

“Nikah Halala: A Legalized Sin”

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Abstract:

The primary source of Muhammadan Law is the Holy Quran that represents the God's will which is communicated through the Prophet in the light of Angel Gabriel. Section 34 , Chapter IV in Mulla's Principles of Muhammadan Law by Hidayatullah, Nineteenth Edition deals with Interpretation of the Quran , which states that the courts in administering Muhammadan Law, should not as a rule attempt to put their own construction on the Quran in opposition to the express ruling of Muhammadan commentators of great antiquity and high authority. In Islam marriage is a 'matrimony contract'. Despite its prominence on marriage and its preservation, Islam, does not rule out the dissolution of marriage as a last resort for estranged couples. The existence of nuptial relations in case of Muslims has to be resolved with reference to provisions of Muhammadan law and not by provisions of equity or good conscience as understood by any other system of law. Halala Nikah is a practice in the Muslim community which allows a man to marry his wife after he irrevocably pronounces Triple-Talaq. Holy Qur'an, per se incorporates that if a husband divorces his wife for the third time, the patronage outlaws him to remarry her, until succeeding she has married another husband and he has divorced her. This second marriage of the wife is called Halala. But lately it has been witnessed that Halala Nikah is being used as a tool to veil the impetuous pronouncements of divorce by the Husbands and as an arrangement for their marriage of the wife with her former husband. This is done in the form of what is generally termed as 'Halala-fixing', whereby another man agrees to marry the woman, consummate the marriage and then divorce her. Halala has been severely criticized as it harms the dignity of a woman by forcing her into a compromised sexual relationship, which is nothing else than Rape. The research attempts to expose the prejudice and fallacies of the criminal justice system in India

viz-a-viz Nikah Halala. It goes on to provide arguments and reasons necessitating to the Unconstitutionality of the said marriage.

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

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 decisions 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 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: 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.

Introduction: The Muslim Personal Law being a domain which remains unscathed by the Legislature to a great extent. The reason for such non-interference by the Government has been the reluctance of the Muslim community to accept the secular Indian laws to govern their private

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

The concept of Halala was introduced by Prophet Mohammad to improve the marital relationships from those corrupt forms which existed during the pre-Islamic era⁵. Under the pre-Islamic era, the husband had an undisputed right to divorce his wife whereas the wife had no right to divorce her husband. There was no limit to the number of times a divorce could be given by the husband and he could also revoke the divorce. The word Halala does not appear in the

¹ Dr. G. Jambu, Socio-Economic Status of Women A Study In Warangal District In Telagana State; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 24-27

² Bharatiya Muslim Mahila Aandolan (BMMA), is an autonomous, secular, rights-based mass organization led by Muslim women which fights for the citizenship rights of the Muslims in India. BMMA was formed in January, 2007. Available at <http://bmmaindia.blogspot.in/p/about-us.html>. (last visited on 20.10.2017).

³ Saumya Parmarathi, Manu Gupta, Our Naion and Its Women; Human Rights International Research Journal: ISSN 2320-6942 Volume 2 Issue 1 (2014) Pg 34-36

⁴ The changes in the law of marriage under Muslim law, (Shodhganga, Gandhinagar). Available at http://shodhganga.inflibnet.ac.in/bitstream/10603/8109/11/11_chapter%204.pdf. (last visited on 19.10.2017).

⁵ The halal is that which Allah has made lawful in His Book and haram is that which He has forbidden, and that concerning which He is silent He has permitted as a favour to you

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

⁶ 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; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 2 (2015), Pg 139-140

⁷ (Reported in Al-Hakim, classified as-sahih (sound), and quoted by al-Bazzar). (Tirmidhi, Ibn Majah). (The Lawful and Prohibited in Islam (arb: Al halal wal haram fil Islam) by. Yusuf Al Qaradawi)

⁸ Priti Sharma, Nishant Pal, Transgender in India: Alimanted From the Society; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 58-61

⁹ Sakina Yusuf Khan, Divorced from Reality – Amending the Triple Talaq law, (Time of India, October 5, 2000), (2000)

¹⁰ ‘Allah has cursed the muhallil and the muhallallahu.’ The muhallilis the one who marries a woman and divorces her so that she can return to her first husband, and the muhallallahuis the first husband. (Ahmad, Nasai, Tirmidhi). Available at http://www.zawaj.com/articles/tahleel_marriage_f_atwa.html. (last visited on 21.10.2017).

