



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Misusing the Chastity of Women through the Practise of Nikah Halala

Uddeshya Dhakad^a Keshav Patel^b

^aUniversity of Rajasthan, Jaipur, India ^bUniversity of Rajasthan, Jaipur, India

Received 18 April 2024; Accepted 22 May 2024; Published 27 May 2024

The traditions, conventions, and etiquette of Islam are claimed to set it apart. Having said that, it is well-known among modern-day humans that not all customs and practices are morally and socially acceptable. The original intent of the nikah halala custom was to make life more difficult for a husband who acts rashly when he wants his wife back. One common method of arranging for a guy to marry a woman, consummate the marriage, and then divorce her is called 'halala-fixing' these days. We argue in this paper that the procedure is Firstly, it is clear from even a quick reading of the Quran that the Holy Quran does not condone the heinous custom of Nikah-Halala. Additionally, any effort to uphold the regressive Nikah-Halala practice is intrinsically risky in light of the most recent verdict by the Apex court and the Ordinance (which, hopefully, will be made law soon). In addition, it is disappointing that a comparison between public morality and constitutional morality is used to justify the Nikah-halala practice, which undermines women's fundamental rights and dignity to live egalitarian lives. Finally, the latest judicial trend that emerged from the Sabarimala ruling and the section 377 decision shows that an Indian woman's dignity, worth, and honour should not be hidden behind weak procedural arguments of constitutional overreach, regardless of her religion or faith. The research takes into account Muslim women's worries about Halala and Nikah and suggests that Muslim family law be codified as a workable alternative. As a result, it is morally reprehensible, violates women's rights severely, and is comparable to sanctioned rape. The paper goes on to stress that religious legislation must protect women's rights and autonomy without promoting sexism. So, it's reasonable to call nikah halala rape and say it's against the law. After a final talaq (divorce), a halala Nikah forbids a husband from remarriage his ex-wife, so long as she marries another man and then gets a second divorce.

Keywords: *nikah halala, muslim, divorced, quran, rape, Indian penal code.*

INTRODUCTION

The decision of the Highest Court to invalidate the medieval practice of abrupt and unjustified triple talaq was widely applauded as a major step towards establishing gender parity in Indian culture.¹ We duly recognised this triumph. Noteworthy to highlight is that progressive Muslim men rallied behind Muslim women's petitions to the Supreme Court, which sought to outlaw this antiquated practice. The practice was determined to be in violation of both the precepts of the *Quran* and *Art. 14*, which protects gender equality, according to the Apex Court.² Given the courageous efforts of certain Muslim women to assert their rights as Indian citizens, it is imperative that *Nikah halala* undergo a thorough examination.

This article explores the disturbing practice of preplanned *Nikah halala* and its harmful impact on society. This practice is the most serious among the crimes. This concept goes against the teachings of the *Holy Quran* through its wrongful application and can be seen as nothing less than sanctioned *rape*. In order to fully comprehend the intricacies of *Nikah halala*, it is essential to determine a clear understanding of its components. In '*Nikah Halala*', a '*divorced*' woman enters into a new marriage with the sincere intent of building a life with her new husband. However, circumstances, such as his death or divorce, led to their unfortunate separation once again. *Islamic law*, she has the option to again marry her former husband if she chooses to do so. It is worth mentioning the disturbing practice of *pre-planned halala*, where a former husband orchestrates a marriage for his ex-wife only to immediately divorce her after consummation. The Prophet Muhammad (PBUH) condemns this practice because it is incompatible with the principles of divine law.³ There are questions about the practice of *Nikah Halala* in Islam. From a legal research perspective, the intention behind the practice of *Nikah Halala* was to create

¹ *Shayara Bano v Union of India* (2017) 9 SCC 1

² *Ibid*

³ Sanjiv Kumar Singh, 'The Practice of Halala and Human Rights of Muslim Women' (2021) 8(1) *Journal of Emerging Technologies and Innovative Research* <<https://www.jetir.org/papers/JETIR2111165.pdf>> accessed 11 April 2024

obstacles for men who impulsively divorce their wives and then want to remarry them.⁴ Therefore, it is necessary to adhere to the prescribed procedure for Nikah Halala without any prior planning.⁵ However, there have been some recent incidents that have brought to attention the alarming physical, psychological, and monetary mistreatment of women under the guise of Nikah Halala. This practice shall be considered one of the extreme atrocious crimes under the IPC, falling into the class of rape. In this practice, a distraught female is forced to submit her body as a plaything, simply to pay for the inconsiderate pronouncement of talaq by her husband.

The concept undermines the sanctity of marriage vows, turning them into a mockery. It is morally wrong and dehumanising to expect a woman to go through the process of marrying another man and then getting divorced just so she can remarry her first husband. There are other approaches to tackling the problem of triple talaq that can avoid causing additional humiliation and ridicule for women. Although Nikah halala was not originally meant for halala-fixing, which involves a woman marrying and consummating with another man solely to obtain a divorce, the practice itself is inherently flawed. It perpetuates the normalisation of rape by placing women in situations where their consent is compromised.⁶ *Nikah halala* is a grave injustice committed against vulnerable women who may feel compelled to take extreme measures to save their marriages, possibly because they are monetarily dependent on their husbands.⁷ They are taken advantage of in their vulnerable situation, with few options and experiencing greater difficulties as a consequence. In societies where men hold more power, religious regulations often exhibit a bias that favours men, resulting in disproportionate benefits for them. Practices such as *triple talaq*⁸ and *nikah halala*⁹ are not only outdated but also oppressive

⁴ 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*) <<https://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 11 April 2024

⁵ *Ibid*

⁶ Singh (n 3)

⁷ *Ibid*

⁸ Neyaz Farooquee, 'Triple talaq: India Muslim women in limbo after instant divorce ruling' *BBC* (14 September 2022) <<https://www.bbc.com/news/world-asia-india-62805107>> accessed 10 March 2024

⁹ Mohd. Imran, 'Differentiating Evil Practice of Nikah-Halala from Mandate of 'Intervening Marriage'' (2021) SSRN <<https://dx.doi.org/10.2139/ssrn.3853218>> accessed 10 March 2024

towards Muslim women,¹⁰ significantly reducing their rights and autonomy.¹¹ Our society consistently perpetuates gender inequalities and fails to address the injustices faced by women. It's difficult to fathom why any woman would consider returning to a husband who has heartlessly uttered *talaq* unless there are extenuating circumstances that force her to do so. I vividly recall the film *Nikaah*,¹² the protagonist in this movie, *Salma Agha*, makes the bold decision to reject her first husband and choose to reside with her second spouse.

