

Muta Marriage

Astu Khandelwal & Shashwat Patwa
Symbiosis Law School
Noida, India

I. INTRODUCTION

As per Duhaime's Law Dictionary, Muta Marriage is a temporary marriage for a fixed period of time. ¹ A marriage is perceived as a legal institution because of the number of 'pillars' (*arkan*) and 'statutes' (*ahkam*) it comprising of. Muta Marriage, being a branch of marriage also consists of such components. This paper endeavours to cull out the legitimacy of Muta Marriage by highlighting them. Though Muta Marriage a very rare form of marriage in India, it is quite common in various regions across the globe. Hence to further reiterate the legitimacy of the notions of such marriage, its practices in Britain and Iran will be studied. The Indian perspective pertaining to the same shall also to put forth. The legal impacts of marriage i.e. the right to divorce, right to inherit, legitimacy of child pertaining to Muta Marriage are also enumerated with reference to several case laws.

Light has also been thrown on the link of such arrangement with prostitution and how Muta Marriage has been used across the globe as a shield to get away from the clutches of persecution and a tool to derive enjoyment and pleasure, especially for the men and added misery and disgrace to the lives of the female sector of the society.

II. HISTORY

The origin of Muta Marriage can be traced back to the war times when the first Islamic jihadis, led by their prophet Mohamed, raided caravans and attacked neighboring societies for war booties. The absence of war slaves with whom they could enter into marriage made them seek permission from their prophet to visit prostitutes. Mohamed, being the "perfect man of Allah" did not grant them the permission to undertake such immoral activity and hence decreed that these soldiers shall have to marry the girls that they wanted. A dowry for their vaginas is mandated and subsequently the concept of "Muta" gave birth. ²

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. ³ During the Pahlavi regime in Iran, an endeavor to abolish the institution of temporary marriage was initiated but the fear of religious retaliation held them

¹ Mulla D., *PRINCIPLES OF MAHOMEDAN LAW*, 239 (14 ED. 1955).

² John Bastile, History of Muta and the future of an Islamic society (Dec. 29, 2017), <http://www.danielpipes.org/comments/2674>.

³ Konina Mandal, *Concept Of Marriage Among Muslims: A Study On Muta Marriage*, INTERNATIONAL JOURNAL OF LAW AND LEGAL JURISPRUDENCE STUDIES (2015), <http://ijlljs.in/wp-content/uploads/2016/02/18.pdf>.

back. Later the state was effectively able to move the family reforms through the parliament which led the public to believe that temporary marriages have been banned. However, the practice was carried out in secrecy.⁴

III. QURANIC EVIDENCES FOR LEGITIMACY OF MUTA MARRIAGE

The most important verse of the Holy Qur'an which establishes the legitimacy of Muta is verse 24 of Surat an-Nisa, known to all hadeeth commentators (Sunni and Shi'a) as "the verse of Muta." The Shari'ah prohibits fornication, but at the same time allows the practise of Muta. The Holy Qur'an evidently states that:

*"Forbidden to you are married woman, except what your right hand possesses. This Allah has written for you, and all other women besides these are permitted to you, so that you may seek them out with your wealth, seeking chastity and not fornication. So when you have contracted temporary marriage [istimt'atum] with them, then give them their words. There is no sin on you for whatever you agree to after this. Indeed, Allah is Knowing Wise."*⁵

The episodes wherein the performance of temporary marriage (Muta) can be evidenced are from Sahih Muslim, the second most authentic Sunni Hadith book which states: "*Sabra al-Juhanni reported on the authority of his father that while he was with Allah's Messenger (may peace be upon him) he said: O people, I had permitted you to contract temporary marriage with women...*"⁶

IV. PILLARS OF MUTA MARRIAGE

The Formula

Marriage under Muslim Law is a contract and as per the essentials of a valid contract, there needs to be a declaration and an acceptance.⁷ The Shafi'is and Hanbalis hold the words '*I have married you*' (*ankahtu-ka*) or '*I have espoused you*' (*zawwajtu-ka*) as valid whereas the Malikis believes that if the amount of the dower to be paid to the wife has been specified, the woman can say '*I give myself to you*' (*wahabtu-ka*).⁸

The declaration by the woman is followed by the man giving his acceptance expressing his satisfaction with the declaration.

