

Difference Between Traditional and Quranic Concepts of *Halala*

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Generally a temporary marriage with the intention or will of divorce is called 'Halala' if separation is not the precondition. However, the intention of divorce at the time of marriage is deemed tolerable. Hence the precondition of divorce is generally unaccepted whereas intention of divorce is considered acceptable. The sharai details of precondition and intention can be seen in the books of Fiqh. The issue under consideration here is what type of marriage is meant by ﴿فَلَا نَجِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَتَخَيَّ زَوْجًا غَيْرَهُ﴾

the prevailing Halala or the legitimate dissolution of marriage.

We believe that the Fiqhi Halala (prevalent interpretation) is immensely different from the Quranic concept of Halala. Unfortunately, due to our non-research orientation, lack of relation with Quran and deficiency of investigation, the Quranic concept of Halala has been overshadowed by Fiqhi Halala. The research of this lost concept is the main objective of this dissertation.

In this regards, we need to deliberate on a few points as below:

- 1) According to Quran, marriage is never temporary. It is always permanent and that is why the law of divorce is there to dissolve the marriage in case the relations are completely spoiled between the couple. What is then the difference between precondition and intention of divorce from the results perspective? It is therefore quite astonishing that some of our religious jurists have not only allowed the marriage with the intention of divorce but have declared it blessed. (1)

If the spirit of Nikah Ehsaan is not there then it will difficult to call it a marriage. The word Ehsaan is extracted from 'Hisn' meaning fort, i.e. the place that serves as a place of protection. That is why a married man is called 'Mohsin' and married woman is called 'Mohsina' because they protect each other i.e. they get sheltered in a fort. The traditional Nikah brings the woman in its fold of security. This protects the honour and dignity of woman as well as tames the unrestrained sexual desires of man, hence he also gets secured in the form of marriage. This is what Quran has pointed out by calling man a 'Muhsin' and woman a 'Muhsina'.

Addition of ﴿غَيْرِ مُسَافِحِينَ وَلَا مُتَشَدِّينَ أَخْدَانِ﴾ with 'Muhsineen' is to show that extra

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marital relations are disallowed in open or in secret. Just review the words of ﴿مُحْصِنِينَ غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي الْأَخْدَانِ﴾ and honestly decide after pondering whether prevalent form of Halala comes under the definition of ‘Muhsineen’ or not, i.e. if this form of Halala makes man the protector of the honour and dignity of woman or a looter of her chastity usually lasting a few nights.

- 2) Secondly, the agreement of man and woman plays a vital role in the marriage and no one denies the importance rather requirement of this covenant. Hence the question arises if the free will of partners is taken care of in the prevalent form of Halala?
- 3) Thirdly, in the case of pregnancy due to Halala, is there any legal plan in the minds of man and woman? Also, is the issue of inheritance there in the minds of partners, in case of death during the period of Halala. You may not find answer to these questions because the prevalent form of Halala is only temporary and is only there to cater to the urgency of situation. Prevalent form of Halala does not have any basis like a ‘permanent marriage’ i.e. this sowing is not to get the crop.
- 4) Fourthly, man and woman tend to find out about each other’s social, financial, moral and religious status before entering the matrimonial relation. It is only after satisfactory investigation that the relation comes into being. Does Halala also require this kind of scrutiny? Hand on heart, do we really think that this kind Halala is the Quranic objective of marriage. If not, then we should indeed not consider the prevalent form of Halala as the legitimate dissolution of marriage.

﴿غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي الْأَخْدَانِ﴾ shows that where Quran has termed the marriage as ‘Ehsaan’ it has actually completely explained its meanings by this word i.e. a marriage which is opposite of ‘Musafihat’ and that is only possible when there is an intention of ‘Ehsaan’. The marriage which is absent with the essence of ‘Ehsaan’ is not the opposite of ‘Musafihat’ - it is actually ‘Musafihat’. The people, who take sex as the main objective of marriage, should ponder a little more on this verse of Quran. Does the prevalent Halala not just comprise of sex only and don’t we have the possibility of clandestine sex in this kind of marriage during Halala or afterwards. Is there anyone who thinks about this aspect?

Sexual immorality is possible in women just like men. In case of Halala if a woman gets exposed to this kind of relation, will it not open the possibilities of extra marital relations for her later on? The reason is that like the words ﴿مُحْصِنَاتٍ غَيْرَ مُسَافِحَاتٍ وَلَا مُتَّخِذَاتِ الْأَخْدَانِ﴾ have come for men, similarly the words ﴿مُحْصِنَاتٍ غَيْرَ مُسَافِحَاتٍ وَلَا مُتَّخِذَاتِ الْأَخْدَانِ﴾ Al-Nisa 25 have come for women. That is, the women should also come under the

bound of marriage to be 'Muhsina' rather than having overt and covert sexual relations. We believe that Halala on one hand provides a blatant way for sexual desires, whereas on the other hand opens up the possibilities of clandestine illicit relations after divorce.

