

I) INTRODUCTION:

A) Historical Bakground:

The Pre-Islamic era, also known as the age of *Jahiliya*, signifies the age of barbarism, darkness and ignorance of God's guidance.¹

In pre-Islamic Arabia the condition of women was extremely degraded. Women were treated as mere chattels and were made an integral part of the estates of their husband or father.

Prophet Mohammad introduced the concept of 'Halala' to improve the marital relationships from those corrupt forms which existed during the pre-Islamic era.² The primary source of Muhammaddan Law is the Holy Quran which represents the Gods will communicate to the Prophet through the Angel Gabriel.³

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 case, there is no blame on either of them if they re-unite, provided they can keep the limits ordained by Allah. Such are the limits ordained by Allah which He makes plain to those who know."*⁴

The Holy Quran in *Sura 230* (i.e. Verse 230) 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).'⁵

The concept of Halala was introduced to prevent mockery of the institution of marriage and the rights of women. Where a man divorces his wife and marries again the Quran imposes a two-strike rule whereby a man is allowed to re-marry the same woman again only twice. If the man divorces his wife for the third time, it imposes an irrevocable divorce and it would be

¹ 'Women's Rights In Muslim Law' (Shodhganga, Gandhinagar), http://shodhganga.inflibnet.ac.in/bitstream/10603/148573/9/09_chaoter%204.pdf accessed 05 June 2018.

² Nidhi Khare, Radhika Singh 'Halala Nikah: Marriage Against the Dignity of Muslim Women? A Critical Analysis of the India Legal Scenario'12 HRIRJ (2016)

³ Zafar Iqbal Kulauri, 'Marriage, Divorce and Re-marriage (Halala) In Islam' , <http://www.zklawassociates.com/wp-content/uploads/2012/03/MARRIAGE-DIVORCE-AND-RE-MARRIAGE-HALALA-IN-ISLAM.pdf> accessed 07 June 2018.

⁴ Ibid.

⁵ Priti Sharma, Nishant Pal, 'Transgender in India: Alimented From the Society'; 58HRIRJ (2014)

impermissible for the man to marry the same woman again unless she marries another man, consummates her marriage and the man dies or divorces her by his own will.⁶

B) Current Position:

Today, the way halala is used defeats the purpose of the restriction. Any nikah with a pre-agreed agenda, date and time of divorce is not allowed in Islam and is considered to be a sin. There have been several instances where a woman has been exploited for months and even years in the name of religion, both physically and financially.⁷ While Nikah Halala is accepted by a minority group of Muslims, it is rejected and strongly opposed by the majority.⁸

In India we have numerous examples, while speaking to the President of *All India Muslim Women Personal Law Board* and a nikah halala 'victim', Ms Shaista Amber narrated her ordeal, wherein she was asked by her husband to get married to another person as per nikah halala customs, yet to her dismay, her husband refused to accept her despite promising her in writing.⁹ One more incident is of Jaipur where A Muslim man drugged his wife and forced her to sleep with his friend under the pretence of following nikah halala.

The victims are always women, more in rural areas than urban, and the execution of the halala is starkly similar.¹⁰ Usually a man pronounces divorce in a fit of rage and after a while, once his anger subsides, he realises his folly and approaches a local cleric for a way out. The husband now wants to reconcile. She too is willing, the argument often being that he did not mean triple talaq, only a single, revocable divorce. Or that he was not in his senses when he pronounced the three dreaded words. Yet, when the maulana is consulted, he hardly ever rules that instant triple talaq given in one go without following the procedure prescribed in the Quran is only a single, revocable divorce. Instead of doing what the Prophet did when faced with such a situation – the Prophet allowed a man who had divorced his wife in this manner to go back to her if he so desired, thus giving him a chance to resume his marriage – most maulanas never ask the couple if they would like to resume their marriage. They simply consider that the instant

⁶ Zafar Iqbal Kulauri, ‘[Marriage, Divorce and Re-marriage \(Halala\) In Islam](http://www.zklawassociates.com/wp-content/uploads/2012/03/MARRIAGE-DIVORCE-AND-RE-MARRIAGE-HALALA-IN-ISLAM.pdf)’ , <http://www.zklawassociates.com/wp-content/uploads/2012/03/MARRIAGE-DIVORCE-AND-RE-MARRIAGE-HALALA-IN-ISLAM.pdf>, accessed 07 June 2018.

