

Temporary Marriage in Islam Part 6: Similarities and Differences of Mut'a and Regular Marriage

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Some people assume that some of the Shi'a practices are not Islamic because they haven't heard about it before, or they do not know the justifications behind it. What I tried to prove by the previous parts of the discussion was:

1. Temporary marriage was not invented by the Shi'a.
2. Allah made it legal in the Qur'an (4:24).
3. There are authentic Sunni references which indicate that various companions did NOT agree on being it abolished. This happens to agree with the Shi'a point of view.
4. It was also indicated that there are few allegations for its banning, but they are inconsistent and are weaker claims. Their variety is sufficient indication of the fact that they are based on opinion-only, mainly to justify the present situation. Also, not to mention their obvious conflict with above three points. Moreover, the Hadith is always tested against the Qur'an and not the other way around. The Qur'an is always in the higher authority.

In that effort, I was not trying to convince the Sunnis that Mut'a is permitted for them as a "Sunni", as much as, I was trying to show that the Shi'a point of view in this issue has a very strong basis in Qur'an and Hadith, and is not inconsistent with Islam and its documented history. I also tried to illuminate the fact that Mut'a can be legal, depending on which companion's point of view we take.

In this part and the next two parts, however, I would like to talk More about Mut'a itself, its specifications, regulations, advantages, and to answer some the questions which I received from the Sunnis on this

issue.

Warning: What follows in this and the next parts is only a scientific discussion and in NO way it should be considered as some kind of verdict. Interested readers may contact the Shi'a scholars or read books on Shi'a Jurisprudence to learn more about this issue, its terms, and its restrictions.

Fixed-Term/Temporary/Mut'a Marriage is a contract between a man and woman, much in the same way the Long-Term/Conventional Marriage is. The same vows are exchanged by the partners or their authorized representatives in both cases, including stating the dowry. In temporary marriage a fixed period of time (like one year, four years of college, etc.) should be clearly specified. After the expiration date of the marriage, the couple must either extend it to another specified time or they will automatically separate without divorce, and the woman must count the "Iddah"(waiting period) before which she can not marry any one else.

The dowry (Mahr/Sidaq) should be specified at the time of contract. It may be a calculated sum of money, or a certain work like teaching a certain science, or something like a ring or bracelet by specifying or showing them. As for the dower which are not present at the time of contract, it is sufficient that the dower be described in such a manner that the woman's misunderstanding will be removed, i.e., that it be described exactly as it is.

Usually in this type of marriage, the couple do not plan to have any child. But it becomes accidentally the case, then the kids from this marriage are the legal sons/daughters of their parents. All regulations of permanent marriage will apply to the children.

The man and woman are husband and wife till the expiration date of the contract, much in the same way as the normal marriage is. In fact the author of al-Jawahir (the biggest Shi'a Encyclopedia in Jurisprudence) said:

"Originally the same rules apply to permanent and temporary marriage, except what was excluded by certain proofs."

For instance, similar to the permanent one, in the temporary marriage it is necessary for the virgin girl to get the permission of her guardian (which is usually her father) before accepting such offer. Imam al-Ridha said: "A virgin may not be married temporarily without her father's permission." (Wasa'il al-Shi'a, v14, p458). As for a non-virgin, she can make her decision alone without getting the agreement of her guardian or any other person, but it is still encouraged to get the permission.

Temporary marriage is valid with the Muslim women and the woman of the People of the Book like the Christians and the Jews. And if the Christian/ Jewish girl is virgin, the prosper should still seek the permission of her guardian even if that guardian is not a Muslim. Under very extraordinary circumstances, if it is proved that her guardian does not care about her benefit, a Muslim scholar (or the judge when the government is truly Islamic) can let her marry. In this case the necessity of the

permission of the father is lifted and will be shifted to the permission of the scholar/judge. This is true for permanent marriage as well.

Marriage with a woman who is atheist, or blasphemer, or apostate, or a woman who declares animosity against Ahlul-Bayt, or the extremist (one who believes 'Ali is God) is not allowed; and the same applies to man with the addition that marriage of Muslim woman with a non-Muslim man is not allowed either.

