

SOME OPINIONS ABOUT THE MUTA MARRIAGE (THE TEMPORARY MARRIAGE)

Abdullah Kahraman¹

Associate professor

Introduction.

The target of Islam religion is to create a sound and honest family. In order to ensure it Islam religion bases on marrying with a legal way. According to Islam the marriage must be durable, but the divorce is an exception. That is why most of Islam jurisprudents have accepted the uninterrupted of marriage as a stipulation. So a man married with a women can't divorce her if there are no any legal reasons which necessities the divorce. But Jafaris being one of sects of Islamic law and assimilating Shia law think that, muta, calling a short time or conditional marriage, can be possible. But such marriage form is one of the main controversial problems between Sunni and Shia sects. Sunni jurisprudents and Zeidia, branch of Shia, notify that; at the beginning of Islam the permitted temporary marriage form was created during the war as a result of necessity, but then it was prohibited just by Prophet and abrogated. So in their opinion such kind of marriage is illegal by a legitimate way. They inform that such kind of relation is not different from zina (an illegal intercourse) and they also think that it doesn't ensure the targets which Islam aimed from marriage. At the same time against to Sunnis, Shia authors inform that such marriage is legal, it wasn't abrogated and it is necessary to do muta at least once a life. According to their thoughts it is impossible to display the muta as a zina (an illegal intercourse). On the contrary, according to them the zina happened because of Omar's prohibition the muta.

¹ Republic University Theology Faculty associate Professor, Baku State University Theology Faculty associate professor and assistant of dean.

Shia authors consider the muta marriage very important. They think this problem is one of the main characters of Shia sect. Tens of independence books and treatises (risalah) written about muta show the importance of this matter by Shias. In those works Shia authors show muta's permission, legality and being not abrogated². Due to such persistently defending Shias were accused by other sects as that they had legalized the zina. As they pay a great attention to this matter, as if muta has become the main matter of Shia sect and it is showed at Jafari sect' shopwindow as a unique matter. Shias have introduced this problem as a character separating from others. As for us, if we think Islam completely we can see that to marry four times was shown as a result of wrong interpretations as if it was a necessary order. Like this Shias also gave a great attention to muta, because of this attention is thought that the muta a necessary judgment. But both orders are permissible orders at the reality.

With the important wrong information about this marriage's aims, reasons, legal and social results and use and not to understand it well is a reality. That is why we want to elucidate our thoughts about the muta marriage form's legality and its results. First of all we show some problems about theme, and then according to those problems we shall elucidate our thoughts.

According to this theme the basis of problems is about commentation of texts (nass) and whether muta abrogated or not to abrogated by the permission texts (nass) to muta. But there is another version that muta had continued till Omar's times, but he had forbidden that marriage. That is why these questions can be asked:

Why had this rule continued by Omar's times if it was abrogated? According to what and why had Omar forbidden muta if there was no abrogation? Was there any influence of attitude based on Omar? By another speech, is there any influence of reaction to Omer by Shias in defense this marriage and acceptance it as if necessary religious judgement?

² Some of these works' names and authors are followings: 1. Ebu Jafer Ahmed b. Isa el-Eshary, *Kitabu'l-mut'a*, 2. Ebu Muhammed el-Hasen b. Ali b. Fezail el-Kufi, *Kitabu'l-mut'a*, 3. Ebu Abdillan el-Huseyn b. Ubeydullah b. Sehl es-Sa'di, *Kitabu'l-mut'a*, 4. Ebu'l-Kasim Sa'd b. Abdullah el-Eshari el-Kummi, *Kitabu'l-mut'a*, 5. Ebu'l-Hasen Ali b. Fedail, *Kitabu'l-mut'a*, 6. Ebu Ahmed Muhammed b. Ebu Umeyr el-Ezdi el-Bagdadi, *Kitabu'l-mut'a*, 7. esh-Sheyh Saduk, *Isbatu'l-mut'a*, 8. esh-Sehy Izziddin el-Amily, *el-Lum'a fi'n-nikahi'd-daimi ve'l-mut'a*, 9. Sehy Mufid, *Hulasatu'l-Ijaz, Rizaletu'l-mut'a*.

The other problem is about the legal results of muta. Didn't this system really contain the conditions of reasonable marriage as it was shown in Sunni's resources?

What conditions and orders are about it according to Shias' thoughts? In what form are Iddah (prescribed periods), Nafaga (an adequate support), tescil (documentation), Miras (legacy) problems? Are there any characters protecting the Islam family concept from injuring and differing muta from zina and prostitution? How can a woman be honorable being exposed to muta durably if muta is a subject being realized with honorable women? Can't muta create a prostitution system? A woman having compulsion waiting for Iddah can do no more than three times muta a year? How can this rule be saved?

But there is an other problem about social results of muta's application. Who and why appeal this marriage? What social factors create muta? Is it true to show such kind of marriage form as a main problem of Shia sect? Muta appeared as a result of extreme conditions. Why is Shia sect's attitude this marriage so normal?

I. Definition

In the dictionary "muta" means "to enjoy". In the muta marriage the main aim is a sexual pleasure. That's why muta comes from such kind of word³. As a term muta is a marriage instead of definite money and during the definite period⁴.

Muta happens so: A man who has no obstacles offers a woman in such way: "I want to be in sexual relations with you instead of money during the definite time" or "Fulfill my sexual needs instead of definite money". If the woman accepts this offer "the muta marriage" happens⁵.