⁷ Rashi Gupta, ‘[Abominable rapes in the name of Nikah Halala: An analytical study of Halala with special reference to Rape Laws in India](#)’ 131 IJARD (2018).

⁸ Ajaz Ashraf, “[If Pakistan and 21 other countries have abolished triple talaq, why can't India?](https://scroll.in/article/806299/if-pakistan-and-21-other-countries-have-abolished-triple-talaq-why-can't-india)”, (Apr 18, 2016) <<https://scroll.in/article/806299/if-pakistan-and-21-other-countries-have-abolished-triple-talaq-why-can't-india>>, accessed on 2nd June, 2018.

⁹ Zee Media Bureau, “[Triple talaq row: Nikah halala victim speaks about her ordeal – Know what she said](http://zeenews.india.com/india/triple-talaq-row-nikah-halala-victim-speaks-about-her-ordeal-know-what-she-said-1996379)”, (Apr 15, 2017) <<http://zeenews.india.com/india/triple-talaq-row-nikah-halala-victim-speaks-about-her-ordeal-know-what-she-said-1996379>> accessed on 2nd June, 2018.

¹⁰ Ziya US. Salman, [Till Talaq Do Us Part, Understanding Talaq, Triple Talaq and Khula](#) (Penguin, April, 2018)

triple talaq is a valid, irrevocable divorce, though they refer to it as talaq-e-biddat or sinful divorce.¹¹

As more and more human rights disappear under the pressure of mounting fanaticism and traditionalism in many areas of the Muslim world¹², the practice of halala is construed as extremely heinous and offensive to the honour of both the man and woman¹³. The manner in which this practice has been constructed in the contemporary situation is a ghoulish glimpse of the practice prevalent in Islamic States of raping women in the garb of religion.¹⁴

C) Original Intent:

The pre-planned and intentional plotting of a marriage to circumvent the laws of Allah is absolutely impermissible and it is believed that the messenger of Allah (PBUH) will invoke the curse of Allah on whoever mock the laws of Quran. The pre-condition of Halala is a ‘genuine’ marriage and a ‘genuine’ divorce.¹⁵

The prophet warned his followers “*Curse of god rests on him who repudiates his wife capriciously.*”¹⁶ And “*Divorce shakes the throne of God.*”¹⁷

Therefore a concept that was initially brought about for the ideals of Human Rights and Gender Justice is being abused by some Muslims.

This can be further enunciated by looking the following principles of Marriage in Muslim Law.

- 1) According to the Quran, a marriage is permanent and never temporary. If the spirit of *Nikah Ehsaan*¹⁸ is not there then it would be difficult to call it a marriage. Therefore a man is called *mohsin* and woman *mohsina* because they protect each other.¹⁹

¹¹ [Till Talaq Do Us Part, Understanding Talaq, Triple Talaq and Khula](#) (Penguin, April, 2018)

¹² Riffat Hassan, [On Human Rights and The Qur'anic Perspective](#), (2014), , http://riffathassan.info/wpcontent/uploads/2014/03/On_Human_Rights_and_the_Quranic_Perspective1.pdf, accessed on 11 June, 2018.

¹³ Pirzada S, [“Divorce in days of Ignorance, Triple Talaq- In The Light of Quran and Sunnah](#), <http://www.islamicstudies.info/literature/triple-talaq.pdf>, accessed on 11 June, 2018.

¹⁴ Indian Penal Code, 1860, s. 375.

¹⁵ Zafar Iqbal Kulauri, [‘Marriage, Divorce and Re-marriage \(Halala\) In Islam’](#), <http://www.zklawassociates.com/wp-content/uploads/2012/03/MARRIAGE-DIVORCE-AND-RE-MARRIAGE-HALALA-IN-ISLAM.pdf>, accessed 07 June 2018.