HISTORICAL DEVELOPMENT OF NIKAH HALALA

In Islam, the term '*halala*' is derived from '*halal*', which means something that is permissible and therefore considered '*lawful*'.¹³ Within the realm of marriage, it signifies that a female who has been divorced can regain her status as '*lawful*' for her spouse once the process has been fulfilled.¹⁴

A Muslim man is allowed to divorce and remarry the same lady twice as long as he follows Islamic law.¹⁵ Should he decide to end his marriage for the third occasion, he is limited to marrying the same woman only after she has married another man and consummated the marriage. The woman can only go back to her initial partner and remarry him if the man dies or voluntarily seeks a divorce.¹⁶

Instead of the corrupt forms of marriage that existed before Islam, *Prophet Mohammad* created the notion of *Halala* to reform marriage.¹⁷ In times before *Islam*, a husband's right to detach from his wife was absolute, but a wife's right to separate from her spouse was non-existent. In

¹⁰ Vanshika Kapoor, 'Nikal Halala' (*Lawyers Club India*, 03 July 2018) <https://www.lawyersclubindia.com/articles/nikah-halala-9166.asp>> accessed 15 March 2024

¹¹ *Ibid*

¹² 'Nikaah (1982)' (*IMDb*) <<https://www.imdb.com/title/tt0158827/>> accessed 10 March 2024

¹³ Radhika Iyengar, 'What is Nikah halala, how it was established and where it stands in modern India' *The Indian Express* (26 March 2018) <<https://indianexpress.com/article/what-is/what-is-nikah-halala-how-it-was-established-and-where-it-stands-in-modern-india-triple-talaq-4618415>> accessed 10 March 2024

¹⁴ *Ibid*

¹⁵ Sparsh Upadhyay, 'Muslim Man Can Marry More Than Once Without Divorcing Earlier Wife But Same Doesn't Apply To A Muslim Woman: P&H High Court' *Live Law* (9 February 2021) <<https://www.livelaw.in/news-updates/muslim-man-can-marry-more-than-once-without-divorcing-earlier-wife-muslim-woman-ph-high-court-169630>> accessed 10 March 2024

¹⁶ *Ibid*

¹⁷ *Shayara Bano v Union of India* (2017) 9 SCC 1

addition to being able to cancel a divorce at any time, husbands could grant them an unlimited number of times. There is no reference to the word ‘*Halala*’ in the Quran.¹⁸

In *Bahishti Zewar*,¹⁹ Moulana Ashraf Ali Thanvi (1863-1943), an Indian Muslim jurist,²⁰ provides a clear explanation of the concept. According to him, a person utters a revocable (Raji) talaq. Afterward, he settles and continues living together. After a certain period of time, due to provocation, he on one occasion again voiced a revocable *talaq*. After being provoked, he once again resumes living together. Now 2 *talaqs* have been completed. In the future, whenever he utters a talaq, it will be considered as the 3rd talaq, resulting in the immediate dissolution of the marriage.²¹ If the parties wish to remarry, it will require a halala (intermediary marriage).²² According to the legal implications of *talaq*, the woman is considered ‘haram’ for the husband, meaning she becomes unlawful and prohibited.²³ Within the realm of divorce, a provision was established to prevent the exploitation of marriage as a means of inflicting harm on one’s spouse, allowing for multiple marriages and divorces at will.²⁴ The rule was irrevocable. This instruction was implemented to uphold a strong sense of self-control and to safeguard the sanctity of marriage from being trivialised.²⁵

In *Understanding the Islamic Law of Divorce*, Dr Furqan Ahmad,²⁶ highlights the efforts made by the Prophet to eradicate the cruel *pre-Islamic practice* of repeatedly divorcing and mistreating wives.²⁷ According to *the Prophet*, it was made clear that this practice could not be sustained forever due to the rule of irrevocability of the 3rd pronouncement.²⁸ Therefore, if the husband truly desires to reconcile with his wife, he should take the necessary steps. However, if he

¹⁸ Rana Safvi, ‘There is no such thing as nikah halala in Quran’ *Hindustan Times* (06 July 2018) <<https://www.hindustantimes.com/analysis/there-is-no-such-thing-as-nikah-halala-in-quran/story-SfWKC63tdTA1nOe7pJ6KdM.html>> accessed 10 March 2024

¹⁹ Bahishti Zewar, *Heavenly Ornaments* (The Islamic Bulletin 2021)

²⁰ Faud Naeem Fuad, *The Oxford Encyclopedia of the Islamic World* (1st edn, Oxford University Press 2009)

²¹ *Shayara Bano v Union of India* (2017) 9 SCC 1

²² Singh (n 3)

²³ Gunjan (n 4)

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ Furqan Ahmad, ‘Understanding the Islamic Law of Divorce’ (2003) 45 (3/4) *Journal of the Indian Law Institute* <<https://www.jstor.org/stable/43951877>> accessed 10 April 2024

²⁷ *Ibid*

²⁸ *Ibid*

chooses not to, the 3rd pronouncement following two previous attempts at reconciliation would serve as a definitive barrier.²⁹ Amidst these developments, the govt. is urging the Court to eliminate 'nikah halala' and 'polygamy' in India.³⁰ 'The All India Muslim Personal Law Board' (AIMPLB) has previously argued that any departure from the *Quranic injunction* on the legitimacy of *triple talaq* would contradict the divine mandate.³¹ 'Engaging in such an act would be in direct opposition to the fundamental principles of Islam, and would demonstrate a disregard for the explicit guidance of Allah and his Messenger, which is considered a sinful action', the organisation stated. Conditional marriage, also known as *muta*, is regarded as a violation of *Islamic principles* and is strictly prohibited under *Sharia law*.³² Based on the available evidence, it can be observed that the husband is deemed to have acted in a morally questionable manner. According to *Umar* (579-644 AD), the 2nd *caliph* of the *Rashidun Caliphate*,³³ husbands who engage in such behaviour were observed as sinners and he expressed a strong stance, stating that they should be stoned to death.