³ See. Muhammed Hamid, *Nikahu'l-mut'ati fi'l-Islami haramun*, Beyrut 1999, 11.

⁴ Sheyh Mufid, Muhammed b. Muhammed b. Numan b. Muallim, *Hulastu'l-ijaz fi'l-mut'a*, p. 18; Muhammed el-Hamid, *Nikahu'l-mut'a*, 11.

⁵ Tusi, Ebu Cafer, *el-Hilaf*, IV, 340; İbn Hüman, Kemaluddin Muhammed b. Abdulvahid, Mısır 1319, III, 149; el-Imadi, Hamid b. Ali b. Ibrahim el-Hanefi, *Lum'a fi ahvali'l-mut'a* (tahkik, Saffet Kose, İslam Hukuku Arashtirmalari Dergesi icinde, cilt, 2), Konya 2003, 237; Hamdi Döndüren, *Delilleriyle Aile Ilmihali*, 308; Sistani, Ali Hüseyinî, *Tavzihu'l-mesail*, İstanbul 1995, 357.

In Azerbaijan and Iran in order to notify such kind of marriage form “siyga” is used which means “the temporary marriage”. This word is in the Persian language⁶. In these countries who wants to marry by that way they usually appeal to a “mullah” or an “akhund” (a clergy man). They fill a form and get married. In this form the names of sides, the period of marriage, money given by a man are shown.

Some Islam jurisprudents consider that a temporary marriage for the definite period is one kind of muta marriage. But there are some differences between them. The temporary marriage creates at the presence of witnesses and saying some words about marriage for the definite time. But in muta the word “muta” or other word combinations like “to use woman’s sexual opportunities” are used⁷.

Muta is a kind of marriage before Islam. Before Islam muta was a temporary marriage form, it ensured the living of a man and a woman together for the definite period as it was determined beforehand. It had no aim to create a family or to give a birth. Such kind of marriage was put into practice by men who went to abroad⁸. Such marriage was only to provide lust feelings⁹. Though Prophet forbade the muta but it lasted till Omar’s times and the reason of this marriage was the applying before Islam.

II. The Opinions Of Islam Jurisprudents About Muta And The Temporary Marriage.

A. Shia Jurisprudents’ Thoughts About This Matter

For Shia sect muta or temporary marriage for the definite time can be with a Moslem, Christian or Jewish woman. Muta can’t be with a prostitute. In such way Mahr (bridal-money given by the husband to his wife at the time of marriage) must be declared and showing the period of marriage is a

⁶See, Şehla Hairi, *el-Mut’atu ez-zivaju’l-muvakkatu inde’sh-shi’a*, Beyrut 1995, 11; Sistani, 357.

⁷ Imadi, 237; Döndüren, 309.

⁸ J.Schacht, “Nikah”md. MEB *İslam Ansiklopedisi*, IX,260; Ali Osman Ateş, *İslam’a Göre Cahilliye ve Ehl-i Kitap Örf ve Adetleri*, İstanbul 1996, 331; Ali Ekber Babazade, *İslam’da Evlenme ve Aile Hukuku*, 225vd.

⁹ Taberi, Muhammed b.Cerir, *Camii’l-beyan*, Mısır 1954, V, 12; Kurtubi, Ebu Abdillâh Muhammed b. Ahmed, *el-Cami’li akhami’l-Kuran*, Kahire 1967, V, 129; Ateş, 332.

condition. To marry consists of one of three words. They are followings: “I married you”, “I made a temporary marriage with you”, “I engaged to you”¹⁰.

B. Sunni Jurisprudents’ Thoughts About This Matter

Four sects and most of Sahaba (companies of Prophet) consider muta and such kind of marriages unlawful by religion. Because such marriages ruin one of marriage conditions. This condition is being of declaration of will (Ijab-gabul/ the principle of suggestion and acception) forever. But in reasonable marriage this condition must be eternal, not temporary.

If there is no one of reasonable conditions Hanafi sect don’t consider it false, but “fasid” (vicious). Though they didn’t have a condition of reasonable marriage they accepted it unlawful and its reason was its order defining according to Sunna of Prophet. Only Imam Zufer accepted a temporary marriage right and determining the definite time unlawful or vicious. It means as for him a temporary marriage was an eternal marriage. As for Zufer’s opinion there was no confirmation for the muta marriage. Because this marriage was legal for ever and was not necessary to determine the time, the marriage was legal and eternal. Because marriage can be considered unlawful under vicious conditions. But most of Islam jurisprudents accept the followings: in marriage the meaning is trusted, not a word. According to this principle a temporary marriage means muta. That is why most of Islam jurisprudents didn’t accept Zufer’s opinions¹¹.

III. Arguments Of Sides

A. Shia Jurisprudents’ Arguments

Shia jurisprudents showed the following arguments in order to confirm the legality of the muta marriage:

¹⁰ Şeyh Mufid, *Hulasatu'l-icaz*, 45; Tusi, *el-Hilaf*, 340.

¹¹ Kasani, *Bedayui's-sanayi*, II, 272, 273; Bilmen, Ömer Nasuhi, *Hukuk-ı İslamiyye ve Istilahat-ı Fikhiyye Kamusu*, III, 20, 21; Zuhayli, Vehbe, *el-Fikhu'l- İslami ve edilletuhu*, VII, 64.