It is undesirable/discouraged (Makrooh) that one temporarily marries the fornicatress who is not famous for practicing fornication. Conservative way is to avoid marrying her at all. As for the woman who is famous for committing fornication like a prostitute, it is forbidden to do Mut'a with her, unless she repents. Her repentance is known if she was called to commit sin and she refused; then that should indicate her trustworthiness, and an indication for the possibility that she may revive her soul with the opportunity of temporary marriage and being in the company of a person who can guide her to the right path. Nonetheless, it is highly encouraged that the wife in both temporary and permanent marriage to be modest and temperate, not reckless or cheap.

It is recommended that a Muslim man contract a temporary marriage only with a chaste ('Afifa) Muslim woman. Here chaste means someone who has never committed fornication and who follows the Shari'ah in her activities, and in general is honest and upright. The two attributes 'Muslim' and 'chaste' are mentioned in the following two tradition:

Imam al-Ridha (as) was asked: "Is it possible for a man to contract a temporary marriage with a Jew or a Christian?" He (as) answered: "I would prefer that he engage in Mut'a with a free Muslim woman." (Wasa'il al-Shi'a, v14, p452).

To a question about performing Mut'a, the Imam Ja'far replied: "It is permissible. So marry none but a chaste woman, for God says, 'And those who guard their private parts' (Qur'an 23:5). Hence you should not put your private parts where you do not feel safe with your dirhams." (Wasa'il al-Shi'a, v14, p452).

How to distinguish a modest and temperate woman? In the case that one may have suspicious to the unknown woman who want to offer the temporary marriage, one way is to test her, yet this is not necessary as we will discuss shortly. It was reported that a modest woman was astonished when a believer asked her to commit the sin of fornication. She thought the man committed sin by saying such thing. She did not know that it was a test with no lying meant. That was a question and not a decision to do wrong. For it was Abdullah Ibn Ya'fur who asked the Imam Ja'far al-Sadiq (as) that if she can temporarily marry an unknown woman. The Imam answered: "One could invite her to commit sin, and if she accepted he should not marry with her."

If someone makes an accusation against a woman, it is recommended that before contracting of Mut'a with her the man ask her about her situation, i.e., as to whether or not she has a husband and whether or not she is chaste. However, in general, asking is not a condition of the contract (Jawahir, v5, p165).

The rule of Jurisprudence regarding to "the principle of correctness of the acts of a Muslim" demands that one consider the act of a woman who has declared herself ready to enter into Mut'a as correct. According to this principle, whenever we are in doubt concerning the correctness of the act of a Muslim, we preserve the social and legal order by judging that his/her act was correct, unless otherwise proven by chance. Several traditions are related which demonstrate the reprehensibility of asking about the woman's situation AFTER the contract has been made.

Temporary marriage is discouraged when one has a permanent wife who is sexually available to him. 'Ali Ibn Yaqtin (ra) who was married, asked Imam al-Ridha (as) about Mut'a marriage. The Imam said to him:

"Why do you want to bother with it while God has provided you what's better (i.e., permanent wife)."

Another one also asked him about Mut'a, and the Imam (as) said:

"It is absolutely permissible and allowed to whom is not provided with (permanent) marriage, then he may act decently by resorting to Mut'a marriage. If he was provided with a (permanent) wife, then it is allowed for him (to engage in temporary marriage) when he is away from his wife (e.g., like a traveler)."

Also Imam al-Ridha (as) wrote to one of his followers:

"You should revive the Islamic law, but do not persist on Mut'a marriage where it would keep you occupied from your permanent wives, for they (permanent wives) might reject the faith and then accuse us."

The scholars consider such restricted allowance only as undesirable, but not forbidden. This is due to other traditions that make it permissible, but it is undesirable/discouraged in the case of having a permanent wife who is sexually accessible.

As we mentioned earlier, there are some differences between the temporary marriage and the permanent marriage which I now briefly pinpoint here:

1) Temporary Marriage is NOT Necessarily A Sex Relationship

The couple who want to enter in temporary marriage contract may put a condition at the time of contract that the marriage shall not be consummated. Such condition can not be put in permanent marriage and it is the religious obligation of the permanent wife to be sexually available to her husband and should be responsive to his sexual requests; and at the same time, man should not avoid intercourse for more than four month and should sleep with his permanent wife at least once each four nights.

Such sexual necessities do not apply in temporary marriage, because it has been designed for wider purposes which will be explained later. In the case that the couple put a condition that they do not have

sex, then they can only enjoy other things in a couple life. If, later, the woman agrees to have sex, the condition is resolved, and the marriage can be consummated.