¹¹ (Fathul Qadeer Vol. 4 Pg. 34/ Al Bahrur Raiq Vol. 4 Pg. 58)

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-ulsunnat 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-ulbiddat 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 renounced 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

Literature Review:

The literature review procured from "Our nation and its women" by Saumya Parmarthi and Manu Gupta 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)

¹² Vangalaravinder, Dr.G.Shailaja, Women Literacy In India After Independence: A Study On Debatable Affinities And Divergences; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 2 (2015), Pg 125-129

¹³ Masroor Ahmed v. State (NCT of Delhi) and Anr., (2007)ILR 2Delhi1329.

¹⁴ A. S. Parveen Akthar v. The Union Of India, (2003- 1-LW (CrI) 115).

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 entrenches that Muslim Personal Law was majorly uncodified 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 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.” (Institute,

2001)

Suggestion and Discussion:

Constitutional Validity:

In the Holy Book Quran, Nikah means ‘Misaqan Ghaliza’ that means a strong bond and it explains how and with whom one can enter into this strong bond and this bond cannot be diluted without proper reason and method. Marriage Halala has not only resulted in atrocity but also contravene the fundamental rights guaranteed to the citizens of India. Article 14 is the right to equality in which no person is beyond the law, as it is absolute. Every person is equal in the eyes of law irrespective of gender or religion. We have seen that, in Nikah Halala all right of divorce is bestowed upon the men only. As the marriage is undertaken by the free consent of both the parties, dissolution of such marriage also should be by the free consent of the parties, only then equality exists. But in Nikah Halala the husband can pronounce the divorce without even the knowledge of the wife, and the wife has to go through the inhuman veracity of consummating and attaining a divorce from her new husband, where the very concept in itself is infringing the Muslim wife’s right to equality. The Muslim wife have to go to the Qazi and have to prove the atrocities committed by her husband in order to get a divorce where a husband can pronounce talaq without any reasonable logic. Triple talaq has conferred unlimited and absolute power to give instant divorce to his wife, even when there is no just or reasonable cause, intriguing marriage halala to a whole new dimension.

Article 15(1) state that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.” Article 15(1) does not permit any kind of discrimination; whereas Nikah Halala violates it. Halala is an abhorrent practice in which all the rights are conferred upon the men and women are considered mere as puppets, whom they can control as they desire. The Muslim women tend to suffer penalty even after talaq because of their gender.

Article 21 is the most sacred fundamental right conferred by the law of laws. It speaks about the

right to life and personal liberty, which has been violated by the doctrine of Halala. It encroaches upon the indispensable dignity that a woman holds under article 21. The Quran encourages people to respect the women and not to abandon her without any just reason or 8 “The state shall not deny any person equality before the law or equal protection of the laws within the territory of India” for gratifying the male ego. If a spouse acquires sanction to remarry her old spouse only through a sore consummation of her new marriage without any logical and rational cause it will not only violate the Quran but also the supreme law of the land. It violates the basic rights of a woman as she does not get to know why she has been given divorce and also is deprived of her rights on her children and her matrimonial house. She becomes dejected and unaided after such divorce. The most important contention which makes a Nikah Halala violative of article 21 is this concept is totally arbitrary and woman has no say in this process which is totally unfair and unconstitutional.

Article 25(1) provides freedom of religion where every citizen is given the right to choose and practice and freely any religion of his or her own choice. It also states that no one should interfere with it. Muslim marriages and divorces are governed by Muslim personal laws and they are solely responsible for the infringement of fundamental rights of Muslim women. In Quran, it is nowhere mentioned that Nikah Halala is obligatory to establish the dignity of a woman making her lawfully robust for her former husband.

