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## A STUDY OF *NIKĀH AL-MUT'AH* AND ITS IMPLICATIONS FOR FEMININE DIGNITY

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### **Abstract**

*A unique contradistinction between the Sunni school of thought and the Shi'ah school of thought is the concept of temporary marriage, simply put as nikāh al-mut'ah. While the Sunnis strongly opposed the practice, it is an approved system of marriage among the Shi'ah. Although, the two schools of thought unanimously agree that it was a practice initially approved by Islam, the Sunnis believed that the Qur'ānic verse which initially approved it was later abrogated and the practice was banned. A display of intellectual discourse was therefore embarked upon by both groups. That notwithstanding, this paper is out to assess the implications of the legality of the practice of mut'ah for feminine dignity in the contemporary period. Historical and Descriptive research methods were used in this exercise. The paper concluded that the dignity of women which Islam is meant to protect would be jeopardised if Nikāh al-Mut'ah was legalised, as this type of marriage was a clever way of legalising adultery, fornication and prostitution.*

**Keywords:** *Nikāh, Mut'ah, Feminine, Sunni, Shi'ah, Dignity.*

### **Introduction**

The age-long hostility, oppression and humiliation against the woman seem endless in all cultures and civilizations. Right from the Babylonian civilization up to the eve of Islam, she was given different unpalatable descriptions and negative nomenclatures. In the hand of those who seem to have sympathy for her, she was no more than an instrument of pleasure and possibly procreation.<sup>1</sup> In the Egyptian civilization; she was an object of entertainment in the king's palace. Her plight in Greek and Roman civilizations was equally degrading, and this did not improve, even in the face of some monotheistic cultures.<sup>2</sup> From the Judaistic perspective, she was the brain behind the fall of man, as she was instrumental to his committing a grave sin against God.<sup>3</sup> A means of avoiding her was the adoption of celibacy and spinsterhood by the patriarch's doctrine, as doing this was tantamount to avoiding 'an enviable evil, an eternal mischief, an attractive calamity, a domestic risk and a charming and decorated misfortune.'<sup>4</sup>

In the contemporary period where women claim to have liberated themselves from the bondage of men's persecution and humiliation, the situation

has not improved. A fascinating description of the modern form of exploitation of women by men is aptly expressed by Mary Ali thus:

She is degraded as a sex symbol and coerced into removing most of her clothing in public so that men can desire her with their eyes. Whenever a product is to be advertised, a scantily clad woman is put next to the product to attract the attention of the buyer.<sup>5</sup>

The above indicates that a woman has become an object of advertisement; she is subjected to man's sexual desire in various forms either to dance half naked in the presence of visitors in the form of participating in beauty contests where men serve as judges, or in the form of serving guests at occasions. Her claim of equality with her male counterpart becomes defeated as she only competes with him in what he does in form of dressing and profession, as if she cannot think on her own or as if she is not creative enough.

Prior to the coming of Islam to Arabian land, women were exposed to serious humiliation to the point of being buried alive to avoid public disgrace and embarrassment. The Qur'an vividly confirms this when it reads: "And when the news of (the birth of) a female (child) is brought to any of them, his face becomes dark, and he is filled with inward grief! He hides himself from the people because of the evil of that whereof he has been informed. Shall he keep her with dishonour or bury her in the earth? Certainly, evil is their decision (Q.16: 58-59)." This shameful disgrace was however brought to an end with the advent of Islam which restored to her, her dignity and honour and described her a complete human being.

A spectacular means of restoring woman's honour to her can be appreciated in the institution of marriage as laid down by Islam. The religion acknowledges the fact that sexual urge is a natural instinct in man which must be satisfied in a modest way by seeking a woman's hand in marriage so that she becomes lawful to satisfy the sexual urge with. The objectives of marriage between a man and a woman are succinctly mentioned in the following verse of the Qur'an:

He created for you your mates from among yourselves that you may find tranquillity in them and has put love and mercy between you (Q. 30: 21).

Stressing further the virtue of marriage in ensuring a virile society, Sayyid Qutb submits:

The family which is formed through a public marriage in which a woman is publicly declared as a wife to a man will certainly lead to a high degree of security and sense of responsibility. It is the most appropriate system that befits the nature and the need of man and woman as human beings

whose life objectives are loftier and higher than those of other animals and beasts. Even though it guarantees this goal, among others, it (also) leads to realization of human society and it guarantees peace for this society, peace of mind, peace at home and peace in the society in the long run.<sup>6</sup>

Islam further declares, in clear terms, fornication and adultery as unlawful, and sees them as the root of social disruption. It also condemns celibacy for its unnatural tendency.

In spite of these, some criticisms are still levelled against the religion on issues related to the treatment of women, namely seclusion of women, imposition of a dress code which makes them veil themselves from public, their confinement from the public and allotting them half of what their male counterparts take in an inheritance. As Muslims are still struggling to educate the public on how the religion has come to liberate women, the issue of temporary marriage as approved by a group of Muslims seems to be a serious setback to the Muslims' presentation of Islam's liberation of women to doubting Thomases. It has become a thorny issue between the Sunni Muslims who forbid it and the Shi'ah Muslims who permit it. Not this alone, the recent attempt of the Islamic Republic of Iran to legalise temporary marriage as a means of checking the country's menace of street prostitution has generated hot debates among scholars. The suggestion to take this step was made consequent upon the increase in the number of women who work as prostitutes in Iran despite frequent police crackdowns. By implication, *muṭ'ah* marriage will legitimise sexual relations between men and women and as such eradicate social corruption. Whatever the case may be, this paper shall attempt to study the concept of temporary marriage as perceived by those who permit it and those who oppose it. This will be juxtaposed with contemporary discourse on women dignity.