This is due to the fact that the obstacle to sexual relations was the woman's unwillingness to permit anything more than what was agreed upon in the contract. But the marriage contract warrants intercourse, i.e., the marriage contract itself establishes the permissibility of intercourse. Thus if the obstacle is removed, the default contract will come into play, unless such obstacle could not be removed by the woman (e.g., permission of the father of a virgin girl). (see Matajir, v2, p300; Riyadh, v2, p116)

In other words, if the condition of non-intercourse is laid down, that is the woman's right over the man. So if she chooses to waive the condition, union is lawful.

2) Mut'a With Sex Is Strongly Discouraged For A Virgin Girl

Although a virgin girl can temporarily marry if her guardian permits, such marriage is strongly discouraged (Makrooh Muakkad) for a virgin girl "if "having sex is to be involved. Imam Ja'far al-Sadiq (as) in one tradition mentioned this and gave the reason that "it may bring shame for her family." In practice, most Muslim parents do not allow such thing either. But there is no problem for a virgin girl to temporarily marry if they put the condition at the time of the contract that the marriage can not be consummated, by saying for instance: they can just visit each other under the supervision of the parents.

However, under some circumstances, the temporary marriage (with no restriction) may become necessary even for a virgin girl if her guardian feels that there is a great possibility of committing sin for her girl due to personal and or environmental situation, and if no qualified man proposed her permanent marriage.

3) Inheritance

In temporary marriage the wife and the husband don't inherit each other, while their kids inherit from their parents. According to the Imam Ja'far (as): "Among the regulations of Mut'a is that you do not inherit from the woman, nor does she inherit from you." (Wasa'il al-Shi'a, v4, p486).

However man and woman can inherit each other if it is made a condition at the time of contract. Also it is possible that only one of the spouses may be named heir to the other, in which case the inheritance is one-sided.

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 promises." (Sahih al-Bukhari, v3, p120). Second, according to the Imam Ja'far al-Sadiq: "If they should stipulate the condition of inheritance (in the contract of Mut'a), they must hold fast to this condition." (Wasa'il al-Shi'a, v4, p486).

4) Financial Support

In this type of marriage, man is not required to financially support his wife, yet he is required to support the kids if any. However, man should financially support his wife if it is made a condition at the time of contract.

5) The Length Of The Waiting Period (Iddah)

After the expiration of marriage woman should wait for a specific amount of time before which she can not marry any one else. This is the case if the couple had intercourse, otherwise there is no waiting period. This rule also applies for permanent marriage in the case of divorce. However the length of this waiting period is slightly different. The waiting period of a temporarily married woman is equal to that of slave-girl which is different from the permanent married woman since temporary marriage is a "weaker" marriage much the same as marriage with slave-girl is a "weaker" marriage.

The length of waiting period for woman is two complete menstrual periods (about two month) for temporary marriage, if she menstruates. If the woman is of menstruating age but for some reason does not menstruate, her waiting period is 45 days. (It should be emphasized that having intercourse with a girl who has not reached to the age of puberty is forbidden in Islam).

Imam al-Baqir (as) said:

"The waiting period of a divorced (free) woman is three months, ... and what is required of a wife by Mut'a is the same as what is required of a slave."(Wasa'il al-Shi'a, v14, p484)

It has been narrated from both Imam Baqir (as) and Imam Musa (as) that:

"To divorce a slave, one must pronounce the formula of divorce twice; her waiting period is two menstrual periods."(Wasa'il al-Shi'a, v15, p469).

If the woman is pregnant, her waiting period is the remaining time it takes to give birth, provided that this time is not shorter than her regular waiting period in this case. (See al-Fiqh ala al-Madhahib al-Khamsah, by Muhammad Jawad Mughniyyah).

As for the case of free permanent married woman who is divorced, it is the clear text of Qur'an that her waiting period of three complete menstruation (about three month). In temporary marriage the couple will separate from each other automatically after the expiration date without divorce, and it is the consensus of the scholars that there is no divorce in Mut'a.

Even for the permanent marriage, the waiting period is not three month if the separation is not due to divorce. For instance see 2:234 where it prescribes a different waiting period for the case of death of husband.