Further, the marriage can be concluded by the man and woman themselves, or their representatives (*wakil*), or their fathers. Thus, it is permissible for the father to say: '*I give my daughter in muta with her agreement.*'

⁴ *Id.*

⁵ Ansar, Chapter Four: Qur'anic evidences for the legitimacy of Mut'ah, SHIA PEN NEWSLETTER, <http://answering-ansar.org/mutah.pdf>.

⁶ *Id.*

⁷ Sachiko Murata, Muta', Temporary Marriage in Islamic Law, <https://www.alislam.org/printpdf/book/export/html/11245>.

⁸ *Id.*

It is 'uncommissioned' (fuduli) and invalid if anyone but the abovementioned persons conclude the marriage.

The Persons

Muta marriage can only be concluded by a man with a Muslim or one of the 'People of the Book'. Marriage with an unbeliever or an enemy of the Household of the Prophet (Ahlul Bayt, i.e., the Imams), is prohibitive. Certain situational restrictions are also imposed pertaining the persons contracting the marriage such as if the man is already married or the slave belongs to someone else or she is the daughter of his sister-in-law or brother-in-law he cannot contract a Muta her in absence of the wife's permission or the permission of the master of the slave. The contract in such a case is invalid or in abeyance until the permission is given.⁹

The Time Period (Mudda)

The time period must be set forth in a manner which leaves no possibility of increase or decrease. According to the Imam al-Rida, '*...(mut'a must) be a stipulated thing for a stipulated period.*' The absence of a stipulated period renders the contract of marriage as invalid. On the contrary, most of the 'ulema' hold the contract is not invalidated due to this reason and rather, the marriage becomes a permanent one.

In Syed Amanullah Hussain and Ors. Vs. Rajamma and Ors¹⁰, a Shia male Habibulla contracted a Muta with Rajamma which lasted till the death of the man in 1967. and subsequently the wife inherited his properties. This was challenged by the brother of Habibulla contesting that the marriage was simply a Muta marriage. It was held that although the word Muta was used but the term was not specified, therefore, the marriage was treated as permanent marriage and thus Rajamma was entitled to inherit her husband's properties.

Further, the mentioning of certain number of sexual acts along with the time period does not render the contract invalid. If the role of the time period is to contain a stipulated number of sexual acts, whenever the number is finished, the woman is free of any further obligation to the man and if the stipulated number of sexual acts is not performed by the end of the time period, the marriage still comes to an end.

The Dower

Another prerequisite of Muta Marriage is the fact of dower of known property, whether in cash or kind, whose amount is safe from any fluctuations.

The fact that the two sides have agreed over articles which may properly be exchanged is sufficient.¹¹ If the woman asks for the whole amount of the dower at the beginning of the marriage, the man is not entitled to take back any of the dower under any circumstances, provided contract have been invalid from the beginning.

⁹Supra 5.

¹⁰ Syed Amanullah Hussain and Ors. v. Rajamma and Ors (1977) 152 AIR.

¹¹ Wasa'il, XIV, 467, hadith 5.

There can be situations where a contract is concluded, but before the beginning of the time period the man refuses the marriage but to 'give back' to the woman the contracted time, she is entitled to one-half the dower which is similar to divorce before consummation in permanent marriage.¹²

The fact whether the marriage has been consummated or not also plays an important aspect as if it has been consummated and then the husband returns some or all of the remaining time, the wife is entitled to the whole dower, since without question the dower becomes necessary as soon as consummation takes place.¹³ The failure on the part of the woman to provide the man with conjugal rights because of an excuse sanctioned by the sharia, such as menstruation or 'fear of an oppressor', then the dower may not be reduced. The death of the woman during the period of the Muta does not reduce her dower.