### ***Nikāh al-Muṭ'ah* in the Qur'ān and the Hadīth: A Critical Assessment**

*Nikāh al-muṭ'ah* could be described as a form of marriage which more or less has same characteristics as permanent marriage but with the condition that a duration for the marriage is mentioned. It refers to marriage of comfort believed by the Shi'ah to have been lawful based on injunctions of the Qur'ān and Sunnah of the Prophet. In other words, the Shi'ah strongly uphold temporary marriage as acceptable in Islam. The basis of their stand is a verse of the Qur'ān which reads:

Also (prohibited are) women already married, except those whom your right hands possess: Thus hath Allah ordained (prohibitions) against you; except for these, all others are lawful, provided you seek (them in marriage) with gifts from your property – desiring chastity, not fornication. So those of them whom you enjoy (*istamta'um*), give them their dowry...(Q4: 24).

To the Shīʿah, the phrase ‘so those of them whom you enjoy’ (*istamtatū*) in the above verse, implies the permissibility of *mutʿah*. Rather than making the clause a continuation of the preceding clause which explains the legitimacy of seeking sexual relationships with women through marriage or the purchase of slaves, and giving them their dowry for the enjoyment made of them through such marriage, the Shīʿah see the clause *istamtatū* as an exposition of a further kind of marriage not previously mentioned and which also requires that the man pays the wages to the wife for such type of marriage as well. The Shīʿah believe that a better understanding of the clause on *mutʿah* could have been facilitated if not for the omission of the words *ila ajalīn musamma* (for a specified term) which according to them was in the original version of the Qurʾān, but which could no more be found in the Qurʾān in its present form.<sup>7</sup>

In actual fact, the portion of the Qurʾān from where the issue of *nikāh al-Muʿah* is extracted cannot be said to be an intention to declare the practice legal, as its main theme is impediments to marriage. In our own view, the phrase “so those of them whom you enjoy” may imply the real wife, as ‘enjoyment’ is not restricted to a woman married temporarily. We are therefore satisfied with the translation of Yusuf Ali that the phrase in the verse should read:

.....Except for these, all others are lawful, provided you seek (them in marriage) with gifts from your property, - desiring chastity, not fornication. Give them their dowry for the enjoyment you have of them as a duty; ... (Q.4:24).<sup>8</sup>

The Qurʾān further confirms that Muslims are exonerated from any form of sexual indecency so far it is limited to their wives and those their right hands possess, and that whoever exceeds that limit is considered a transgressor. The relevant Qurʾānic verses say for instance:

Successful indeed are the believers.  
 Those who humble themselves in their prayers.  
 Who avoid vain talk.  
 Who are active in giving zakat.  
 Who guard their modesty.  
 Except with those joined to them in the marriage bond,  
 or (the captives) whom their right hands possess, -  
 for (in their case) they are free from blame.  
 But those whose desires exceed those limits are transgressors.  
 (Q 23:1-7)

Looking at it from the mirror of *hadīth*, there are numerous *ahādīth* where the Prophet was said to have given the option of *mutʿah* to castration. A *hadīth* narrated by Abdullah says for instance:

We used to participate in the holy battles led by Allah's Apostle and we had nothing (no wives) with us, so we said, "Shall we get ourselves castrated?" he forbade us that and then allowed us to marry women with a temporary contract; and recited to us – "O you who believe! Make not unlawful the good things which Allah has made lawful to you, but commit no transgression" (5: 87). Narrated Abu Huraira: I said, "O Allah's Apostle! I am a young man and I am afraid that I may commit illegal sexual intercourse and I cannot afford to marry." He kept silent, and then repeated my question once again, but he kept silent. I said the same (for the third time) and he remained silent. Then repeated my question (for the fourth time), and only then the Prophet said, "O Abu Huraira! The pen has dried after writing what you are going to confront. So (it does not matter whether you) get yourself castrated or not."<sup>9</sup>

The above *hadīth* raises some questions. In the first instance, the first part of the *hadīth* did not directly report the statement of the Prophet on temporary marriage. Abdullah only mentioned that the Prophet allowed it. He did not also specify the actual battle at which the Prophet made a categorical statement on the lawfulness of *muṭ'ah*. Apart from this, the actual number of days or months such a battle lasted to have warranted the Muslims' demand for castration in the absence of their legal wives, was not mentioned. One equally doubts the meaning of the phrase "we had nothing with us" to have implied wives, as well as *nikāh al-mar'at bi ath-thawb* to mean temporary marriage. In addition, one wonders why the Qur'ānic verse acclaimed to have been quoted by the Prophet cannot imply the Muslims marrying women whom Allah had made lawful and with whom they were to commit no transgression in the form of marrying beyond the stipulated number of wife, as approved by the Sharī'ah. The second aspect of the *hadīth* as narrated by Abū Huraira further confirms this assertion, as the Prophet neither recommended temporary marriage nor castration to Abu Hūraira who could not afford to marry and who was thus afraid of committing illegal intercourse.

