

## CONCEPT OF MARRIAGE AMONG MUSLIMS : A STUDY ON MUTA MARRIAGE

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### Abstract

*Marriage is a contract for the purposes of the legislation of intercourse, procreation of children and the regulation of social life in the interests of society by creating both rights and duties for the parties partaking in this social contract and also between the parties and the children born out of the aforesaid union. In Arabic dictionaries “Muta” is defined as ‘enjoyment, pleasure, delight’. Muta marriage also known as Nikah al-Mutah is a marriage for a temporary but fixed period with a Muslim female by a male Muslim, after specifying dower. The specifics of temporary marriage remain unclear and enigmatic till date due to which the practise still remains stigmatised among many of the Muslims. Although referred to as a form of “legalized prostitution”, the practise is perceived to be better than the promiscuous western style by the clerics. Muta marriage has its own pros and cons but one cannot turn a blind eye to the fact that it is indeed a form of Islamic prostitution and such a practised should be curbed in order to bring an end to gender discrimination and promote equality of women to men, a concept is hardly seen in male centric patriarchal Muslim law.*

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## CHAPTER I: INTRODUCTION

### 1.1.Pre Islamic background of marriage

Marriage in the pre Islamic Arabia as we understand in the contemporary world was very rare and the sexual unions which prevailed may only be branded as prostitution, adultery or polyandry. The following types of marriage have been known to prevail in those days listed by Abdur Rahim.<sup>2</sup>

- i) A custom whereby the husband would authorize the wife to have intercourse with different men and isolate her till she conceives a child from anyone of them. Once she is pregnant, he would return to her. This custom originated from a desire to secure noble offspring.
- ii) Several men, less than ten, used to go out with a woman and indulge in sexual intercourse with her and if she conceived and delivered a child, she would send for all of those men and it was obligatory for them to come. Then they came, the woman informed them of the birth of a child and chose one of them on whom paternity of the child would be ascribed and he was not allowed to disclaim it.
- iii) Several men used to visit women who were basically prostitutes and if a woman of this class conceived and brought forth a child, the men who frequented her would be assembled and a physiognomist would decide to whom the child belongs.

The only difference lies in the fact that the paternity of the child is established and the man is not allowed to disclaiming it. Today, no prostitute could legally or personally establish the paternity of her child in any person, more so if the person disclaims the paternity.<sup>3</sup>

In addition to these, there were some other corrupt forms of marriages were:

- 1) A man would purchase a girl from her parents or guardians for a fixed sum.

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<sup>2</sup> V.P. Bhartiya, Syed Khalid Rashid's Muslim Law, 2010, fifth edition, pp. 51.

<sup>3</sup> Ibid at pp. 52.

- 2) Muta (temporary) marriages were widely prevalent, so much so that in the beginning of Islam, even the Prophet tolerated them as a matter of policy but later on he prohibited them.
- 3) A pre-Islamic Arab was allowed to marry two real sisters at one and the same time.

### 1.2.The concept of muta marriage

In Arabic dictionaries “Muta” is defined as ‘enjoyment, pleasure, delight’.<sup>4</sup> Muta marriage also known as Nikah al-Mutah is a marriage for a temporary but fixed period with a Muslim female by a male Muslim, after specifying dowar.<sup>5</sup> It is a type of marriage used in Twelver Shia Islam<sup>6</sup>. It is a private contract which might be verbal or written in which the declaration of the intent to marry is done followed by the acceptance of the terms in the same way as is done in nikah (marriage in Islam).<sup>7</sup> After the specified period, the marriage ends without going through the process of divorce (talaq). The purpose of such a marriage is clear from its name, Muta which means pleasure. It is an intriguing way of relieving sexual frustration.