Further, in the following mentioned situations if the payment of the whole dower has been made the wife must return part or all of it as soon as the invalidity becomes apparent:¹⁴

1. The woman already has a husband, or because she should be maintaining a waiting period as the result of a previous marriage, or because she is forbidden to the man by family relationship
2. If the marriage has already been consummated and if the woman was ignorant of the fact that the contract was invalid at the time of sexual intercourse, then she should be given the 'normal dower'.
3. If the marriage has been consummated and the woman was aware of the contract's invalidity, she can have no claim to a dower, since she is a fornicatress, and there is no dower for fornication.

V. STATUTES OF MUTA MARRIAGE

Conditions in the Contract

Certain condition mentioned in contract can be like:

1. A particular time for meetings between the husband and wife, such as daytime or night-time.
2. A given number of sexual acts for a given period to be stipulated, as for example, during one day or over the whole period of the marriage.
3. Non consummation of the marriage is legitimate as does not contradict the requirements of the contract.¹⁵

Coitus Interruptus

It is permissible to perform coitus interruptus, irrespective of the fact that it is not mentioned as a condition in the contract. If the woman becomes pregnant during the Muta, the child belongs to the husband, even if

¹² Sharh al-lum'a, v, 285; Shara'i, II, 24; Matajir, II, 300; Masalik, 1,538.

¹³ Jawahir, V, 168,

¹⁴ Matajir, II, 301; Sharh al-lum'a, v, 287-88.

¹⁵ *Supra* 4, at 31.

he performed coitus interruptus. However denial of the child by the man is a sufficient ground for the child to not belong to him.

Divorce

The view held by the ulama prohibits divorce in *muta*. The expiration of the time period automatically separates the man and woman, or else by the man's 'returning' the remaining time to the woman.

Sworn Allegation

As per Quran^{24:6-9}, the husband to swear four times that his accusation is true, followed by a fifth oath in which he invokes the wrath of God upon himself if he is lying.¹⁶ Sworn allegation does not take place in *Muta*. According to the Imam Ja'far: 'A free man does not make a sworn allegation against a slave girl, a non-Muslim (*dhimmi*), or a wife by *mut'a*.'

Zihar

As per Duhaime's Law Dictionary an insult proffered by a husband upon his wife which likens the wife to some prohibited female relation of his, and exposes the husband to divorce.¹⁷

The majority of the *ulama* hold the opinion in affirmative stating the Qur'anic pronouncements: '**Those of you who say, regarding their women: 'Be as my mother's back', they are not truly their mothers' (58:2)** which is indicative of the fact that *zihar* pertains to any woman with whom intercourse has legitimately taken place.¹⁸

Inheritance

According to the most widely held view, there is no inheritance between husband and wife in *Muta* unless it is specifically mentioned as a condition of the contract. The reason that inheritance is permissible provided that the condition is entered into the contract is first the universal applicability of the prophetic *hadith*: '*The believers hold fast to their conditions.*'

Second, according to the Imam Ja'far: '*If they should stipulate the condition of inheritance [in the contract of mut'a], they must hold fast to this condition.*'

The inheritance by a child born as the result of a temporary marriage is one-half from the father of that of a child by permanent marriage and the same from the mother as it would be in permanent marriage.

The Waiting Period

Muta Marriage also observed waiting period after the time period of the marriage has expired or the man

¹⁶ John L. Esposito, *OXFORD ISLAMIC STUDIES ONLINE*, <http://www.oxfordislamicstudies.com/article/opr/t125/e1345>.

¹⁷ *Supra* 1.

¹⁸ *Supra* 8.

has returned the remainder of the period to the woman.¹⁹ It consists of two menstrual periods, provided she menstruates. This statute finds basis in two *hadith*: 'To divorce a slave, one must pronounce the formula of divorce twice; her waiting period is two menstrual periods' (the Imam Musa).