There have been instances of manipulation and misuse surrounding *nikah halala* in modern India. The Muslim Personal Law remains largely untouched by the Legislature, remaining within its own domain. The Government's non-interference can be attributed to the Muslim community's hesitance in embracing secular Indian laws to regulate their personal affairs. In 2011, the Bharatiya Muslim Mahila Andolan emerged.³⁴ The BMMA caused quite a commotion within the community. The organisations have written a letter to the president of the All India Muslim Personal Law Board.³⁵ Concerning the hardships faced by Muslim women as a result of *Halala*. The cases brought to light by BMMA shed light on the troubling aspects of the practice. The cases revolved around women who experienced numerous occurrences of *Halala* due to

²⁹ *Ibid*

³⁰ *Shayara Bano v Union of India* (2017) 9 SCC 1

³¹ Dhananjay Mahapatra, 'AIMPLB to SC: Declaring triple talaq illegal akin to rewriting Quran' *The Times of India* (28 March 2017) <<https://timesofindia.indiatimes.com/india/aimplb-to-sc-declaring-triple-talaq-illegal-akin-to-rewriting-quran/articleshow/57863225.cms>> accessed 10 March 2024

³² Niranjana Ojha, 'Muta Marriage in Islam: Understanding the Practice, Controversies, and Significance' (2023) 6 (1) *Shikshya Sandesh* <<https://doi.org/10.3126/ss.v6i1.63097>> accessed 12 March 2024

³³ Syed Muhammad Khan, 'Rashidun Caliphate' (*World History Encyclopaedia*, 10 January 2022) <https://www.worldhistory.org/Rashidun_Caliphate/> accessed 10 March 2024

³⁴ Dr. G. Jambu, 'Socio-Economic Status of Women A Study In Warangal District In Telangana State' (2015) 3(1) *Human Rights International Research Journal*

³⁵ 'About Us' (*BMMA India*) <<http://bmmaindia.blogspot.com/p/about-us.html>> accessed 15 March 2024

their husbands pronouncing talaq in moments of annoyance, drunkenness, or job loss. The women expressed a sense of being used and objectified as if they were compelled to enter into temporary marriages in order to return to their original spouses.³⁶ Organisations like BMMA have repeatedly called for a ban, but unfortunately, their efforts have not resulted in any action being taken. It is concerning to observe the existence of the '*Halala service*'³⁷ booming as a business these days, the unfortunate reality is that there are no measures in place to prevent the brutalities encountered by females in *Halala*.³⁸

In October 2016, an Indian Muslim woman made an allegation of rape against her husband's friend. The husband was forced to divorce his wife after losing her to his friend in a gambling game. To win her back, the husband sought the assistance of his friend to engage in a romantic relationship with the woman. The accused, who is a friend of the husband, claimed that it was part of the nikah halala practice, allowing the divorced husband to remarry his ex-wife.³⁹

In the middle of this, a plethora of online platforms has emerged, offering halala marriage services to women who are going through a divorce. For instance, 'Assalamu'alaykum Alhamdulillah' greets visitors to the Halal Nikah X page, which provides a marriage service for Muslims all over the globe. Grab this chance while you can.⁴⁰

These websites provide a platform for men who are open to marrying and being intimate with clients, typically women who are going through a difficult divorce, in exchange for payment.⁴¹ Numerous women who seek assistance from these services often find themselves subjected to blackmail or exploitation. Many individuals are required to make substantial payments.⁴² In 2016, a BBC reporter conducted an undercover investigation, assuming the identity of a

³⁶ Saumya Parmarthi and Manu Gupta, 'Our Nation and Its Women' (2014) 2(1) Human Rights International Research Journal

³⁷ 'The Changes in the Law of Marriage under Muslim Law' (2013) *Shodh Ganga*
<https://shodhganga.inflibnet.ac.in/bitstream/10603/8109/11/11_chapter%204.pdf> accessed 15 March 2024

³⁸ *Ibid*

³⁹ Iyengar (n 13)

⁴⁰ 'Halal Nikah' (X) <https://x.com/Halal_Nikah?t=c5MXLgVciEZx1DT2aFnE4A&s=08> accessed 12 March 2024

⁴¹ *Ibid*

⁴² Kapoor (n 10)

divorced woman in search of a halala marriage service on Facebook.⁴³ The journalist was requested to make a payment of £2,500 for a fraudulent, short-term marriage proposal in which the individual on the Facebook profile offered to get married and engage in a physical relationship with her.⁴⁴

In certain cultures, religious commandments have frequently displayed an imbalance, showing a clear bias towards men.⁴⁵ The existence of laws like triple talaq and nikah halala is not only outdated, but it also poses significant challenges for Muslim women.⁴⁶ It is imperative to question the legality of these laws.⁴⁷ On Tuesday 6th February, 2024, the administration of Uttarakhand presented The Uniform Civil Code (UCC) Bill to the government Assembly. This bill hunts for, among other things, the exclusion of the practice of polygamy and child marriage, as well as the criminalization of nikah halala.⁴⁸ Furthermore, the Bill provides a common law on marriage, divorce, land, property, and inheritance for all inhabitants of the state, regardless of their religious affiliation, provided that the Scheduled Tribes are not included in the scope of this law. The practice of nikah halala, which is observed by certain segments of the Muslim community, is prohibited by this.⁴⁹

