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

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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.

