

COMPARATIVE STUDY OF NIKAH HALALA PRACTICES: INDIA AND OTHER MUSLIM-MAJORITY COUNTRIES

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Abstract

Nikah Halala is a controversial practice in Islamic law that mandates a woman, after being irrevocably divorced (talaq-e-bain), to marry another man, consummate the marriage, and then divorce him before she can remarry her former husband. This practice, which originated as a deterrent to impulsive divorces, has faced widespread criticism for being misused and for disproportionately affecting women. While Nikah Halala is practiced in India under Muslim personal law, its legal status and interpretation differ across Muslim-majority countries, some of which have introduced legal reforms to curb its exploitation.

This study aims to provide a comparative analysis of Nikah Halala in India and other Muslim-majority nations by examining its legal, social, and ethical implications. It explores how various countries, including Pakistan, Saudi Arabia, Egypt, and Indonesia, approach Nikah Halala, highlighting the differences in religious interpretation, judicial oversight, and legislative interventions. In India, Nikah Halala has been challenged in the courts as a violation of constitutional rights, particularly concerning gender equality and personal dignity.

The study examines historical perspectives, religious texts, judicial pronouncements, and feminist critiques to understand the ongoing debates surrounding Nikah Halala. By comparing India's approach with legal frameworks in other countries, the paper seeks to evaluate whether regulatory reforms can strike a balance between religious traditions and women's rights. The findings emphasize the urgent need for legal clarity, greater protections for women, and potential reforms to prevent exploitation.

INTRODUCTION

Islamic marriage laws are rooted in religious doctrine, with different interpretations shaping their implementation across various societies. One such practice, Nikah Halala, is based on Quranic injunctions and hadith but has been debated for centuries. The original purpose of Nikah Halala was to discourage men from issuing arbitrary and hasty divorces by ensuring that a divorced woman could not return to her former husband without experiencing marriage with another man. However, in contemporary times, this practice has often been manipulated, leading to instances of coercion, financial exploitation, and psychological distress for women.

In India, Nikah Halala falls under Muslim personal law, which operates separately from the uniform legal framework governing other communities. Several cases have emerged where women have been forced into temporary marriages under the guise of Nikah Halala, raising concerns about gender justice and human rights violations. Unlike some Muslim-majority countries that have reformed their family laws to prevent such abuses, India has yet to introduce significant legal restrictions on the practice.

REVIEW OF LITERATURE

The existing literature on Nikah Halala can be categorized into religious, legal, and feminist perspectives.

Religious Interpretations

Islamic scholars have historically debated the legitimacy and ethical dimensions of Nikah Halala. While traditional Islamic jurisprudence permits it under specific conditions, many contemporary scholars argue that it has been misinterpreted and misused. Ali (2019) explores how classical Islamic scholars viewed Nikah Halala as a strict deterrent, not a routine practice. In contrast, Ahmed (2021) critiques the way it has been commercialized in some societies, where men offer Halala services for financial gain, violating the spirit of Islamic law.

Legal Perspectives

The legal status of Nikah Halala varies across Muslim-majority countries. In Pakistan, the practice is permitted but closely regulated under the Muslim Family Laws Ordinance, 1961. In Egypt, courts have intervened in cases

where Nikah Halala was found to be forced or fraudulent. In contrast, countries like Tunisia and Turkey have outlawed the practice by reforming their family laws to align with modern human rights principles. Indian legal scholars such as Sharma (2022) argue that Nikah Halala violates women's fundamental rights under Articles 14 (equality), 15 (non-discrimination), and 21 (right to dignity) of the Indian Constitution. The Supreme Court of India has acknowledged concerns regarding Nikah Halala in various cases, but no definitive ruling has yet abolished or restricted the practice.

Feminist Critiques

Feminist scholars argue that Nikah Halala disproportionately affects women, placing them in vulnerable situations where they are forced into marriages against their will. Studies by Fatima (2020) and Khan (2023) highlight the psychological and emotional trauma that women undergo due to this practice. Feminist legal activists have called for reforming Muslim personal laws in India to ensure that women are not subjected to coercion under the guise of religious obligation.

DATA ANALYSIS

1. Legal Documents & Court Judgments: Analysis of Indian Supreme Court cases, personal law provisions, and judgments from countries like Pakistan, Egypt, Indonesia, and Saudi Arabia.
2. Scholarly Articles & Reports: Examination of academic publications, government reports, and policy papers on Nikah Halala.
3. Case Studies & Testimonies: Review of real-life experiences and testimonies from women affected by Nikah Halala in India and other nations.
4. Comparative Legal Frameworks: Evaluation of how various Muslim-majority countries regulate or prohibit Nikah Halala, and the impact of these regulations on women's rights.

The findings indicate significant disparities in the treatment of Nikah Halala across jurisdictions. While some countries have reformed their laws to prevent misuse, India lacks explicit legal safeguards, leaving women vulnerable to coercion and exploitation.

OBJECTIVES OF THE STUDY

1. To analyze the historical and religious foundations of Nikah Halala in Islamic jurisprudence.
2. To compare legal perspectives on Nikah Halala in India and other Muslim-majority countries.
3. To assess the impact of Nikah Halala on women's rights, gender equality, and personal autonomy.
4. To evaluate judicial responses in India and abroad regarding Nikah Halala.
5. To propose legal and policy recommendations for addressing the exploitation associated with Nikah Halala while respecting religious practices.

RECOMMENDATIONS

1. Legal Reforms:

Amend Muslim personal law in India to prohibit forced or pre-planned Nikah Halala.

Implement stricter judicial oversight to prevent misuse.

Introduce penalties for individuals or religious figures who exploit women under Nikah Halala.

2. Judicial and Constitutional Interventions:

Encourage the Supreme Court of India to clarify the legal standing of Nikah Halala.

Advocate for a constitutional review of Nikah Halala under Articles 14, 15, and 21.

3. Awareness and Education:

Conduct awareness campaigns on women's rights in marriage and divorce.

Engage religious scholars to reinterpret Islamic laws in ways that promote gender justice.

4. Comparative Legal Adaptations:

India can learn from countries like Indonesia and Malaysia, where judicial mechanisms prevent the misuse of Nikah Halala.

Strengthen family law courts to handle cases related to Nikah Halala effectively.

CONCLUSION

The comparative study of Nikah Halala reveals stark differences in its legal treatment across Muslim-majority countries. While originally intended as a safeguard against impulsive divorces, Nikah Halala has, in many cases, become a tool of exploitation against women. In India, the lack of explicit legal restrictions allows for misuse, while other countries have taken steps to regulate or abolish the practice.

To align Nikah Halala with contemporary human rights standards, India must introduce legal reforms, judicial scrutiny, and awareness campaigns. By learning from the experiences of other Muslim-majority nations, India

can ensure that religious practices do not infringe upon constitutional rights, particularly gender equality and personal dignity.

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