1. Kuran

“And if you fear that you shall not be able deal justly with the orphan-girls then marry (other) women of your choice”¹².

According to Shia jurisprudents’ explanation the woman marrying with the Muta marriage is also lawful.

“... All others are lawful, provided you seek (them in marriage) with Mahr (bridal-money given by the husband to his wife at the time of marriage) from your property, desiring chastity, not committing illegal sexual intercourse, so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed...”¹³.

According to Shia jurisprudents’ explanation this verse is not about marriage but enjoyment and not about mahr but hire. In Kuran the good given instead of marriage is always used as words “fariza” (gift), “nihle” (gift), and “sadak” (obligatory bride many). However the word “ujret” (hire) was used in this verse. And it also points to muta¹⁴. “Istimta” (enjoyment) and “muta” are also in the same meaning. Having used “to give hire” happens in “rent” contract. “Rent” is an agreement which is used in muta in order to enrich a woman’s sexual organ. But “Mahr” is a necessary marriage contract which is used before marriage. When the word “to use” is said it absolutely means the muta marriage. Before Islam Arabs knew this marriage. That is why they showed this marriage by the word “to use”. According to Ibn Masud, Hz. Ali, Ibn Abbas thoughts there is this meaning in the verse: “When you use them for the definite time pay them.” It also points to muta¹⁵. Due to this or similar explanations Shia jurisprudents notify that the verse also firmly points to muta.

¹² Nisa, 4/3.

¹³ Nisa, 4/24.

¹⁴ Some Shia scientists don’t accept this argument either, which Sunni scientists reject. Look . Şeyh Mufid, *Hulasatu’l-icaz*, 23.

¹⁵ Şeyh Mufid, *Hulasatu’l-icaz*, 23-24; Tusi, Ebu Cafer, *el-Hilaf*, IV, 341; Tabersi, Ebu Ali el-Fadl b. Huseyn, *Mecmeu’l-beyan fi tefsiri’l-Kuran*, Beyrut ts., II, 71-72 Tabatabai, Muhammed Huseyn, *el-Mizan tefsiri’l-Kuran*, Beyrut 1983, IV, 271-272 Zuhayli, VII, 65.

2. Sunna of Prophet

Shia jurisprudents had told many narratives which statements legality of muta¹⁶. Some of them are shown at the same time in Sunni sources. We want to put forward some examples:

It is known that to make muta in some fights was permitted in Prophet's Sunna. They can be followings: Evtas year, umratu'l-kadâ, Khayber, Fetih (conquest) year and Tebuk¹⁷.

a. Abdullah İbn Masud told so: "We were in the fight with the prophet and there was no woman. We asked him if we could fulfill our sexual needs (to masturbate) ourselves. But the prophet forbade it. Then he allowed us to marry women for the definite time and to give them dresses. Then Abdullah b. Masud read this verse: **"O you who believe! Make not unlawful the Tayyibat (all that is good as regards foods, things, deeds, beliefs, persons) which Allah has made lawful to you, and transgress not"**¹⁸.

b. A narrative was also told from Jabir: "During prophet's time we did muta instead of a handful date and flour. It lasted in Abu Bakir's times, too. At last Omar forbade it"¹⁹.

c. İbn Abbas and a group of people also told that muta was legal. Esma bint-i Abu Bakr, Jabir, Abdullah b. Masud, Muaviya, Amr b. Huveys and Umeyye b.Halef's sons Salame and Abu Said, jurisprudents from Tabiun Tavus, Ata, Said b. Jubeyr and some Makkian Islam jurisprudents and Ibn-Jureyj are also in that opinion.

Imam Mehdi also accepted muta that it was legal and he reported that from Bakır, Jafer Sadık and Imamiyye²⁰.

Zeydiyye the branch of Shia notify muta marriage as in permitted. As for them İbn Abbas had refused from his commentary²¹.

¹⁶See, Tusi, *el-Istibsar*, Tahran ts., III, 141 vd.; a.mlf., *Tehzibu'l-ahkam*, Tahran ts., VII, 250vd.

¹⁷Shevkani, *Neylu'l-evtar*, VI, 136, 137.

¹⁸Maide, 5/87; see for hadith, Müslim, Nikah, 11; Tirmizi, Nikah, 2; Nesai, Nikah, 4; Ibn Maje, Nikah,2.

¹⁹Müslim, Nikah, 16; Ebu Davud, Nikah, 29; Zeylai, *Nasbu'r-raye*, III, 181.

²⁰Şevkani, *Neylu'l-evtar*, VI, 135vd.; Şeyh Mufid, *Hulasatu'l-icaz*,27; *Risaletu'l-mut'a*, 7vd.

²¹Ibnu'l-Murteza, *el-Bahru'z-zihar*, III, 22; Muhammed Cevad Muğniye, *Fıkhul-İmam Caferi's-Sadik*, Kum 1424, V, 238-239; Şevkani, VI, 136.

3. Consensus

Shia jurisprudents according to those verses notify that muta is legal and not abrogation. Their thoughts about this problem are similar. It means these Prophet traditions not successive, but they were told by a solitary person. And such kind of Prophet's traditions can't abrogate the order of Kur'an verse²².

4. Wisdom

According to Shia thoughts muta being harmless is legal and lawful. They think that every profit being harmless in this and the next world is lawful according to the order of wisdom²³.

A. Arguments of Sunnis

Sunnis proved the muta marriage unlawful according to Kuran, Sunna of Prophet, Consensus and wisdom.

