsel other women of their kind in order to protect them from harmful traditions like triple talaq, polygamy, domestic violence, and nikah Halala. E.g. A non-profitable group, Ala Hazrat Helping Society, ran by Nida khan a victim of triple talaq and domestic violence herself.

- The government and non-governmental organizations should focus more on setting up self-help groups, shelter homes, and other aiding camps to transform these women into independent and empowered citizens so that reconciliation with their husbands is not the only way further.
- The Muslim women should be made aware of the consequences of their silence and should be made heard of stories of the fewer Muslim women like Shah Bano, Shayara Bano, Nida Khan and other courageous women who fought against these unjust practices to protect their own rights and to bring a change in the mindset of the Muslim society

As long as they fail to help themselves nobody really can.

“The best place to find a helping hand is at the end of your own arm”. Therefore, as long as the women of these communities do not come out and make audible their grievances no remarkable change could be brought about.

## **CONCLUSION**

Through its 1500-year history, Islam has been by far the most misunderstood and misrepresented of all world religions. The reason for this is not external, but rather owing to the followers' own ignorance. The practice of Nikah Halala has been extensively misconstrued as a result of the non-codification of Muslim rules. So much so that Muslim divorced women are increasingly being manipulated and coerced into having one-night stands with strangers in order to legalize their remarriage to their first husband. The traumatic stitch of Halala [26] is the disagreeable corollary of triple talaq, which has already been pronounced unlawful by the Supreme Court of India in Shayara Bano v. Union of India (as a violation of the fundamental right provided by Article 14 of the Constitution).

After defeating instant triple talaq, the Bhartiya Muslim Mahila Andolan has completed their draft of the Muslim Family Law, 2017, which, if debated and enacted by the parliament, will put an end to polygamy and Nikah Halala. Appropriately, a written legislation prohibiting this practice can significantly alleviate the despair felt by women in the name of Nikah Halala.

Regarding the need for law to be flexible in order to adapt to changing society, if the law fails to respond to the needs of changing society, it will either stifle the society's growth and choke its progress, or if the society is strong enough, it will cast away the law that is impeding its growth. Law must therefore be continuously on the move, adjusting to a rapidly changing society and not falling behind.