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## 6. Al-Zawaj bi Niyyah Al-Talaq, The Sunni Attempt to Reinvent Mut'ah

After declaring *mut'ah* to be *haram*, Sunni Muslims were faced with the very situations which it was meant to address. But, unable to backtrack on it, the *'ulama* of the Ahl al–Sunnah instead invented a new form of marriage – called *al–zawaj bi niyyah al–Salaq* (marriage with the intention of divorce) – to cater for their needs. Its nature is exactly as its name suggests: the "marriage" is contracted with a *deliberate* intention to dissolve it sometimes in the future. To say this in clearer words, it is a *temporary* form of *nikah*!

Here, al-Hafi (d. 852 H) opens the floor about this Sunni-invented marriage:

قال عياض وأجمعوا على أن شرط البطلان التصريح بالشرط فلو نوى عند العقد أن يفارق بعد مدة صح نكاحه الا الأوزاعي فأبطله

'lya® said: "They unanimously agreed that the condition of invalidity is to openly disclose the condition (of time limit). So, if he intends, during the 'aqd' (i.e. the formalization of the marriage) to separate after a period, his marriage is correct. Only al-Awza'i disagreed, and he declared it invalid."1

So, when a Sunni man wishes to temporarily marry a woman, he must never disclose his real intention to her. If he does that, it becomes illegal for him to proceed with the marriage. However, as long as he does not tell her, he is allowed to marry her with his *hidden* intention to divorce her after a period of time. He knows of his secret plan in his heart, but must never let the woman discover it until when it happens.

Imam al-Nawawi (d. 676 H) also mentions:

قال القاضي وأجمعوا على أن من نكح نكاحا مطلقا ونيته أن لا يمكث معها الا مدة نواها فنكاحه صحيح حلال

وليس نكاح متعة وإنما نكاح المتعة ما وقع بالشرط المذكور ولكن قال مالك ليس هذا من أخلاق الناس وشذ الأوزاعي فقال هو نكاح متعة ولا خير فيه والله أعلم

Al-Qadi said, "They unanimously agreed that whoever contracts an (outwardly) permanent marriage while his (real) intention is to stay with her for only a period of time which he intends, then his marriage is correct and *halal*, and is not a *mut'ah* marriage. The *mut'ah* marriage is only that which occurs with the (previously) mentioned condition. However, Malik said, 'It is not from the manners of the people.' As for al-Awza'i, he disagreed and said, 'It is a *mut'ah* marriage, and there is no good in it." And Allah knows best.2

Of course, it is NOT *mut'ah*! Al-Awza'i was definitely *very* wrong. In *mut'ah*, both parties – again, both parties – mutually and voluntarily agree on the temporary nature of their prospective union, and on the exact time of its end. However, in this Sunni-invented "marriage", both would-be spouses *outwardly* agree on a permanent marriage while the man inwardly intends *only* a temporary relationship. He basically tricks the unsuspecting woman till the very end.

Shaykh Ibn Taymiyyah (d. 728 H) has his submission too:

وسئل رحمه الله عن رجل ركاض يسير في البلاد في كل مدينة شهرا او شهرين ويعزل عنها ويخاف ان يقع في المعصية فهل له ان يتزوج في مدة إقامته في تلك البلدة وإذا سافر طلقها وأعطاها حقها أو لا وهل يصح النكاح أم لا

فأجاب له أن يتزوج لكن ينكح نكاحا مطلقا لا يشترط فيه توقيتا بحيث يكون إن شاء مسكها وإن شاء طلقها وإن نوى طلاقها حتما عند انقضاء سفره كره في مثل ذلك وفي صحة النكاح نزاع ولو نوى أنه إذا سافر واعجبته أمسكها وإلا طلقها جاز ذلك فأما أن يشترط التوقيت فهذا نكاح المتعة الذي اتفق الأئمة الأربعة وغيرهم على تحريمه

He (Ibn Taymiyyah), may Allah be merciful to him, was asked about a running man, who goes through countries, spending a month or two months in each city, and then leaves it; and he fears that he might commit sin. So, can he marry during the period of his stay in those cities, divorcing her when he travels and giving her right to her? Or can he not? And is the marriage valid or not?