There are numerous *ahādīth* believed to have declared *nikāh al-muṭ'ah* forbidden. The Sunni Muslims rely highly upon those *ahādīth* as the basis of their argument of its prohibition. The irony of it is that some of these *ahādīth* are attributed to Imam 'Alī. In a *hadīth*, it was narrated that Jābir bin Abdullah and Salama bin Al-Akwa<sup>c</sup> were speaking in support of the Prophetic approval of *muṭ'ah* but with a remark that 'Alī made it clear that the Prophet had declared it unlawful.<sup>10</sup> Shaykh al-Tusi, a great Shī'ah scholar considered the *ahādīth* attributed to 'Alī on the prohibition of *muṭ'ah* as authentic, but maintained that he did so for his personal protection using the principle of *taqiyya*.<sup>11</sup> This assertion

may not be accepted by us, in view of the highly placed status of 'Ali amongst the Prophet's companions and in view of the gravity of such a statement on a practice which is so vital to the Shī'ah Muslims.

### A Critique of the Shī'ah's View on *Mut'ah*

The Shī'ah accord *nikāh al-Mut'ah* the same status as permanent marriage in terms of the conditions and impediments. It requires a declaration and an acceptance with the addition that the amount to be paid as a dowry to the woman and the duration of the marriage are specified. The conditions concerning the time of meetings be it daytime or night time and even the number of sexual acts for a given period could form part of the agreement. Just like in permanent marriage, *mut'ah* can only be contracted with a Muslim, not an unbeliever. The Muslim male cannot however contract a *mut'ah* marriage with a slave where he already has a free wife, while he can contract temporary marriage with a slave girl only with the permission of her master. He cannot also contract temporary marriage with the daughter of his sister-in-law or brother-in-law without his wife's permission.<sup>12</sup>

To the Shī'ah, *mut'ah* is considered part of the mercy of God to save people from the sin of fornication and deliver them from God's retribution. Imam Ja'far was reported to have said: "it is reprehensible in my eyes that a man should die while there yet remains a practice of the Messenger of God that he has not adopted." When he was asked whether or not the Prophet practised *mut'ah*, he replied in affirmation and buttressed this with the Qur'ānic verses: "and when the Prophet confided to one of his wives a certain matter" up to the words "and virgins too" (Q. 66: 3-5).<sup>13</sup> Although the Imam was able to come with this Qur'ānic reference in support of his claim, which of course, the Sunnis would not concur with, he could not state precisely when the Prophet engaged in *mut'ah* and the woman or women he contracted the temporary marriage with. The reason for the permissibility of *mut'ah* by the Shī'ah is given by Imam Ali ar-Riza who was reported to have said:

*Mut'ah* is permitted and absolutely allowed for the one whom Allah has not provided with the means of performing permanent marriage so that he may be chaste by performing *mut'ah*.<sup>14</sup>

The reason given above may sound logical; its logicity however suffers credibility, as it implies that a man may struggle to get what to use to pay the dower of his temporary wife, but may not be ready to bear responsibility that may come thereof. A pertinent question is, should a man get a temporary wife who falls sick within the period of the contract, will the husband be responsible for the medical expenses on the woman, or not? If the answer is in the affirmative, then the man could be said to have the potential of a permanent marriage; and if not,

the man becomes irresponsible and the woman becomes as useless as an object which can be used and dropped at will by the husband.

Another important fact is that there was no instance of a situation where the Prophet recommended *mut'ah* for those who could not afford permanent marriage. The Prophet rather recommended fasting saying: "O young people! Whoever among you is able to marry, should marry, and whoever is not able to marry, is recommended to fast, as fasting diminishes his sexual power."<sup>15</sup> At another instance, *Sahih Bukhari* reported a *hadith* narrated by Abdullah that:

We were with the Prophet while we were young and had no wealth whatever. So Allah's Apostle said, "O young people! Whoever among you can marry, should marry because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power."<sup>16</sup>

To the Shi'ah, *mut'ah* is a means of checking fornication and adultery. The high rate of fornication in the society is therefore attributed to the prohibition of *mut'ah* which was facilitated by 'Umar who did not only prohibit it but also threatened to stone its practitioners to death. They therefore condemn 'Umar's action in its totality for prohibiting what the Prophet had approved. The basis of their argument is that the *hadith* attributed to 'Umar claiming that the Prophet had banned *mut'ah* before his death was only known to 'Umar whereas such a *hadith* ought to have been transmitted by other companions of the Prophet as well. They also faulted the *hadith* as reported by ibn Sabra which banned *mut'ah* as weak, for being reported by a single person and that such a *hadith* could not abrogate a Qur'anic verse acclaimed to have allowed it.

The argument that *mut'ah* is meant to check fornication and adultery may not be taken with all seriousness. We therefore opine that the institutionalisation of polygyny as a form of marriage could solve the problem rather than *mut'ah*. This is because polygyny is out to solve the instance of women out-numbering men, as well as the situation where the husband is stronger than his wife sexually. In Islam, polygyny was said to have been adopted consequent upon the large number of martyrs in the battle of Uhud. So, if mere temporary marriage had been permitted with the widows and orphans of the martyrs, justice would not have been considered to have been done to the martyrs. Polygyny therefore provides a way of catering for unsupported women in the society. It is a source of joy, succour and security for those members of the society who naturally would have felt neglected and unwanted and which *mut'ah* cannot provide. Polygyny, although practised for different reasons including, lust, fame and economic reasons, is recommended on humanitarian grounds, sympathy and love and on the desire to see bereaved members of the family through a life of uncertainty and hopelessness that could have been guaranteed by *mut'ah*.