¹⁶ Syed Ameer Ali, [Mohammedan Law II](#), 473 (Kitab Bhavan, 1986)

¹⁷ Dr. Ahmed A. Galwash, [The Religion of Islam](#), 117 (5th ed., Impr. Misr S. A. E., 1958)

¹⁸ Meaning: Fort; Origin: *Hisn*

¹⁹ Muhammad Shakil Auj, [‘Difference Between Traditional and Quranic Concepts of Halala’](#), http://pu.edu.pk/images/journal/szic/pdf_files/1-%20shakil%20Auj%20Halala-%20final%2014th%20march%20june%2013.pdf, accessed 30 May 2018.

Due to the fact that Halala in its present perverted form is temporary therefore the solution to problems like pregnancy during halala, death of husband during halala and inheritance are not answered in the Quran. This is because the intention of halala was never what it is put out to be today. The Quran declares men as protectors, and casts a duty on them to maintain their women.²⁰ The present form of halala fails at making the husband protector of the wife's dignity rather it makes him a looter of her chastity usually lasting a few nights.²¹

- 2) For the validity of a marriage, it is essential that there should be a proposal (*ijab*) of marriage by or on behalf of one of the parties and acceptance (*Qubul*) of the proposal by or on behalf of the other party, at one and the same meeting.²²

In the case of Halala customs and religion have been deformed to exercise control and domination over women to conform to the patriarchal needs of the society. Consequently, the pertinent point here is that a Halala Nikah cannot be pre-planned. A forced marriage is a form of psychological and emotional violence.²³

In *Ghulam Kubra v. M. Shafi*²⁴, the established law was laid down i.e.

"In Muslim marriage, consent is an essential element. Two persons are said to consent when they agree upon the same thing in the same sense. If the consent has not been given voluntarily and is not free, it is no consent at all. A consent given under compulsion, fraud or mistake of fact is said to be not a free consent²⁵."

Therefore the question that arises now is whether Halala marriage is taken by free consent and agreement of both the parties? Mostly, the marriage is void if it is one that is through fraud, coercion or force.²⁶

²⁰ *Shayara Bano v. Union of India*, 9 SCC 1 (2017)

²¹ Zafar Iqbal Kulanauri, 'Marriage, Divorce and Re-marriage (Halala) In Islam', <http://www.zklawassociates.com/wp-content/uploads/2012/03/MARRIAGE-DIVORCE-AND-RE-MARRIAGE-HALALA-IN-ISLAM.pdf>, accessed 07 June 2018.

²² Dr. Nishi Purohit, The Principles of Mohammedan law, 125 (2nd edn, Orient Publishing Company, Allahabad 1988)

²³ Lisa Hajjar, 'Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis', 12 Law & Social Inquiry (2004)

²⁴ *Ghulam Kubra v. M. Shafi*, 64 CWN 756 (1960)

²⁵ Dr. R.K. Sinha, Muslim Law, 48 (5th edn., Central Law Agency, Allahabad, 2003)

²⁶ Muhammad Shakil Auj, 'Difference Between Traditional and Quranic Concepts of Halala', http://pu.edu.pk/images/journal/szic/pdf_files/1-%20shakil%20Auj%20Halala-%20final%2014th%20march%20june%2013.pdf, accessed 30 May 2018.

Apostle of god said, “*there are three things which whether done in joke or earnest, shall be considered as serious and effectual; one, marriages; the second, divorce and the third, taking back*”²⁷

The purpose of this verse according to Abul Ala Maududi in the Meaning of Quran²⁸

“*This verse was meant to reform a serious social evil common in Arabia before the advent of Islam. A husband was allowed to pronounce divorce as often as he pleased. Whenever his relations were strained with his wife, he would pronounce divorce and then re-unite as and when it suited him. As there was no limit to this, it was repeated over and over again.*”

The concept of Halala Nikah is degrading to the status of women. Though the practice was introduced with an intention to safeguard the rights of women in a marriage and to save her from unthoughtful divorce but it has been misinterpreted to a point where it is working contrary to its objective.²⁹