So, he (Ibn Taymiyyah) answered:

He can marry. However, he contracts an (outwardly) permanent marriage. He cannot openly disclose any time limit as its condition, so that if he wishes he retains her, and if he wishes he divorces her. But, if he absolutely intends to divorce her at the end of his journey (in the city), the like of that is disliked (*makruh*), and there is dispute concerning the validity of such marriage. If he intends that when he travels, if he loves her he will retain her, and if otherwise, he will divorce her, that is permissible. However, to (openly) disclose a time limit as a condition, that would be the marriage of *mut'ah*, which is unanimously agreed to be *haram* by the four Imams and others.3

He also states about this same type of "marriage":

والصحيح أن هذا ليس بنكاح متعة ولا يحرم وذلك أنه قاصد للنكاح وراغب فيه بخلاف المحلل لكن لا يريد دوام المرأة معه وهذا ليس بشرط فإن دوام المراة معه ليس بواجب بل له أن يطلقها فإذا قصد أن يطلقها بعد مدة فقد قصد أمرا جائزا

The correct opinion is that it is not a *mut'ah* marriage, and it is not *haram*. And that is: he intends marriage and is desirous of it, as opposed to the practitioner of *al-tahlil*. However, he does not want the permanency of the woman with him; and this is not a condition, as the permanency of the woman with him is not obligatory. Rather, he has the right to divorce her. So, when he intends to divorce her after a period, he has intended a permissible affair.4

Ibn Taymiyyah apparently attempts to refine this Sunni invention. He therefore introduces a new condition: the man must intend that if he loves her at the end of his stay in the town, city or country, he *may* retain her. But then, even if he loves her, he still has the right NOT to retain her after having used her. He is free to divorce her, despite his love for her, and permanently move away from her. To Ibn Taymiyyah, as long as the man holds that in his secret intentions, the marriage is correct.

Imam Ibn Qudamah (d. 620 H) submits this fatwa as well:

If he marries her without (openly disclosing) any condition (of time limit), except that (in his heart) he intends to divorce her after a month, or after fulfilling his need in this town, **then the marriage is valid according to the statement of the generality of the scholars** except al-Awza'i. He said: "It is a *mut'ah* marriage". **The correct opinion is that there is no problem with it**, and his intention does no harm.5

Shaykh Sayyid Sabiq also declares:

The jurists unanimously agree that whoever marries a woman without (openly disclosing) any time limit as a condition, and his intention is to divorce her after a period of time, or after the fulfilment of his need in the town where he resides, then the marriage is valid. But, al-Awza'i disagreed and called it a *mut'ah* marriage.6

Honestly, we find it insulting to Allah and His Messenger, *sallallahu 'alaihi wa alihi*, to equate the divinely legislated *mut'ah* with this Sunni-invented "marriage". Their distance, in all ways and manners, is far more than that between the heavens and the earth.

So, to do a recap, before the Sunni-invented "marriage" could be valid:

- (i) the would-be "husband" must never openly disclose any time limit for the proposed marriage to the would-be "wife";
- (ii) if he openly discloses to the woman that their "marriage" would only be temporary or for a period of time, then it would be invalid;
- (iii) however, he is allowed to formulate a time limit for the "marriage" in his mind, and to enforce it;
- (iv) yet, he must always pretend to the woman that he is permanently "married" to her, and that he has no premeditated intention of ever leaving her;
- (v) the only problem is the open disclosure of a time limit for the proposed or ongoing marital union whether it is specified or obscure;
- (vi) as long as the (would-be) "husband" keeps his time limit for the "marriage" in his heart, serious on carrying it out, there is no problem;
- (vii) Ibn Taymiyyah introduced the condition that the man must also uphold a non-binding plan to retain the woman after the intended time limit if he loves her;
- (viii) but, if he dumps her despite loving her, there is no blame on him.