The practise of Muta marriage is only recognised by the Ithna School of Shia Law while Zaidi Shia, Ismaeli Shia and Sunni Muslims do not practice Nikah Mutah. Such marriages are void as per Sunni law.<sup>8</sup>

Muta marriage was also practised by the pre-Islamic Arabs. In Iran, this practise which is referred to as Sigheh is often viewed as a cover for promiscuity or prostitution.<sup>9</sup> Such a marriage which can last from a few hours to decades though legal is highly criticized.<sup>10</sup> There is no need for registering such marriages or presence of any witness. The marriage ends at the end of the specified period without any formal divorce proceeding. After the dissolution of marriage the woman has to undergo a period of abstinence for a period of forty five years to ensure if she is pregnant or not so that the child’s biological father is identified if she is. Allowing people to publicly register their union through Sigheh is a method of controlling

<sup>4</sup> "The four pillars of Mut'a: the time period (mudda)." Al-Islam.org website. At <http://www.al-islam.org/muta-temporary-marriage-in-islamic-law-sachiko-murata/four-pillars-muta> . Last seen on 26th January, 2015.

<sup>5</sup> Manzar Saeed, *Muslim Law in India*, Orient Publishing Company, 2008, p-125.

<sup>6</sup> Twelver Shia Islam is the largest branch of Shi'a Islam. The term *Twelver* refers to its adherents' belief in twelve divinely ordained leaders, known as the Twelve Imams, and their belief that the Mahdi will be the returned Twelfth Imam who disappeared and is believed by Twelvers to be in occultation.

<sup>7</sup> Supra note 3.

<sup>8</sup> Supra note 4 at p-125, 126.

<sup>9</sup> Sexual mores in Iran: Throwing off the covers, *economist.com*. , see at <http://www.economist.com/news/middle-east-and-africa/21611117-official-report-blows-lid-secret-world-sex-throwing>. Last seen on 26th January, 2015.

<sup>10</sup> Ibid.

unsanctioned sex.<sup>11</sup> It is not only widely acknowledged by the Shiite clerics but also bravely promoted as an important element in Islam.<sup>12</sup> "Temporary marriages must be bravely promoted," the interior minister said at a clerical conference in Qom in 2007. "Islam is in no way indifferent to the needs of a 15-year-old youth in whom God has placed the sex drive."<sup>13</sup> Yet the efforts to encourage Muta marriage are being drawn against a stern core of resistance especially from the feminists who condemn such a practise as a form of "Islamic Prostitution".<sup>14</sup>

Muta marriage is practised under the Twelver Shia jurisprudence. There are several conditions which have to be followed with due diligence according to which at the time of marriage:<sup>15</sup>

- 1) The girl should not be married.
- 2) She must be a Muslim girl or belong to *ahl-e-kitab* (people of the book).
- 3) She should not be addicted to fornication.
- 4) She should not be young virgin especially if her father is not present and cannot give consent.

### 1.3.History

In the late sixth and early seventh century, during the time of Prophet Muhammad, temporary marriages were already prevalent in the Arabia.<sup>16</sup> Most scholars believe that he recommended it during pilgrimage, travel and war.<sup>17</sup> Most Shiites believe that the practised is approved by the Koran. The second caliph, Umar, banned temporary marriage, but Shiites reject his authority because they believe he usurped Muhammad's rightful heir, his son-in-law Ali.<sup>18</sup>

During the Pahlavi regime in Iran, there was a discreet attempt to abolish this institution of temporary marriage. However the fear of religious retaliation held them back from out rightly calling temporary marriages to a halt. The family Protection Law of 1967 has no mention of

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<sup>11</sup> Ibid.

<sup>12</sup> Labi, Nadya. "Married for a Minute". Mother Jones. See at

<http://www.motherjones.com/politics/2010/03/temporary-marriage-iran-islam>. Last seen on 26th January,2015.

<sup>13</sup> Supra note 11.

<sup>14</sup> Ibid.

<sup>15</sup> <http://www.jannaati.com/far/index.php?page=6&row=6&start=6>. Last seen on 26<sup>th</sup> January 2015. Translated to English.