Furthermore, the desire for sexual companionship, especially when the pregnancy and lactation of a wife dictate abstinence makes polygyny a popular system of marriage among the Yoruba and Hausa ethnic groups of Nigeria. They thus prefer to have as many wives as they can rather than having immoral sexual dealings with unauthorised women. Since, polygyny is also allowed in Shī'ism, it is possible that the Shī'ah do not consider polygyny to solve these social problems.

### *A Critique of the Sunni's View on muṭ'ah*

It is generally believed by both the Sunni and Shī'ah Muslims that *muṭ'ah* was practised before the prophethood of Muhammad in Makkah<sup>17</sup> and that the Prophet met the practice when he migrated to Madinah.<sup>18</sup> The two groups also believe that the practice was adopted by Islam after fulfilling the required conditions attached to it.<sup>19</sup> The point of departure by the two groups is the terminal point of the practice. While the Sunni Muslims believe the practice has been terminated by Qur'anic and prophetic injunctions, the Shiah uphold it, claiming it is relevant to date. The Sunnis believe that the initial verse which allowed the practice had been abrogated by some other verses which allow only the 'wives and those whose one's hands possess' (Q23:1-6) and so exclude the 'wife of enjoyment' from the list of permissible kinds of marriage, as mentioned earlier in this paper. Some prophetic traditions are equally cited by the Sunni scholars to indicate that the Prophet had banned the practice before his death.

However, some discrepancies are observed in the various *ahādith* cited in favour of the prohibition of *muṭ'ah*. These are noted in the periods of the prohibition which are given as:

- i. on the occasion of the Khaybar expedition (7 A.H);<sup>20</sup>
- ii. on the occasion of the Umrah known as al-Qadza (7 A.H);<sup>21</sup>
- iii. at the conquest of Makkah (8 A.H);<sup>22</sup>
- iv. in the Autas expedition (8 A.H);<sup>23</sup>
- v. in the Tabuk expedition (8 A.H);
- vi. in the farewell pilgrimage (10 A.H).<sup>24</sup>

The discrepancies become obvious in view of the fact that there are *ahādith* which permitted the practice in the year Makkah was conquered, whereas there are still *ahādith* which put the year of its prohibition as the Day of Khaybar (three years before the conquest of Makkah). It would therefore not be reasonable enough to admit that the Prophet who had initially banned the practice could have allowed it thereafter. We however concur with the view of Muhammad 'Ali who writes:

...if the traditions which speak of temporary marriages having been contracted are accepted as true, the right explanation seems to be that the practice of *muṭ'ah* was a deep-rooted one, and that repeated injunctions had to be given by the Prophet,



or that all people were not at once apprised of the order of its prohibition.<sup>25</sup>

Muhammad 'Ali believes that the report that the Prophet had sent a messenger to inform people of the legality of temporary marriages in the battle of Autas, in the 8<sup>th</sup> year of Hijrah, was misleading. He therefore opines that the report might have been carried by someone who had not, up to that time, been informed of the illegality of the practice since the Khaybar expedition; and that 'Umar had to enforce the prohibition and made a public declaration that temporary marriage was not allowed in Islam when he observed that some men still remained under a misconception that it was still allowed.<sup>26</sup>

### **Implications of *mut'ah* for women's dignity**

In the first instance, the concept of *mut'ah* implies that a woman is an object of enjoyment that can be rented by a man for a specific period and that she will receive certain amount for the service she renders. This concurs with the view of a scholar that:

In some works a special term is applied to women who participate in *mut'a musta'jara* or 'rented woman'. *Mut'a* is considered a kind of 'rental' because in general a man's basic aim in this kind of marriage is the sexual enjoyment of a woman, and in return for his enjoyment the woman receives a certain amount of money or property.<sup>27</sup>

From the above, it becomes difficult to differentiate women participate in *nikāh al-mut'ah* from commercial sex workers who are engaged by men to satisfy their sexual needs in exchange for payment for services rendered. The fact that *mut'ah* prescribes the involvement of the parents of the woman before it becomes legal services as the only difference between *mut'ah* and prostitution. That such a marriage lacks the permanent bond of the type which requires constant care and attention towards a wife and children further makes men irresponsible and women mere objects of enjoyment. The instance where the Prophet was said to have permitted *mut'ah* also gives the impression of lust and desire for sexual affairs especially on the battlefield where the Muslim soldiers had no access to their legitimate wives. One wonders if there could have been any urge for sexual relations in a serious battle fought in the name of Allah.

In addition to the above, the fact that *mut'ah* is proposed mostly by a woman seems to jeopardise the dignity of women all the more. Yann cites Shahla Haeri's *Law of Desire: Temporary Marriage in Iran*, where a woman who was totally cloaked in a black veil approached a man for a month of temporary marriage. The woman however refused to remove her veil for proper scrutiny by the man. The man grudgingly accepted the offer, agreed to a contract of three days and nights; followed her to her home after performing the marriage. The

woman eventually took off her veil and astonished by her beauty and charm, the man sought for extension of the marriage which the woman refused to grant.<sup>28</sup> From this, it could be seen that the woman used her initiatives to choose her companion and she later rejected him after obtaining the satisfaction she desired. The fact that the woman was wealthy is indicative of her using her affluence to entice the man, and dropped him after – a practice that might be possible for wealthy widows. A receptionist of a hotel in Tehran admitted “our clients are young men with older women” and that the hotel admitted about 100 couples per week with documents showing they were temporarily married.<sup>29</sup>