NIKAH HALALA IN HOLY QURAN

The Arabic root of the word 'halala' indicates that which is lawful or permitted within the framework of Islam.⁵⁰ The opposite of anything being halal is something being haram, or forbidden by Allah. Both 'haram' and 'halal' are defined at length in the Quran. After a divorce, a woman is automatically considered 'haram' by her former husband, and the only way she can

⁴³ 'nikah halala services provide' (Facebook) <<https://www.facebook.com/share/H21cr7JwN3R5zAMT/?mibextid=qj2Omg>> accessed 12 March 2024

⁴⁴ *Ibid*

⁴⁵ T. Mitchell, 'The Gender Gap in Religion Around the World' (Pew Research Centre, 22 March 2016) <<https://www.pewresearch.org/religion/2016/03/22/the-gender-gap-in-religion-around-the-world/>> accessed 12 March 2024

⁴⁶ *Ibid*

⁴⁷ Ziya Us Salam, *Nikah Halala: Sleeping with a Stranger* (Bloomsbury 2020)

⁴⁸ Neelam Pandey, 'UCC Bill proposes ban on polygamy & child marriage, criminalisation of 'nikah halala' *The Print* (06 February 2024) <<https://theprint.in/india/uttarakhand-ucc-bill-proposes-ban-on-polygamy-child-marriage-criminalisation-of-nikah-halala/1955994/>> accessed 12 March 2024

⁴⁹ *Ibid*

⁵⁰ Gary R. Bunt, *Islam in the Digital Age: E-Jihad, Online Fatwas and Cyber Islamic Environments* (Pluto Press 2003)

become ‘halal’ again is if she remarries, consummates the marriage, and her new husband decides to divorce her.⁵¹

One important point to consider is that it is advisable for a woman to avoid undergoing the halal process with her first husband. It is crucial to inform individuals about the potential ramifications of hasty or alcohol-influenced divorces, as it can greatly complicate the process of reconciling with their ex-partner.⁵² Forced marriages often encompass various forms of emotional and mental abuse.⁵³ The concept of ‘Nikah Halala’ is frequently misunderstood and entails the woman who has been divorced through irreversible talaq having to live with another man in a marriage-like arrangement. This enables the former spouse to enter into a new marriage with the individual who has been previously divorced.⁵⁴ From a legal research perspective, the intention behind the practice of ‘Nikah Halala’ was to create obstacles for men who impulsively divorce their wives, making it more challenging for them to remarry their former spouses.⁵⁵ It is truly disheartening to see individuals who claim to adhere to Islam not embodying the genuine essence of the faith as exemplified by Prophet Muhammad.⁵⁶ Does the lifestyle of a typical Muslim truly revolve around the teachings of the Prophet, as found in the Holy Quran and the associated traditions and Hadith? In most cases, the answer would be a definite no, which calls for some serious introspection from all parties involved. It is particularly evident in the manner in which women have been treated. Nikah Halala refers to a practice observed by some Muslims, where a divorced wife can remarry her husband after a temporary, pre-planned marriage and the consummation of that marriage.⁵⁷ Is this permitted by the *Quran*?

⁵¹ Legal Kazam, ‘The Concept of Halala in Islam - Truth Versus Falsity’ (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-1713-the-concept-of-halala-in-islam-truth-versus-falsity.html>> accessed 12 March 2024

⁵² Rashi Gupta, ‘Abominable Rapes in the Name of Nikah Halal: An Analytical Study of Halal with Special Reference to Rape Laws in India’ (2018) 3(1) *International Journal of Advanced Research and Development* <<https://www.multidisciplinaryjournal.net/assets/archives/2018/vol3issue1/2-6-274-373.pdf>> accessed 12 March 2024

⁵³ Lisa Hajjar, ‘Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis’ (2004) 29(1) *Law & Social Inquiry* <<https://www.jstor.org/stable/4092696>> accessed 12 March 2024

⁵⁴ *Ibid*

⁵⁵ Gupta (n 52)

⁵⁶ *Ibid*

⁵⁷ *Ibid*

Of course not.⁵⁸ An extremely stringent condition was imposed to prevent a man from divorcing his wife impulsively, jokingly, or without careful thought. After the divorce, a divorced woman is able to marry another man once her waiting period (*iddat*) has passed.⁵⁹ In the event that the man she has married passes away or ends their marriage, she is then able to marry her previous husband who had divorced her. This is now considered permissible for him. It is important that she makes this decision voluntarily and without any collaboration. Marriages shall not be entered into with the intention of an immediate divorce, solely for the purpose of remarrying a previous spouse. This sort of marriage can be understood as a deviation from the principles of *Islam*.⁶⁰ There is no indication whatsoever that this should serve as a loophole for a husband who has unilaterally divorced his wife or as a requirement for sexual relations between the 2nd husband and wife prior to the 1st marriage. Interestingly, *the Prophet* strongly condemned this practice, expressing his disapproval by stating, “*May a curse be upon those who marry a divorced woman with the intention of reuniting her with her former husband, as well as upon those for whom she is made lawful.*”⁶¹

It is vital to distinguish between the actions of Muslims and the teachings of Islam, as they can often be distinct. *Nikah Halala* infringes upon the basic rights of women and undermines their capability to live a fair and dignified life.⁶² There seems to be a significant lack of awareness among Muslim men and women regarding the Sharia and the teachings in the *Quran*. Many Muslims typically read the Quran in Arabic, often memorising it without comprehending its meaning.⁶³ Interestingly, despite being one of the earliest religions to grant rights to women, its female followers have been deliberately denied the opportunity to learn and comprehend their

⁵⁸ ‘Surah Al-Baqarah Ayat 230 (2:230 Quran) With Tafsir’ (*My Islam*) <<https://myislam.org/surabaqarah/ayat-230/>> accessed 15 March 2024