If the woman is of menstruating age but for some reason does not menstruate, her waiting period is 45 days irrespective of she being free or a slave. The waiting period of a free woman whose husband has died during the period of Muta is for four months and ten days, so long as she is not pregnant irrespective of the consummation of marriage. According to the Qur'an: 'Those of you who die, leaving wives, they shall wait by themselves for four months and ten days' (2:234).

Renewing The Contract

A contract of *Muta* cannot be renewed before the time period expires. Hence, if the parties wish to renew the contract, the man has to return the remainder of the time period to the woman, as a result terminates the contract and then may enter into a fresh one. The woman need not undergo waiting period if she remarries the same man.²⁰

VI. PRACTICES IN DIFFERENT COUNTRIES

To further reiterate the legitimacy of Muta marriage, we may delve into the practice of such marriage in two countries-Britain and Iran.

Practice In Britain

The Islamic practice of temporary marriage termed as Nikah al-Mutah is being revived in Britain.²¹ It is the union constituted either of a verbal or written contract with the agreement of both parties as to the length of time and conditions for the marriage which can last for a few minutes or a few years. The wives are not counted toward the maximum of four, and the sole responsibility of the children is that of the females.

The practice is popular among the younger generation of Muslims in England and Wales. In Luton, a densely populated Islamized city situated 50 km north of London, temporary marriage has been considered such a common practice that it has been referred to as "wife swapping."

According to the Islamic Scholar Mushtaq Lodi, "Islamic society has evolved ingenious methods to bypass its own restrictions on premarital sex and promiscuity and to help one avoid committing the serious sin of zina -- sex outside of marriage, which is considered illicit and calls for a very heavy penalty. The sole object of the Misyar and Mutah marriages is for sexual gratification in a licit manner. Like most practices in Islamic society, this is also skewed in favor of the male."

¹⁹ *Supra* 8, at 35.

²⁰ *Supra* 8, at 37.

²¹ Britain: Islamic Temporary Marriages on the Rise, GATESTONE INSTITUTE INTERNATIONAL POLICY COUNCIL, <https://www.gatestoneinstitute.org/3748/uk-islamic-temporary-marriages>.

Practice In Iran

Temporary marriage in Iran is construed as a contractual deal between a man and a woman which lasts for an agreed period of time ranging from one hour to ninety nine years. It is practiced among the Shiites of Iran and Iraq, although it is not a part of Quranic teachings. This permits single men and women who are divorced Iranians and precocious teens to date or have sex in an acceptable way as under Iranian law, unmarried couples who have sex or even date and hold hands can be arrested, fined or even flogged. In Iran, a man - bachelor or married, and a woman - virgin, divorced, or widowed can contact into a temporary marriage commonly referred to as *sigheh* or *nekah-e-monghate'e*. No registration or witness is not required.

Such an arrangement is considered as a means of curbing free sex and control prostitution along with allowing man to have 'sigheh' wives to an extent that is affordable by him. But a woman can enter only one such relationship at a point of time. Moreover, the woman is also paid the compensation amount before entering the contract. However, no couple can enter another contract before completing a waiting period of three months or an elapse of two menstrual cycles. This waiting period is referred as 'edda'. Such marriage has been discouraged by the educated middle class families. Also, some women are predisposed to think it as legal prostitution and, therefore, oppose the trend.²²

