

Halala: An Exceptional Marriage Practice in Islam

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Abstract:

The study of a religious minority like Muslims keeps greater importance in the country like Nepal where the majority population is Hindu. Marriage, divorce are the common phenomenon of the society. Remarriage after divorce is also common in Nepali society but remarriage with same bride after divorce in Muslim community is exceptional and the process is very curious to Nepali society. This paper tries to discuss the exceptional marriage practice in Islam i.e. Halala marriage. Marriage is a contract between bride and groom for the purposes of the legislation of intercourse, procreation of children and the social contract between husband and wife. Muslims practices marriage ritual according to the Muhammadan law. According to Holy Quran, if a husband divorces his wife, he is not allowed to remarry her until she has married to another husband and he has divorced her. Halala marriage is a practice in the Muslim community which allows a man to re-marry his wife after Triple-Talaq. Halala has been severely criticized as it harms the dignity of a woman by forcing her into a compromised sexual relationship. This research attempts to deal with the overall scenario of Nikah Halala.

Keywords: Halal, Haram, Muslim Women, Nikah Halala, Triple-Talaq.

Background

The concept of Nikaha Halala was introduced by Prophet Mohammad to improve the marital relationships during the pre-Islamic era. 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 (Das and Dixit, 2019). The word Halala comes from the term Halal which means lawful (Hari, 2015). Like Halal, Haram has been commonly used in Islam meaning Unlawful. According to Quran when 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 (Das and Dixit, 2019). The entire process of purification of divorced women from Haram to Halal is Halala.

The Quran says that if a man without any precondition marries the divorced woman purely for the sake of making her free to re-marry her first husband, the Halala is considered to be valid if it is planned Allah curses both of them (Das and Dixit, 2019). A Halala cannot be planned in advance between a divorced woman and her second husband with an understanding of a divorce to marry her first husband. If she does so, it will be called a pre-planned Halala. Muslim scholar interprets Halala marriage is to empower women with specific prerogative right i.e. not to marry same husband who divorced her. It can be said Halala is the punishment to the Muslim male directing their duties not to play with the life of a lady. But the concept now a day, misused, became legalized prostitution.

Statement of the Problem

Marriage and divorce are the fundamental human right of every citizen in the world but it is not common in Muslim society. Muslim women has been exploiting in the name of Triple Talaq and Nikaha Halala where Muslim Personal Law is in practice. Triple Talaq and Nikaha Halala became a big issue after abolition of Triple Talaq system in India. Nepal is a secular country and national law is a legal compulsion to every citizen including Muslims in the country. But the Muslims, they practice Muslim law instead of national law in their rituals. Nikaha Halala is not popularly practiced in Nepal but some Islamic fundamentalist are trying to practice it within their community. Some national and international articles tried to address different aspects of Nikaha Halala and its practice but they don't cover the overall aspects of Halala practice. This article intends to identify some unidentified problems of Nikaha Halala in Islam.

Research Question

So many such problems have been raised by so many researchers listed in review of literature. There are some areas which are not addressed that are being focused by this research. The research tries to answer following questions,

1. What is Nikaha Halala?
2. How Nikaha Halala has been practiced in Muslim community?

Objective of the study

In order to present the study two main objectives were selected:

1. To identify the concept of Nikaha Halala in Islam.
2. To explore the practice of Nikaha Halala among Muslims.

Review of the Literature

Abdul Salam Khan (2071) provides general information of the Nepali Muslims in his book “Nepal Ra Nepali Musalman”. His book is basically focused on socio-economic status of Nepali Muslims of Kapilbastu. David Seddon (2018) “The Muslim Communities of Nepal” is based on a field study report. It is focused on socio-cultural as well as political conditions of Nepali Muslims of Terai. Nidhi Khare and Radhika Singh (2016) in “Halala Nikah: Marriage against The Dignity of Muslim Women?” is a critical analysis of Halala marriage in the light of the Indian legal system. Niranjan Ojha (2018) critically analyzes the marriage and divorce practice in Muslim community in his book “Rites and Rituals of Nepali Muslims”. Saumya Parmarhi and Manu Gupta (2014) in their book “Our nation and its women” exhibit the challenges of women in India especially in Muslim community. It further deals with social inequalities ranging from gender; domestic violence faced by Muslim women in the name of personal laws and suggests women empowerment through legal provisions.