⁵⁹ Rana Safvi, ‘Abhorrent practice of Nikah Halala is not sanctioned in the Quran’ *DailyO* (19 August 2017) <<https://www.dailyo.in/variety/nikah-halala-muslims-prophet-muhammad-islam-patriarchy-marriage-divorce-triple-talaq-19058>> accessed 16 March 2024

⁶⁰ *Ibid*

⁶¹ Narrated Ali ibn AbuTalib, ‘12 Marriage (Kitab Al-Nikah)’ (*Sunnah*) <<https://sunnah.com/abudawud:2076>> accessed 16 March 2024

⁶² Hajjar (n 53)

⁶³ Kali Robinson, ‘Understanding Sharia: The Intersection of Islam and the Law’ (*Council on Foreign Relations*, 17 December 2021) <<https://www.cfr.org/background/understanding-sharia-intersection-islam-and-law>> accessed 13 March 2024

own rights.⁶⁴ They obediently follow the lead of the men in their lives, without question or hesitation. It's important to educate others about the remarkable lives of *Hazrat Khadija*, the Prophet's first wife who was a highly successful businesswoman; *Hazrat Ayesha*, the Prophet's youngest wife who was known for her intelligence and role as a narrator of *Hadith*; and *Hazrat Zainab*, the Prophet's granddaughter who bravely stood against the oppressive ruler *Yezid* after the battle of *Karbala*, ensuring the preservation of the Prophet's legacy. These examples are just a small sample of the many possibilities.

The author often pondered whether the individuals engaging in the practice of *Nikah Halala* truly comprehend the teachings of the Quran. Or are they content with the services they offer in exchange for payment, without delving into the Islamic legal aspects of their actions? *Nikah Halala* is a grave injustice committed against vulnerable women who may be desperate to salvage their marriages, possibly due to financial dependence on their husbands. These women are left with no choice but to endure such a practice, which leaves them in a state of destitution without their husband's support. The general attitude towards women in certain Muslim communities can be extremely troubling, particularly when it comes to insensitivities surrounding issues such as the controversial practice of triple talaq and the irrational allowance for polygamy.⁶⁵ Religious leaders lacking a contemporary understanding of the mind have put forth urgings in support of peculiar traditional practices, supposedly backed by early Islamic traditions.⁶⁶

Upon thorough examination of the Quran and the authoritative traditions of the Prophet, it becomes apparent that a significant portion of the inequalities practiced in the name of Islam must be abandoned. Without passing judgement based on contemporary feminist ideals, it is worth examining the traditions that emerged in 6th-7th century Arabia. Within the Quran and the teachings of the Prophet, there are indications of a greater level of consideration and

⁶⁴ Hazrat Mirza Masroor Ahmad, 'Islam and Women's Rights' (*Review of Religions*, 01 March 2009) <<https://www.reviewofreligions.org/1555/islam-and-womens-rights/>> accessed 13 April 2024

⁶⁵ Raziuddin Aquil, 'Muslims must not justify triple-talaq, polygamy' *The Sunday Guardian* (06 February 2016) <<https://sundayguardianlive.com/opinion/3009-muslims-must-not-justify-triple-talaq-polygamy>> accessed 14 April 2024

⁶⁶ *Ibid*

reverence towards women than what may be perceived from later or even present-day interpretations of *Islam*.⁶⁷

In contrast to the permissible manner in which *triple talaq* may be started as a valid method of terminating a matrimonial union, the *Quran* discourages hasty divorces on account of disputes, disagreements, uncertainties, and the like. Rather, it urges reconciliation and the patient's deference to God's will, since matches are allegedly formed solely by Him.⁶⁸ Even when considering the option of having up to four marriages, the focus is on promoting fairness and justice within the family, which is why the recommendation is for monogamy. The *Quran* emphasises the importance of carefully considering the challenges, disparities, uncertainties, and other factors before making the decision to divorce.

Some individuals with biased views have only focused on the initial portion of *nikah*, the marital contract, which is a suggested practice that allows for up to four women. However, they have disregarded the advice to avoid this practice due to the struggle of treating all partners equally.⁶⁹ Inquiring about the logistics of maintaining multiple relationships and ensuring equal satisfaction, care, attention, and proper maintenance for all parties involved.

It is obvious that there is a clear warning about the common outcome when entering into a second or new marriage: the previous wife and her children are often neglected. The older wife is often abandoned abruptly, as in the case of *triple-talaq*, or left to endure difficult circumstances without much assistance from society or even her own family. In an unfortunate reflection of traditional gender norms, women are often discouraged from taking the initiative to seek divorce. This is based on a patriarchal interpretation of religious scriptures, which suggests that God disapproves of divorce and encourages patience and reconciliation instead. This position is contradictory, as it disregards the same command of God when allowing *triple-talaq* for men in a hurry. Therefore, it is evident that in various crucial aspects, the guidelines presented in the *Quran* are not being adhered to fully, or are being misinterpreted and applied arbitrarily.

⁶⁷ Aquil (n 65)

⁶⁸ Mohammad Azeemullah, 'Islam Does Not Sanction Triple Talaq in One Sitting' *The Wire* (20 October 2016) <<https://thewire.in/law/islam-triple-talaq-one-sitting>> accessed 15 March 2024

⁶⁹ Ahmad (n 64)

Throughout history, despite the common belief that *Shariat* is solely derived from the *Quran* and *Hadis*, the reality is that Islam and Muslim communities have embraced local social customs and practices in the places they have established themselves. In societies governed by conservative patriarchal principles or the decisions of community leaders, *Shariat* can be used to defend certain traditional practices that may contradict calls for equality. These practices are not only at odds with modern secular laws but also with *Islamic* legal positions.