The Holy Qur'an only provided some general regulations and left behind many specific regulations to be specified by the Prophet himself. For instance Qur'an does not say that we should pray two units in Fajr or how we should pray. It was the Prophet (S) who explained all these regulations which were all revelations but were not a part of Qur'an. This is the Sunnah of the Prophet which has been transmitted by his Ahlul-Bayt (peace be upon them all).

The fact is that we do NOT need to know the reasons behind the religious regulations set by Allah and His Prophet in order to obey them. These regulations are based on the infinite wisdom of Allah. However, using logic, one may find some of the reasons behind them. Yet, one can never claim these findings are the only reasons behind those regulations. Allah mentioned in Qur'an that "You have not been granted knowledge but little."

Logically speaking, the waiting period for woman has many advantages:

1. If woman is pregnant she will realized this fact within the first two months.
2. If not, this waiting period will serve as preparation time for woman to adopt a new lifestyle. It is neutral interval for rest, psychological relaxation, and the transition from one state to another.
3. In most cases in permanent marriage, the divorce is the result of dispute between the couple, and they separate from each other with broken heart and tragic feelings. It is likely that after a period of isolation, they soon realize that they need each other and they still love one another, and what they did was wrong. This period provides enough time for both couple to rethink about their behavior which may lead to re-uniting before the woman marries a different man.

However, in the temporary marriage the problem mentioned in Item 3, does not exist. The couple know from the beginning that they will separate from each other after a fixed period of time, and with that understanding they entered to such contract. Therefore there is no surprises nor is any hard feelings when the marriage period expires. They need no extra time to rethink about returning to each other or to pass the period of hard feelings and mistreatments which is the case when permanently married couples divorce. Thus it seems reasonable why in the temporary marriage, the waiting period is a little shorter.

Moreover, as we mentioned, the waiting period for temporary marriage is equal to that of the slave-girls which does not follow the rule of permanent marriage in this regard.

According to a Sunni report:

Ibn Abbas was asked: "Is Mut'a fornication or marriage?" He answered: 'Neither the one nor the other.' The questioner then asked: "Well then, what is it?" Ibn Abbas replied: "It is Mut'a', just as God has said." The questioner continued: "Is there a waiting period in Mut'a?" He replied: "Yes, a menstrual period." He was also asked: "Do the husband and wife inherit from each other?" He answered: "No."

Sunni reference: Tafsir al-Kabir, by Fakhr al-Razi, v3, p286

In the above Sunni tradition, it is attributed to Ibn Abbas that the waiting period for Mut'a is only one menstrual period. However, this is not acceptable for us due to more accurate traditions from the Imams of Ahlul-Bayt which explain that it is two menstrual periods.

6) The Time-Period Of Marriage

The time period of a temporary marriage must be expressed at the time of contract in a manner which allows no possibility of increase or decrease. According to the Imam al-Ridha (as): "... (Mut'a must) be a stipulated thing for a stipulated period." (Wasa'il al-Shi'a, v14, p479).

The Imam was once asked if it is possible to conclude a contract of Mut'a for 'one or two hours'. He replied, "No exact time limit is understood from 'one or two' hours." (Wasa'il al-Shi'a, v14, p479).

Based on the opinion of some of the scholars, if the stipulated period is not mentioned at all in the text of the contract, the marriage cannot take place and the contract is invalid. (Matajir, v2, p299; Sharh al-Lum'a, v5, p287; Jawahir, v5, p169).

Some scholars, however, are in the opinion that if the time period is not specified then the marriage reverts to a long-term marriage and separation can only happen by death or by divorce. In this case, all the rules of the regular marriage apply. They base their opinion on a tradition from Imam Ja'far Sadiq (as) who said: "If a time period is stated, the marriage is Mut'a; if it is not stated, it is permanent." (Wasa'il al-Shi'a, v14, p469).

al-Shahid al-Thani comments that the above tradition does not state explicitly that the desire of the two parties to the contract was to establish a marriage of Mut'a, but then they fail to mention the time period. On the contrary, the purport of the Hadith is that marriage with a stated period is Mut'a while marriage without a stated period is permanent marriage. (Sharh al-Lum'a, v5, p287).

There is no upper or lower limit to the duration of the time period. It makes no difference if the period is extremely long, so that one doubts whether the parties will survive its duration; or if it is extremely short, so that there is no possibility of consummation. In other words, any time period is permissible, so long as it is specific and both sides are aware of the situation and are satisfied. (Sharh al-Lum'a, v5, p285).