II) CONSTITUTIONAL VALIDITY (ARTICLE 25):

The Muslim Personal Law (Shariat) Application Act, 1937, by providing for the application of Muslim personal law in matters relating to marriage where the parties are Muslims, conveys a wrong impression that the law sanctions Nikah Halala, Nikah Mutah and Nikah Misyar and Polygamy, which are not only grossly injurious to public order, morality and health, but also violative of the fundamental rights of Muslim women guaranteed under Articles 14, 15 and 21 of the Constitution.³⁰

The Constitution neither grants any absolute protection to any personal law of any community that is unjust, nor exempts personal laws from the jurisdiction of the Legislature or Judiciary.³¹ The concept of “Constitutional Morality” has been expounded by a 5-judge bench of the Hon’ble Supreme Court in *Manoj Narula v. Union of India*³², wherein it was observed that

²⁷ Tyabji, Muslim Law, 53 (4th edn., N. M. Tripathi, 1968)

²⁸ Abul Ala Maududi, The Meaning of Quran, 167 (10th Ed. Delhi, MM, Jamaat-e-Islam, 1968) , 167

²⁹ Nidhi Khare, Radhika Singh ‘Halala Nikah: Marriage Against the Dignity of Muslim Women? A Critical Analysis of the India Legal Scenario’ HRIRJ (2016)

³⁰ Moullim Mohsin Bin Hussain Bin Abdad Al Kathiri v. Union of India, WRIT PETITION (CIVIL) NO 235 OF 2018

³¹ Nafisa Khan v. Union of India , WRIT PETITION (CIVIL) NO 227 OF 2018

³² Manoj Narula v. Union of India, 9 SCC 1 (2014)

“the Constitution of India is a living instrument, and the principle of constitutional morality, essentially means, to bow down to the norms of the Constitution, and to not act in a manner, which is arbitrary or violative of the rule of law, since commitment to the Constitution is a facet of constitutional morality.”

What is bad in theology was once good in law but after Shariat has been declared as the personal law, whether what is Quranically wrong can be legally right is the issue to be considered.³³ A simple question to be answered is whether Nikah Halala passes the test of being essential to the religion of Islam, and by that virtue determining its legal sanctity with respect to Article 25 of the Indian Constitution.

Article 25

Article 25(1) provides that “all” persons are “equally” entitled to the freedom of conscience, and the right to profess, practice and propagate religion. This, should be understood to mean, that the rights conferred by this article are equally available to women, and are not confined to men alone. Therefore, any patriarchal or one-sided interpretation of religion (or a practice of religion), ought not to be countenanced.³⁴

In *A.S. Narayana Deekshitulu v. State of A.P.*³⁵ it was held that the right to religion or religious belief are not absolute or unfettered. In this light the court observed:

“Therefore, the right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity – economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State.”

In *State of Bombay v. Narasu Appa Mali*³⁶ the court enunciated the importance of reasonable restrictions on Article 25 along with clarifying the distinction between a religious belief and a religious practice. The court in this light held:

“If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole.”

A) Is Nikah Halala an Essential Religious Practice?

³³ Shayara Bano v. Union of India, 9 SCC 1 (2017)

³⁴ Shayara Bano v. Union of India, 9 SCC 1 (2017)

³⁵ A.S. Narayana Deekshitulu v. State of A.P., 9 SCC 548 (1996)

³⁶ State of Bombay v. Narasu Appa Mali, AIR 84 (1952, BOM)

There are four sources of Islamic law³⁷-

- i) Quran
- ii) Hadith
- iii) Ijma
- iv) Qiyas.

Degrees of obedience: Islam divides all actions into five kinds which figure differently in the sight of God and in respect of which His Commands are different. This plays an important part in the lives of Muslims.