1. Koran

“Except from their wives or (the slaves) that their right hands possess, - for then, they are free from blame; but whoever seeks beyond that, then those are the transgressors”²⁴.

According to this verse only two ways (marriage and the that their right hands possess) are lawful, but others are unlawful. As muta is not a sound marriage and there is not a position being owner to a Jariyya (slave girls) either. That is why, according to this verse muta is unlawful. And the arguments of muta being unsound marriage are so: it ends without divorcing, there is not inheritance right and “nafaga” (adequate support) in muta marriage. Whereas all these are natural results sound marriage²⁵.

²² Şeyh Mufid, 27; Tusi, 341.

²³ Şeyh Mufid, 22.

²⁴ Mu'minun, 23/7; Me'aric, 70/ 29-30.

²⁵ Cessas, Abu Bekir, *Ahkamu'l-Kur'an*, Beyrut 1993, II, 208vd.; Masvili, Abdullah b. Mahmud, *el-Ihtiyar lita'lili'l-muhtar*, III, 89; el-Imadi, Hamid b. Ali b. Ibrahim el-Hanefi, *Lum'a fi ahvali'l-muta* (tahkik, Saffet Köse, İslam Hukuku Araştırmaları Dergisi, cilt, 2) Konya 2003, 239vd.; Zuhayli, *el-Fıkhu'l-Islami ve edilletuhu*, VII,69.

2. Sunna of Prophet

Ali b. Abû Talib, Sebre al-Juhani, Salama b. al-Ekva and other sahaba (companions of Prophet) told that, a lot of Prophet's traditions show the forbidding of muta during Khaybar year, fifteen days later after Makka conquest and in the farewell pilgrimage. About these Prophet traditions all are in the same opinion and according to these traditions the muta marriage was forbidden. Due to these Prophet traditions the Prophet allowed muta temporary and when it was necessary. So Abdullah b. Abbas permitted muta in the necessary position, then he gave up that idea. As for the report of Said b. Jubair Ibn Abbas told so: "Subhanallah! (Exclamation of surprise) what did I permit? The muta marriage is lawful only for a person who is in difficulties. For example a man needs disgusting meat when he in difficulties. But Shia sect spread the muta marriage. They referred the muta order to everyone who needed it or not"²⁶.

Some narratives about this theme are so:

a. Prophet had told so: "O people! I permitted you to do the muta marriage with women. No doubts, it was forbidden by Allah till the Day Final Judgment. If you have a woman with the muta marriages liberate her. Don't take anything from her what you have given"²⁷.

b. Salama b. Ekva had told so: "Prophet permitted us to do the muta marriage for three days in Evtas year, but then he forbade it"²⁸.

c. Hz.Ali had told so: "During the Khaybar fight Prophet forbade the muta marriage and the meat of domestic donkey"²⁹.

3. Consensus

All ummah except Shia sect, notified being far from the muta marriage. If such kind of marriage was legal it would be permitted formal legal opinion to act it. Ibn Munzir tells: "First Moslems permitted the muta marriage. But today I don't know anyone permitting it except some of Rafizes. That is why there is no sense of the word which is against of Allah's book and Prophet's

²⁶ Zuhayli, VII, 67-68.

²⁷ Muslim, Nikah, 22; Ibn Mace, nikah, 44; Darimi, Nikah 16; Ahmed b. Hanbel, Musned, III, 406.

²⁸ Muslim, Nikah, 18; Ibn Hanbel, I, 142, IV, 55.

²⁹ Muslim, Nikah, 25-30,32.

sunna”. Kadi Iyad also had told so: “Then all jurisprudence except Rafizes notified the muta marriage unlawful”³⁰.

4. Wisdom

According to social aim and need marriage is an eternal legal problem. For example, marriage has aims as a spiritual comfort, to give a birth and to have a family. But muta has no sense of having only sexual relations for definite time. Muta is the same as zina (an illegal sexual relation). If muta is legal there is no sense of considering zina (an illegal sexual relation) as unlawful³¹.

IV. The Common Opinion Against The Arguments Given By Shia Sect

A. The Answer To The Adducing Verse

In the twenty fourth verse of en-Nisa the aim of the word “to enjoy” is a marriage. Because at the beginning and the end of the verse is spoken about the marriage. This verse begins with the sentence “And marry not women whom your fathers married” and ends with the sentence “a man can’t marry a free, religious woman”. Here the using aim of the word “to use” is not muta being illegal from the juridical point of view, but quite the contrary it means to make use of marring way. When we value the beginning of the verse together with the previous and next verses this result appears.

According to the most of Sunni jurisprudent’ opinion in the verse the word “ujrat” (hire) is not the money given instead of muta, but it is mahr for eternal marriage. Because, not only in this verse, but also in other verses “mahr” concept was given as a word “ujrat” (hire). So in some verses it is said so: “Wed them with the permission of their own folk (guardians, Auliya or masters) and give them their mahr according to what is reasonable”³², “O Prophet (Muhammed)! Verily, we have made lawful to you your wives, to whom you have paid their mahr (bridal-money given by the husband to his wife at the time of marriage)”³³.

³⁰ Şevkani, VI,136; Zuhayli, 70.

³¹ Zuhayli, VII, 70.

³² Nisa, 4/25.

³³ Ahzab, 33/50.