Marriage and successions are not a part of religion and with the changing time the law also needs to change. This idea was supported by Hon'ble court in Prakash v. Phulavati and it was stated that there can be no discrimination on the grounds of religion. Therefore, it is clearly visible from the above instances that Nikah Halala is violative of constitution. It violates the basic structure of the constitution which provides justice to both men and women equally but it is not justifiable as, it is discriminatory to women and this practice is totally arbitrary in nature which makes it violative of fundamental rights guaranteed under constitution.

In the recent judgment in Sharyara Bano v. Union of India, the triple talaq has been held unconstitutional and illegal in eyes of law. It is the need of the hour, to declare Nikah Halala to

be evenly in contravention to the articles of the constitution.

Case Laws:

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

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

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

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

Facts- According to Muslim laws it allows Muslim men to have four marriages, along with the right to divorce, under the concept of Talaq, whereby, the husband possess the right to divorce by pronouncing the term 'Talaq', without judicial methods, and this may happen without her consent, along with the practice of Halala in case the wife intends to go back to her former Husband. The PIL was filed in this case addressing both these issues. Held- In the light of these arguments, the court was of the opinion that India and Indians have been governed by personal laws, regardless of the time period. It was of the view that interference by the court would lead to

several undesirable results, as the verdict of personal laws was beyond the jurisdiction of the courts. The petition was dismissed.

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

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

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

4. Shamim Ara. v. State of U.P; Case No.: Appeal (crl.) 465 of 1996

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. 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

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 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.

Issues Arising Out Of Halala Nikah:

News Report

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

¹⁵ Mrs. Sabah Adnan Sami Khan v. Adnan Sami Khan, 2010(112)BOMLR1409.

¹⁶ Dhaval Kulkarni, Muslim groups plan to meet Prime Minister Narendra Modi for abolition of regressive personal laws, (DNA, Mumbai, Monday,4 August 2014 - 10:11am IST), (2014). Available at <http://www.dnaindia.com/mumbai/reportmuslim-groups-plan-to-meet-prime-ministernarendra-modi-for-abolition-of-regressivepersonal-laws-2007733>

¹⁷ Challa Srinivas, Status Of Women Empowerment In India:Problems And Concerns; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 2 (2015), Pg 122-124

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

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.¹⁸

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

¹⁸ <https://economictimes.indiatimes.com/news/politics-and-nation/will-supreme-court-consider-nikah-halala-polygamy-challenges-as-well/articleshow/60227764.cms>

those have overwhelming Muslim population, the Centre said Pakistan, Bangladesh, Afghanistan, Morocco, Tunisia, Turkey, Indonesia, Egypt and Iran have undertaken significant reforms and the practices of instant triple talaq or automatic polygamy at will is not permitted in most of these countries.¹⁹

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

Elaborating on the plea of rights provided under personal law, the court observed, “Personal law operates under the authority of legislation, and not under the religion. Personal law can always be superseded by legislation.”

Jamil had filed the petition asking for quashing of his wife’s complaint, maintaining that he had given triple talaq to her in 2015. He then obtained a fatwa from city mufti of Agra, in which the latter affirmed the talaqnama and pronounced that his former wife has become impure (haraam) for the petitioner. Hence, the subsequent complaint filed by his wife must be quashed because, as per Islamic personal law, no marriage existed between them when the complaint was filed.²⁰

INDIA TODAY REPORT

Nikah Halala: Muslim women pay lakhs to Islamic scholars for one-night stands to 'save their marriages

¹⁹ Dr Ilmana Fasih, Samra’s story: When marital abuse did not break her, (The Express Tribune Blogs, June 10, 2013),(<http://blogs.tribune.com.pk/story/17620/samrasstory-when-marital-abuse-did-not-break-her/>.(last visited on 24.10.2017)

²⁰ <https://www.pressreader.com/india/the-times-of-india-mumbai-edition/20170510/282063391882448>

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.