- i) First degree: Fard. Whatever is commanded in the Koran, Hadis or ijmaa must be obeyed.
- ii) Second degree: Masnun, Mandub and Mustahab: These are recommended actions.
- iii) Third degree: Jaiz or Mubah: These are permissible actions as to which religion is indifferent.
- iv) Fourth degree: Makruh: That which is reprobated as unworthy.
- iv) Fifth degree: Haram: That which is forbidden. ³⁸

Obviously, Triple Talaq along with Nikah Halala does not fall within the first degree, since even assuming that it forms part of the Koran, Hadis or Ijmaa, it is not something “commanded”. Equally Talaq and Halala are not recommended actions and, therefore, will not fall within the second degree. The above-mentioned practices at best fall within the third degree, but probably fall more squarely within the fourth degree. It will be remembered that under the third degree, an action is permissible to which religion is indifferent. Within the fourth degree, it is reprobated as unworthy. We have already seen that though permissible in Hanafi jurisprudence, but it castigates Triple Talaq and Halala as being sinful. It is clear, therefore, that these practices do not form part of Article 25(1).³⁹

In *Masroor Ahmed v. State (NCT of Delhi) & Another*⁴⁰ it was held that the primary source of rules guiding the life of a Muslim in the Quran. The matters that are not covered by the Quran will be developed looking to the hadis and upon driving a consensus. The differences arose

³⁷ Asaf A.A. Fyzee, Outlines of Muhammadan Law, 10 (5th edn., Oxford University Press 2008)

³⁸ J. Hidayatullah, Mulla's Principles of Mahomedan Law, (16th edn., N.M. Tripathi Pvt. Ltd., 1968)

³⁹ Shayara Bano v. Union of India, 9 SCC 1 (2017)

⁴⁰ Masroor Ahmed v. State (NCT of Delhi) & Another, (103) DRJ 137 (2008, Del)

between the schools because of reliance on different hadis, differences in consensus and differences on qiyas and aql as the case may be.

‘Verses’ 229 to 231 contained in ‘section’ 29 of ‘sura’ II, are relevant on the issue of divorce. A perusal of the aforesaid ‘verses’ reveals, that divorce for the reason of mutual incompatibility is allowed. There is however a recorded word of caution – that the parties could act in haste and then repent, and thereafter again reunite, and yet again, separate. To prevent erratic and fitful repeated separations and reunions i.e. what has been the common practice in countries where triple talaq is permissible, a limit of two divorces is prescribed. In other words, reconciliation after two divorces is allowed. After the second divorce, the parties must definitely make up their mind, either to dissolve their ties permanently, or to live together honourably, in mutual love and forbearance – to hold together on equitable terms. However, if separation is inevitable even on reunion after the second divorce, easy reunion is not permitted. The husband and wife are forbidden from casting aspersions on one another. They are mandated to recognize, what is right and honourable, on a collective consideration of all circumstances.

‘Verse’ 230 is in continuation of the first part of ‘verse’ 229. The instant ‘verse’ recognizes the permissibility of reunion after two divorces. When divorce is pronounced for the third time, between the same parties, it becomes irreversible, until the woman marries some other man and he divorces her (or is otherwise released from the matrimonial tie, on account of his death). The Quranic expectation in ‘verse’ 230, requires the husband to restrain himself, from dissolving the matrimonial tie, on a sudden gust of temper or anger.⁴¹

‘Verse’ 1 contained in Section 1 endorses the view, that of all things permitted, divorce is the most hateful in the sight of the God.⁴²

The message contained in ‘verse’ 2 is, that everything should be done fairly, and all interests should be safeguarded. It is ordained, that the parties should remember, that such matters affect the most intimate aspect of their lives, and therefore, have a bearing even in the spiritual kingdom.⁴³

⁴¹ Shayara Bano v. Union of India, 9 SCC 1 (2017)

⁴² Shayara Bano v. Union of India, 9 SCC 1 (2017); refer to Section 1 Verse 1 of the Quran.

⁴³ Shayara Bano v. Union of India, 9 SCC 1 (2017)

In *Jiauddin Ahmed v. Anwara Begum*⁴⁴ it was held that triple talaq though still legal and valid is bad in theology. The judgement recognises that the Holy Quran does not propagate or encourage such a practice. Talaq in Muslim Law is for a reasonable cause and to be preceded by attempts at reconciliation.