The need to address or modify unfair customary practices should arise from the collective reflection within communities of individuals. As times evolve, it becomes necessary to establish new and forward-thinking laws to regulate societies experiencing changes. This issue should not be entrusted to individuals who hold traditional religious or customary beliefs, as their main priority is to preserve the existing social order, even if it involves misinterpreting traditional sources and *Quranic* guidance on divorce and *polygamy*.⁷⁰

Meanwhile, it is interesting to note that while some men may aspire to have multiple wives, it is uncommon for a woman to imagine having multiple husbands simultaneously. It would be beneficial for individuals who identify as believers, particularly Muslim men, to revisit the *Quran* and study a comprehensive chapter titled 'The Woman' that provides valuable guidance. It will provide valuable insights and serve as a valuable reminder of appropriate conduct towards women.

Therefore, it is important to adhere to the prescribed procedure for *Nikah Halala* without any premeditation. However, there have been some disturbing incidents that have exposed the mistreatment of women in the context of *Nikah Halala*, involving physical, psychological, and financial harm. This practice is commonly referred to as 'Halala-fixing', where a man decides to wed the woman, consummate the marriage, and then separate from her. *Nikah Halala* has been recognised as a grave offence in India's penal code, comparable to rape. It involves a distressed woman who feels compelled to offer her body to her husband as a way to repay him for the hasty *talaq* he pronounced.

⁷⁰ *Ibid*

There is a consensus among Muslim scholars that a marriage contract between a divorced woman and a second husband, with the intention of divorce in the future, goes against the established rules and is considered invalid.⁷¹

Halala is not mentioned anywhere in the Holy Quran. It comes from the Arabic word 'Halal,' which means 'Allah-approved' in the Quran.⁷² A bare perusal of the Quranic verse 2:230⁷³ makes it amply clear that the Holy Quran never intended to provide for the commercialization of Nikah-Halala. This may be inferred from the insertion of the words 'if the latter husband divorces her or dies, there is no blame upon the woman...'⁷⁴ this verse means that Muslim women who remarry with the sole intention of living with the new husband are guaranteed protection in the event of their separation from their new husband due to his death or divorce, provided that these events occur naturally and are not pre-planned at the time of Nikah. To prevent the rash guy who pronounces Talaq upon his wife from coercing her back into the marriage, Nikah Halala was instituted. Thus, there can be no forethought in deviating from the Nikah Halala protocol. A Halala cannot be prearranged since a Nikah between a woman and her 2nd husband with the intention of divorcing him later is not recognised by Islamic law.⁷⁵ If she marries a second time, it will be an unlawful union, just as her first husband's prearranged Halala was an illegitimate union.⁷⁶

"Curse is upon the one who marries a divorced woman with the intention of making her lawful for her former husband and upon the one for whom she is made lawful," the Prophet said, denouncing Nikah-

⁷¹ 'Is Halala Islamic?' (*Islamic Awareness*) <https://www.islamawareness.net/Talaq/talaq_fatwa0008.html> accessed 14 March 2024

⁷² Abhi Hari, 'Effective Adherence of Legal Reforms for Protection of Women at Work Place with Special Reference to Women Working in Night Shifts in BPO Sectors' (2015) 3(139) *Human Rights International Research Journal*

⁷³ 'Towards Understanding the Quran Surah Al-Baqarah 2:222-230' (*Islamic Studies Info*) <<https://www.islamicstudies.info/tafheem.php?sura=2&verse=222&to=230>> accessed 15 March 2024

⁷⁴ *Ibid*

⁷⁵ Muhammad Saleh Al-Munajjid, 'Is "Tahleel" Marriage Permissible? (Also Called Halala)' (*Zawaj*, 29 June 2009) <https://www.zawaj.com/articles/tahleel_marriage_fatwa.html> accessed 15 March 2024

⁷⁶ Hanfi Fiqh, 'What is the Islamic order for women who want to remarry their ex-husband?' (*IslamicQA*) <<https://islamqa.org/hanafi/muftisays/9587/what-is-the-islamic-order-for-women-who-want-to-remarry-their-ex-husband/>> accessed 15 March 2024

Halala.⁷⁷ Caliph Omar declared the adulterous practice of prearranged Nikah–Halala, calling for the stoning to death of both the males who perform and those for whom Nikah–Halala is conducted.⁷⁸ It is forbidden for you to prevent women from marrying their ex-husbands if they both agree to it, as **Ibn Kathir** explains in his famous commentary: ‘(This (instruction) is an admonition for him among you who believes in Allah and the Last Day.’⁷⁹

However, a thorough examination of the Holy Quran indicates that what is being conducted in the name of Nikah–Halala differs greatly from what Islam recommends, as marriage is not a transient union in Islam.⁸⁰ Since the women are often enslaved by local Maulvis, who hide behind the veiled word of male prostitution, which is also harshly denounced by the Holy Quran, it is also impossible to know whether or not the parties to such weddings were acting freely.

A MISGUIDED PRACTICE: NIKAH HALALA

The Apex Court in *John Vallamattom v Union of India*,⁸¹ held in para 44 that Marriage and inheritance rules are secular, not religious. Paragraphs 30–32 elaborate on this idea, stating that the law cannot be static in the face of societal evolution. Further, the Court in *Khursheed Ahmad Khan v State of U.P.*⁸² held that a religious practice or a tenet that is authorised but not forbidden does not become an essential portion of the *religion*. The Court has made it very apparent that *Articles 25 and 26* of the *Constitution* protect only the ‘essential parts or practices’ of a religion. The question that arises now is what elements and rituals are necessary for the proper functioning of a religion. The Apex Court in *Commr. of Police v Acharya Jagadishwarananda Avadhuta*⁸³ answered this question according to the Court One way to tell if a religious observance qualifies as a tenet of the faith is to consider how much the religion would change if

⁷⁷ ‘Abu Dawud Book 5, Hadith Number 2071’ (*Hadith Collection*)

<<https://hadithcollection.com/abudawud/Abu%20Dawud%20Book%2005.%20Marriage/abu-dawud-book-005-hadith-number-2071>> accessed 15 March 2024

