

The Case of Nikah Halala

Why in news?

A Constitution Bench of the Supreme Court will start hearing a batch of petitions challenging the constitutional validity of the practice of Nikah Halala allowed by Muslim personal law.

What is the case about?

- Sameena Begum, a Delhi-based victim of instant triple talaq and a fraud marriage approached the Supreme Court in 2018 seeking the annulment of halala marriage and polygamy.
- She requested the court that Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, be declared arbitrary as it violates
 - Article 14 (right to equality)
 - Article 15 (discrimination on ground of religion)
 - Article 21 (right to life and dignity)
- She has also requested the court to ensure that provisions of the Indian Penal Code, 1860, apply to all Indian citizens.
- She contended that nikah halala is rape under IPC Section 375.
- The petitions have challenged practices including nikah halala, polygamy, mutah, misyar marriage that are prevalent under Muslim marriages and divorce law practices.

What is Nikah halala?

- The Koran allows a man to divorce his wife a maximum of two times.
- If the man divorces his wife for the third time, he is not allowed to marry her again.
- This bar was laid down in order to save women from temperamental husbands who divorce in a fit of anger, then cancel it, then divorce again, unleashing an endless cycle of marriage and divorce.
- After the third talaq, the woman becomes an independent being with full choice over her life and it empowers them to take independent decisions.
- **Nikah Halala** - For the purpose of going back to the erstwhile husband, **sham marriages** are enacted.
- Nikah halala, also known as *Tahleel Marriage*, is one of the forms of sham marriages to marry the divorced husband again.
- In Nikkah halala, a divorced Muslim woman marries another person.
- She gets divorce from him in order to marry her divorcee husband again.
- **Prevalence**- No cases of halala have been reported from Saudi Arabia, the UAE, Kuwait and Yemen.
- In India, the [Muslim Women's Protection of Rights on Marriage](#), passed after invalidation of triple talaq by the Supreme Court, is silent on nikah halala.

What procedures are followed by Muslims for divorce?

- **Instant triple talaq (Talaq-e-biddat)**- In instant triple talaq a man pronounces multiple divorce in one go.
- It has no scope for reconciliation between the couple, and often ends a marriage instantly.
- It is not mentioned anywhere in the Quran which prescribes a code of divorce.
- Instant triple talaq has been banned in many Muslim countries, including Egypt, Syria, Jordan, Kuwait, Iraq and Malaysia.
- Instant triple talaq is banned in India.
- **Talaq-e-Hasan**- Talaq-e-Hasan is pronounced with a gap of at least one month or one menstrual cycle.
- Only a single revocable divorce takes place through the first pronouncement of Talaq-e-Hasan and the couples are supposed to live together after this pronouncement and have the option of rapprochement.
- At the end of this month, the husband has to pronounce divorce for the second time which is revocable, and the couple may resume their conjugal relationship anytime they desire.
- If the third pronouncement is made after at least one menstrual cycle, then irrevocable divorce takes place.
- No divorce can be administered when the woman is undergoing her menstrual cycle or pregnancy.
- Unlike instant triple talaq, the Quran clearly mentions the process of Talaq-e-Hasan.
- **Talaq-e-Ahsan**- Under this form, a single pronouncement is made following which a woman has to go through **iddat** or a waiting period of three months.
- During this period the divorce can be cancelled and the failure to annul divorce during this period results in divorce.
- **Khula**- In Khula, a woman gives something to the man in return for annulling the marriage.
- For men the procedure given by Quran to divorce is Talaq-e-Hasan; for women the procedure to give divorce is called khula.
- **Mubarat**- In Mubarat, both the parties desire divorce.

References

1. <https://www.thehindu.com/opinion/op-ed/the-case-of-nikah-halala-in-india-and-a-long-court-battle/article65922149.ece?homepage=true>
2. <https://www.livelaw.in/top-stories/supreme-court-to-hear-cases-challenging-validity-of-polygamy-nikah-halala-in-muslim-personal-law-in-october-issues-notice-to-nhrc-ncw-ncm-207873>

Quick facts

- **Sham marriage**- A marriage of convenience entered into with the intent of deceiving

public officials or society about its purpose.

- **Mutah**- It is a temporary marriage that is contracted for a limited or fixed period and involves the payment of money to the female partner.
- **Misyar**- In misyar, the wife gives up her rights offered under the religion, including the right to have the husband living with her in the same house and providing her with necessary expenses.