As much as one could have concluded that temporary marriage could only be concluded with unchaste women, the Shīʿah’s condition that a Muslim man can only conclude a temporary marriage with a chaste woman who has never committed fornication and who follows the Sharīʿah in her activities, defeats this assumption. But then, virginity is not considered as a prerequisite for real marriage in Islam in spite of the fact that the Prophet encouraged Muslims to look for virgins to marry. It is however reprehensible to contract a marriage with a virgin unless with the permission of her father.<sup>30</sup> One then wonders how a responsible father will sanction a temporary marriage for his chaste and virgin daughter. Virtually, all the *ahādīth* in support of *muʿah* indicate that the consents of parents were not sought. Consider this *hadīth* for instance:

Sabra bin Maʿhad al-Juhany said: “I was with my cousin when we passed by a woman who liked my youth and a robe which my companion had. So she offered temporary marriage with the robe as the dowry. I married her and spent the night with her...”<sup>31</sup>

In another *hadīth*,

Sabra Juhany reported: “Allah’s Messenger (may peace be upon him) permitted temporary marriage for us. So I and another person went out and saw a woman of Bani ‘Amir, who was like a young long-necked she-camel. We presented ourselves to her (for contracting temporary marriage), whereupon she said: What dower would you give me? I said: My cloak, and my companion also said: My cloak. And the cloak of my companion was superior to my cloak, but I was younger than he. So when she looked at the cloak of my companion she liked it, and when she cast a glance at me I looked more attractive to her. She then said: Well, you and your cloak are sufficient for me. I remained with her for three nights, and then Allah’s Messenger (May peace be upon him) said: He who has any such woman with whom he had contracted temporary marriage, he should let her off.”<sup>32</sup>

The point we are trying to make in the above *hadīth* is that none of the women contacted for temporary marriage sought the consent of their parents, as no parent would approve such a marriage which has no future. If women could bring themselves so low to the extent of contracting temporary marriages for a dower of a cloak at that period, one is sure that its permissibility nowadays would have been widely acknowledged, more so now that poverty strikes more on women. Fatemeh Sadeghi, a woman activist attributes women's involvement in the practice of temporary marriage to poverty.<sup>33</sup> *Nikāh al-Mut'ah* thus provides solace for them to "lie beside a Muslim man for a few miserable minutes and earn the pittance that sustained their wretched lives."<sup>34</sup>

Furthermore, the chastity of a woman who engages in series of temporary marriages with different men at different periods is doubted. What then differentiates her from a prostitute? It is understandable for a man who enjoys temporary marriage to have it with women who enjoy it as well, in line with the Qur'ānic injunction that the fornicator should marry not but a fornicateress or an idolateress, and the fornicateress none shall marry her but a fornicator or an idolator, that is forbidden to the believers (Q24: 3). No wonder Fatemeh Rakeh, a female former parliamentary deputy observed that temporary marriage makes it difficult for young women to later find permanent husbands, while the future of children from such marriages are at stake.<sup>35</sup> The consequence of temporary marriage on women who partake in it and the products of such a marriage are further reiterated by Camelina thus:

Children born of temporary marriages face difficulties in getting identification papers needed for school and work. Without these papers, they are shut off from family inheritance and from government assistance normally available to poor or orphaned kids. The shame follows them all their lives. Women who engage in temporary marriages can find themselves locked out of chances to get better-paying jobs and shunned by their families. For them, the name of the brief marriages – *sigheh*- becomes an insult.<sup>36</sup>

The fact that there is no inheritance between husband and wife in *mut'ah* also undermines the dignity of women. In the pre-Islamic period, women were not allowed to partake in the property of their husbands, neither could they inherit anything from the property of their deceased husband. A replica of this undignified status accorded womenfolk in pre-Islamic times seems to resurface in the institution of *mut'ah*. This is irrespective of the argument that one could make it a condition in *mut'ah*, as this is not obtainable in a permanent marriage.

In addition, such a woman is expected to observe waiting period (*'iddah*) if the husband should die. This is in line with the view of Imam al-Baqir who says:

For every marriage, if the husband should die, the wife must

observe a waiting period of four months and ten days. It makes no difference whether she is free or a slave, and whether the marriage was permanent or temporary.<sup>37</sup>

The status of a woman who engages in *muʿah* marriage is further undermined in the scholars' argument on her waiting period in case of the death of her husband as observed above. The fact that she is required to observe one and a half month of waiting period in case of divorce just like a slave girl, makes scholars like Shaykh al-Mufid al-Sayyid al-Murtada and some other authorities to opine that the waiting period of a temporary wife whose husband dies is two months and five days just like a slave girl.<sup>38</sup>

The story of how Caliph ʿUmar was construed as the brain behind the Sunni's condemnation and eventual ban of temporary marriage piously related by the Shiʿah who believe that he did so because of his personal animosity toward Imam ʿAli also has its implications. According to Yann, Caliph ʿUmar attempted to refute the claim of ʿAli who used to boast that he could not but have intercourse with any of his wives every night, and so Umar invited Ali to his house one day and made him to spend the night in his house. On the second day, ʿUmar was said to have asked ʿAli: "Do you remember to have claimed to do such and such act every night?" To this question, ʿAli replied affirmatively. ʿUmar then said: "Well, last night you were at my house and had none of your wives with you." ʿAli is claimed to have answered that he concluded a temporary marriage with ʿUmar's sister. This so enraged ʿUmar that he rushed out of the house and immediately ordered the banning of *muʿah* marriage and the stoning of those who continued to practise it.<sup>39</sup>