⁷⁸ Safvi (n 59)

⁷⁹ ‘The Wali (Guardian) of the Divorced Woman should not prevent Her from going back to Her Husband’ (*Quran*) <<https://quran.com/en/al-baqarah/232/tafsirs>> accessed 16 March 2024

⁸⁰ ‘Towards Understanding the Quran Surah An-Nisa 4:23-24’ (*Islamic Studies Info*)

<<https://www.islamicstudies.info/tafheem.php?sura=4&verse=24&to=24>> accessed 16 March 2024

⁸¹ *John Vallamattom & Anr v Union of India* (2003) 6 SCC 611

⁸² *Khursheed Ahmad Khan v State of UP & Ors* (2015) 2 PAT LJR 196

⁸³ *The Commissioner of Police & Ors v Acharya Jagadishwarananda Avadhuta* (2004) 12 SCC 770

it were eliminated.⁸⁴ In light of the foregoing criteria, it is evident that nikah halala does not form an essential part of the Islamic faith, and its elimination would not alter the core principles of *Islam*. However, the Court ruled that judicial review does not extend to matters of personal law. The *Narasu Appa Mali* judgement⁸⁵ to which the Supreme Court ultimately agreed in *Shri Krishna Singh v Mathura Ahir*⁸⁶.

The *Narasu*⁸⁷ judgement of the possibility of applying constitutional principles like *equality, non-discrimination, and dignity* to personal legislation was called into question.⁸⁸ However, the Supreme Court after *Shayara Bano*⁸⁹ made it quite seem that individual legislation can be deemed null and unconstitutional and struck down if they infringe on guaranteed rights. Thus, the *Narasu* decision is of no further relevance here.⁹⁰ Given these rulings and the Supreme Court's more lenient stance in recent cases (*instant triple talaq, privacy judgement, review of Section 377*), the likelihood of this practice surviving is low.

NIKAH HALAL- A RAPE OR RELIGION

The practice of *Halala* is abhorrent and debases the self-respect of both sexes. In fact, *Nikah Halala* enables the mental, spiritual, and bodily disrobing of a female victim in the name of religion, providing a disturbing peek into the State's responsibility to allow and endure *rapes* in the name of religion. This *Islamic law* must be classified as the crime of *rape* under Section 375 of the Indian Penal Code (*hereafter "IPC"*). A linguistic definition of '*rape*' under the IPC, however, reveals that the law only recognises four scenarios when consent is not required: *sections 375(2)–(5)*. *Nikah-Halala* is not envisioned by any of these groups, however, unless it can be demonstrated that a woman did not give her consent or express her will. *Explanation 2 to Section 375* consent excludes the possibility of using the lack of physical resistance by the female to the act of penetration as a criterion for determining consent, instead proposing an unequivocal voluntary agreement in

⁸⁴ *Ibid*

⁸⁵ *The Commissioner of Police & Ors v Acharya Jagdishwarananda Avadhuta* (2004) 12 SCC 770

⁸⁶ *Sri Krishna Singh v Mathura Ahir and Ors* (1981) 3 SCC 689

⁸⁷ *Ibid*

⁸⁸ *Sri Krishna Singh v Mathura Ahir and Ors* (1981) 3 SCC 689

⁸⁹ *Shayara Bano v Union of India* (2017) 9 SCC 1

⁹⁰ *C. Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil* (1996) 8 SCC 525

which they wish to engage in the specific sexual activity is explicitly communicated.⁹¹ Nevertheless, it is important to note that a woman's passiveness during a penetration does not necessarily mean that she consents to participate in sexual activity. Therefore, in cases of adult-on-adult rape, the question of 'consent' is crucial.⁹² In *Uday v State of Karnataka*,⁹³ the Court elaborates the term '*consent*' through various judgment. A woman's '*consent*' as a guard against rape charges must be the result of her free and informed decision to either comply or resist, depending on the circumstances.⁹⁴ Therefore, '*Consent*' is reduced to a voluntary agreement between the individuals involved in a sexual act. Thus, the man is not responsible if the conduct is voluntary, but he is guilty of '*rape*' if the action is involuntary, even if the woman did not actively resist the act of penetration. '*Voluntary*' means 'done, given, or acting of one's own free will,' according to the dictionary.⁹⁵

However, the unfettered use of a woman's intellect, however, may be indicative of *Nikah-Halala's* voluntariness, based purely on the rational assumption that she is bound to undergo this horrible *rape* in order to satisfy her religious norms. Free will, as defined by *Section 375(1)* of the *IPC*⁹⁶, is also impossible to determine when a woman is forced to complete a 2nd marriage with her relatives under the guise of *Nikah-Halala*. *Consent* or unbounded will cannot be established or proven beyond a reasonable doubt in any of these situations.⁹⁷ Therefore, we urge that either the religious practice of *Nikah-Halala* be prohibited entirely or *Section 375* of the *IPC* be changed so as to incorporate such unusual circumstances of consent gained on the basis of religious customs and beliefs.⁹⁸

⁹¹ Indian Penal Code 1860, s 375

⁹² J Stone, 'Rape Consent, Intoxication. A Legal Practitioner's Perspective, Alcohol and Alcoholism' (2013) 48(4) Oxford Academic <<https://doi.org/10.1093/alcalc/agt039>> accessed 16 March 2024

⁹³ *Uday v State of Karnataka* (2003) 4 SCC 46

⁹⁴ *Idan Singh v State of Rajasthan* (1976) 9 WLN 665

⁹⁵ 'Voluntary' (*Cambridge Dictionary*) <<https://dictionary.cambridge.org/dictionary/english/voluntary>> accessed 16 March 2024

⁹⁶ Indian Penal Code 1860, s 375(1)