<sup>16</sup> Supra note 12.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

temporary marriage.<sup>19</sup> Later the state was effectively able to move the move the family reforms through the parliament which led the public to believe that temporary marriages have been banned. Because of this temporary marriage lost its honour and the practise was carried out in secrecy.<sup>20</sup> The specifics of temporary marriage remain unclear and enigmatic due to which the practise still remains stigmatised among many of the Muslims. Although referred to as a form of “legalized prostitution”, the practise is perceived to be better than the promiscuous western style by the clerics.<sup>21</sup>

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<sup>19</sup> Shahla Haeli, Temporary Marriage and the State in Iran: An Islamic Discourse on Female Sexuality, The New School, Social Research, Vol. 59, No. 1, Religion and Politics (SPRING 1992), pp. 212 ( January 30, 2015, 10.30 pm) available at <http://www.jstor.org/stable/40970689> .

<sup>20</sup> Supra note 18.

<sup>21</sup> Ibid.

## CHAPTER II

### 2.1. Conditions of a valid muta marriage:-

- 1) The term and duration of marriage must be fixed. It may be for a day, a week or a few months.
- 2) The term of marriage indicates the period of cohabitation.
- 3) Dower must be specified.
- 4) If the term is not fixed but dower is specified, then the marriage will be presumed to be for life and a permanent marriage is implied.
- 5) If the duration of marriage is fixed but no dower is specified, the contract for muta marriage is void.

### 2.2. Term and duration

There is no fixed limit prescribed for the duration of a Muta marriage.<sup>22</sup> In one of the cases it was held that “Where cohabitation of the parties to a Muta marriage has commenced, but there is no evidence of the term or duration for which the marriage was contracted, the inference would, in absence of evidence to the contrary, be that the Muta continued during the entire period of cohabitation and the children conceived during such period are legitimate and capable of inheriting from their parents”.<sup>23</sup> The period of cohabitation in this case was for ten years.

### 2.3. Difference between muta and nikah

- 1) Muta marriage is a temporary marriage while nikah is a permanent marriage.

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<sup>22</sup>Supra note 7 at p-128.

<sup>23</sup> Sohrat Singh v Jafri Bibi, (1915) 17 Bom LR 13.

- 2) The basic object of a muta marriage is pleasure while the basic object of a nikah is socio-religious union.
- 3) In muta marriage, the period is fixed by agreement. Being a temporary arrangement a fixed period is its essential ingredient. In nikah, it is essentially a union for life, subject to divorce. Fixation of period shifts it to the former category.
- 4) Muta is recognised by the Shias only while Nikah is recognised both by Shias and Sunnis.
- 5) Dower must be specified in muta marriage otherwise it is a void agreement, for it is a quid pro quo for short time services of the woman. In Nikah, the dower may be implied if not specified. The marriage does not become void if no dower is specified for the idea is that the woman may get it anytime during the lifelong duration.
- 6) An Unconsummated muta would entitle the wife to one-half dower only. Whether consummated or not, Nikah entitles the wife to full dower-both prompt and deferred.
- 7) There is no minimum limit to dower and it depends upon the terms of contract. Hanafi Law recognises a minimum limit of ten dirhams in nikah.
- 8) In muta there is ipso facto termination of the contract on expiry of the term of marriage and no formality of termination is required. Time limit is the limit of relationship. In nikah there is no automatic termination as no time limit is fixed.
- 9) In muta, earlier termination is possible by paying the wife the hibba-i-muddat, i.e. gift for the unexpired period. No question of 'earlier' termination, for the term 'earlier' is relative to time limit in a nikah. Dissolution of marriage is of course possible.
- 10) In muta, divorce is not recognised. Divorce is recognised for the purpose of dissolution in nikah.
- 11) In muta, there is no provision for maintenance of the wife, for she is not regarded as depended (Shia Law). Wife by Nikah is entitled to maintenance.
- 12) In muta, there is no right of inheritance to the wife or husband in respect of each other's property. In nikah, reciprocal right of inheritance exists.