The Quran states in this regard that, “*If he abandons his wife or puts her away in simple caprice, he draws upon himself the divine anger, for the curse of God, said the Prophet, rests on him who repudiates his wife capriciously.*”⁴⁵

The Hanafi school has supported the practice of Triple Talaq and Nikah Halala amongst the Sunni Muslims in India for many centuries based on ‘Hadiths’.

Coming to Hadiths, it is by now well settled, that there were various degrees of reliability or authenticity of different ‘hadiths’ which is the reason of the split of various sects of Islam.

Further, The Holy Quran is the “first source of law”. According to the learned author, pre-eminence is to be given to the Quran.⁴⁶ That means, sources other than the Holy Quran are only to supplement what is given in it and to supply what is not provided for. In other words, there cannot be any Hadith, Ijma or Qiyas against what is expressly stated in the Quran. Islam cannot be anti-Quran.⁴⁷

III) COMPARATIVE ANALYSIS:

In India, Nikah Halala has been a bone of contention. Under the Muslim Personal Law (Shariat) Application Act (1937), Nikah Halala— a practice that has been discarded by several Muslim majority countries, including Turkey, Pakistan and Bangladesh – still exists in India. Up until now, it was maintained that when it came to marriage, divorce and other personal rifts, the state would not interfere, and the religious law would be the prevailing authority but after the landmark judgement in the *Shayara Bano v Union of India*⁴⁸ case it is only relevant to ban the abhorrent practice of nikah halal as well.

⁴⁴ *Jiauddin Ahmed v. Anwara Begum*, 1 LR 358 (1981, Gau)

⁴⁵ *Mohammed Haneefa v. Pathummal Beevi*, LT 512 (1972, Ker)

⁴⁶ Imran Ayaz, “THE HOLY QURAN AS A SOURCE OF ISLAMIC LAW”, < https://www.academia.edu/17756852/THE_HOLY_QURAN_AS_A_SOURCE_OF_ISLAMIC_LAW> accessed on 2nd June, 2018.

⁴⁷ Asaf A.A. Fyzee, Outlines of Muhammadan Law, 10 (5th Edition, Oxford University Press 2008)

⁴⁸ *Shayara Bano v. Union of India*, 9 SCC 1 (2017)

A) Pakistan: The law of Pakistan is very clear for Nikah halala and allows the Muslim divorced couple to remarry again without any involvement of a third party. Pakistan's Muslim Family Law Ordinance (1961) was the turning point in Pakistan's history as it altered the martial laws in Pakistan and made the customary triple talaq and nikah halala, illegal. It came into being through a controversial event. The All Pakistan Women's Association (APWA) held nationwide protests against the Prime Minister and polygamy. The campaign eventually transformed into a vehicle for change, where women in Pakistan demanded reforms in Muslim family laws. As stated in Section 7(6) "Nothing shall debar a wife whose marriage has been terminated by talaq effective under his section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective."⁴⁹ We can contrast the situation with that in India where an intervening marriage is necessary to remarry the same person. In Pakistan though, Section 7 can be construed to imply abolishment of talaq al-bid'at because it allows remarriage between the two parties after the divorce without an intervening marriage or halala.

B) Bangladesh: The former East Pakistan, inherited the Muslim Family Law Ordinance, 1961 before gaining its independence in 1971 and the same is followed till date. Therefore, even in Bangladesh Halala is declared as illegal by law.

C) Egypt: The first country to deviate from the majority opinion of Muslim jurists was Egypt, which through Law No 25 of 1929 declared that a talaq and halala regardless of whether accompanied by a number, will be counted as one and will be considered as a revocable divorce implying that no one can pronounce triple talaq at one sitting. The only exception to this law is when three talaqs are given in three successive tuhrs.⁵⁰ Tuhr means 'period of purity', therefore by virtue of the law in Egypt a man cannot successively pronounce divorce and the requisite timeline has to be followed.

