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An In-Depth Analysis on Temporary Marriage

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In ancient times, marriage for Hindus is one of the essential ‘Sanskara’ and is sacramental in nature. It is considered as permanent and a holy union. Hindu marriage was considered an absolute and essential sacrament, because the marital relations between the spouses, were created and were not based on contract. The binding agreement between a bride and bridegroom results in a man and woman choosing to live together and sustaining each other within the limitations of the duties and obligations that have been established. Although, in Islamic dictionaries word “Muta” factually translates to ‘enjoyment or use’. Muta marriages are the marriage of pleasure, although, these marriages are only in force for a specific period of time, for a certain award mostly in the form of monetary fund’s given to the woman. Muta marriages are temporary in nature, and once the specified period mentioned expires, the marriage in its own spirit dissolves. Such temporary marriages were justified or were more favourable during the time of war or when men were on a constant journey, as these men would always be away from home.

Keywords: *marriage. Muta marriage,*

INTRODUCTION

The origin of Muta marriage can be traced back to the days of battle, when the early Islamic jihadis, headed by their prophet Mohamed, ambushed merchants and fought neighbouring civilizations for wealth. The absence of war slaves with whom they could enter into marriage and have carnal relations, made them visit prophet Mohammed to seek permission to render

such services from prostitutes. On such an intervention, prophet Mohamed, being the “perfect man of Allah”, did not assent to that particular request. Although, in addition to that prophet Mohamed did permit them to marry as many women as they wanted but a dowry amount for such marriage was mandatory in nature and should be given to every woman they wanted to marry. Thus, the concept of “Muta marriage” emerged¹.

There are innumerable contentions based upon the fact of polygamy practised by Muslims, as well as prophet Mohamed's willingness to allow Muslim men to marry as many women as they would like. One possible explanation for such a concept was that the prophet Mohammed was a spiritual figure, and during Prophet Mohammed's governance, a lot of men used women as objects primarily to satisfy their carnal needs, they used to have sexual relationships with the ladies and then abandon them. Prophet Mohammed was deeply distorted by such an observation, he created a provision that any male can only have rights over a woman and enjoy sexual intercourse with her, after marriage. As a result, they married a lot of women. Thus furthermore, they practised polygamy. However, the motivation was to preserve a woman's chastity and so that they did not abandon her wandering with no means of looking after herself.

These kinds of marriages substantially occurred during the era of Prophet Mohammed. In current times, all the schools of Muslim law have regarded Muta marriage as unlawful, and thus void. This type of marriage was justified as it was useful in times of war or on travel. It was condemned later by Omar Khalif. Temporary marriage was acknowledged and authorised by the Prophet for a period in order to avoid the spread of prostitution in society and to bestow legitimacy on the offspring of such unions. However, when he saw that this concession was being abused, he outright forbade it.

¹ John Bastile, 'History of Muta and The Future of an Islamic Society' (*Daniel Pipes*, 2005) <<http://www.danielpipes.org/comments/26741>> accessed 01 August 2021

It is pertinent to mention the fact that, solemnization of Muta marriages is not prevalent in India, but they are still followed in Persia and Arabia. In addition, Muta marriage is prevalently followed between the Shia Muslims and not Sunni Muslims.²

WHO ARE SHIA & SUNNI MUSLIMS?

The answer to the question lies here in the fact that Shia Muslims and Sunni Muslims have different ideologies, it was based on who was worshipped or regarded as the Prophet Mohammed's successor. Shia Muslims thought that only the Prophet Mohammed's lineage, i.e., his sons, should be the heirs to the kingdom. Sunni Muslims believed that the successor of Prophet Mohammed was, whoever competent and strong enough to stand and inherit the throne.

Following the Prophet's death in 632 A.D., the concern of who would succeed him arose. People who followed AH, the Prophet's son-in-law, and saw him as the Prophet's temporal and religious successor, constituted the "Shia" school of thought. Those who believed in the Prophet's election created a separate school referred to as the "Sunni" school. The first Khalif was Abu Baker, the father of the Prophet's junior wife Ashaya Begam. The doctrine of Imamat (leadership) is the main distinction. Shia believes that the imam is appointed by divine prerogative. He is the Prophet's descendant. The contrast between the two schools is exemplified by spiritual leadership.³

IDENTIFICATION OF MUTA MARRIAGE IN SHIA LAW

The Shia law identifies two kinds of marriage namely; permanent marriage and temporary marriage which is also known as Muta marriage. There is no fundamental difference identified between the former and the latter but in the permanent form of marriage the term or the duration of the marriage is not mentioned when two competent adults solemnize their marriage and in the temporary form of marriage or the Muta marriage the duration of the

² *Ibid*

³ *Ibid*

marriage is always mentioned, although it is pertinent to mention the fact that, Sunni's do not take cognizance of temporary marriage or Muta marriage.