Our understanding is that this Quranic statement contains a universe of meanings within. This statement has provided such a description of marriage due to which not only 'Mutaa' but the prevalent Halala also becomes illegal because both of them are devoid of 'Ehsaan' and full of 'Musafihat'.

This is also worth remembering that once prophet Mohammed (PBUH) told sahaba, "Should not I warn you about the rented bull? The companions asked the Prophet who are they? He replied that those are the Mohallil. Curse of Allah be upon the Mohallil and Mohallil lahu."

Syed Mahmud Aaloosi has stated two rivayaat regarding Halala:

- 1) Abdul Razzaq told the statement from Umar (RA)
If someone asking for Halala is brought to me I will kill (Rajam) both of them.
- 2) There is a statement from Hazrat Uthman (RA) in baihiqee
One such case was brought to him where a man had temporarily married a woman to do halala for her previous husband. Hazrat Usman (RA) parted them away and declared that the woman cannot marry the first husband until she marries someone else of her own liking, i.e. a marriage free from conditions (i.e. prevalent Halala). (2)

This is quite clear now that Prophet Mohammed (PBUH) declared halala (3) profane, Hazrat Umar (RA) called it worth stoning and Hazrat Uthman (RA) considered it devoid of the trait of Nikah. In the presence such clear verdicts, the emphasis for Halala is quite understandable.

The interpretation of ﴿فَانْ طَلَقَهَا فَلَا تُحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ﴾ by Pir Karam Shah Alazhari is as follows:

"From here onwards it is the discussion about 3rd divorce (4) i.e. if he has given the 3rd divorce as well, then until she marries someone in the same way as she married the first husband and then the second husband after consummating the marriage does not divorce per his free will, she can marry the first husband again. This is a clear order from Quran which is not subject to any interpretation. Now-a-days a solution has been sought in terms of Halala for which Prophet Mohammed (PBUH) has ordered "Allah's curse on the person doing Halala and the one for whom it is being done." (4)

The legitimate dissolution of marriage that: ﴿فَلَا تُحِلُّ لَهُ مِنْ بَعْدُ حَتَّى﴾ ﴿فَانْ طَلَقَهَا تَنْكِحَ زَوْجًا غَيْرَهُ﴾ refers to is what you have seen with reference to

Pir Karam Shah Azhari. My understanding is that the legal and Quranic concept of Halala is the one in which neither precondition nor intention of divorce is present at the time of marriage. If a new marriage is done with the intention of living together forever and it naturally renders unsuccessful and divorce happens or the new husband dies, only in that case the marriage with the former husband becomes permissible.

In short, there should be no covert methods used in the legitimate dissolution of the new marriage to make remarriage with old husband possible i.e. it is entirely incidental and natural. This beautiful combination of natural and incidental dissolution of later marriage is termed as Quranic concept of Halala this is the objective of :

﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَتَّخِجَ زَوْجًا غَيْرَهُ﴾

References

1. Durr-e-Mukhtar: chapter, Al Raja, Published Mujtaba-i-Delhi, 1\241, as referred by Fatawa-e- Razwiya, vol.12, p.409, Raza Foundation, Jamia Nizamia Razwiya, Andurun-e-Lahori Darwaza, Lahore no.8, Pakistan(54000).
2. Roohu l Maani, vol. ii, p.142.
3. Here regarding halala we want to point out that most of the scholars of fiqh rather all of them believes that the legitimate halala will be the only way for women who have received talaq-e-Mugallaza (i.e. three divorces at a time). However, Allama Tamanna Imadi and Allama Jaafar Shah Phulwari believes that this legitimate Halala will be valid for only those woman who have taken Divorce on her own will as a substitute for wealth, not for that woman who have been divorced by her husband on his own will. As per Jaffer Shah Phulwari, "After second Marriage if the later husband also divorced her accidently, then she will be entitled for her former husband, this law was only for women who have taken Khula from their husband but it was considered for the woman who have been divorced thrice." (Qurani Qanun-e-Talaq, p.35, Dar-ul-Tazkeer, Rahman Market, Ghazni Street, Urdu Bazaar, 2003.) Details could be found in the above mentioned two scholars' books. At-Talaq Marratan is a well-known book of Allama Tamanna Immaadi comprises of 167pages, I have the issue of 2004, which was published from Dost Associates Urdu Bazaar Lahore. And The book of Jaffer Shah of 88 pages.
4. Zia-ul-Quran, vol. I, marginal note of verse #230 Sura – tu-al Baqara, Zia-ul-Quran Publicationes, Ganj Bakhsh Road, Lahore, N/A.