⁴⁹ Muslim Family Law Ordinance, 1961, s 7 (6)

⁵⁰ Muhammad Munir, "Reforms in Triple Talaq in the personal law of Muslim states and Pakistani Legal System: Continuity versus change" 2 International Review of Law (2013)

According to Ibn Taimiyah⁵¹, three pronouncements of the word talaq in one session equals only one talaq. This is the concept of talaq is now followed by most of the Islamic nations..⁵²

IV) CONCLUSION

The practice of Nikah Halala is law for the purposes of Article 13 therefore they must satisfy the requirements of Part III of the Constitution. On analysis it is submitted that the practice is violative of Article 14, 15 and 21 of the Indian Constitution.

Further it is not protected under Article 25 as it is not an essential aspect of the religion and according to Article 25 (2) goes against morality.

The practice has not been able to serve the intent. Due to the unwritten laws in Muslims, the practice has been misused by Muslim. It is difficult to imagine the humiliation that such women have to face while getting married to another person and getting divorce the next day.⁵³

The traumatic stitch of Halala⁵⁴ is the obnoxious corollary of triple talaq which has already been declared unconstitutional (being violative of the fundamental right guaranteed under Article 14 of the Constitution) by the Supreme Court of India in *Shayara Bano v. Union of India*⁵⁵. After winning a hard-fought battle against instant triple talaq, the Bhartiya Muslim Mahila Andolan⁵⁶ is ready with its draft of '*Muslim Family Law, 2017*', which, if debated and enacted by the Parliament, would bring an end to acts of polygamy and Nikah Halala, too⁵⁷. Appropriately, a codified law imposing a ban on this practice can remarkably leash out the despondency faced by women in the name of Nikah Halala.

⁵¹ Ajaz Ashraf, "If Pakistan and 21 other countries have abolished triple talaq, why shouldn't India?""(Scroll, 18 April, 2016)< <https://scroll.in/article/806299/if-pakistan-and-21-other-counties-have-abolished-triple-talaq-why-shouldnt-india>> accessed on 2nd June 2018 (Morocco, Iraq, Jordan, Afghanistan, Libya, Kuwait, and Yemen adopted similar laws in 1957/1958, 1959, 1976, 1977, 1984, 1984, and 1992, respectively)

⁵² Ajaz Ashraf, "If Pakistan and 21 other countries have abolished triple talaq, why shouldn't India?""(Scroll, 18 April, 2016)< <https://scroll.in/article/806299/if-pakistan-and-21-other-counties-have-abolished-triple-talaq-why-shouldnt-india>> accessed on 2nd June 2018 (Morocco, Iraq, Jordan, Afghanistan, Libya, Kuwait, and Yemen adopted similar laws in 1957/1958, 1959, 1976, 1977, 1984, 1984, and 1992, respectively)

⁵³ Nidhi Khare, Radhika Singh 'Halala Nikah: Marriage Against the Dignity of Muslim Women? A Critical Analysis of the India Legal Scenario' HRIRJ (2016).

⁵⁴ A. Faizur Rahman, 'Muslim Personal Law in the Present Context', the Hindu Centre for Politics and Public Policy.(The Hindu Centre for Politics and Public Policy, 12 November 2016)

<https://www.thehinducentre.com/the-arena/current-issues/article9323359.ece> accessed on 12 June 2018

⁵⁵ Shayara Bano v. Union of India, 9 SCC 1 (2017)

⁵⁶ ZakiaSoman 'Bharatiya Muslim Mahila Andolan seeks comments of concerned citizens on the draft of the proposed Muslim Family Law' (8th September 2017) <https://bmmaindia.com/2017/09/08/bharatiya-muslim-mahila-andolan-seeks-comments-of-concerned-citizens-on-the-draft-of-the-proposed-muslim-family-law/> accessed on 13 June 2018

⁵⁷ Debayan Roy 'No Polygamy, Nikah Halala in Mahila Andolan's Proposed Muslim Family Law' (9th September 2017) < <http://www.news18.com/news/india/nopolygamy-nikah-halala-in-mahila-andolans-proposedmuslim-family-law-1513985.html>, 2017.> accessed 13 June 2018