There are traditions which indicate that it is permissible for the agreed upon time period either to be joined to the moment of establishing the contract or to be postponed. (Wasa'il al-Shi'a, v14, p446).

As for the possibility of postponing the beginning of Mut'a, this is conditional upon the stipulation of the day and the month in which it is to begin. For example, if the man states that the contract will be for one month but fails to stipulate exactly when that month is to begin, the contract is invalid because the exact time is not stated. But if the contract is meant for both sides to be in effect immediately, without any mention of a postponement, then the marriage begins as soon as the contract is made, and the marriage is valid. (Matajir, v2, p300; Jawahir, v5, p171).

7) The Due Dowry Vs. Consummation

In the permanent marriage the consummation of marriage is only due to sexual act. But the temporary marriage is different from the permanent marriage because there is an extra form of consummation, that is the consummation of the time period. Therefore the consummation of the time period also must also be taken into account for the issue of dowry. (Masalik, v1, p538).

The above explanation follows that once the Mut'a contract is made the wife receives the whole dowry, whether or not the husband consummates the marriage before the time period expires. Starting the Mut'a marriage means consuming the time period which requires full dowry.

The wife is entitled to the dowry as long as she places herself at her husband's disposal and does not present him with any obstacles to consummating the marriage. When the time period is over, the wife is freed from the obligations of the contract. (Matajir, v2, p300; Jawahir, v5, p170).

If the couple made a condition at the time of contract to avoid or limit sex, then the woman is not religiously obliged to be sexually available to her husband and she is still entitled to the dowry.

The woman may ask for the whole amount of the dower at the beginning of the marriage. In this case, the man may not take back any of the dower under any circumstances, unless for some reason the contract turns out to be invalid from the beginning. Several traditions are recorded which establish this point without question. (Wasa'il al-Shi'a, v14, pp 482-483).

In a situation where a contract is made, but BEFORE THE BEGINNING of the time period the man decides not to go through with the marriage but to 'give back' to the woman the contracted time, she is entitled to one-half the dower. The situation is similar to divorce before consummation in permanent marriage. (Sharh al-Lum'a, v5, p285; Shara'i, v2, p24; Matajir, v2, p300; Masalik v1, p538).

Since the consummation of time is taken into account in the issue of dowry for Mut'a, it follows that if a woman who has made a contract of Mut'a separates from her husband on her own free will before the end of the time period, whether before or after consummation, the man is allowed to reduce the dower in proportion to the amount of time by which the time period of the Mut'a has been reduced, provided that he has not already paid her the full dower. (Sharh al-Lum'a v5, p285).

Thus, for example, if the woman's dower is \$300 and the time period 30 days; and if the woman decides to avoid her husband after 20 days, her husband would reduce the dower by one-third. Hence, if the woman should fail to fulfill any of the conditions of the marriage for the whole time period, she forfeits the whole dower.

Numerous traditions have been recorded concerning this particular point. For example, the Imam Ja'far (as) was asked if it is permissible to hold back part of the dower if the woman fails to put herself at her husband's disposal. He replied: 'It is permissible for you to hold back what you can (i.e., what you have

not already given her). so if she goes back on her word, take from her (in proportion to) the amount she has broken the contract. (Wasa'il al-Shi'a, v14, p481).

However, if the woman fails to provide the man with conjugal rights because of an excuse sanctioned by the Shari'ah, such as menstruation or 'fear of an oppressor', then the dower can not be reduced. A man came to the Imam Ja'far and said: "I contracted Mut'a marriage with a woman for one month for a given amount. But the woman only came to me for part of the month, and part she stayed away."The Imam replied: "An amount should be held back from her dower equivalent to the amount she avoided you, except for the days of her menstruation, for those belong to her."(Wasa'il al-Shi'a, v14, p481).

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. In this case, if the man has already given the woman the whole dower, she must return it as soon as the invalidity of the contract becomes apparent. If she no longer possesses the amount which must be returned, she is liable for it, no matter how it may have left her hands, whether, for example, she has spent it or it was stolen. (Matajir, v2, p301; Sharh al-Lum'a v5, pp 287-288).

If the woman passes away during the period of the Mut'a, even if it be before consummation, her dower may in no way be lessened, exactly as is in permanent marriage. (Sharh al-Lum'a, v5, p286).

In the next part, we will discuss the necessities and the advantages of the Temporary marriage, Insha Allah.

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