⁹⁷ *Ibid*

⁹⁸ Indian Penal Code 1860, s 375

POSSIBLE APPROACHES

Upon further analysis of this concept, it becomes clear that there are two significant concerns that arise from this scenario, for which the Muslim law does not offer a resolution. The initial task is to establish whether the Halala occurred due to natural circumstances or if it was planned in advance. Another aspect to take into account is the necessity of imposing a limit on the frequency of Halala for women. After thorough investigation and evaluation, it is clear that the endeavours to prohibit triple-talaq in India have ultimately achieved success. Therefore, it seems that the most effective resolution to these difficulties would be to enforce a whole ban on the practice of Halala. However, the issue being discussed is whether this practice can be prohibited or not. Before the introduction of laws such as The Shariat Application Act, 1937 and The Dissolution of Muslim Marriage Act, 1939, Muslim Personal Law was mostly not formally written down. Regulations were put in place to ensure that Muslim Personal Law would not be overridden by customary law. It was also essential because, without a codified law, customary practices that differed from the values reveal the underlying values of the Quran.⁹⁹ Certain regulations can be enforced in the case of Nikah Halala, as the practice of Halala fixing contradicts the guidelines outlined in the Holy Quran and is gaining more prominence. Enacting a formal law to address this issue may offer a potential solution to the troubling violence and challenges faced by women in Halala.¹⁰⁰

SUPPORTING WOMEN: A FOCUS ON RECENT EFFORTS

The Millennium Development Goal: The United Nations Development Programme established eight MDGs to promote fairness and harmony worldwide. The MDGs are internationally recognised targets aimed at reducing specific indicators of inequality worldwide by 2015.

Ministry for Women & Child Development: The Ministry for Women & Child Development was established in 1985 as a department of the Ministry of Human Resource Development. Its

⁹⁹ Singh (n 3)

¹⁰⁰ Samridhi Sikha Das and Akhil Dixit, 'Nikah Halala: A Legalized Sin' (2019) 5 Pen Acclaims

<<http://www.penacclaims.com/wp-content/uploads/2019/02/Samridhi-Sikha-Das.pdf>> accessed 17 April 2024

main objective is to promote the overall progress of females and children in the country. In 2006, this department was granted the status of a Ministry, empowering it to formulate plans, policies, and programmes. It also has the authority to enact and amend legislation, also guide and coordinate the efforts of governmental and non-governmental organisations involved in the *Women and Child Development sector*.¹⁰¹ The Swayamsidha Programme is a comprehensive initiative aimed at empowering women, with a total budget of Rs.116.30 Crores. *The National Commission for Women*, a department within the Ministry, was established to provide assistance to women through an online complaint submission system and expedited resolution of their issues. Additionally, it serves as a valuable source of information for women, and the Commission is dedicated to providing assistance to women in need. *“The thing women have yet to learn is that nobody gives you power. You just take it.” - Roseanne Bar*

CONCLUSION

It is obvious that the practice of *Nikah Halala* raises significant concerns and diminishes the position of females. In spite of its initial aim to safeguard women’s rights within marriage and discourage unjust divorces, this practice has proven ineffective in achieving its intended goals. As a researcher in the field, it is crucial to consider the issue of unwritten laws in specific Muslim communities. Regrettably, there have been cases where individuals of the Muslim faith have exerted pressure on their spouses to enter into marriages with other individuals to meet specific obligations, only to later reclaim them. It is truly heartbreaking to witness the immense suffering these women face when they enter into a marriage, only to be abruptly divorced the following day. Putting a stop to this disgrace can be accomplished by enacting a prohibition on this practice. There is a potential solution that the Muslim Personal Law Board can consider to enable divorced couples to remarry while ensuring the wife’s well-being and preserving her freedom to choose a suitable partner. Therefore, it is essential to establish an organized law that prohibits the practice of Halala in order to protect the dignity of *Muslim women*. The Highest Court of India has already ruled that the practice of halala, which is the troubling consequence of *triple talaq*, is unconstitutional. The court’s decision in the case of **Shayara Bano v Union of India**¹⁰²

¹⁰¹ *Ibid*

¹⁰² *Shayara Bano v Union of India* (2017) 9 SCC 1

highlighted a violation of the fundamental right guaranteed under Article 14 of the Constitution. After their notable victory in the Court, The Bharatiya Muslim Mahila Andolan has drafted the Muslim Family Law, 2017. If approved by Parliament, this legislation would effectively eradicate the unconstitutional practice of polygamy. The practice of nikah halala is deeply concerning and undermines the dignity and equality of women. There is no denying that the practice was put in place to safeguard women's rights within a marriage and prevent them from experiencing unpredictable and disorderly divorces. However, it is obvious that the practice has not achieved its intended objective. One factor contributing to this failure is the lack of written or codified regulations in certain Muslim communities, resulting in the widespread misapplication of certain customs by Muslim men. The practice has become outdated and unnecessary in the 21st century, as nations are increasingly recognising and protecting the rights of refugees, the LGBT community, women's right to vote, and many others. Therefore, it is crucial to establish a comprehensive law that bans this harmful practice, aiming to address the significant suffering experienced by women who are exposed to nikah halala.

There is a well-established principle in the law that recognises the significance of sincere devotion, faith, and the freedom to practise and profess one's religion, without interference from religious patriarchy. In modern India, there is a concerning issue surrounding the practice of Nikah-Halala. It is being widely misused and manipulated, with some individuals using it as a means to justify rape and solely for personal financial benefit. This unconventional practice necessitates a stringent commitment to standards of purity and chastity, placing the entire responsibility on the divorced woman. She is expected to improve herself by entering into a new marriage and consummating it, while her first husband patiently awaits her return. The practice of Nikah-Halala, which is strongly condemned in Islam, unfortunately, allows for the continuation of sexual assault under the false pretense of religious acceptance. **Susan B. Anthony**, well-known for her feminist viewpoints, powerfully expresses, '*Men, their rights, and nothing more; women, their rights, and nothing less.*' The message is clear—these women, these advocates of marriage should also be given a powerful and unmistakable voice.