A Shia male can initiate a Muta marriage with a kitabia woman (kitabia woman is a person who is of Muslim, Christian, or of the Jewish religion), they may even contract a marriage with a fire-worshipping woman but not a woman following any other religion. But a female Shia can only contract Muta marriage with Muslim males, and they could not contract a Muta with any non-Muslim males.⁴ The Sunni Muslims do not recognise the concept of Muta marriage. Granting, it is relevant to make a note that factually, the Sunni Muslims are in majority compared to Shia Muslims.

ESSENTIALS OF A MUTA MARRIAGE

The Muta-marriage must be entered into in accordance with Ithna Asharia law. A Muta formed in violation of any of the following legal requirements is an illegal union. There are preconditions before formulating a Muta marriage regarding the parties to the marriage, some of them are hereinafter:

- The girl should be married at the time of marriage.
- She must be Muslim,
- She should be chaste and not addicted to fornication.
- She may not be a virgin if her father is absent and cannot give consent

Once, the preconditions are being satisfied by the parties to the marriage, then, the elements listed below are the fundamental prerequisites for a legal Muta-marriage.:

- 1. The form of marriage:** There must be a proper contract between the parties to the Muta marriage. Therefore, there must be an offer made, and consequently, there must be an unconditional acceptance of the same. There is no restriction to the number of Muta wives, one man can contract as many as Muta marriage as they wish to initiate.

⁴ *Nasrat Hussain v Hamidan* [1882] 4 All 205

2. **The age of the parties to the marriage:** This marriage can only take place between consenting Muslim adults who have attained the age of puberty, substantially, the age of puberty is rendered at 15 years, and these parties to the Muta marriage should be of sound mind. The guardians of the minor cannot make the minors enter into a Muta marriage. Although the word puberty is subjective and differs from person to person, it is necessary that they should have attained puberty to such an extent that they are capable of bearing children, and providing their full and free consent to the marriage.
3. **The persons in the marriage:** A Shia male can establish a Muta marriage with a kitabia woman (a person of Muslim, Christian, or Jewish faith), but they can still potentially arrange a marriage with a fire-worshipping woman but not with a woman of any other belief. However, a female Shia can only enter into Muta marriages with Muslim males and not with non-Muslim males.⁵ Any such marriage which is contracted by a female Shia Muslim with a person of other belief would be rendered void.

Although there is a certain restriction on with solemnization of Muta marriages, a marriage contracted with a woman who is related to the man with affinity, then any such marriage would be considered void. Affinity relations are those relations that are formed after the solemnization of a marriage like marrying a wife's sister or wife's mother.

4. **The period of marriage:** Muta marriage, primarily being a temporary marriage in nature, so the period or the duration of the marriage should be specified. The duration of the marriage could be for days, weeks, months, or years. But the period must always be specified. If the time period is not mentioned during the time of marriage or in the contract then such a marriage would be construed as permanent regardless of it being a 'Muta marriage'⁶, If no period is specified then as per the decisions given Syed Amanullah Hussain and Ors. Vs. Rajamma and Ors⁷, will be treated as a permanent marriage.

⁵ *Ibid*

⁶ *Shoharat Singh v Jafri Bibi* [1914] 17 bom LR 13

⁷ *Syed Amanullah Hussain & Ors v Rajamma and Ors* AIR 1977 AP 152

In *S.A Hussain v. Rajamma*,⁸ a Shia male Habibulla contracted a Muta with Rajamma, a Harijan converted to Islam. This marriage lasted till Habibulla's death in 1967. Rajamma inherited her husband's property after his death. Hussain (Habibulla's brother) disputed this inheritance, claiming that Rajamma and his brother's marriage was only engaged in Muta-marriage, in which a widow is not entitled to inherit her husband's property. A Shia eyewitness verified that he witnessed the Muta type of marriage between Habibulla and Rajamma, but he also stated that no time frame was given. The court ruled that a Muta without a time limit is to be considered as a perpetual marriage. (Nikah)

In other words, any duration is permissible in a Muta form of marriage, the marriage could be for days, weeks, months, or even years, as long as both the parties to the marriage are aware of the situation and give their full consent to it.⁹

5. Dower Amount (Mehar): In a Muta marriage, a dower payment is required. It is a sum of money that the husband becomes obligated to pay to the woman upon marriage, either by mutual agreement or by operation of law. Dower is guaranteed to the woman as a mark of life at the time of marriage so that such an amount is executed by her after the dissolution of marriage. Dower could be in form of cash or any other property.