VII. CASE LAWS DEFINING LEGAL INCIDENTS OF MUTA MARRIAGE

No mutual rights of inheritance created between the spouses, however, children are considered legitimate and capable of inheriting from both parents. A son from the Muta is legitimate and has same proprietary rights in his father's property as the offspring of the nikahi marriage.²³ In *Syed Amanullah Hussain and Ors. Vs. Rajamma and Ors.*²⁴ it was held that " *such type of marriage does not create mutual rights of inheritance between husband and wife but children conceived are legitimate and capable of inheriting from both parents.*" This was further reiterated in *Shoharat Singh Vs. Musammat Jafri Bibi*. It was held that " *A muta marriage is, according to the law which prevails among the Mohammedans of the Shia sect, a temporary marriage, its duration being fixed by agreement between the parties. It does not confer on the wife any right or claim to her husband's property, but children conceived while it exists are legitimate and capable of inheriting from their father. A nikah marriage is a religious ceremony, and confers on the woman the full status of wife, and the children born after it are legitimate, children conceived during that period of cohabitation were legitimate and capable of inheriting from their father.* " ²⁵

Wife is not entitled to maintenance (unless specified). However , she is entitled to maintenance as a wife

²²Vocativ Staff. In Tehran, You Can Choose a Marriage That Lasts for Three Minutes, <http://www.vocativ.com/world/iran/tehran-can-choose-marriage-lasts-3-minutes/>.

²³ Sadiq Hussain v. Hashim Ali (1916) 27 AIR 27.

²⁴ *Supra* 14.

²⁵ *Shoharat Singh v. Musammat Jafri Bibi.* (1915) 17 BOMLR 13.

under the provision of section 125 of Code of Criminal Procedure.²⁶ The Court held that " *A right to maintenance, depending upon the personal law of the individual, is a right capable of being enforced, and properly forms the subject of a suit in a Civil Court. But we think that this right, depending upon the personal law of the individual, is altogether different from the statutory right to maintenance given by Section 536 in every case in which a person, having sufficient means, neglects' or refuses, to maintain his wife.*"

As held in the case of Mahomed Abid Ali Kumar Kadar Vs. Ludden Sahiba, Minor, Through Her Guardian Srimati Amir Bahu²⁷ marriage come to end ipso facto on the expiry the term, unless extended. Husband and wife do not have a right of divorce, but he can terminate the union earlier by making a "gift of the term"(hiba-i-muddat). The wife has a right to leave the husband before the expiry of the term of the muta marriage; if she does so, the husband has a right to deduct the proportionate part of the dower for the unexpired period. If the cohabitation commences in the Muta but continues beyond the period fixed by the parties, there is a presumption that the term has been extended to the whole period and the children born during the extended time will be legitimate.²⁸

VIII. INDIAN OUTLOOK

The practice is not very common in India, and in Lucknow and other places where there is a Shia population ladies of the better classes do not contract Muta Marriage.²⁹

The notions of Muta marriage can be evidently seen in our country. In India, temporary marriage is not recognized, although there exist few who contract Muta marriage but such marriages are not enforceable in court. Hyderabad is considered to be the epicentre of the practice where marriage can be instituted for time span as short as one or two days.

In a Hyderabad case it was held that there is no difference between muta for an unspecified period and a muta for life; a permanent nikah marriage for life can be contracted by the use of word muta also; specification of the period for which a muta marriage is contracted alone makes a marriage a temporary marriage for the period specified.³⁰

A wealthy Arab enters into marriage with three girls simultaneously in Hyderabad and could have married more girls without violating Sharia, as his marriages were Muta marriages. Similarly, many rich Arabs visit India, contract Muta with girls by paying huge amount as mehr, use them till the time they are in India and

²⁶ Luddun Sahiba v. Mirza Kamar Kudar (1882) 8 ILR 736.

²⁷ MahomedAbid Ali Kumar Kadar v. LuddenSahiba, Minor, Through Her Guardian Srimati Amir Bahu (1886) 14 ILR 276.

²⁸ Hasanali Mirza v. Nushrutali, (1998) AIR 572.

²⁹ ASAF A.A. FYZEE, OUTLINES OF MUHAMMADAN LAW, 87 (Oxford India Press, 5th ed).