Shanker Thapa (1985) has done a meaningful research on Marriage and Divorce in his research work “Marriage in the Muslim society: A case study of Briganj based Muslims”.

This research is based on the micro study of Muslim settlements in Birganj. It mainly deals with history of Nepali Muslims and practice of Nikah and the Talaq. Quraisha Banu (1980) provides informative and general glimpse of Nepali Muslims in her Master's thesis "Introduction to Muslims in Nepal". This research deals with the historical aspects of Muslim social system, religion, festivals and rituals, status of women and family life of Muslims of Kathmandu.

These literatures are helpful to identify research problems and to generate the ideas. It gives an idea on research and support to analyze the present situation of research on Nikaha Halala. It is also helpful to generate research tools for further study. Some national and international articles, books and reports tried to address the different aspects of Nikaha Halala but they don't cover the overall aspects. These literatures don't support the raised research questions but it is partially helpful to fulfill theoretical aspects of Nikaha Halala. This article intends to identify some unidentified problems of Nikaha Halala in general. Hence, I have reviewed the available literature to explore the research problem.

Methodology

This article is based upon a qualitative analysis. Explanatory, descriptive, analytical as well as informative method has been used in this research. Both formal and informal discussion was held with the concern stake holders. This research consists of present context data but some historical references are cited in the appropriate places. Basic source of information for this research is secondary information. Relevant books, journal articles, online websites and related publications have been used properly. All the information collected has been classified, summarized, analyzed and some reflection will be made for this research. This study is limited to historical study of Halala marriage. This study doesn't cover the social, political, legal, economic and other aspects of Halala marriage.

Discussion

Conceptual Analysis:

After Triple Talaq the woman becomes haram (unlawful) for her husband and he cannot re-marry his divorced wife. To make her lawful (Halal) from unlawful (Haram) she has to go through purification process- Halala. It seems, divorce was introduced to maintain strict discipline to save married life and Halala- punishment for those husbands who misuses the right to divorce. In Islam, especially in India and the Islamic countries, where Muslim Personal Law is in practice, Nikah Halala has been manipulated and misused. Muslim women have been exploiting in the name of Triple Talaq and Nikaha Halala. The necessity of such rituals needs to be discussed. In the country like Nepal, where Muslims are minority and Muslim Personal Law is not in existence and national law decides every personal matter but some Islamic fundamentalists are trying to practice such things within their own community.

Islamic Interpretations

According to the Quran "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." (Surah Al-Baqarah, 2:229)

"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." (Surah Al-Baqarah, 2:229)

According to the All India Muslim Personal Law Board, "A man cannot remarry a woman after triple Talaq unless she has already consummated her marriage with another man and then that new husband dies or divorces her"(scroll.in, Jan 2020). The primary source of Islam is the Holy Quran, is the central point of entire religion and culture of Muslims. Halala is an Islamic marriage practice with a divorced female marrying someone else, consummating the marriage and then getting a divorce in order to make it allowable to remarry her previous husband (*Ahmad, 2017*).

Halala Practice

In Islam Marriage is a social contract between husband and wife for their future life with responsibilities, right and duties (Ojha, 2018). "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" (Thapa, 2043). Nikah Halala is a practice in the Muslim community which allows a man to marry his wife after Triple-Talaq. "According to Holy Quran, 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 with the same wife is called Halala. But lately it has been used as a tool to re-marry his divorced wife to save their marriage life" (Das and Dixit, 2019). Halala has been criticized as it harms the dignity of a woman by forcing her into a compromised sexual relationship, which is nothing else than Rape.

The concept of "Halala was introduced by Prophet Mohammad when 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" (Salam, 2020). 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 (Sharma and Pal, 2014) but if a man without any precondition marries the divorced woman purely for the sake of making her free to re-marry her first husband (Khan, 2000), 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 Halala cannot be planned in advance (Das and Dixit, 2019).

“Talaq-ul-biddat and Talaq Hasan (Triple – Talaq) are the mode of divorce in Muslim community according to Muhammadan law. In Islam a husband has a right to divorce his wife. The divorce given without the consent of his wife is called Talaq. There are two forms of Talaq popularly practiced in the Muslim society- Talaq-ulsunnat and Talaq-ul-biddat” (Vangalaravinder and Shailaja, 2015).

a. “Talaq-ul-sunnat is the divorce given in accordance with the traditions of the Prophet. It is divided into types: Talaq Ahsan and Talaq Hasan. Talaq Ahsan is considered to be the most proper form of divorce. In this form- 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” (Vangalaravinder and Shailaja, 2015).

b. “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” (Das and Dixit, 2019). 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” (Das and Dixit, 2019).