According to people interviewed, the report said that many a time, even formal marriage is not done for Nikah Halala, and the 'groom' merely spends a night with the 'bride' to get his money. One of the interviewed persons also said that he has done this several times and asked for a donation for his madrasa. In parts of Uttar Pradesh, the channel's undercover team met some who said that performing Nikah Halala is their profession and for that they charge a large amount. Sometimes, the clerics even set up the deals, the report said.

Critical Analysis:

The reasons which prove that Nikah Halala has suppressed the interests and rights of the women are-

1. After pronouncing talaq thrice the women are deserted and are not given maintenance and are deserted completely.
2. In most of the cases triple talaq is pronounced in the absence of his wife which is totally arbitrary and illogical. In the case of Aisha Bibi v. Qadir Ibrahim, the husband gave the wife an instant divorce in her absence without any just cause.
3. In few cases, the divorced women are not permitted to see or interact with their children, neither show care nor compassion towards them. In certain cases, the divorced Muslim woman was not even allowed to have telephonic conversation with her children.
4. Almost 50% of the Muslim women are denied mehr at the time of marriage. The concept of

mehr has been brought so as to protect and safeguard the interest of married women, if they are ever deserted. Denying mehr puts them in a vulnerable and helpless situation.

5. In certain cases, the man is under the impression that he has ostensible authority to give instant talaq to women if he wishes to do so, as the burden of reconciliation is imposed on the wife through Halala marriage.

6. In many cases women have reported that in order to get re-married they have been asked to go through halala by their former husband itself. This shows how patriarchal the society is and subjects the Muslim women to go through many hardships leaving their fates on the hands of their husband.

7. The condition of Muslim women becomes worst and vulnerable when they are divorced by their husband and they are left alone to live her upcoming life. It is not easy for such a woman to get re-married as the society in general does not accept a divorced woman. She falls under the abandoned and dejected part of the society. Such woman craves for support and love which they are denied off.

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 finally seen the light of the day. 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 uncodified 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.²¹ 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.

Actions Taken To Empower Women: Millennium Development Goal: The United Nations Development Program constituted eight MDG for ensuring equity and peace across the world. The MDGs are agreed-upon goals to reduce certain indicators of disparity across the world by the year 2015. Ministry For Women & Child Development: The Ministry for Women & Child Development was established as a department of the Ministry of Human Resource Development in the year 1985 to drive the holistic development of women and children in the country. In 2006 this department was given the status of a Ministry, with the powers to: - Formulate plans, policies and programs; enacts/ amends legislation, guiding and coordinating the efforts of both governmental and non-governmental organizations working in the field of Women and Child Development. Swayamsidha Program an integrated scheme for the empowerment of women at a total cost of Rs. 116.30 Crores. National Commission for Women, a Department within the Ministry was set up exclusively to help women via online submission of complaints and their fast redressal. And is also a good resource of information for women and the Commission is committed to helping out women in need. "The thing women have yet to learn is nobody gives you power. You just take it." - Roseanne Bar

Conclusion:

The concept of Halala Nikah is ignominious to the status of women. Though the practice was introduced with an aim to safeguard the rights of women in a marriage and to save her from inconsiderate divorce, the practice has not been able to serve the intent. Due to the unwritten laws in Muslims, the practice has been molested by Muslim men who forced their wife to marry another man and accomplish the essentials so that he can have her back. It is difficult to imagine

²¹ Muhammed Ghulam, Halala : Another Name For Rape Of Muslim Women, (Dawoodi Bohras, Thursday, Dec 08, 2011 6:24 pm), (2011). Availabe at <http://www.dawoodibohras.com/forum/viewtopic.php?t=6727> (last visited on

the mortification 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 unfortunate marriage or relationship of such nature. Thus, the solution to fight the noxious practice of Halala in order to protect the dignity of Muslim women is a codified law banning it.