³⁰ Shahzada Qanum v. Fakher Jahan (1953) 6 AIR.

marriage gets terminated as they return to their hometown.³¹

IX. CRITICISM

Muta Marriage can be held as a form of prostitution as women in these arrangements receive money on dissolution of the union and have been almost universally devalued since the 19th century. In order to avert prosecution during the frequent crackdown of prostitution sex workers in Pakistan claimed to be Shiite practitioners of muta. The traces of misery can be seen in South Asia and Middle East where young girls are tricked into a muta union with a rich man, only to discover that their marriage certificate was falsified and their "marriage" lasted only as long as the consummation. Voluntarily associations into muta marriages by the female sector advertised that they are no longer virgins and a blot of shame on their families.³²

The health factor is completely at stake especially for men who travel often and as a result of multiple sexual contacts outside marriage in line with Muta (temporary marriage/small house) increase the chances of becoming HIV positive.³³

The struggle for life and security by the refugees has been coupled with such practices to further their miseries and devastation. Muslim preachers have been encouraging their followers to engage in "pleasure marriages" with Syrian female refugees aged 14 and 15 as a way of ridding them and their families of their plight. These girls are sent back to their families after hours or days of the temporary marriage.³⁴

In countries like Egypt, India, Mauritania, Yemen, and Indonesia such marriage serves as a means to sexually exploit young girls and women overseas. Males from affluent families of the Gulf, including Saudi Arabia, the United Arab Emirates, and Kuwait travel to Egypt to purchase 'temporary' or 'summer marriages' with Egyptian females.

Women and girls are trafficked within Iraq for the purpose of sexual exploitation through the use of temporary marriages, as a result of which their families money in the form of a dowry in exchange for permission to marry the girl for a limited period of time.

X. CONCLUSION

The practice of Temporary "Muta" marriage is widespread in the modern times and often arranged by Imams and other Islamic leaders in Europe, America (Shia parts of Dearborn, Michigan), and in the Mideast. It is commonly the destitute widows and orphaned girls that are within the clutches of temporary marriage who are often sold to old men. For the women, there is no desire or pleasure that drives them into

³¹ Akanksha Vishnoi & Twinkle Maheshwary, *A Comparative Study of Temporary Marriage in India and Iran*, 3 CLRJ 1, 5 (2017).

³² Melissa Hope Ditmore, *Encyclopedia of Prostitution and Sex Work*, 2 Greenwood Press Westport 587, 664 (2006).

³³ Dube Edmore, *Reflections on Islamic marriage as panacea to the problems of HIV and AIDS*, 7 JASD 184, 185 (2005).

³⁴ Khaled Abu Toameh, *How Muslim Men Are "Helping" Syrian Refugees*, (2012) available at <https://www.gatestoneinstitute.org/3339/syrian-refugees>.

such misery; it is the extreme means to pay rent and feed themselves and their children.³⁵ As a result, this arrangement has received widespread criticism by various countries as it impliedly encouraging legalization of prostitution.

The other viewpoint in this regard which runs contrary to the above mentioned that is the fact that man and woman entering the Muta marriage are fully aware of their purposes and there is no exploitation done on the part of anyone to anyone and in no way Muta marriage can be called prostitution or degraded³⁶ is disapproved of by the authors.

The authors are of the viewpoint that as a consequent of Muta Marriage, the women are left at the mercy of the man who in such an arrangement exercise a position of dominance. Further, it is felt that such sort of marriage is only for sexual gratification and legalizes prostitution. The pure and family-oriented notions of Nikah have become subservient or completely obliterated due to the practices of temporary marriage. Hence Muta Marriage should be discouraged as it shakes the very essence of humanity and self- respect of the female sector of the society.



INTERNATIONAL
JOURNAL
OF
LAW MANAGEMENT
&
HUMANITIES

³⁵ Deepak Prasad, Does Muta marriage amount to legalization of prostitution, (2014), <https://www.legalcrystal.com/blog/general/does-muta-marriage-amount-to-legalization-of-prostitution>.

³⁶ *Id.*