## 2.4. Pros and cons

According to ayatollah Sayyid Reza Borghei Mudaris temporary marriages are a boon to an impecunious widow or a young widow who might have to go through a psychological breakdown for the non fulfilment of her venereal instincts and emotional needs; or a man

who is unable to afford a permanent marriage; or a permanently married man undergoing domestic complication with his wife who needs "a kind of medicine."<sup>24</sup> A widow or a divorcee who contacts a temporary marriage with a man gains a social position in the society which she had earlier lost.<sup>25</sup> Sometime muta is also performed to procreate if the permanent wife is incapable of procreating or even for the want of more children.<sup>26</sup> Children born out of temporary marriages are legitimate and have a share in their fathers' property. Unlike a permanent marriage where dowry is settled and accorded to the groom on behalf of the bride, in temporary marriages, the bride fixes her own terms and conditions. At times, she may even offer to pay the man whom she approaches.<sup>27</sup> She has a fewer obligations than her permanent counterpart and her duty to obey her husband encompasses only sexual intercourse.<sup>28</sup> She has no right to maintenance but she is entitled to maintenance as a wife under the Cr. P.C. in India.<sup>29</sup>

It is true that it brings contentment to the woman as well as the man because they are satisfied with their choices, with whom they can share their feelings as well as physical intimacy. The good thing is if a boyfriend and a girlfriend would want to shift in together or be together can do so by contracting muta marriage. It also makes it easier for them to get to know each other and be sure whether they want to be together for the rest of their lives through a permanent bond of marriage or not. It is not permissible for the unmarried couples to live together or travel together. If looked from that aspect, it is a boon for young couples who want to live together.

They believe that by indulging in a sexual intercourse through temporary marriages they are not violating the Islamic codes and regulations<sup>30</sup>; that they are acting within the religious framework and there is nothing dishonourable about it since gives contentment and satisfaction to the man as well as the woman involved in it. The horrific truth remains that women, even the ones from prominent upper class, also agree that muta marriage allowed

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<sup>24</sup> Supra note 15.

<sup>25</sup> Richa Nagar, "Religion, Race, and the Debate over Mut'a in Dar es Salaam" *Feminist Studies*, Vol. 26, No. 3, Points of Departure: India and the South Asian Diaspora (Autumn, 2000), pp. 677. Available at <http://www.jstor.org/stable/3178645> (accessed on 30/01/2015 13:14)

<sup>26</sup> Supra note 19.

<sup>27</sup> Ibid.

<sup>28</sup> Supra note 23.

<sup>29</sup> [http://legalpoint-india.blogspot.in/2013/03/muta-marriage-introduction\\_22.html](http://legalpoint-india.blogspot.in/2013/03/muta-marriage-introduction_22.html) (accessed on 07/02/2015 at 12.00 am)

<sup>30</sup> Islam does not permit sexual intercourse outside marital union.



men to satisfy their sexual cravings without committing adultery.<sup>31</sup> For instance, Tahira Abbas, the woman who fought for greater representation of Muslim woman intimated her support towards the practise of muta marriage. She directed attention to the fact that if the wife of a man is disabled, the man can satisfy his sexual desires by contracting muta marriage and at the same time he can provide for his permanent wife and the temporary wife financially without having to dissolve his marriage with his permanent wife.<sup>32</sup>

But the fact which is of utmost relevance yet overlooked is that if the man has a permanent wife, then she would definitely not entertain or appreciate this union through temporary marriages and most of the times, they are not even informed.<sup>33</sup> A similar fear was echoed by Rukhsana Banu, who lived in the Jamaat-run house for destitute widows. Banu's first husband abandoned her and secretly left the country with their only son, while her second husband physically abused her, performed mut'a with others, and finally divorced her, illegally taking possession of her valuables. Banu felt that as someone who was "forced to live on Jamaat's charity," it was best for her to not take any risks by voicing her opinions about mut'a.<sup>34</sup>