While the Shiʿah intend to emphasise ʿUmar's personal animosity toward Imam ʿAli, one rather appreciates Imam ʿAli's large heart for accepting Umar's invitation and Umar's readiness to host him. This, to us, indicates the good rapport between the two sages. It further indicates that the assumed rivalry between ʿUmar and ʿAli is rather imagined than real. To us, this story should be considered as fabricated, as it gives the impression that Imam ʿAli could hardly control his sexual needs so he would go to any lengths to satisfy them. ʿUmar's sister could also be accused of being so morally lax to have concluded and consummated temporary marriage within a very short period. One also wonders the *waliyy* to such a marriage within a night and the amount of dower agreed upon by the two personalities. The implication of the above submission is further stressed by Yann with particular reference to feminine dignity when he writes:

We may observe here the complete non-existence of feminine dignity; had the caliph's sister not been there, any maidservant would have served the purpose, if it had not been necessary to humiliate ʿUmar's contemptible memory by reducing his sister to the level of mere release for the virile Imam's sexual drive. The perfectly irrational justification for

the marriage of pleasure and refusal to punish its abuses would be strengthened in Shi'ite eye because the ban emanated from the despised caliph.<sup>40</sup>

Generally speaking, the quoted reference implies that *nikāh al-mut'ah* could take place between two people living under the same roof for a minimal amount of time. There is no doubt that such a contract creates a permissible alternative to entering into a relationship on the premise of future permanent marriage and this can be a stumbling block to achieving tranquillity and peace through a successful union. The practice thus negates the spirit of partnership, companionship and commitment in shouldering the responsibility of rearing and nurturing of children, as marriage is thus relegated to mere satisfaction of sexual urge.

### ***Mut'ah and HIV/AIDS Scourge***

Epidemiological findings have revealed that the presence of HIV in the semen, vaginal/cervical secretions and blood, makes sexual intercourse one of the major routes through which the obnoxious virus can be transmitted. This informs the conclusion of the WHO and UNAIDS expert consultation that unsafe sexual practices are responsible for the vast majority of HIV infections.<sup>41</sup> Homosexual and heterosexual intercourses are therefore part of the means of HIV transmission. As such, *nikāh al-mut'ah* cannot but be implicated as one of the means of transmitting HIV. This is because the practice encourages a woman who may be a carrier to move from one husband to another. Hypothetically, a *mut'ah* wife may transmit the virus to her new husband who will in turn transmit it to his wife or wives. After the expiration of her terminal marriage with him, she can go on and on transmitting it to her numerous husbands who will also transmit it to their wives. If any of the husbands should die and his wives decide to re-marry, they too will transmit it to their new husbands who will in turn transmit it to their wives, and before this is noticed, the whole society would have been in trouble.

It needs to be mentioned that the practice of polygyny among Muslims has been assumed to be responsible, to a large extent, for the spread of HIV amongst them. While speaking in favour of this, a Muslim medical laboratory scientist gives a description of the process of HIV transmission in a polygynous family thus:

...lets assume that a deceased who died of AIDS left behind three wives who by implication may be HIV positive, though looking healthy.... So the widows are most likely to get married to other men who (may) already have other wives ranging from one to three. Each of the widows will in turn transmit the virus to her new husband who will in turn transmit it to his wife (or wives). One can imagine how many

men, women and children will eventually be infected and if this trend begins a vicious cycle, the number of HIV/AIDS victims will keep ascending.<sup>42</sup>

The above observation looks logical and convincing, though it has been faulted by Sarkinfada, who pointed out some shortcomings in it. These are:

1. the failure of the author to demarcate between polygamy and polygyny in relation to marriage in Islam. To him (Sarkinfada), “polygamy means either having more than one wife to a husband or having more than one husband to a wife, while polygyny is a marriage in which one man has more than one wife.”<sup>35</sup> So polygyny is allowed in Islam and not polygamy;<sup>43</sup>
2. his emphasis on marriage over biological relationship; as biological relationship may allow an unmarried or monogamous individual to be more ‘polygamous’ in terms of extra-marital relationships than a faithful polygamous individual;
3. his failure to consider the “provisions within Islamic Jurisprudence of free-from-defects of couples before marriage, *khiyar* (the option of continuing with or separating from a partner who is discovered to have a defect after marriage), the general ethics of marriage life between couples as well as *istibra’i* and the screening of a partner who loses his partner to AIDS.”<sup>44</sup>

The points raised by Sarkinfada in defence of polygyny cannot be applied to *muḥāh*. In reality, the practice of *muḥāh* should be seen as one of the means of transmitting HIV, as the system does not give room for proper scrutiny before marriage is contracted. That apart, a *muḥāh* woman who takes to this practice for financial reason can be said to be a person of little faith. If such a woman is therefore HIV positive, she may deliberately decide to spread the virus indiscriminately. The instance of a deceased female student in Moi University could be used to buttress this assertion. The lady who was HIV positive decided to spread the virus, and before her death, she was said to have left behind a note thus:

I decided to spread the virus indiscriminately in the campus (and have no apologies), because its here I got it and I intend to leave it here. I’ve a well-documented report of all those guys who “crossed my path” since I joined this college. I will be posting their full names and registration numbers on the students’ Notice Board after the end of Sem. II (August). So far, I’ve had 124 students, yes one hundred and twenty four.....<sup>45</sup>