The saying of the “ujrat” (hire) after the word “to use”, but the saying “Mahr” before the word “to use” fits to the grammar rule of the Arabic language. That is why the expression “when you use them give their ujrat” means “when you want to enjoy. When you divorce women, divorce them at their Iddah (prescribed periods)”³⁴ in the verse meant “when you want to divorce the woman”. Let us give an other example: “When you intend to offer As-Salat (the prayer) wash your faces...”³⁵. In this verse also meant “when you want to perform the ritual pray”³⁶.

B. The Answer To The Adducing Prophet Traditions

The reasons of permitting muta by Prophet during some fights were severe necessity in the war and for a man living apart from his wife during travels. Then Prophet forbade it till the Day Final Judgment.

Before Ibn Abbas accepted muta right for a person who was in a bad condition, then he rejected his own opinion. He considered the thought permitting muta illegal notified it as his own thought and rejected it. Ali b. Ebû Talib had told him so: “You have lost your way. Because Prophet forbade muta and to have domestic donkey meat on the Khaybar day”. Abdullah b. Zubeir had also rejected Ibn Abbas’ thought.

According to a narrative from Muslim, Ibn Zubeir standing up in Makka had said so: “Allah made some persons’ hearts blind as he had made their eyes. These persons allow muta”. With those words he meant Abdullah b. Abbas. Ibn Abbas also answered him: “You are a cruel person. Upon my life during prophet’s times who was the leader of religious people muta existed”. Ibn Zubeir answered him: “Try to do it, I swear, if you do muta I’ll stone you”. The prophetic tradition tellers notified that later Ibn Abbas had renounced from his opinion. Tirmizi told that Ibn Abbas had said so: “Muta existed at the beginning of Islam. A man visited a strange city and during his stay he married a woman and the woman saved his goods and also provided him with sexual needs. When this verse came “Except from their wives or the (women slaves) whom their right hands possess –for (then) they are not

³⁴ Talak, 65/1.

³⁵ Maide, 5/6.

³⁶ Zuhayli, VII, 66-67.

blameworthy”³⁷ İbn Abbas told: “Except from the wife and the women slaves all are unlawful”.

Beyhaki and Abû Avane also in “Sahih” told that İbn Abbas had renounced from his first opinion³⁸.

Taking these sayings into considerations most of Islam jurists believe İbn Abbas renouncing from his thought. Sahaba (Companions of Prophet) also had believed and confirmed muta being unlawful for ever. It is unbelievable that İbn Abbas was against them.

In his book “an-Nasih ve'l-mensuh” Hazimi on behalf of Jabir b. Abdullah told so: “With Prophet we went to Tabuk fight. When we were in Akabe near Sham some women came. When they were walking among our luggage, camels we thought to do muta with them. At that time the Prophet came, looked at them and asked: “Who are these women?” “O Prophet! They are those women with whom we did muta” we answered. As he became angry his face changed and cheeks went red. Praying Allah he began to speak. Then he forbade muta. On that day the women and the men parted and we didn't use muta any longer and we shall never use it for ever. That is why that place was called “Farewell Hill”³⁹.

All these show muta being forbidden. May be İbn Abbas, sahaba (supporters of Prophet) and next generation didn't know about arguments of forbidden muta. If muta is forbidden every one has to carry out this prohibition. We can say so that İbn Abbas had told his opinions during forbidden time of muta. Then having known that it was forbidden he renounced from his thoughts. This position is as the same with drink prohibition. So, the prohibition of drink was fulfilled by levels. There are some permission peculiarities in primary verses about prohibition of drink. Being unlawful a firm order came⁴⁰.

³⁷ Mearic, 70/30.

³⁸ Şevkani, Neylu'l-evtâr, VI, 135.

³⁹ Zeylai, *Nasbu'r-riyâh*, III, 179.

⁴⁰ See, el-İmâdi, Hamid b. Ali b. İbrahim el-Hanefî, *Lum'a fî ahvâlî'l-mut'a* (Saffet Köse, İslam hukuku Arashtirmaları Dergisi, cilt,2), Konya 2003, 239vd.; Zemahşeri, Carullah b. Mahmud, el-Keşşaf, Beyrut ts, II, 488; Cessas, II, 208vd.; İbn Rüşd, *Bidayetu'l-muctehid*, Mısır ts., II, 49-50; Şevkani, VI, 135-138; Zuhayli, *el-Fikhu'l-İslami ve edilletuhu*, VII, 67-69; Döndüren, 310-315.

IV. Judgments of Muta

1. If the period of the muta marriage is said, but the amount of Mahr isn't said the contract is disturbed. If the period of the muta marriage is not said, but the amount of Mahr is said muta becomes to the constant agreement.

2. The conditions told before the contract has not any legal orders. But carrying out the conditions which were told during the contract and if these conditions are not contrary to the nass (text) they become necessary.

3. To be or not to be in sexual relations with a woman, not to secrete sperm into woman's body can be conditions. Though sperm is not secreted into woman's body the child belongs to his father. But if a father rejects the child there is no need to do lian (oath of condemnation).

4. According to Shia sect there is no need to divorce in muta marriage. Due to the main opinion lian (oath of condemnation) can't be done. But during the hesitation zihar (pre Islamic form of divorce consisting in the words of repudiation) can be done.

5. In the muta marriage a husband and a wife can't be heir to each other⁴¹. But the child can be their heir and the parents also can be the child's heir. There is no contradiction in this problem.