It threatens the union of a permanent husband and a wife having a family together by creating discord between husband and wife. Since the practise is favourably promoted by the religious leaders, it is difficult for the permanent wives to oppose muta publicly and they have no-one to take their complaints to. The fact which is often overlooked is that it is only halal (lawful) if the man can simultaneously provide for his permanent wife in every way-economically, sexually, emotionally-and for his children. If he fails to do that [according to one of the hadiths], the wife is under no obligation to respect him.<sup>35</sup> For families to stay happy, muta marriage should be restricted otherwise it becomes like an open license for the men to seek sexual pleasures whenever and from whomever they desire.<sup>36</sup>

Although such marriages are promoted, society often looks down upon the couple especially the woman registering for a muta marriage. "One of the main attributes of marriage is publicity and the celebration of it," Ziba Mir-Hosseini, a legal anthropologist who wrote a

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<sup>31</sup> Supra note 24.

<sup>32</sup> Supra note 30.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

study of Islamic family law pointed out. "Women who enter this kind of marriage never talk about it. That's why I call it a socially defective marriage."

Such a practise is despised and extortionately disapproved by feminists who regard it as a form of "Islamic prostitution".<sup>37</sup> Such a practise favours wealthy married men as most of the women who enter into such unions are divorced, widowed or poor. Women mainly contract temporary marriages at times of financial problems. Therefore it is a form of class difference and women's oppression by giving a religious sanction to prostitution. Only the male can terminate or renew the temporary marriage with a new mehr or dowar.<sup>38</sup> A male can have four wives and innumerable temporary wives simultaneously while a woman is allowed to have only one husband.<sup>39</sup> Rezvan Moghadam, the director of a women's health non profit, put it bluntly: "Men do it for fun. Women do it for money; they don't enjoy it at all."<sup>40</sup> Feminists believe that women do not need men to give them a status in the society by treating them as sex objects. They have pointed out that religious leaders who support muta have re-interpreted the religious text in a manner such that it favours their own vested interests. During the time of Prophet Muhammad, muta was a necessity to prevent prostitution since men used to stay away from their homes during wars but in the contemporary world the institution is being misused for exploiting the women.<sup>41</sup>

However Shii Uluma concludes that muta marriage is different from prostitution even though the objective of both is sexual satisfaction. On one hand, muta marriage is legally sanctioned and religiously blessed, prostitution is legally forbidden and a religiously reprehensible. Temporary marriages are divinely recommended to satisfy natural urges which actually prevent corruption and prostitution so that the ethics and ethos of the society stay safeguarded.<sup>42</sup>

President Rafsanjani while expressing his views on muta marriage put before his people, the example of the sexual instincts given by God. Abstaining from satisfying the sexual desires of oneself, not a splendid achievement but sinful and anti-Islamic. He suggested a solution that if a young boy and a girl feel shy to approach a mulla to register their marriage, they may just enter into a private contract of marriage for a few months instead of going to the mulla.

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<sup>37</sup> Supra note 27.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Supra note 35.

<sup>42</sup> Supra note 25.

He further simplified the process by saying that if Arabic is too difficult to recite during marriage ceremony they may just resort to Persian language for recitation of the formula in the absence of a mulla or witness.<sup>43</sup> To these comments made by the President, Zan-i-Ruz (modern Woman), a leading feminist magazine in Iran, retorted vehemently by responding that even if sexual desires cannot be denied, there is a certain perimeter going beyond which is detrimental. It is not rational for a man and woman to just enter into contracts of temporary marriages for a few months for mere sexual gratification, ignoring the role of love in marriages. “Should the repressed needs of the society be considered only in their sexual dimension?”<sup>44</sup> There countless other psychological, moral, hygienic problems, problems related to female sexuality, marital fidelity and stability, and the sexuality of the youth associated with this form of marriage. On the other hand, the editorial of the daily newspaper Kayhan approved the statements made by President Rafsanjani and conveyed through their newspaper the prerequisite for answering sexual instincts.<sup>45</sup>

The practise facilitates the furtherance of events like kidnapping and trafficking of women from different parts of the country. According to the US Department of State,” Iran is a source, transit and destination for women trafficked for the purposes of sexual exploitation and involuntary servitude. Iranian women are trafficked internally for the purpose of forced prostitution and forced marriages to settle debts.”<sup>46</sup> Women entering into muta marriage do not have the right to either maintenance or inheritance.