## Conclusion

So far, efforts have been made to critically examine the concept of *nikāh al-mut'ah* as conceived by those who uphold it and those who oppose it. Undoubtedly, temporary marriage was practised in the pre-Islamic period, which Islam remained silent on. The initial silence on it was taken to mean its acceptance by those who practised it before their acceptance of Islam and so they continued the practice even after accepting Islam. The verse acclaimed to have supported the practice is being misinterpreted, as the Qur'ān describes a sincere believer as he who guards his modesty except to his wife and the captive whom his right hand possesses, while 'the wife of enjoyment' is conspicuously not included in the list. To be on the safe side therefore, one feels comfortable to consider the verse relied upon by the supporters of the lawfulness of *mut'ah* marriage as being not entirely clear and as being ambiguous, an adherence of which can lead to a deviation from the truth. The Qur'ān sheds light on this thus:

It is He Who has sent down to you the Book. In it are verses that are entirely clear, they are the foundations of the Book; and others not entirely clear. So as for those in whose hearts there is a deviation (from the truth) they follow that which is not entirely clear thereof, seeking *al-fitnah*, and seeking for its hidden meanings, but none knows its hidden meanings except Allah.... (Q.3:2)

The multifarious views of scholars on the status of women who practised *mut'ah* as regard their rights to *'iddah* and inheritance are ambiguous. This implies that the lawfulness of the practice is equally ambiguous. A Muslim is therefore expected to do away from ambiguous things in line with the saying of the Prophet that:

Verily, what is lawful is obvious and what is unlawful is obvious, but between the two are matters which are ambiguous and about which many people know not what to do. He who is on his guard with respect to the ambiguous things keeps his religion and his honour clean, but he who falls in the ambiguous things falls into the unlawful, just like the shepherd who pastures (his flocks) round about the forbidden area is on the way to pasturing them in it....<sup>46</sup>

The legality of *mut'ah* for religious reasons in a religious state is a clever way of promoting prostitution under a religious disguise; it therefore defeats the purpose of religious prohibition of adultery, fornication and prostitution. The dignity of women is grossly jeopardised through the institution of temporary marriage, as they are reduced to mere instruments of enjoyment that can be used and dropped. This, no doubt, is against the spirit of Islam which protects the dignity of the woman as wife, mother, sister and daughter. Above all, attempt to legalise *mut'ah* for checking the rate of prostitution in a country can only

aggravate it the more, as it amounts to asking the prostitutes to obtain certificate before operating. We therefore opine that prostitution could be reduced if the government of the concerned country can empower women through provision of lawful job opportunities and provision of other social amenities which can improve the standard of living of women.



### Notes and References

1. M. Qutb, *Islam the Misunderstood Religion*, Salimiah: International Islamic Federation of Student Organizations, 1981, p.90.
2. I.M. Siddiqi, *The Family Law of Islam*, Lahore: Kazi Publications, 1984, p.12.
3. This can be inferred from the Biblical story of the fall of man as contained in the Holy Bible, Genesis 3: 1-24.
4. M.C. Ali, *Liberation of Women in the Seventh Century*, Chicago: The Institute of Islamic Information and Education, 1990, p.3.
5. Ibid, 3.
6. B. Lanre Yusuf, *Sayyid Qutb: A Study of His Tafsir*, Kuala Lumpur: Islamic Book Trust. 2009, p.169.
7. It was reported that Ibn Abbas was asked about *Muf'ah* to which he answered of its permissibility using the Q.4:24 as his evidence. He read it thus "...so those of them whom you enjoy to a specified term...". When the questioner said he did not read the verse like that, ibn Abbas said "I swear by God, this is how God revealed it"; and he repeated the statement twice. See Abu 'Ali al-Fadl al-Hasan al-Tabarsi, *Majma' al-Bayan*, Tehran, 1960, vol. 3, p.32.
8. See Yusuf Ali, *The Holy Qur'an English Translation of the Meanings and Commentary*, The Custodian of the Two Holy Mosques, King Fahd Complex for the printing of the Holy Qur'an, n.d., pp.215-216.
9. M. Muhsin Khan, *The Translation of the meanings of Sahih al-Bukhari (Arabic – English)*, vol. 7, Beirut: Dar al-Arabia, n.d., p.10.
10. Ibid, p.34.
11. *Taqiyah* means precautionary dissimulation which is a calculated pretence to safeguard one's belief where one is not yet capable of declaring his faith.
12. For more on this, see Sachiko Murata, "Temporary Marriage in Islamic Law"; *Al-Serat*, vol. XIII, No. 1; Tehrani Hamdami, 1979, in <http://www.al-Islam.org/al-serat/muta>; retrieved on 5/1/2011.
13. Ibid., unpagued.
14. Sayyid Muhammad Risvi, *Marriage and Morals in Islam*, Canada: Islamic Educational Foundation, undated, pp.74-75.
15. M. Muhsin Khan, p.5.
16. Ibid.
17. In the *Sahih Bukhari*, a hadith narrated by Urwa bin Az-Zubair identifies four types of marriage during the pre-Islamic period of ignorance, namely: (i) a normal marriage where "a man used to ask somebody else for the hand of a girl under his guardianship or for his daughter's hand, and give her *Mahr* and then marry her"; (ii) a man would say to his wife after she had become clean from her period, "Send for so-and-so and

have sexual relations with him” for the purpose of having a child of noble breed. Her husband would then keep away from her and would never sleep with her till she got pregnant from the other man with whom she was sleeping. When the pregnancy became evident, her husband would sleep with her if he wished. (iii) A group of less than ten men would assemble and enter upon a woman, and all of them would have sexual relation with her. If she became pregnant and delivered, they will all be called by the woman who would then give the child to whomever she liked and such a person would not refuse to take him. (iv) Many people would enter upon a lady and she would never refuse anyone who came to her. If she became pregnant and delivered a child, all those who had intercourse with her would then call those who were skilled in recognising the likeness of a child to his father. They would identify a man as the father and such a man would not object to this and he would be called his son. All these types of marriage were abolished by the Prophet except the first. See *Ibid*, 41-42.