The above is often interpreted as following: if a husband divorces his wife by pronouncing Talaq, he can revoke the divorce within the Iddat period (waiting period). If the divorce is completed, the couple can remarry (www.askimam.org). The couple may divorce and remarry twice. However, if they divorce a third time, they can neither unite within the Iddat period nor marry again until the ex-wife marries another man, to ensure that the divorce is taken seriously. (www.Islamqa.org). If Nikah halala tried to understand in its original Islamic form, it is actually for empowering women, aimed to safeguarding their dignity and rights, but the concept nowadays resulted in disempowering them (Salam,2020). Halala Nikah is a concept under the Muslim personal law 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 (Salam, 2020).

Islam and the Quran say about marriage, divorce and remarriage. The Quran permits divorce twice. After both divorces, a husband and wife can patch up. After the second divorce if they live happily, it is fine. “If the husband divorces her for the third time, then the woman is prohibited for him. She becomes a completely independent woman, free to stay single

or marry a man of her choice. The husband got three chances to make things work and exhausted them. This way, she does not become a plaything in the hands of a whimsical husband. After the third divorce, the woman can marry any other man after the lapse of the Iddat period”(Salam, 2020).

“Most Nikah Halala cases are followed by instant triple Talaq and have more or less the same story. In some cases, women who were subjected to Halala, not once but seven to eight times simply because their husband pronounced Talaq when they were dunked 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 her first husband” (Das and Dixit, 2019).

The number of Halala marriages has suddenly increased to alarming numbers in Muslim community. “The women in Halala have also reported abuse at the hands of their husbands” (Das and Dixit, 2019). “These women are forced to undergo Halala with their near relatives also at times. 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” (Srinivas, 2015).

Why Muslim Women accepts it

Most of the educated and modern Muslim women they know it is a brutal practice in the name of rituals. They also feel that it is nothing than the prostitution. There are many reasons behind that make Muslim women to compromise. They know they have been exploited in the name of such rituals but they uncomfortably accept it.

- After pronouncing Triple Talaq the women are not given any means of maintenance.
- The divorced women are not permitted to see or interact with her children and they are not even allowed to have telephonic conversation with her children.
- Most of the Muslim women denied Mehr at the time of marriage. Mehr or dowry can protect and safeguard married women, if they are divorced. Denying Mehr puts them in a vulnerable and helpless situation.
- During reconciliation, women were suggested to go through Halal by their former husband to get re-married (Das and Dixit, 2019).

The condition of divorced Muslim women becomes miserable in the society. They have a whole life to live without any support. They became helpless. It is not easy for a divorced woman to get re-married and the Muslim society does not easily accept second marriage. They know Halala is some means of prostitution but they unwillingly accept it.

Conclusion:

Halala is an exceptional marriage practice in Islam. Logic behind Halala is to safeguard women right, their marriage and to save her from unexpected and unconditional divorce because Muslim male have unconditional right to divorce. Because of the male domination in the Islamic society female were supposed to behave as an object thus they forced their wife to marry another man that they could get her back for their satisfaction. It is nothing else than the exploitation of Muslim women in the name of rituals. It is the ritualistic brutality

for those women who have to face such circumstances in the name of purification- getting married to another person and getting divorce the next day to save her family life. In early days Hindu society was also full of such inhuman rituals i.e. child marriage, sati system and so on. Still in the far-western region of Nepal Chau-padi system is in practice. It's not the marriage system but it is related to women exploitation. Hindu is the liberal religion thus many reformers had challenged such practices and the society easily accepted it without any hue and cry. But in Muslim society, society itself is conservative, rigid and closed and the so called Muslim scholars are not ready to be a step header. As well as religion base politics is more or less responsible for such un-human behavior. In this very 21st century, especially the Muslim reformers should think broadly on such practices. The Muslims scholars should find a new way for divorced couples to get re-married to save their family without forcing the wife into any unfortunate marriage or sexual relationship.

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