## 2.5. Indian cases in relation to muta marriage.

A few judgements delivered by the Indian courts have reflected the above mentioned conditions for a temporary marriage. In addition to that the courts have made further observations in several cases. In the case of *Mahomed Abid Ali Kumar Kadar vs Ludden Sahiba, Minor*, the court held that although at the time of contracting muta marriage, a dowar is fixed; the husband may deduct a portion of the woman’s dowar if the marriage is not consummated. She is entitled to full dowar only if the marriage is consummated, whether they continue to cohabit or not. If the cohabitation ceases through any fault of the woman

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<sup>43</sup> Ibid.

<sup>44</sup> Supra note 42.

<sup>45</sup> Ibid .

<sup>46</sup> <https://www.youtube.com/watch?v=edTeJFsBsQm> (Last accessed on 06/02/2015 at 11.30 pm)

then she is entitled to only half of the dowar but the husband, having paid the dowar is not bound to cohabit with the woman. The woman has no right to maintenance after the dissolution of a muta marriage. The court made this observation after contemplating over the declaration made by Sharaya-ul-Islam, "if the husband were to make the woman a gift of the term before coition, he would be liable for half the dower, and if coition should have taken place, she is entitled whole dower on condition of her keeping the term, and if she has prevented him, he is entitled to deduct a proportionate part of the dower."<sup>47</sup>

In an appeal before the Madras High Court, two youths who were sons of a certain Mahfil Nagir Bee, brought an action against the relatives of late Nawab of Masulipatam, alleged to have contracted muta marriage with Mahfil Nagir Bee, demanding a part of the partition in his landed property. The issue before the court was whether the Nawab had actually contracted muta with the woman or the relation between them was such that it lead to a presumption that a marriage had taken place between them. Taking into consideration the evidence before the court, the appeal was dismissed. In this case muta has been referred to as the "lowest form of marriage known to Muhammadan Law, which is said by some to be so low a form of union as to be practically indistinguishable from concubinage."

Most of the cases before the Indian courts are regarding the legitimacy of child born out of the muta marriage for the purpose of transfer of property. In maximum cases the most proficient defence is that the marriage never took place between the man and the woman who has conceived the child. In the case of *Hasanali Mirja And Ors. vs Nushratali Mirja And Anr* the court granted plaintiff one the declaration that he was the legitimate son and heir of late Syed Azmut Ali Mirza alias Aziz Saheb.<sup>48</sup> Similarly in *Sadik Husain Khan vs Hashim Ali Khan And Ors.* The court dealt with similar facts.<sup>49</sup> In *Shoharat Singh vs Musammat Jafri Bibi* the issue before the court was whether Muhammad Kazim ever married to Achchhi Bibi, and if so, when, and were there any children of the marriage.<sup>50</sup>

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<sup>47</sup> (1887) ILR 14 Cal 276

<sup>48</sup> AIR 1935 Cal 572, 157 Ind Cas 1091

<sup>49</sup> (1916) ILR 38 All 627

<sup>50</sup> (1915) 17 BOMLR 13

### **CHAPTER III: CONCLUSION**

Muta marriage has its own pros and cons but one cannot turn a blind eye to the fact that it is indeed a form of Islamic prostitution and such a practised should be curbed in order to bring an end to gender discrimination and promote equality of women to men, a concept is hardly seen in male centric patriarchal Muslim law. Muta marriage is yet another practise which favours the Muslim males more than the females was initially introduced for the benefit of males as already discussed above. However the paper covers all the pros and cons allowing the reader to make his or her own individual judgement regarding the practise.