6. If the time -being together ends, the Iddah period lasts two menstrual cycles. But who doesn't menstruate the Iddah period is forty five days. If the husband of the wife dies, the Iddah period lasts four months ten days.

7. It is not right to make agreement again if the definite time is not over. If the definite time for muta is more and the men present that time to the woman or if he renounces from her such kind of order can't be changed⁴².

⁴¹ It's not a firm order. We'll explain it later.

⁴² Şeyh Müfid, *Hulasatu'l-icaz*, 45vd.; Zuhayli, VII, 64, 65; Hamdi Döndüren, *Delilleriyle Aile Ilmihali*, 309-310.

V. Similar And Different Peculiarities Between Muta And Nigah (Constant Marriage)

A. The Same Peculiarities

1. In both marriage a woman can be clever, having a mature age and not to have any obstacles for marriage. That is why it is not right to do muta with a woman who is married, or who waits for Iddah after her husband's death, or whom is unlawful to marry by generation or by milk way (if the man and the woman sucks of the same woman's milk), the woman who makes the associate of Allah. A woman who is made muta must be Moslem.

2. To give only agreement is not right in muta as it in constant marriage. There must be a written agreement about their marriage.

3. The muta marriage has necessary conditions for a man and a woman as it also has in constant marriage. As a man has a right to divorce a woman in constant marriage in muta a man also has a right to present the woman the agreed time.

4. Sihriyyat (relationship by a marriage way) is unlawful in muta marriage as it is in constant marriage. A man who does muta with a woman has not a right to do muta with her daughter from her previous husband. In muta it is impossible to keep two sisters in one marriage.

5. There is no difference in the inheritance given to a child and other material rights between marriage and muta either. When the position of a woman being pregnant at the result of the muta marriage was asked Imam Jafar Sadig he replied that that child belonged to a man who had a sexual relation with her.

6. Even though the sperm is not secreted into woman's body, the baby was born at the result of the sexual relations belongs to a father. Because the woman's (who was done muta) child is also legal. According to the common thought the child belongs to the place where he was born.

7. There is no definite limit for Mahr in muta. It is so in constant marriage too.

8. In the muta marriage the woman who divorces before the sexual relations is given the half of Mahr. But if during the definite time according to any reason sexual relations don't happen the woman is given whole Mahr.

9. If a woman who was done muta had sexual relations she must wait for Iddah period. If there were no any sexual relations there is no Iddah period. If woman's husband is dead and if she has or doesn't have sexual relations in muta or in constant marriage she must wait for Iddah period.

10. According to Islam law the conditions being in muta can be determined due to agreement.

11. In muta it is also unlawful to be in sexual relations during the women's menstrual cycle.

B. Different Peculiarities

1. It is not right to say the definite time in constant marriage. But in muta the definite and firm time must be said.

2. Mahr is one part of agreement in muta, but in constant marriage Mahr is not one part. That is why the agreement is not legal if Mahr is not said in muta. Imam Jafer had told that muta could be in definite time and with the definite amount of money.

3. In constant marriage after having the sexual relation if a woman wants to divorce not being pregnant Iddah period is three menstrual cycles or three months. If she is pregnant she must wait for Iddah period till she gives a birth. But in muta marriage if a woman divorces after having sexual relation and if she is not pregnant, she must wait two menstrual cycles or forty five days. But if she is pregnant she also must wait for Iddah period till she gives a birth.

4. Between Jaferi jurisprudents there are different thoughts about inheritance between a husband and a wife who marry with the muta marriage. According to the group of which Shehid-i-Avvel-Muhammed b. Makki (786/1384) and Shahid-I Sani Zeynuddin al-Amili (965/1558) belongs if in the muta marriage a condition is not determined, there is no inheritance right between a husband and a wife. Because according to essence the marriage agreement neither makes the inheritance necessary nor liquidates it. If there is a condition it must be carried out. They thought that Prophet's this hadith is an argument: "Believers are devoted to conditions". Imam Jafer Sadig also told so: "If in Muta the sides have determined the inheritance condition they must carry out it". But in constant marriage there is inheritance between a husband and a wife.

5. If there is no condition, according to muta there is no nafaga (adequate support) either. But in constant marriage if not to buy nafaga is determined as a condition but there is nafaga.

6. Doing muta with virgins is nuisance (mekrûh). But virgins were encouraged for constant marriage. When Imam Jafer was asked about muta he replied so: "The position of muta is difficult. Don't do muta with virgins".

7. In constant marriage if a man divorces his wife with a revocable divorce the woman has a right to return before the period of Iddah completed. After finishing the period of muta the woman who was done muta is free according to the irrevocable divorce.

8. In constant marriage one can marry no more than four women. But in muta one can do muta with more than four women at the same time. But according to doctrinaires of Jaferi Islam jurisprudents it is impossible to do muta with more than four women at the same time⁴³.

But it is some jurisprudents' opinion. Shia authors note a problem about muta specially. They think the woman who is done muta must be honorable. That is why muta must be done to a honorable woman, not to an adulterer woman. Imam Jafer Sadig answered a question about this problem in this way: "Muta is lawful. Marry only an honorable woman." But Sheykh Saduk had told so: "a man, who does muta with is an adulterer woman is also an adulterer"⁴⁴.