To understand how the Ahl al–Sunnah practise their innovated "marriage", let us illustrate with a scenario. Let us assume that a major Saudi Salafi shaykh is invited by a Salafi organization in the United Kingdom to a Salafi conference. He is to stay in London for three days. However, he is unable to bring any of his three wives along, due to visa problems. Therefore, he will remain without any of his women throughout his three–day stay in England. But, after spending just over twenty four hours in London, he experiences very strong sexual urges. He fears committing adultery. So, he discusses the option of this Sunni–invented "marriage" with his British hosts. They are to help him find a suitable "wife" for it, with whom he satisfies his sexual urges until he leaves the United Kingdom.

His hosts discuss with various Christian, Jewish and Salafi women. There is a pious shaykh from Saudi Arabia, they tell them, and he wants a fourth wife. They must never inform the women that the shaykh only wants a "wife" for about forty–eight hours or less. Otherwise, it would be *haram* to proceed with the plan. Therefore, the Salafi hosts assure all the women that the marriage is intended to be permanent: it is not a *mut'ah*, and there is no premeditated time limit to it. One of the women asks whether the shaykh intends to relocate to Britain, or if she is expected to move to Saudi Arabia. They tell her that she will

permanently join him in the Arabian kingdom as soon as the necessary immigration processes are completed. They must never let her discover that the Salafi shaykh never intends to stay with her beyond forty-eight hours. If they do, the marriage becomes *haram* under the Sunni *Shari'ah*. So, they must absolutely deceive her in order to make the "marriage" lawful!

Luckily, there are four different successful candidates among the women. But, the shaykh cannot marry more than one of them. He already has three wives in Saudi Arabia. Therefore, he has only the option of a single makeshift "wife", as the women in this innovated "marriage" are counted among the four legitimate wives. As a result, his British hosts devise a plan. He "marries" one of them around 8:00 am. Fortunately, none of them is a virgin in the *Shari'i* sense, and all of them are financially capable. So, the shaykh has intercourse with her around 9.00 am. Then, he "divorces" her at about 10:00 am. He needs no reason in order to do the divorce, and he owes no one – not even the "divorced wife" – any explanation for it. Then, he "marries" the second "wife", has sex with her, and "divorces" her too after some hours. Using the same method, he successfully "marries" and sleeps with, and "divorces" all four of the women before he leaves the United Kingdom.

This is *al-zawaj bi niyyah al-salaq*; and what the shaykh has done is perfectly *halal* in Sunni *fiqh*. In fact, he is lawfully allowed to "marry" a qualified woman for just one hour or less, "divorcing" her immediately after enjoying sex with her. He literally has the right to "marry", sleep with and immediately "divorce" as many women as he wishes on any given day – as long as he does not exceed four wives (in addition to his standard women) at a time, and he is able to flawlessly pull wool over their eyes concerning the true nature of their "marriages".

The keen observer notices an absolute lack of proof for this Sunni-invented marriage. There is no *ayah* of the Qur'an to back it, nor any reliable Sunni *hadith*. Without doubt, it is a blatant *bid'ah*; and its proponents and practitioners are all, thereby, people of heresy. Moreover, since it is a non-*Shari'i* union, any sexual contact made within it is indisputably *zina*.

- 1. Shihab al-Din Ibn Hajar al-'Asqalani, Fath al-Bari Sharh sahih al-Bukhari (Beirut: Dar al-Ma'rifah li al-saba'ah wa al-Nashr; 2nd edition), vol. 9, p. 150
- 2. Abu Zakariyyah Yahya b. Sharaf al-Nawawi, ⊡ahih Muslim bi Sharh al-Nawawi (Beirut: Dar al-Kitab al-'Arabi; 1st edition, 1407 H), vol. 9, p. 182
- 3. Abu al-'Abbas Ahmad b. 'Abd al-Halim b. Taymiyyah al-Harrani, Majmu' al-Fatawa, vol. 32, pp. 106-107
- 4. Ibid, vol. 32, p. 147
- 5. Abu Muhammad 'Abd Allah b. Ahmad b. Muhammad b. Qudamah, al-Mughni (Dar al-Kitab al-'Arabi), vol. 7, p. 573
- 6. Sayyid Sabiq, Figh al-Sunnah (Beirut: Dar al-Kitab al-'Arabi; 3rd edition, 1397 H), vol. 2, p. 45

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