Where there is no dower fixed during the formulation of the Muta marriage, then such a marriage would be rendered void.

Consummation of the marriage also plays a grave role in Muta marriage. On the completion of the mentioned period in the Muta form of marriage, and if the marriage has been consummated then the wife is entitled to the full dower amount which was promised to her¹⁰. In *Abdul Khadir vs Salima*,¹¹ the court upheld the right of the wife to Mehar if the marriage had been consummated¹². But if the marriage is not consummated then she is only entitled to receive half of the dower amount.

⁸ *S A Hussain v Rajamma* AIR 1977 AP 152

⁹ *Syed Amanullah Hussain* (n 7)

¹⁰ *Singh* (n 6)

¹¹ *Abdul Khadir vs Salima* (1886) ILR 8 All 149

¹² *Ibid*

There is another aspect regarding the dower amount if the marriage discontinues before the completion of the stipulated period and the wife walks out of the marriage, she will only be entitled to that amount of dower money to which she stayed in the marriage. If the husband walks out of the marriage before the completion of the stipulated period, then, he may make a gift of the unexpired period to the wife which is called Hiba-i-muddat.¹³

When both parties to a marriage satisfy all of the above-mentioned requirements, the marriage is considered a legal Muta marriage. All of the elements listed are required; the Muta marriage would be null and void if any of them were omitted. Although it is necessary to mention the fact that, if the duration of the muta marriage has not been specified then such marriage would be considered as permanent, even though it is being called muta marriage. However, once a Muta marriage has been effectively formed, there are a variety of consequences that follow. Taking into consideration, that a Muta marriage is not permanent, and undeniably a marriage of pleasure, hence it is transitory and for a specified period of time. There are numerous obligations and spousal duties that arise out of a Muta marriage, which both the parties to the marriage have to oblige with, for the mentioned period of time.

INCIDENTS OF THE MUTA MARRIAGE:

1. As Muta marriages are temporary in nature, the marriage does a mutual right of inheritance between the man and the woman. In addition to that, the children born out of such marriage during the stipulated mentioned period, such children are recognised by the court of law, and they get the status of “legitimate children” and furthermore, they have the right of inheritance from both of their parents¹⁴.
2. Where a man and a woman cohabit in a Muta marriage, but there is no evidence regarding the actual time period for which the marriage was contracted and the cohabitation continues, the proper assumption, in the absence of contradictory evidence, would be that the Muta continued throughout the entire period of cohabitation and that children conceived during that period were legitimate and capable of inheriting from

¹³ *Mohamed Abid v Ludden* [1887] 14 Cal 276

¹⁴ *Singh* (n 6)

their parents¹⁵. Although, this provision is the same regarding the children in a Muta marriage for a specified period of time. But when the term of the marriage is vague and there is a lot of ambiguity regarding the duration of the marriage, it is essentially assumed that the Muta marriage continued, till the time cohabitation continued between the parties to the Muta marriage.

3. There are instances where the duration of the marriage has been specified, but after the expiry of the stipulated term, the man and the woman committed in the Muta marriage continues to cohabit with each other and comply with the obligations and the spousal duties then, it is presumed that the parties to the marriage have extended their duration of Muta marriage. And the children born out of such wed would be rendered legitimate and they could get the right of inheritance from both of their parents¹⁶.
4. The Muta marriages do not recognize the concept of divorce, and once the mentioned period expires, then prima facie the marriage dissolves¹⁷. According to Ulama, there is no divorce take place in Muta marriage¹⁸. Although, before the completion of the stipulated period, the man walks out of the Muta marriage, then the women will be entitled to that dower amount to which he stayed with her, and if the man may will, he can make a gift of the unexpired period to the wife which is called Hiba-i-muddat¹⁹.
5. On the expiry of the marriage, if the marriage has been consummated, then the wife must go through the iddat period. The iddat period is considered as a duration of chastity where the woman after the dissolution of the marriage either by the death of the husband or by operation of law, is being secluded from the world, and while undergoing the iddat period, the woman must abstain from marrying any other man. The main motivation of following through the iddat period is that there should be no confusion regarding the parentage and legitimacy of the child. Hence, there must be an observance of the iddat period after the dissolution of marriage.