VI. Evaluation And Conclusion

During the beginning of Islam according to the definite reason and in the definite conditions muta was considered legal. Permission to muta and considering it unlawful was repeated several times⁴⁵. That is why the manner of nash (abrogation) is known that it also was repeated twice⁴⁶. Forbidding of muta was shown with six dates. These are followings: The conquest day of Khaybar, the period of Umratu'l-kazâ, the conquest of Makka, Evtas war,

⁴³ Muhammed Cevad Muğniye, *Fikhu'l-Imam Cafer es-Sadik*, V, 240-245.

⁴⁴ Muğniye, V, 246.

⁴⁵ Hazimi, Ebu Bekir Muhammed b. Musa, *el-I'tibar*, Haydarabad 1319; Ibn Hacer el-Askalani, *Fethu'l-Bari*, Bulak 1301, IX, 145 (was told by Ali Osman Koçkuzu, *Hadiste Nasih-Mensuh Meselesi*, Istanbul 1985, 301.

⁴⁶ Ibn Hacer el-Askalani, IX, 145.

the fight days of Tebuk and Farewell Pilgrimage. Most of jurisprudents notify that muta was forbidden on the conquest day of Khaybar⁴⁷. Permission to muta and considering it unlawful was forbidden on Prophet's "Last Farewell Pilgrimage"⁴⁸.

Analyzing the information about muta it is shown that this information is about different problems. In some information it is shown that muta belonged to first years, but in other resources it is known that the permission was only for once⁴⁹. But the information about the forbidding of muta is more⁵⁰.

According to some authors' note muta is a temporary permission during the fight period, the time when the man apart from the woman, during the definite time. There is no any information about doing muta in these conditions when it isn't state of emergency and Sahaba (the companion of prophet) is in his house⁵¹.

Tahavi, explaining the narratives about muta and sequencing them with one another, drawn a conclusion like that: "There is consensus about that muta was forbidden and considered unlawful. Most of jurisprudents are in this opinion. There is also some information about forbidding of narratives about permitting muta. Ali had several times corrected İbn Abbas's different position about theme and warned him. Omar also during his authority years had told in one special speech that he had forbidden muta and no one from sahaba rejected him. It shows that, till that time sahaba was not in the same opinion about muta problem. But from that time sahaba agreed with that thought⁵².

There are also some narratives told by Ali about muta which was unlawful forever. In those narratives it is told that either muta was forbidden or that permission was abrogated. Ali had told so: "Prophet forbade to do muta with women. Before muta was for those who couldn't find a woman. After-

⁴⁷ Müslim, Nikah, 18, 20, 22, 23, 25, 26, 29.

⁴⁸ See, Ebu Davud , Nikah, 13 Azimabadi, *Avnu'l-ma' bud*, Medine 1968, VI, 82; Koçkuzu, 302.

⁴⁹ Tirmizi, Nikah, 28; Muslim, Nikah, 14, 19, 20, 27; Nesai, Nikah, 71; Ibn Mace, Nikah, 44; Ahmed b. Hanbel, III, 405.

⁵⁰ Buhari, Megazi, 38; Et'ime, 6; Nesai, Nikah, 71; Sayd, 31; Ibn Mace, Nikah, 44; Darimi, Edahi, 21.

⁵¹ Tahavi, Ebu Cafer Ahmed, *Şerhu me'ani'l-âsar*, Beyrut 1979, I, II, 24; Hazimi, *el-İ'tibar*, 178.

⁵² Tahavi, III, 24-27; Koçkuzu, 302.

wards when the orders about Miras (legacy), Iddah (prescribed period), Talag (divorce) and Nigah (marriage) came down the habit of muta was forbidden”⁵³. But some people notify that muta was forbidden during the conquest of Makka and Ali hadn’t known it⁵⁴.

There are also some narratives about muta forbidding by Omar.⁵⁵ According to this information Omar had thought so that muta was permitted for temporary time and at the result of necessity during Prophet’s times. According to Omar’s opinion muta which was forbidden later didn’t have to do it any longer. It is also notified that there were persons who did muta in special forms. Though it was forbidden and as muta is not a thing which was lawful before, but then it was forbidden. People began to do it from the ignorance times. This situation lasted till the middle of Omar’s domination years. But there were people who did muta though it was forbidden. For example, that time Amr b. Hureys came to Kufa city, did muta with a slave girl and she became pregnant. This situation was told Omar and he thought that not all Moslems knew about the forbidding of muta. That is why at that Omar told a special speech and declared that muta was forbidden⁵⁶. In one special speech Omar told so: “Prophet permitted us to do muta for three days, then he declared that it was forbidden. Upon to Allah, if I know that after having been permitted by Prophet a married person had made muta and if he doesn’t show me four witnesses considering muta lawful, I’ll stone him”⁵⁷.

It is in other narrative: “Omar had told in a special speech so: “Why do people do muta though it is forbidden by Prophet?” Omar knew for the first time some people doing muta. If he knew the prohibition didn’t last in Prophet’s times he wouldn’t be nervous. This situation shows that to forbid muta wasn’t his own decision. When he saw that the prohibition which was applied during Prophet’s times was disordered and some people didn’t know that prohibition he began to apply this order again. So Omar is not the first

⁵³ Hazimi, *el-I’tibar*, 179; koçkuzu, 301-302.

⁵⁴ Ibn Hacer el-Askalani, *Fethu’l-bari*, IX,145.

⁵⁵ Müslim, Nikah, 15.