18. M.A. Ibn Rushd, *Bidayat al-Mujtahid wa nihayat al-Muqtasid*, Beirut: Dar al-Fikr, 2006, p.57.
19. *Ibid*.
20. See *Sahih Muslim*, The Book of Marriage (Kitab *al-Nikāh*) Book 008, Number 3263, p.810. The Hadith reads thus: 'Ali b. Abi Talib reported that Allah's Messenger (may peace be upon him) prohibited on the Day of Khaibar the contracting of temporary marriage with women and the eating of the flesh of domestic asses.
21. Muhammad 'Ali, *The Religion of Islam*, Lahore: The Ahmadiyya Anjuman Isha'at Islam, 1973, p. 501.
22. Rabi' b. Sabra reported that his father went on an expedition with Allah's Messenger (may peace be upon him) during the Victory of Mecca, and we stayed there for fifteen days (i. e. for thirteen full days and a day and a night), and Allah's Messenger (may peace be upon him) permitted us to contract temporary marriage with women. So I and another person of my tribe went out, and I was more handsome than he, whereas he was almost ugly. Each one of us had a cloaks, My cloak was worn out, whereas the cloak of my cousin was quite new. As we reached the lower or the upper side of Mecca, we came across a young woman like a young smart long-necked she-camel. We said: Is it possible that one of us may contract temporary marriage with you? She said: What will you give me as a dower? Each one of us spread his cloak. She began to cast a glance on both the persons. My companion also looked at her when she was casting a glance at her side and he said: This cloak of his is worn out, whereas my cloak is quite new. She, however, said twice or thrice: There is no harm in (accepting) this cloak (the old one). So I contracted temporary marriage with her, and I did not come out (of this) until Allah's

- Messenger (may peace be upon him) declared it forbidden. See *Sahih Muslim*, The Book of Marriage (Kitab *al-Nikāh*) book 008, number 3253. 807.
23. See *Sahih Muslim*, The Book of Marriage (Kitab *al-Nikāh*) Book 008, Number 3251, p.806. It reads: Iyas b. Salama reported on the authority of his father that Allah's Messenger (may peace be upon him) gave sanction for contracting temporary marriage for three nights in the year of Autas and then forbade it.
  24. M. Ali, p.502.
  25. Ibid.
  26. Ibid
  27. ...Sachiko Murata, unpagged.
  28. Yan Richard, *Shi'ite Islam*, Oxford: Blackwell Publishers, 1995, pp.152-153.
  29. LiveLeak.com, 'Temporary marriage draws female re-visited' on 17/01/2011.
  30. Muhammad ibn al-Hasan al-Huri al-Amili, *Wasail al-Shia*, Tehran, n.p 1965, vol. XIV, hadith 10, p.459.
  31. Abu Ruquayyaa, "Temporary Marriage & Its Illegitimacy in Islam" in [mhtml:file://users/dr/documents/temporary marriage & its illegitimacy in Islam](mhtml:file://users/dr/documents/temporary%20marriage%20&%20its%20illegitimacy%20in%20Islam). Retrieved on 2/9/2010, p.2.
  32. See *Sahih Muslim* (trans), The Book of Marriage; Book 8, Hadith no. 3252.
  33. LiveLeak.com; visited on 17/01/2011.
  34. Camelina, E. Fard, "She Found Prostitution Among Iran's Holy Men: They Found a Way to put her in Jail" in [http://www.uri.edu/artsci/wms/hughes/ prostitution \\_holy men](http://www.uri.edu/artsci/wms/hughes/prostitution_holy_men); visited on 03/02/ 2011.
  35. LiveLeak.com; visited on 17/01/2011.
  36. Camelina, E. Fard, visited 03/02/2011.
  37. Muhammad ibn al-Hasan al-Huri.... p.484.
  38. Ibid, p.485.
  39. R. Yann, *Shi'ite Islam*, p.154.
  40. Ibid., pp.154-155.
  41. Africa Health, vol. 25, No. 4, May 2003, pp.4-8.
  42. N. Yahaya Isa, "HIV/AIDS and the Polygamous Muslim North, which Way Forward?" *Weekly Trust*, vol.5, No. 38. Oct 4-10, 2002. Pp. 10-11; cited by Faruk Sarkinfada, "HIV/AIDS and Islamic Belief and Practice", *Al-Ijtihad, Journal of Islamization of Knowledge and Contemporary Issues*, vol.5, No. 1, Kano: IIIT Nigeria Office, 2004, pp.16-17.
  43. F. Sarkinfada, 16.
  44. Ibid. 17.

45. P.O. Abioje, "An Examination of Some Churches' Objection to Use of Condoms Viz-a-vis HIV/AIDS." A paper presented at WAATI Conference, Kumasi, Ghana, 2006, pp.6-9.
46. M.O.A. Abdul, *The Selected Traditions of Al-Nawawi, Arabic Text, Transliteration, Translation & Commentary*, Lagos: Islamic Publications Bureau, 1973, pp.29-30.