¹⁵ *Ibid*

¹⁶ *Hasan Ali Mirja v Nushrat Ali Mirja* [1935]

¹⁷ *Syed Amanullah Hussain* (n 7)

¹⁸ *Ibid*

¹⁹ *Mohamed Abid* (n 13)

6. The husband in addition also has the right to refuse procreation, as the Muta marriage is typically construed for pleasure.
7. A woman married in a Muta form of marriage, then she is not entitled to maintenance under the given provisions of the Shia law²⁰. But it has been held that the woman can have a right to maintenance as a wife under the provision of section 125 of the criminal procedure code²¹. This decision is of doubtful authority according to Mulla, because, as stated in *Sharaya- ul- Islam* 'the name of a wife does not, in reality, apply to a woman contracted in Muta.

PREVALENT COUNTRIES WHERE MUTA MARRIAGES ARE STILL CONTRACTED.

Muta marriage is a concept of Shia school of law (ithna Ansari school), and Muta marriage is contracted by Shia Muslims only, Sunni Muslims do not recognise the concept of the Muta marriage. In India, Muta marriages are not contracted and this practice is not as must as prevalent as it is in the Islamic countries mostly Persia and Arabia.²²

In the United Kingdom, the Islamic practice of temporary marriage termed *Nikah al-Mutah* is being revived in Britain²³. The contractual agreement between the husband and the wife for a muta marriage could be in the written or verbal format.²⁴ This practice is more dominant within the younger generation of Muslims in England and Wales, in addition to that, such practice of marriage is referred to as wife swapping. It is a union or marriage between two people, who recognise the duration and the conditions of the marriage, and the children born out of such marriage would be the lone responsibility of the females.²⁵

In Iran, the Muta marriage is extremely prevalent, the duration of the marriage ranges anywhere between one hour and 99 years. Such marriage allows single men and women even those who are widowed or divorced inclusive of the teens to contract a Muta marriage. When

²⁰ *CA Majeed v Afira* CrI MC No 1852 of 2007

²¹ *Luddun v Mirza Kamar* [1882] 8 Cal 736

²² *Majeed* (n 20)

²³ Soeren Kern, 'Britain: Islamic Temporary Marriages on The Rise' (*Gatestone Institute*, 2013)

²⁴ <https://www.gatestoneinstitute.org/3748/uk-islamic-temporary-marriages> accessed 04 August 2021

²⁴ *Ibid*

²⁵ *Ibid*

an unmarried individual is seen engaging in sexual behaviour, he or she is detained, fined, or even whipped. The reason for such a restriction is that it prohibits free sex and visits to prostitutes. Middle-class educated households have opposed such marriages. Furthermore, some women are prone to regard it as legal prostitution and, as a result, resist the trend.²⁶

CONCLUSION

Muta marriage has its own essence being temporary in nature, and in addition to that, the primary reason for men to contract a Muta marriage is for “pleasure” or to satisfy their carnal needs. Although granting that Muta marriage is contracted to preserve a women’s dignity so that the men would not use them as sex objects and leave them scattered. Muta marriage has its own rewards and drawbacks, but it is relevant to mention that Muta marriage is extremely male-centric. These marriages contract at the desire of men, the Muslim male can contract Muta marriage with a kitabi or a fire-worshipper, whereas on the other hand, a Muslim female cannot initiate a Muta marriage with a non-Muslim male. It is critical to state that a blind eye cannot be turned to the fact that such marriage is a form of Islamic prostitution, and that such marriage should be prohibited to achieve equality between the sexes so that there is no segregation based on gender on those practises that, supported by evidence, favour males over females. Although there are many countries that do not follow through with the provisions of Muta marriage and render such temporary marriages illegal, in addition to that fact, there still are countries like the United Kingdom, especially Islamic countries like Iran, who still allow the initiation of Muta marriage.

²⁶ 'In Tehran, You Can Choose a Marriage That Lasts for Three Minutes' (*Vocativ*, 2014)
<<https://www.vocativ.com/world/iran/tehran-can-choose-marriage-lasts-3-minutes/>> accessed 08 August 2021