⁵⁶ Aynî, Bedruddin, *Umdetu’l-kari şernhu sahihi’l-buhari*, XVII, 246.

⁵⁷ Ibn Mace, Nikah, 44; Muvatta, Nikah, 41.

person who forbade that rule, he is the person who applies the Prophet's prohibition⁵⁸.

The verses about the muta marriage given by Shia and Sunni sects are not arguments about this problem. The verses given by Sunni sect are against muta, but Shia sect has explained the verses according to their thought. So the expression "till definite time" told by Abdullah b. Masud about this verse is not in Kuran text. It is only an infamous narrative. Due to Schacht's opinion, the orientalist interested in this theme, there is no argument in Kuran about the name of the muta marriage taking from Kuran (Al-Nisa surah 4/24). In the shown verse it is not firmly told about the muta marriage⁵⁹. In Prophet's tradition it is also told about this problem. In Prophet's tradition it is also told about this problem. In prophet's traditions it is also shown that the muta marriage was permitted during wars and in necessary situations. Sunni school and Zeydiyya branch of Shia sect also notify that these prophet's traditions were abrogated. But Imamiyya notify that the showings in Prophet's traditions have legal strength.

There are some narrotives about the muta marriage having been forbidden by Omar. There is an explanation by some authors analyzing the narratives which show the forbidding of muta during prophet's times together with the narrative which show the forbidding of muta by Omar: May be some sahaba hadn't known the muta forbidding by Prophet and they had continued the muta marriage. Omar had seen it and had forbidden it again. They had known the forbidding of muta from Omar⁶⁰. It means Omar had ended the muta marriage. In his times he had seen some people protecting the muta marriage as it was legal. Considering them so who had done zina Omar had notified that he would have stoned them⁶¹.

It is impossible to solve this problem according to mutual arguments. Because there were strong arguments creating from the explanation of verses and narratives of both sides. But the application of the muta marriage created some problems damaged the family type which was determined by Islam and

⁵⁸ See. Ali Osman Ateş, 334; Mehmet Soysaldı, *Kur'an ve Sünnete Göre Evlenme ve Boşanma*, İstanbul 1999, 70.

⁵⁹ Schacht, IX, 260; Ateş, 333.

⁶⁰ Tahavi, III, 26.

⁶¹ Ateş, 334.

was suitable for abuse. Whereas to protect family and generation is one of the five basic principles which Islam aims to protect them. We can appreciate this problem from this point of view: Because Sunni sect rejected the arguments of Shia and at the same time Shia sect didn't accept Sunni sect's arguments right either. Because according to Sunni jurisprudents the arguments which Shia jurisprudents asserted are obrogated. And Shia jurisprudents consider that the narratives were asserted by Sunnites are solitary (âhad) and insufficiently supported (muzdarib). One of the main arguments of Shia sect about muta is that, most of Shia jurisprudents considered muta right and there is concensus between Shia jurisprudents. There is an intellectual argument of position of Shia sect in this problem. They think that the sense orders the permission of this marriage. Because this marriage has no matter. But they don't answer such kind of questions: what must be done if muta gives harmful results? If it is so can the thought and the order of Shia sect be changed? As a matter of fact is that some muta applies disorders the family system of Islam. Because such kind of muta is not applied according to Jafary law books too.

While analyzing the muta theme some misunderstandings happen. For example, one mistake of Shia sect is that they consider muta as a Sunna, some Prophet's traditions are told about the advantage of muta and say that a person must do at least one muta during his life. But one of mistakes of Sunni sect is that they consider muta baseless and irregular work. But muta showing in these books and the muta which is applied differs from each other. Some times the conditions which were determined in Islam law books are not carried out, the persons who do muta are not controlled and at the same time it is very difficult to control this problem.

One of problems of Shia sect about this theme is that they consider the order right for the persons who are in the state of emergency or in difficulties as well as for the persons who are in simple situations. It is clear that some orders which are in Islam law books make conditions for abuse from muta. But taking it into account they don't provide necessary measures. A person reading Shia sources he can think that as if muta is one of the most important orders. Because in these books there are many stimulating narratives and words.

According to the orders which are in Islam law books to do muta can be accepted only in necessary situation. But there is not any system that can control it if it is done or not. That is why the muta marriage is a reason for damages, social-psychological problems. Because of it in some countries such as Azerbaijan it is forbidden to do muta.

There is also a thought that Omar had settled muta obstinacy with Ali⁶². Then one can think a question: "Is the reason of protecting muta insistently by Shia sect their attitude to Omar?" But to think about it is also wrong. Because such thought creates an opinion that two great personality passed a sentence in religion problem based on personal principles. It is an accusation against them and is not right indeed.

Social investigations had investigated Shia Jafari societies which had accepted the muta marriage. According to the investigations there is a contradiction between the levels of cultural, education, welfare and religion knowledge of these societies and the application of the muta marriage. That is to say when the women's welfare and cultural levels increases the number of users of muta are reduced. In such condition for the women living in outskirts where the economic and cultural level is low the muta marriage still remains as a marring form⁶³.

⁶² See, Şeyh Mufid, *Hulasatu'l-icaz*, 22.

⁶³ See, *Müslüman Toplumlarda Kadın ve Cinsellik* (Pınar İlkaracan, İletişim yay. İstanbul 2003. See another approach to this problem from view of possibility and permissibility under special circumstances, *Kur'an Yolu*, Ankara 2003, II, 33-34.